A-580-870
Remand: Slip Op 19-73
POR: 09/01/2015-08/31/2016
PUBLIC DOCUMENT
E&C/Office VI: CS

Final Results of Redetermination Pursuant to Court Remand
Oil Country Tubular Goods from the Republic of Korea
Nexteel Co. v. United States
Consolidated Court No. 18-00083, Slip. Op. 19-73 (CIT June 17, 2019)

A. Summary

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *Nexteel Co., Ltd. v. United States*, Consol. Court No. 18-00083, Slip. Op. 19-73 (June 17, 2019) (*Remand Order*). These final results of redetermination concern *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 17146 (April 18, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

In the *Remand Order*, the Court remanded four issues to Commerce: (1) adverse facts available (AFA), finding that Commerce's application of AFA to NEXTEEL Co., Ltd. (NEXTEEL) was unreasonable and, thus, the issue required further consideration; (2) particular market situation (PMS), finding that Commerce failed to substantiate its finding of a PMS with record evidence; (3) classification of proprietary SeAH Steel Corporation (SeAH) grades, finding that Commerce failed to meaningfully distinguish between a product's physical characteristics and production processes and remanded the issue for further consideration; and (4) deduction of general and administrative (G&A) expenses as U.S. selling expenses, finding that Commerce's

determination was not supported by record evidence and remanded the issue for clarification or reconsideration.

On October 4, 2019, we released our Draft Results of Redetermination to interested parties.[1] On October 16, 2019, we received comments from SeAH,[2] NEXTEEL,[3] Maverick Tube Corporation, Tenaris Bay City, Inc., TMK IPSCO, Vallourec Star, L.P., Welded Tube USA, and United States Steel Corporation (collectively, the domestic interested parties).[4] We respond to these comments below. After considering these comments and analyzing the record, we have further explained our methodology employed in the *Final Results*. Based upon the results of our analyses, we have recalculated the weighted-average dumping margins for SeAH, NEXTEEL, and non-examined companies, which have changed from 6.75 percent to 5.41 percent, 75.81 percent to 46.71 percent, and 6.75 percent to 26.06 percent, respectively.

B. Background

On October 2, 2016, Commerce published the *Preliminary Results*, in which Commerce calculated a preliminary margin for NEXTEEL based on its questionnaire responses and data, including its translated audited financial statements.[5]

[1] *See* "Draft Results of Redetermination Pursuant to Court Remand Oil Country Tubular Goods from the Republic of Korea," dated October 4, 2019 (Draft Results of Redetermination).
[2] *See* SeAH's Letter, "Comment of SeAH Steel Corporation on Draft Redetermination on Remand" dated October 16, 2019 (SeAH Draft Remand Comments).
[3] *See* NEXTEEL's Letter, "Oil Country Tubular Goods from the Republic of Korea: Comments on Draft Remand Redetermination," dated October 16, 2019 (NEXTEEL Draft Remand Comments).
[4] *See* Domestic Interested Parties' Letters, "Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2015-2016, Remand: Comments on Draft Results of Redetermination Pursuant to Court Remand," (Domestic Interested Parties Grade and G&A Comments), and "Oil Country Tubular Goods from the Republic of Korea: Domestic Interested Parties' Comments Upon Commerce's Draft Results of Redetermination Pursuant to Court Remand," (Domestic Interested Parties AFA and PMS Comments), both dated October 16, 2019.
[5] *See Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 46963 (October 10, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

1. Adverse Facts Available

After the *Preliminary Results*, Commerce received an allegation from Maverick Tube Corporation (Maverick) and United States Steel Corporation (U.S. Steel) (collectively, the petitioners) in which the petitioners alleged that NEXTEEL intentionally misled Commerce by omitting a translation from the English version of NEXTEEL's 2016 financial statements.[6] Specifically, the translated version of the audited financial statements submitted by NEXTEEL omitted the translation of characters from line items for loan obligations. Commerce agreed with the petitioners in the *Final Results*, stating, "{w}ithout an accurate translation, Commerce did not have the ability to probe the loans recorded therein and properly determine how to treat the loans for margin calculation purposes."[7] Commerce further stated that, "based on NEXTEEL's failure to provide an accurate translation of an important line item in its 2016 financial statements… NEXTEEL withheld information that would have enabled Commerce to analyze whether the loans recorded in that line item were relevant to Commerce's dumping calculations. Further, by failing to provide an accurate translation of that line item, NEXTEEL significantly impeded the proceeding."[8] As a result, Commerce applied AFA to NEXTEEL in the *Final Results*.

In its *Remand Order*, the Court disagreed with Commerce's assessment that by mistranslating a portion of its financial statements NEXTEEL failed to cooperate to the best of its ability. It further concluded that Commerce's application of total AFA was unreasonable and remanded the issue for further consideration consistent with that conclusion.[9]

---

[6] *See* Petitioners' Letter, "Oil Country Tubular Goods from The Republic of Korea: Duty Reimbursement and Further Information in Support of Duties as a Cost Allegation," dated January 19, 2018.
[7] *See Final Results* IDM at Comment 6.
[8] *Id.*
[9] *See Remand Order* at 9-10.

2. Particular Market Situation

During the antidumping administrative review, Commerce received an allegation from Maverick Tube Corporation that a PMS existed in the Republic of Korea (Korea).[10] In the *Preliminary Results* and *Final Results*, after considering the arguments and comments submitted by interested parties on this issue, Commerce found that record evidence supported a finding that a PMS existed in Korea which distorted the costs of production of oil country tubular goods (OCTG) due to the totality of circumstances.[11] Commerce's finding of the existence of a PMS was based on the evidence on the record of this administrative review and also found that the circumstances present in the Korean market during the previous period of review "remained largely unchanged from… the prior review which led to the finding of a particular market situation in Korea in *OCTG from Korea POR 1*."[12] Therefore, Commerce continued to find in the *Final Results* that, "based on the collective impact of Korean hot-rolled coil (HRC) subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market, a particular market situation exists in Korea which distorts the OCTG costs of production."[13] Commerce further stated:

> Based on the totality of the conditions in the Korean market, Commerce continues to find that the allegations represent facets of a single particular market situation. Record evidence shows subsidization of HRC by the Korean government, as well as purchases of HRC by the mandatory respondents from POSCO, which received such subsidies. Record evidence also shows that the subsidies received by Korean hot-rolled steel producers totaled

[10] *See* Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Other Factual Information Submission for Valuing the Particular Market Situation in Korea," dated May 4, 2017 (Maverick PMS Allegation).
[11] *See Preliminary Results* PDM at 14
[12] *See Final Results* IDM at Comment 1 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea POR 1*), and accompanying IDM).
[13] *See Final Results* IDM at Comment 1.

> almost 60 percent of the cost of hot-rolled steel, the primary input into OCTG production."[14]

In the previous administrative review, the Court held that Commerce's PMS approach "was reasonable in theory," but that "Commerce failed, however, to substantiate its finding of one particular market situation with evidence on the record."[15] In the instant review, Commerce applied the same approach of considering the totality of circumstances, which the Court endorsed in the previous review. The Court concluded, however, that because Commerce stated that the circumstances remained largely unchanged from those in the previous review, and the Court did not affirm Commerce's determination in the previous review based on substantial evidence, Commerce's determination that a PMS existed in this period of review was also unsupported by record evidence and remanded the issue for further proceedings.[16] Even though U.S. Steel argued that the record of this review contained 29 additional documents and, thus, was more robust than the record of the prior review, the Court stated that the additional documents "consisted mostly of news articles, and Commerce did not rely on them when making its ultimate decision."[17] Therefore, the Court did not analyze these new documents in its opinion any further, determined that Commerce's determination that a PMS existed was unsupported by record evidence, and remanded the issue for further proceedings.[18]

3. Classification of Proprietary SeAH Products

The Court also remanded for reconsideration the classification of proprietary SeAH products.[19] In its initial questionnaire, Commerce asked SeAH to report the grade of OCTG, and

[14] *Id*.
[15] *See Nexteel Co. v. United States*, Consol. Court No. 17-00091, Slip. Op. 19-01 (January 2, 2019), at 15.
[16] *Id*. at 15.
[17] *See Remand Order* at 14.
[18] *Id*. at 15.
[19] *Id*. at 20.

to use a separate reporting code for any proprietary/non-American Petroleum Institute (API) grades of OCTG that were not listed in the API Specification 5CT.[20] SeAH reported that it assigned a separate grade code "075" for "an OCTG product that has the same tensile strength required by the N-80 specification…but is not heat treated…in the manner required by the N-80 norms."[21] In the *Final Results*, Commerce stated that SeAH's proprietary grades "meet the same tensile-strength and hardness requirements as normalized pipe N-80 grade," and that "SeAH acknowledges that key mechanical properties, tensile strength and hardness, are equivalent for its proprietary grades and grade N-80."[22] Commerce stated that heat treatment was not a "physical characteristic," but rather a "production process" and should not be included when assigning a grade code. Therefore, Commerce found that it was appropriate to classify SeAH's proprietary grades of OCTG as grade code "080" in the control number (CONNUM) construction.[23] The Court found that Commerce "failed to distinguish meaningfully between a product's physical characteristics and production process" and remanded the issue to Commerce for further consideration.[24]

4. Deduction of General and Administrative Expenses as U.S. Selling Expenses

Lastly, the Court remanded for clarification or reconsideration the deduction of G&A expenses related to resold U.S. products for SeAH's U.S. affiliate Pusan Pipe America Inc. (PPA) as U.S. selling expenses.[25] SeAH argued that the G&A expenses were related to the

[20] *See* Commerce's Letter, "Request for Information Antidumping Duty Administrative Review, SeAH Steel Corporation, Republic of Korea, Oil Country Tubular Goods," dated January 13, 2017 (SeAH Antidumping Questionnaire), at C-9.
[21] *See* SeAH's Letter, "Oil Country Tubular Goods from the Republic of Korea – Response to January 13 Questionnaire," dated March 6, 2017 (SeAH's Section C Questionnaire Response), at 11 and C-2.
[22] *See Final Results* IDM at Comment 11 (citing SeAH's Section C Questionnaire Response).
[23] *See Final Results* IDM at Comment 11.
[24] *See Remand Order* at 21.
[25] *Id.* at 23.

company's overall activities, and, therefore, that it would be improper for these selling expenses to be deducted.[26] In the *Final Results*, however, Commerce allocated the G&A expenses related to resold U.S. products for PPA.[27] In the *Final Results*, Commerce also stated that "PPA's G&A activities support the general activities of the company as a whole, including its sales and further manufacturing functions of all products," and applied the G&A ratio to further manufactured and resold products.[28] The Court found that Commerce's explanation "does not clarify why Commerce deducted PPA's G&A activities for resold products, nor does it clarify why it deducted G&A expenses from the costs of imported pipe." The Court further states that Commerce's conclusion was "unsupported by substantial evidence on the record" and remanded the issue for clarification or reconsideration.[29]

C. Analysis

1) Application of Total Adverse Facts Available to NEXTEEL

In the *Remand Order*, the Court remanded Commerce's application of total AFA to NEXTEEL due to NEXTEEL's incomplete English-version translation of its audited financial statements during the course of the administrative review. The Court concluded "that the showing that NEXTEEL did not act to the best of its ability and willfully withheld information is weak."[30] Accordingly, the Court stated that Commerce's use of total AFA was unreasonable and remanded the issue for further consideration consistent with its opinion.[31]

Although we respectfully disagree with the Court that the mistranslation of financial statements by NEXTEEL does not amount to failure to cooperate to the best of its ability, we

[26] *See* SeAH's Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea – Case Brief of SeAH Steel Corporation," dated November 30, 2017 (SeAH's Case Brief), at 14.
[27] *See Final Results* IDM at Comment 13.
[28] *See Remand Order* at 24.
[29] *Id.* at 25.
[30] *See Remand Order* at 10.
[31] *Id*.

have complied with the Court's order. In compliance with the Court's instruction, we have reconsidered our application of total AFA to NEXTEEL and have issued a new determination consistent with the Court's opinion. Section 776(b) of the Tariff Act of 1930, as amended (the Act), provides that Commerce may use an inference adverse to the interests of an interested party in selecting from among facts otherwise available, if an interested party failed to cooperate to the best of its ability. Given the Court's finding that Commerce's showing that NEXTEEL failed to cooperate to the best of its ability was insufficient, we see no basis to continue to apply the total AFA to NEXTEEL. Accordingly, under protest, we have calculated NEXTEEL's dumping margin based on NEXTEEL's reported data.

However, the case briefs submitted during the course of the underlying administrative review contained six comments which Commerce found it did not need to address in the *Final Results*, since the application of AFA to NEXTEEL rendered those comments moot.[32] Given the Court's reversal on the issue of the application of the total AFA to NEXTEEL, and our reconsideration on remand, these comments are no longer moot and we will address them now. Commerce's positions on those six issues are explained below.

Comment 1: NEXTEEL's Warranty Expense Calculation

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce used NEXTEEL's reported transaction-specific warranty expenses in the margin calculation.
- NEXTEEL provided a schedule of its direct and indirect warranty expenses incurred on subject merchandise for the three most recently completed fiscal years (*i.e.*, 2014, 2015, and 2016), which incorporates the warranty expenses that NEXTEEL incurred through its settlement with its affiliate POSCO Daewoo.[33]

[32] *See Final Results* IDM at Comments 16-21.
[33] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea," dated November 30, 2017 (U.S. Steel Case Brief), at 19 (citing NEXTEEL Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Second Supplemental Sections A&C Questionnaire Response," dated September 12, 2017, at Exhibit S-1).

- Commerce has consistently found that it is appropriate to use a three-year average of historical warranty expenses where a respondent's actual, POR transaction-specific warranty expenses are not typical of the expenses normally incurred by the respondent.[34]
- In the less-than-fair-value (LTFV) investigation of this proceeding, Commerce used NEXTEEL's historical warranty expenses after finding that it would be distortive to use NEXTEEL's transaction-specific warranty expenses.[35]
- A comparison of the NEXTEEL's transaction-specific warranty expenses to its historical warranty expenses shows that it would be distortive to use NEXTEEL's transaction-specific warranty expenses in the instant review. Consistent with Commerce's prior practice concerning NEXTEEL in this proceeding, Commerce should calculate NEXTEEL's warranty expenses based on the average of its three-year historical warranty expenses and assign this amount to all U.S. sales reported by NEXTEEL.

NEXTEEL's Rebuttal Comments:

- Commerce correctly relied on NEXTEEL's transaction-specific warranty expenses, as they reflect NEXTEEL's actual expenses incurred in selling the subject merchandise.
- A certain amount of the warranty expenses included in NEXTEEL's three-year average calculation relate to payments to POSCO Daewoo. Because Commerce treated NEXTEEL and POSCO Daewoo as affiliates, these amounts are effectively transferred to POSCO Daewoo to cover its costs of warranty expenses in selling to its downstream customers. Thus, these amounts are irrelevant to Commerce's calculations.[36]
- NEXTEEL segregated the warranty expenses associated with payments to POSCO Daewoo from its payments to other customers; the latter show that NEXTEEL's reported transaction-specific expenses are consistent with its historical experience.[37]

Commerce Position: In the *Preliminary Results* of the instant review, Commerce relied on transaction-specific warranty expenses incurred by NEXTEEL during the POR.[38] Commerce normally relies on the three-year average of warranty expenses when it finds that the expenses

[34] *Id*. at 19-20 (citing *Stainless Steel Plate in Coils from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 66 FR 64017 (December 11, 2001), and accompanying IDM at Comment 7; and *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009), and accompanying IDM at Comment 4).
[35] *Id*. at 20 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea Investigation*), and accompanying IDM at Comment 22).
[36] *See* NEXTEEL's Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Rebuttal Brief," dated December 8, 2017 (NEXTEEL Rebuttal Brief), at 18 (citing POSCO Daewoo's September 11, 2017 supplemental sections A and C questionnaire response (POSCO Daewoo September 11, 2017 SQR) at S-5 to S-14).
[37] *Id*. at 19 (citing NEXTEEL September 12, 2017 SQR at Exhibit S-1).
[38] *See Preliminary Results* PDM.

from the POR are distorted;[39] however, we find that there is no record evidence to indicate that the expenses from this POR are distorted.

In the LTFV investigation, NEXTEEL reported incurring no warranty expenses during the period of investigation (POI), yet it did report pending warranty expenses during that period. Commerce found in the LTFV investigation that it was not typical of NEXTEEL's experience not to incur any warranty expenses in a calendar year, so Commerce concluded that NEXTEEL's warranty expenses for the POI were distorted. This is not the case in the POR of the instant review, as explained in more detail below.

Commerce found NEXTEEL and POSCO Daewoo to be affiliates in this administrative review; thus, warranty expenses of POSCO Daewoo's were regarded as indirect warranty expenses.[40] However, we disagree that the payments made by NEXTEEL to POSCO Daewoo for POSCO Daewoo's customers' warranty claims are transfers or that they are irrelevant to Commerce's calculations. These are warranty expenses for subject merchandise produced and/or sold by NEXTEEL and its affiliates. Therefore, we are treating them as warranty expenses for subject merchandise sold during the POR, and not as "transfers" to POSCO Daewoo as NEXTEEL has argued.

Furthermore, NEXTEEL has demonstrated that its warranty expenses during the POR are consistent with its historical amount of warranty expenses.[41] Consistent with normal practice, Commerce will not rely on the three-year average because there is nothing on the record to indicate that these warranty expenses are distorted. However, Commerce's general practice is not to allocate warranty expenses on a transaction-specific basis, but rather to allocate warranty expenses over all sales to a particular market or on a model-specific basis within that market if the respondent tracks and records such expenses in its books and records.[42] Commerce has previously stated:

> The nature of a warranty expense is that it is unknown and unforeseeable at the time of sale. As such, in setting prices sellers would be expected to build in a warranty and bad debt allowance across products and markets based on a company's historical experience.[43]

Consistent with this practice, we find it appropriate to allocate the warranty expenses from the POR across all subject merchandise.

---

[39] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying IDM at Comment 28.
[40] *See Preliminary Results* PDM at 8.
[41] *See* NEXTEEL Rebuttal Brief at 19 (citing NEXTEEL's Letter, "Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Second Supplemental Sections A&C Questionnaire Response," dated September 12, 2017, at S-1).
[42] *See Certain Pasta from Italy: Notice of Final Results of 16th Antidumping Duty Administrative Review; 2011–2012*, 79 FR 11409 (February 28, 2014) (*Certain Pasta from Italy*), and accompanying IDM at Comment 2.
[43] *Id*. at Comment 2.

Comment 2: POSCO Daewoo's Warranty Expense Calculation

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce based POSCO Daewoo's warranty expenses on its single reported warranty claim for the POR.
- Commerce should calculate POSCO Daewoo's warranty expenses not attributed to NEXTEEL based on the company's historical warranty expenses instead of its transition-specific warranty expenses for the final results, consistent with Commerce's established practice.[44]
- However, in relying upon POSCO Daewoo's historical warranty expenses, Commerce should exclude 2016 from the calculation, because it appears that the timing issue as to when claims are requested and when they are settled had an impact on POSCO Daewoo's reported warranty expenses for 2016.[45] Thus, Commerce should base POSCO Daewoo's warranty expenses on the company's average warranty expenses in 2014 and 2015.
- Furthermore, Commerce should deny the offsets claimed by POSCO Daewoo to its warranty expenses, which consisted of (1) reimbursements received from insurance claims where the claims related to damage incurred in shipment, and (2) sales revenue from scrap sales.[46]

NEXTEEL's Rebuttal Comments:

- Commerce properly relied on POSCO Daewoo's transaction-specific warranty expenses, as they reflect its actual expenses incurred in selling the subject merchandise. Thus, NEXTEEL disagrees that any modifications are warranted for the final results.
- However, if Commerce relies on POSCO Daewoo's three-year historical average warranty expenses, it should not adopt U.S. Steel's proposal to exclude 2016 warranty expenses.[47]
- Also, if Commerce relies on POSCO Daewoo's three-year historical average warranty expenses, Commerce should allow the offsets for insurance reimbursements and revenue from scrap sales because they are directly tied to and reduce the warranty expense at issue.[48]
- Finally, if Commerce uses NEXTEEL's and/or POSCO Daewoo's three-year warranty expenses, Commerce should ensure that it is not double counting any warranty expenses.[49]

[44] *See* U.S. Steel Case Brief at 22-24 (citing POSCO Daewoo September 11, 2017 SQR at Exhibit SC-5).
[45] *Id*. at 24-25 (citing POSCO Daewoo September 11, 2017 SQR, at S-7).
[46] *Id*. at 26-28.
[47] *See* NEXTEEL Rebuttal Brief at 20-21.
[48] *Id*. at 21-22.
[49] *Id*. at 22-23.

Commerce Position: As stated above, Commerce's practice is to rely on the three-year average to determine the warranty deductions if there is evidence that expenses incurred during the POR are distorted.[50] Because the reported expenses are the actual expenses incurred during the POR, and consistent with Commerce's practice, we are relying on the warranty expenses during the POR and allocating those expenses for all subject merchandise sold in the United States during the POR by POSCO Daewoo. POSCO Daewoo provided the three-year historical warranty expenses of its customers and it showed warranty/unit costs that did not indicate that the POR expenses were distortive. In fact, when looking at the three-year historical average (years 2014 through 2016), the POR warranty expenses are generally in line with the historical average in non-aberrational years. For additional detail concerning these programming adjustments, *see* the Draft Analysis Memorandum.[51] This record evidence does not support the argument that the POR warranty expenses are distorted, thus there is no reason for Commerce to rely on the historical three-year average. Accordingly, U.S. Steel's arguments regarding adjustment to the three-year average are moot.

Comment 3: POSCO Daewoo's Further Manufacturing Costs

U.S. Steel's Comments:

- There are two U.S. sales in POSCO Daewoo's U.S. sales database that are identified as having been further manufactured for which POSCO Daewoo did not report any further manufacturing costs.
- Commerce should apply partial adverse facts available for these two sales, consistent with Commerce's approach in past cases where the respondent failed to provide acceptable information regarding its sales of further manufactured merchandise.[52]
- As partial adverse facts available, Commerce should assign the highest reported further manufacturing cost.[53]

NEXTEEL's Rebuttal Comments:

- These sales should not be included in the margin calculation for the instant POR because Commerce already included these sales in its margin calculations in the first administrative review, and Commerce's practice is to include sales in the margin calculations only once. These products did not enter the United States during the instant POR; thus, the underlying entries will not be subject to the assessment rate calculated in the instant review.

[50] *See Certain Pasta from Italy* IDM at Comment 2.
[51] *See* Memorandum, "Analysis of Data Submitted by NEXTEEL Co., Ltd. for the Draft Redetermination Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea," dated October 4, 2019 (Draft Analysis Memorandum).
[52] *See* U.S. Steel's Case Brief at 33.
[53] *Id*. at 33-34.

- However, if Commerce retains these sales in its analysis, there is no basis for applying adverse inferences to any aspect of the data, including the further manufacturing costs.[54]

Commerce Position: It is Commerce's practice not to review the same sales from a previous administrative review in the current POR.[55] Because these products did not enter the United States during the instant POR, they should not be subject to the assessment rate calculated in the instant review. Since the two U.S. sales identified by the petitioners were included in NEXTEEL's margin calculation for the 2014-2015 administrative review,[56] we have not included them in NEXTEEL's margin calculation in the instant review.[57] As such, we find that the application of AFA is not warranted for the two U.S. sales in POSCO Daewoo's U.S. sales database for which it did not report further manufacturing costs.

Comment 4: Suspended Production Losses

U.S. Steel's Comments:

- For the final results, Commerce should adjust NEXTEEL's reported G&A expense ratio to include its suspended production losses during the POR.
- NEXTEEL's suspended production losses do not relate to the manufacture of any products, and, thus, they pertain to NEXTEEL's general operations and are correctly classified as G&A expenses.
- Commerce included NEXTEEL's suspended production losses in its G&A ratio in *OCTG from Korea POR 1*.[58]

NEXTEEL's Rebuttal Comments:

- No adjustment to NEXTEEL's reported cost data to account for losses associated with suspended operations is necessary.
- NEXTEEL did not include the suspended losses in its reported costs because they were not recognized as a cost of manufacturing, but, rather, as a cost of goods sold, in accordance with Korean International Financial Reporting Standard (K-IFRS).[59]
- Suspended losses are not related to the overall management of NEXTEEL's operations, but, rather, consisted of maintenance expenses that NEXTEEL incurred on a production line that was suspended temporarily.

---

[54] *See* NEXTEEL Rebuttal Brief at 27.
[55] *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 40492 (July 15, 2008), and accompanying IDM at Comment 8.
[56] *See* Memorandum, "Analysis of Data Submitted by NEXTEEL Co., Ltd. for the Final Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea," dated April 10, 2017; s*ee also* Memorandum, "Analysis of Data Submitted by NEXTEEL Co., Ltd. for the Amended Final Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea," dated July 3, 2017.
[57] *See* Draft Analysis Memorandum.
[58] *See* U.S. Steel's Case Brief at 29-30 (citing *OCTG from Korea POR 1* IDM at Comment 34).
[59] *See* NEXTEEL's Rebuttal Brief at 25.

Commerce Position: We agree with U.S. Steel that an adjustment to NEXTEEL's reported G&A expenses to include its suspended production losses is appropriate. It is Commerce's normal practice to include routine shutdown expenses (*i.e.*, maintenance shutdowns) in a respondent's reported costs. In *Cement from Mexico*,[60] Commerce found that shutdown costs related to one of the respondent's facilities were properly included in the COM. However, in the instant review, the suspended loss is not related to a routine shutdown; rather, it relates to NEXTEEL's suspension of production on certain lines for an extended period of time.[61] As explained in *OCTG From Korea POR 1*, unlike a routine maintenance shutdown, once a production line is suspended, it no longer relates to the ongoing production. Regardless of the reason for the suspension, in contrast to the routine maintenance shutdowns, there are no longer products produced on those production lines or current intentions to produce products on those lines that can bear the burden of the costs associated with those production lines.[62] As such, because NEXTEEL suspended the production lines for an extended period of time, we consider the associated costs to be related to the general operations of the company as a whole, and not specific to products associated with the production lines. Therefore, we have reclassified the suspended production losses to G&A expenses. In addition, we have excluded from the cost of goods sold (COGS) denominator the reclassified suspended production losses.

Comment 5: Cost Adjustment for Downgraded, Non-OCTG Pipe

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce did not adjust NEXTEEL's costs to account for non-prime OCTG, which is a by-product generated during the OCTG production process.
- NEXTEEL's non-prime OCTG is not sold as OCTG or as pipe that can be used for the same purposes as OCTG (*i.e.*, for drilling applications in oil and gas exploration and production).
- Under its established practice, Commerce should allocate the net costs of producing non-prime OCTG to the costs of producing the OCTG to ensure that NEXTEEL's reported data reasonably reflect the costs associated with the production and sale of OCTG.[63]
- For the final results, Commerce should allocate the costs reported for non-prime OCTG to prime OCTG, consistent with *OCTG from Korea Investigation* and *OCTG from Korea POR 1*.[64]

---

[60] *See Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148 (April 9, 1997) (*Cement from Mexico*), and accompanying IDM at Comment 9.
[61] *See* NEXTEEL's July 17, 2017 supplemental section D questionnaire response at 2-4 and Exhibits SD-5, SD-6 and SD-7.
[62] *See OCTG From Korea POR 1* IDM at Comment 34.
[63] *See* U.S. Steel's Case Brief at 30-31 (citing 773(f)(1) of the Act).
[64] *Id*. at 31-32 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Negative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of the Final Determination*, 79 FR 10480 (February 25, 2014) and accompanying PDM at 21, unchanged in *OCTG from Korea Investigation*; and *Certain Oil Country Tubular Goods From the Republic of*

NEXTEEL's Rebuttal Comments:

- Commerce should not calculate an adjustment to account for costs incurred on non-prime OCTG. Non-prime OCTG is subject merchandise, as Commerce found in *OCTG from Ukraine*.[65]
- Alternatively, even if Commerce calculates an adjustment using the average cost of manufacture (COM) versus the selling price, the appropriate quantification of an adjustment that measures the difference between revenue on non-prime products and the cost of non-prime products is one derived from the average COM of non-prime products, not the average COM of all products. This is because Commerce's intention is to allocate the manufacturing costs less the sales revenue of non-prime pipe to OCTG pipe.[66]

Commerce Position: We agree with U.S. Steel that NEXTEEL's non-prime products should not be allocated full cost because they are not capable of being used for the same applications as prime OCTG. As explained in *OCTG from Korea Investigation* and *OCTG From Korea POR 1*, the issue here is whether the non-prime products can still be used in the same applications as the subject merchandise (*i.e.*, whether it is still OCTG).[67] The downgrading of a product from one grade to another will vary from case to case. Sometimes the downgrading is minor, and the product remains within a product group, while at other times the downgraded product differs significantly, and it no longer belongs to the same group and cannot be used in the same applications as the prime product. Consequently, if the product is not capable of being used for the same applications, the product's market value is usually significantly impaired, often to a point where its full cost cannot be recovered. Therefore, instead of attempting to judge the relative values and qualities between grades, Commerce adopted the reasonable practice of looking at whether the downgraded product can still be used in the same applications as its prime counterparts.[68]

With this distinction in mind, we have reviewed the information on the record of this review related to NEXTEEL's downgraded merchandise that is detected at the final testing stage of the production process. We find that NEXTEEL's reliance in *OCTG from Ukraine* is misplaced. In *OCTG from Ukraine*, the rejected OCTG merchandise that Commerce found was within the scope of the investigation consisted of products that entered the United States as OCTG and,

---

Korea: Preliminary Results of Antidumping Duty Administrative Review 2014-2015, 81 FR 24800 (October 14, 2016), and accompanying PDM at 17, unchanged in *OCTG from Korea POR 1*).

[65] *See* NEXTEEL's Rebuttal Brief, at 24 (citing *Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 41969 (July 18, 2014) (*OCTG from Ukraine*), and accompanying IDM at Comment 2).

[66] *Id*. at 25.

[67] *See OCTG From Korea Investigation* IDM at Comment 18; and *OCTG From Korea POR 1* IDM at Comment 33.

[68] *See OCTG From Korea Investigation* IDM at Comment 18; *OCTG From Korea POR 1* IDM at Comment 33; *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014), and accompanying IDM at Comment 15; and *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 9.

subsequent to the entry, upon inspection, were deemed to be damaged or otherwise non-compliant with API standards and could not be repaired in a way to make them meet these standards.[69] In the instant case, the merchandise initially intended to be produced as OCTG was downgraded to non-prime at the end of the production process and was never sold as OCTG. According to NEXTEEL, non-prime products cannot be used in the same applications as the OCTG products subject to the investigation.[70] Pipes that are downgraded at the final testing stage on the OCTG production lines are unsuitable for use in applications defined under API 5CT, because non-prime products do not satisfy the relevant API standard. NEXTEEL does not issue a mill certificate for the OCTG products downgraded to non-prime and they are generally used for structural purposes such as pile.[71] In addition, the sales (*i.e.*, market) prices of NEXTEEL's downgraded non-prime products are considerably less than the full production costs that the company assigns to them in the normal course of business. We will not artificially inflate the value of non-prime products to an amount that is significantly higher than the amount such products can be sold for. The difference between the cost and the sales price of the non-prime products is in large part due to the fact that these products are not OCTG and cannot be used in the same applications as the specialized, high-value OCTG products. Consequently, assigning full costs of prime-products to these non-prime products does not reasonably reflect the costs associated with the production and sale of the merchandise. Therefore, we have adjusted NEXTEEL's reported costs to value the downgraded non-prime products at their sales price, while allocating the difference between the full production cost and market value of the non-prime products to the production costs of prime-quality OCTG. Further, because we agree with NEXTEEL that the quantification of the adjustment could also be derived from the average cost of the non-prime products, we have calculated the per-unit adjustment accordingly.

Comment 6: Programming Errors

U.S. Steel's Comments:

- In the *Preliminary Results*, Commerce made certain ministerial errors in the margin program when merging POSCO Daewoo's U.S. sales data with NEXTEEL's U.S. sales data. Commerce should correct these errors.
- First, when merging the two sales databases, the values in the fields common to both databases were only overwritten for the first sequence number and not for subsequent sequence numbers. To correct this error, Commerce should rename the fields in POSCO Daewoo's U.S. database that are common to the fields in NEXTEEL's U.S. database prior to merging the two databases.[72]
- Second, Commerce should amend the margin program to ensure that all direct and indirect selling expenses incurred by NEXTEEL and POSCO Daewoo are deducted from U.S. price.[73]

[69] *See OCTG from Ukraine* IDM at Comment 2.
[70] *See* NEXTEEL's July 21, 2017 Supplemental Section D Questionnaire Response at 1-2.
[71] *Id*.
[72] *See* U.S. Steel's Case Brief at 34-37.
[73] *Id*. at 37-38.

- Third, certain sales in NEXTEEL's U.S. database for the instant POR have the same sequence numbers as certain sales in the separate NEXTEEL database containing data for first administrative review sales related to re-sales by POSCO Daewoo. Commerce should correct the duplicative sequence numbers by renumbering the sequence numbers at issue in NEXTEEL's U.S. database for the instant POR.[74]
- Lastly, Commerce should insert programming language to ensure that POSCO Daewoo's reported sales quantity, not NEXTEEL's, is used in the margin program in instances where NEXTEEL's and POSCO Daewoo's U.S. databases link.[75]

NEXTEEL's Rebuttal Comments:

- Commerce should not include sales from the first administrative review in its analysis.
- However, if Commerce determines to retain these sales in the margin calculation, certain modifications to U.S. Steel's proposed SAS language are necessary.[76]
- In addition, regarding U.S. Steel's proposal that expense variables for both NEXTEEL and POSCO Daewoo be included, Commerce should not simply sum the reported warranty expense amounts, as doing so would double count the warranty expenses in instances where NEXTEEL's warranty amounts are payments to POSCO Daewoo.[77]

Commerce Position: A "ministerial error" is defined by 19 CFR 351.224(f) as an error "in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial." We have authority to correct any error, which an interested party has raised in the case brief, regardless of whether such error is ministerial in nature. With respect to the four errors alleged by the petitioners, we agree with U.S. Steel.

For the first allegation, we agree that the fields in POSCO Daewoo's U.S. database that are common to the fields in NEXTEEL's U.S. database should be renamed prior to merging the two databases. Additionally, we agree that the correct POSCO Daewoo values must be assigned to the appropriate fields. We have made these adjustments.[78]

Secondly, we agree that sales for which both NEXTEEL and POSCO Daewoo incurred direct and indirect selling expenses that these expenses should be deducted from the gross U.S. sales price. We have made these adjustments.[79]

Thirdly, we agree that any sales which occurred in the prior administrative review should only link to NEXTEEL's database from that review. This includes ensuring that any sales which were

[74] *Id*. at 38-39.
[75] *Id*. at 39-40.
[76] *See* NEXTEEL's Rebuttal Brief at 31-32.
[77] *Id*. at 32.
[78] *See* Draft Analysis Memo.
[79] *Id*.

assessed in the previous review are not included in the instant review, as established above in Comment 3. To correct this error, the duplicative numbers in the instant review's database have been renumbered.[80]

Lastly, we agree that the correct sales quantity can be distorted after merging the U.S. sales databases of NEXTEEL and POSCO Daewoo. Accordingly, we have made adjustments to ensure that POSCO Daewoo's sales quantity is used, rather than NEXTEEL's, in instances where NEXTEEL and POSCO Daewoo's U.S. sales databases are linked.[81]

For additional detail concerning these programming adjustments, *see* the Draft Analysis Memorandum.[82]

2) Particular Market Situation

In the *Remand Order*, the Court remanded Commerce's application of a PMS adjustment to the mandatory respondents' reported costs of production for Korean OCTG.[83] After reconsideration of all the record evidence regarding PMS, we find that a PMS exists in Korea that distorts the cost of production (COP) of OCTG and, thus, we have continued to make an adjustment for the PMS based on the countervailing duty (CVD) rate found in *Hot-Rolled Steel Flat Products from Korea.*[84].

Section 504 of the TPEA added the concept of particular market situation in the definition of the term "ordinary course of trade," for purposes of constructed value under section 773(e), and through these provisions for purposes of the COP under section 773(b)(3).[85] Section 773(e) of the TPEA states that "if a particular market situation exists such that the cost of

[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *See Remand Order* at 11-15.
[84] *See Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), as amended in *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016); and *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony With Amended Final Determination of the Countervailing Duty Investigation*, 84 FR 23019 (May 21, 2019) (collectively, *Hot-Rolled Steel Flat Products from Korea*).
[85] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."[86] Thus, under 504 of the TPEA, Congress has given Commerce the authority to determine whether a particular market situation exists within the foreign market from which the subject merchandise is sourced and to determine whether the cost of materials, fabrication, or processing of such merchandise fail to accurately reflect the COP in the ordinary course of trade.[87] Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively.

In this redetermination regarding a PMS in Korea, Commerce is reviewing the allegations of the existence of a PMS *de novo*, in compliance with the Court's remand instructions. Therefore, Commerce is examining each alleged factor as it relates to the establishment of a PMS. Additionally, all evidence on the record that may support or detract from a finding of a PMS in Korea has been reviewed as part of this redetermination. It is critical that this redetermination and new examination of a PMS is a market-wide determination. It is not intended to be company-specific. Thus, while some companies may not be directly affected by one or other particular factors that Commerce examines, the issue is whether, overall, the market is affected by the particular market situation.

In the administrative review, Maverick alleged that a PMS existed in Korea based on: (1) subsidization of Korean hot-rolled steel products by the Korean government; (2) the distortive pricing of unfairly traded Chinese HRC; (3) strategic alliances between Korean HRC suppliers and Korean OCTG producers; and (4) distortive government control over electricity prices in

[86] *Id*.
[87] *See* Section 773(e) of the Act.

Korea.[88] In addition to the four factors alleged by the petitioners, we considered an additional factor in this redetermination: (5) steel industry restructuring effort by the Korean government. Commerce found in both the prior and instant reviews that a PMS existed based on the totality of these four factors.[89] In the remand of the first administrative review, the Court found that "Commerce's particular market situation approach was reasonable in theory," but that Commerce's finding of a PMS was not supported by substantial evidence on the record of the first administrative review.[90] As the Court concluded that our approach of considering the totality of circumstances in the market is reasonable, we have continued to use the same methodology in this redetermination and have added another factor to our examination of the totality of the circumstances based upon our review of the evidence on the record.

Commerce is considering, as a whole, the four PMS allegation factors based on their cumulative effect on the Korean OCTG market through the COP for OCTG and its inputs, as well as an additional factor that was found in the course of this redetermination analysis. In our analysis, we have considered the totality of record evidence, which includes both the documents that were placed on the record on this review that were also on the record of the prior review, and new documents that were placed on the record of this review, but which were not on the record of the prior review. Although the evidence pertains to the same issue of existence of a particular market situation in Korea, neither the record evidence nor our evaluation of such evidence is identical to those in the prior review. Based upon our reevaluation of the totality of the conditions in the Korean market during the period of this review, Commerce finds that the

[88] *See* Maverick PMS Allegation at 2-3.
[89] *See OCTG from Korea POR 1*; *see also OCTG from Korea Investigation*.
[90] *See Nexteel Co., Ltd. v. United States*, Consol. Court No. 17-00091, Slip. Op. 19-1 (January 2, 2019) (*AR1 Remand Order*).

allegations and evidence represent facets of a single particular market situation. We address below the supporting evidence and our analysis for each of these elements.

1. Subsidization of HRC by the Government of Korea (GOK)

Record evidence shows subsidization of HRC by the Korean government, as well as purchases of HRC from POSCO by the mandatory respondents.[91] In *Hot-Rolled Steel Flat Products from Korea*, Commerce found that the subsidies received by Korean hot-rolled steel producers totaled almost 60 percent of the cost of hot-rolled steel.[92] In *Hot-Rolled Steel Flat Products from Korea*, Commerce found that POSCO was receiving subsidies.[93] HRC is the primary input of OCTG, constituting approximately 80 percent of the cost of OCTG production; thus, distortions in the HRC market, particularly those received by POSCO, have a significant impact on production costs of OCTG for the mandatory respondents in this review.[94]

2. Distortive Pricing of Chinese HRC

Record information demonstrates that, as a result of significant overcapacity in Chinese steel production, the Korean steel market has been inundated with imports of cheap Chinese steel products, placing downward pressure on Korean domestic steel prices.[95] This market condition is demonstrated in the document, "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," which states that China is responsible for 60 percent of the global excess supply of steel and that

[91] *See* Maverick PMS Allegation at Exhibit 12 (containing Maverick's Letter, "Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief," dated March 1, 2017, at 6, fn.18, and sources cited therein).
[92] *Id.*
[93] *Id*.
[94] *Id.* at Exhibit 4 (containing Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015, at 3).
[95] *See* Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Submission of Factual Information Relating to Particular Market Situation Allegations," dated August 7, 2017 (Maverick's Supplemental PMS Allegation), at Exhibit 5 (containing "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry" (September 30, 2016)).

this excess supply is "especially targeted" towards Korea.[96] We find it significant that the Korean government's document indicates that Chinese excess supply is "especially targeted" toward Korea, which lends further support to a finding that a particular market situation exists in Korea. This, along with the domestic steel production being heavily subsidized by the Korean government, as described above, has a distorting effect on the market prices of HRC in Korea.

As reported by Asian Steel Watch, Korea is one of China's largest export destinations; this includes exports of flat-rolled products.[97] As the volume of Chinese exports of hot-rolled steel to Korea increased, the price of these exports decreased, continuing to place downward pressure on Korean steel. This is a years-long trend, but was particularly pronounced from 2015-2016 when the hot-rolled steel price per net ton decreased eight percent.[98]

3. Strategic Alliance

With respect to Maverick's allegation that certain Korean HRC suppliers and Korean OCTG producers attempt to compete by engaging in strategic alliances, we agree with Maverick's allegation that certain Korean HRC suppliers and Korean OCTG producers compete by engaging in strategic alliances. The record evidence supports that such strategic alliances existed in Korea recently and that these strategic alliances may have affected prices in the periods covered by the original LTFV investigation and subsequent reviews, including this POR.[99] For example, in a SeAH Steel Group brochure, a processing center was described as

[96] *Id.* at Exhibit 5 (containing "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry" (September 30, 2016)).
[97] *See* U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea," dated August 7, 2017, at Exhibit 2 (U.S. Steel PMS Allegation) (containing article, *China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond*, Asian Steel Watch (January 2016)).
[98] *Id* at Exhibit 1 (containing Global Trade Atlas Data "China Exports of Hot-Rolled Carbon/Alloy Steel Products to South Korea").
[99] *See* Maverick PMS Allegation at Exhibit 4 (containing Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015, at Attachment 4).

operating "as the processing center for POSCO."[100] This further demonstrates a close entanglement between HRC suppliers such as POSCO and OCTG producers. Further, information on the record of this review confirms that there were various price-fixing or trade restraint schemes engaged in by various steel suppliers and OCTG producers.[101] Because of the close working relationship between the HRC suppliers and producers of OCTG, we find that these strategic alliances between certain Korean HRC suppliers and Korean OCTG producers are relevant as an element of Commerce's analysis in that they may have created distortions in the prices of HRC in the past, and have the potential to impact HRC pricing in a distortive manner during the instant POR and in the future. As stated, this factor alone is not definitive, but it is an integral part of Commerce's reasonable totality approach.

4. Electricity

With respect to the allegation of distortion present in the electricity market, we find that the price of electricity is set by the GOK and that electricity in Korea functions as a tool of the government's industrial policy.[102] As the record demonstrates, the Korea Electric Power Corporation (KEPCO) stated that the Korean government "heavily regulates the rates we charge for the electricity we sell" and that its "ability to pass on such costs increases to customers is limited."[103] The GOK has tight control over the electricity market, including supply and pricing. As KEPCO has stated:

> If fuel prices substantially increase and the Government, out of concern for inflation or for other reasons, maintains the current level of electricity tariff and does not increase it to a level to sufficiently offset the impact of rising fuel prices or prolongs the

[100] *Id*.
[101] *Id*.
[102] *See* Maverick PMS Allegation at Exhibit 5 (citing Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Allegation on Electricity," dated February 3, 2016 (Maverick Electricity Allegation), at 3 (referencing Korea Electric Power Corporation Form 20-F (April 30, 2016) (KEPCO 20-F)).
[103] *Id*.

> hold-order on the fuel cost pass-through adjustment system or amend or modify it to the effect that we are prevented from billing and collection of the fuel cost pass-through adjustment amount on a timely basis or at all, the price increases will negatively affect our profit margins or even cause us to suffer net losses and our business, financial condition, results of operations and cash flows would suffer. [104]

The largest electricity supplier, KEPCO, is a government-controlled entity, for which the GOK maintains extensive control over pricing and materials.[105] As a government-controlled entity, KEPCO is responsible for the transmission, distribution, and sale of electricity to customers, but the pricing is heavily monitored and regulated by the GOK:

> KEPCO submits to the Ministry of Trade, Industry and Energy a report containing the facts and basis of the calculation of the electricity tariff and the basic accounting documents including the statement on profit and loss and the financial statement. The GOK may request data on KEPCO's investment plan, administrative and operational expense and KEPCO's transaction with an interested party. The costs for providing service to each applicable KEPCO's tariff class are generally submitted in order to discuss and set the electricity rate for each class. [106]

Consistent with the Statement of Administrative Action (SAA), a PMS may exist where there is government control over prices to such an extent that home-market prices cannot be considered to be competitively set.[107] Considering the government control over KEPCO, it is notable that the average Korean electric rates are lower than those in Japan.[108] In 2016, according to the International Energy Agency, Korea's annual industrial electricity prices were approximately 43

[104] *See* Maverick PMS Allegation at Exhibit 8 (citing Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Pre-Preliminary Comments on SeAH," dated September 6, 2016, at Exhibits 6-7), and Exhibit 5 (citing Maverick Electricity Allegation at Exhibit 2, p. 32, "KEPCO Form 20-F" (April 30, 2015)).
[105] *See* Maverick Electricity Allegation at 13-14.
[106] *Id.* at Exhibit 4 (containing GOK's Letter, "Response of the Government of Korea to the Department of Commerce's Questionnaire January 21, 2015 Welded Line Pipe from the Republic of Korea CVD Original Investigation," dated January 21, 2015, at I-34).
[107] *See* Statement of Administrative Action, H.R. Doc. 103-316, Vol 1 (1994) at 822.
[108] *See* NEXTEEL's Letter, "Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Rebuttal Comments and Factual Information," dated August 15, 2017, at Exhibit 10.

percent lower than that of Japan.[109] It is implausible that this type of price discrepancy resulting in reduced Korean electric rates is occurring without government control, particularly when KEPCO explicitly states that its costs are submitted to the Korean government to establish the electricity rates.[110] Moreover, electricity constitutes a significant portion of the cost of manufacturing (COM) of OCTG. In fact, record evidence indicates that in the production of OCTG, electricity accounts for at least 5 percent of COM.[111] Based on these facts, we find that the GOK's interest in, and involvement with, the electricity market in Korea, this factor contributes to the distortion of the COM by placing continued downward pressure on the price of electricity in Korea and the COM of OCTG.

5. Steel Industry Restructuring Effort by the Korean Government

In analyzing the four alleged factors of a PMS in Korea, we considered an additional element in which the Korean government is playing an active role in restructuring the private steel industry. A press release from the Korean Ministry of Strategy and Finance, which provided the Korean government's plans to "help accelerate business restructuring planned to manage oversupply, and promote the development of high value added materials" in the steel industry.[112] We also considered publications to observe the conditions surrounding restructuring, such as Invest Chosun's article, "Restructuring of Steel Industry Severe Excess Supply in Steel Pipe, Cold Rolled and Plate Sectors ...Concerns Loom over Dongkook Steel and SeAH Group," which stated that, "{t}he investment industry is expressing the opinion that additional restructuring is necessary."

---

[109] *Id*.
[110] *See* Maverick Electricity Allegation at Exhibit 4, "Response of the Government of Korea to the Department of Commerce's Questionnaire January 21, 2015 Welded Line Pipe from the Republic of Korea CVD Original Investigation," dated January 21, 2015, at I-34.
[111] *See* Maverick Electricity Allegation at 23.
[112] *See* Maverick Supplemental PMS Allegation at Exhibit 12 (containing "Korean Ministry of Strategy and Finance, Press Release: Government Unveils 2017 Action Plan to for Industrial Restructuring" (January 25, 2017)).

The Korean steel industry is advocating for restructuring to respond to severe excesses of supply. In response, the Korean government has announced its plans to aid and accelerate that restructuring. This type of active government involvement in the steel industry's response to market overcapacity is indicative of a PMS. This is precisely the type of interference that meets the definition of a PMS. As stated in the TPEA, a PMS "exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."[113] The Korean government's assistance to accelerate the steel industry's response and restructuring interferes with the normal functioning of the free market and alters the ordinary course of trade. Outside government interference in the steel industry in response to particular market conditions that affected such industry to the point that the industry may need to undergo restructuring is highly unusual and does not represent the ordinary course of trade. When the investment industry expressed the view that Korean steel industry needed additional restructuring, as shown in Invest Chosun, the Korean government quickly intervened to assist the steel industry to restructure, as expressed in the press release from the Korean Ministry of Strategy and Finance. We recognize that the government's announcement of additional restructuring of steel industry occurred within months of the end of the POR, nonetheless, the conditions that lead to the government's announcement existed during the POR.

Interplay Between These Market Conditions

As stated in the *Final Results*, these intertwined market conditions signify that the production costs of OCTG, especially the acquisition prices of HRC in Korea, are distorted, and, thus, demonstrate that the costs of HRC to Korean OCTG producers are not in the ordinary course of trade. Accordingly, Commerce finds that various market forces result in distortions

[113] *See* TPEA.

which impact the costs of production for OCTG from Korea. Considered collectively, Commerce finds that the evidence on the record establishes that the Korean OCTG market is affected by significant forces that are impacting the cost of producing OCTG in Korea during the POR in the instant administrative review.

To be clear, each of these factors alone does not lack the potential for creating a PMS. Any one of these four factors can distort the market such that Commerce could reasonably conclude that a PMS exists. For example, the legislative history indicates that during the floor debates, members of Congress were particularly concerned with cost distortions in inputs. In explaining the proposed legislation, Representative Meehan stated that Commerce "will be empowered to be able to disregard prices or costs of inputs that foreign producers purchase if the Department of Commerce has reason to believe or suspect that *the inputs in question have been subsidized or dumped* (emphasis added)."[114]

Accordingly, based on our evaluation of the record evidence before us, there is no suggestion that any one of the five factors alone is insufficient to establish the particular market situation. Rather, we evaluate the totality of circumstances and, based on our evaluation of all circumstances, the presence of all five factors, as well as the interaction of the five factors with one another, supports the finding that a PMS existed in Korea during the relevant period. For example, as explained above, the overcapacity of Chinese HRC alone can, and, in fact, does distort the Korean market. But as part of Commerce's totality approach, we also evaluated how the overcapacity and price distortion of Chinese steel imports, which are subsidized by the Chinese government, made it impossible for Korean producers to compete without Korean

[114] *See* Congressional Record-House, H4666, H4690 (June 25, 2015); *see also* Congressional Record-Senate, S2899, S2900 (May 14, 2015)

government interference and support. In fact, POSCO's CEO stated that the prevailing conditions in Korean steel market made it impossible for Korean industry to compete:

> We're struggling mostly because China is flooding the market with extremely cheap products with the support from the government. We cannot help but complain about their low prices as it's impossible for us to produce at the same level and be competitive.[115]

This reaction demonstrates the dramatic price distortion in Korea steel market, which made it impossible for the Korean steel industry to compete in Korea without the Korean government's subsidization to address the Chinese government's support for its own steel industry. The Boston Consulting Group, in a report prepared for the Korean Iron and Steel Association (KOSA), suggested mergers of Korean steel producers in attempt to push back against the "crisis faced with Chinese makers' assaults."[116] In other words, in its evaluation of the market conditions in the Korean steel market in a study commissioned by KOSA, the Boston Consulting Group came to the conclusion that the Korean steel producers faced a "crisis" as a result of Chinese steel imports. It is important to understand that the totality approach does not assign a sum greater than the addition of the parts or factors, but accurately accounts for all of the factors' influence on one another in creating a PMS.

Commerce relied on the entire record to observe the intertwined market conditions. Commerce stated in the *Final Results* that the circumstances present in the Korean market during the previous review are "largely unchanged."[117] However, this should not be interpreted to mean that the evidentiary documentation present on the record (or our evaluation of this evidence) is

[115] *See* POSCO's Letter, "Oil Country Tubular Goods from the Republic of Korea," dated August 15, 2017 (citing "Asian Steel Market Outlook: Next Ten Years," *Asian Steel Watch* (January 2016)).
[116] *Id*. at 12 (citing, "Steel Industry Restructuring: Korean Steel Industry Advised to Reduce Number of Steel Plate Plants by Half," *Business Korea* (September 19, 2016)).
[117] *Id*. at 17.

identical to the documentation on the record of the first administrative review. Rather, in the instant administrative review, we found the same or similar circumstances (subsidization by Korean government, flood of cheap Chinese steel imports with support of Chinese government, strategic alliances, the Korean government's role in electricity markets, and the Korean Government's role in the restructuring of the steel industry), constituting a PMS, but we note that there is additional evidence on the record of this review that supports the finding of PMS. Commerce stated in the *Final Results* that "we agree with Maverick that facts in the instant review are largely identical to the facts in the first administrative review, and the same evidence is on the record of the instant review."[118] However, the context is important. This statement was in response to SeAH and NEXTEEL's arguments that the facts in this instant review have changed significantly, such that no PMS exists. To clarify, the facts demonstrating the existence of a PMS are similar, and the same evidence considered in the first administrative review is also included on the record of the instant review; however, Commerce also considered additional record evidence establishing existence of such factors beyond that present on the record of the first administrative review and conducted additional analysis that was not performed in the first administrative review or in our original determination in this review.[119]

[118] *Id.* at 18.

[119] We respectfully disagree with the Court's statement that "Commerce did not rely on {the new documents} when making its ultimate determination." When making a determination, particularly with a substantial record, such as that which is present in this administrative review, Commerce might not cite to every individual document used to arrive at its conclusion. This is particularly true when evaluating the existence of a PMS, since the determination does not rely exclusively on any one circumstance presented by any one document, but rather the cumulative impact of multiple factors presented by many documents. Commerce reasonably relied upon the previous administrative review record's facts, which remain unchanged, but these facts are more clearly and thoroughly demonstrated by additional documentation on the instant administrative review's record. However, this reliance does not diminish the strength of these additional substantiating documents. It would be incorrect to conclude that because a specific document is not discussed in the *Final Results*, that it was not part of Commerce's PMS analysis.

3) Classification of Proprietary SeAH Products

The product grade field of Commerce's initial questionnaire listed multiple API standard OCTG grades and asked respondents to report a separate grade code for any proprietary grades of OCTG that are not listed in API Specification 5CT.[120] SeAH reported that it sold three proprietary grades of OCTG in the United States during the POR that had the same tensile strength and hardness required by grade N-80 specifications but were not heat treated as required by the N-80 specification.[121] SeAH provided a separate grade code for these products, *i.e.*, code "075." In the *Final Results*, we combined the three proprietary grades that SeAH reported under code "075" with N-80 grade reported under code "080" for purposes of SeAH's margin calculation.[122] The Court determined that Commerce failed to meaningfully distinguish between a product's physical characteristics and production process and did not adequately address evidence on the record in making its determination.[123] The Court found that Commerce's decision was unsupported by substantial evidence and remanded for further consideration.[124]

We have reconsidered this issue and will provide further explanation. This issue is related to Commerce's model match methodology, which, in this case, was adopted with input from all interested parties during the original investigation and ensures that products with identical or similar physical characteristics are compared in determining the dumping margin. For example, in making price comparisons to calculate dumping margins, Commerce generally would not compare a price of an ordinary bearing used in a kitchen blender with a price of a state-of-the-art bearing designed to be used in space exploration, because their physical

[120] *See* Commerce's Letter, "Request for Information Antidumping Duty Administrative Review SeAH Steel Corporation Republic of Korea Oil Country Tubular Goods," dated January 13, 2017 (Antidumping Questionnaire), at B-11 and C-9.
[121] *Id*.
[122] *See Final Results* IDM at 84-85.
[123] *See Remand Order* at 21.
[124] *Id*.

characteristics are likely to be very different. On the other hand, if two bearings are almost identical in physical characteristics, but may differ in minor ways, they may be compared in model-match comparisons as products with similar physical characteristics.

Our model match methodologies, in general, and the model match methodology in this proceeding, specifically, contain a hierarchy of model match criteria to address these kinds of differences. The more important matching characteristics are listed higher in the model match methodology than less important criteria.

Commerce's established model matching hierarchy for this proceeding not only reflects the differences between products, but also ranks those differences in order of importance. Commerce informed parties of this methodology and reviewed interested parties' comments when establishing the model match hierarchy.[125] Physical characteristics (such as grade) are ranked above production processes (such as heat treatment) in the CONNUM construction.[126] Specifically, grade is the third-highest product characteristic, while heat treatment is the ninth-highest.[127] SeAH contends that its proprietary grades are distinct from the N-80 grade of OCTG because they are not heat treated. However, on this record, the absence of the heat treatment process is the sole distinguishing characteristic between N-80 grade products and SeAH's proprietary products. Under our model match hierarchy, the differences related to heat treatment are captured by the ninth-highest criteria and not the third-highest criteria, which is the grade. Indeed, it is incongruous to identify heat-treatment as a separate and distinct criterion in our

[125] *See* Commerce's Letter, "Antidumping Duty Investigations of Certain Oil Country Tubular Goods (OCTG) from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam; Proposed Product Characteristics and Model Match Hierarchy," dated July 29, 2013; *see also* Memorandum, "Decision Memorandum for the Negative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination in the Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of Korea," dated February 14, 2014, at 10-11.
[126] *See* Antidumping Questionnaire, at sections B and C.
[127] *Id.*

model match methodology hierarchy, while at the same time creating a grade distinction at a higher level of model match hierarchy based solely on heat treatment (*i.e.*, the same criterion, which exists at a lower level of the model match hierarchy). Accordingly, Commerce properly classified SeAH's proprietary products for model match purposes. SeAH reported that it sold three proprietary grades of OCTG in the United States during the period of review (POR) that had the same tensile strength and hardness required by grade N-80 specifications but were not heat treated as required by the N-80 specification.[128] In the *Final Results*, Commerce combined the three proprietary grades with N-80 grade for purposes of matching sales in SeAH's margin calculation.[129]

SeAH's explanation for not classifying its proprietary grade products under the codes assigned to grades J-55 or K-55 is that its proprietary grade products offer higher strength levels than J-55 or K-55, equivalent with N-80 grade products.[130] In fact, SeAH reported that its products have the same "mechanical properties" (*i.e.*, tensile strength and hardness) required by the N-80 specification, which have the assigned code of "080."[131] Because OCTG are used "in the well" and, thus, must withstand significant internal and external pressures at various depths, the key physical properties, such as tensile strength and hardness, are essential to determining the capabilities of a particular OCTG product. SeAH even noted that its proprietary grade products have "the same tensile strength required by the N-80 specification,"[132] which, we find, supports physical properties such as tensile strength being essential in determining comparable grades. In fact, SeAH itself cited a difference in physical characteristics when it explained that its

[128] *See* SeAH's Section C Questionnaire Response at 13, n.10.
[129] *See Final Results* IDM at 84-85.
[130] *See* SeAH Case Brief at 5-10; *see also* SeAH's Section C Questionnaire Response at 13, n.10.
[131] *See* SeAH's Section C Questionnaire Response at 13, n.10.
[132] *Id*.

proprietary grades were dissimilar to grades J-55 and K-55.[133] Commerce reasonably relied on the very same properties as SeAH did when determining a product's grade for model match purposes. SeAH stated, for example, that it did not classify its proprietary grade products under codes assigned to grade J-55 or K-55 products because their products offered higher strength levels.[134] It is clear that SeAH acknowledges the importance of physical characteristics, such as tensile strength, in determining a similar grade, as it used those very characteristics when submitting its own grade classification.

SeAH's has previously acknowledged that "it developed its proprietary grades specifically to compete with N-80 grade products and upgradeable L-80 products in the North American market, but without going through the heat treatment process." [135] SeAH's own statement that it developed the proprietary products at issue to compete with N-80 grade products further supports Commerce's approach of treating them as comparable matches with N-80 products in the model match methodology. It cannot also be true that SEAH's proprietary grade products cannot be sold to customers seeking certain API grade physical characteristics, as claimed by SeAH.[136] If this were the case, SeAH would not be selling non-API grade products in the North American market, much less specifically creating proprietary grade products to compete with N-80 grade, or any other API grade, products. Thus, in light of the overall goals of model-match methodology, and since SeAH stated in the previous review cycle that its proprietary grade products have an equivalent tensile strength as N-80 grade products and

[133] *See* SeAH Case Brief at 8-9.
[134] *Id*.
[135] *See* Final Results of Redetermination Pursuant to Court Remand Oil Country Tubular Goods from the Republic of Korea Nexteel Co. v. United States, Consolidated Court No. 17-00091, Slip. Op. 19-01 (CIT January 2, 2019) (OCTG AR1 Redetermination), at 8, (citing SeAH's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea Response to July 1 Supplemental Questionnaire," dated July 28, 2016, at 11, n 6).
[136] *See* SeAH Case Brief at 8.

compete with N-80 grade products in the North American market,[137] we continue to find that it was reasonable for Commerce to find them to be comparable for purposes of CONNUM construction in the *Final Results*.

Furthermore, SeAH submitted a purchase order for product that it titled, "Sales Documents for Sample Sale of Finished OCTG" in which it describes the OCTG as undergoing the same process that the proprietary grades undergo."[138] SeAH is directly marketing its seam annealed products with "the same tensile strength required by the N-80 specification" for jobs searching N-80 and L-80 grade OCTG. This undermines SeAH's statement that, "SeAH proprietary grades at issue do not undergo normalizing or normalizing and tempering. Instead, they are only seam annealed. As a result, SeAH is not permitted to certify or stencil its products as meeting the N-80 specification. This means that a customer that has job requirements that require N-80 grade OCTG cannot use the proprietary SeAH Steel grades." It is clear that SeAH markets and sells its proprietary products for jobs involving N-80 products. Thus, in light of the overall goals of model-match methodology, and since SeAH reported that its proprietary grade products have an "equivalent" tensile strength as N-80 grade products and compete with N-80 grade products in the U.S. market, we continue to find that it was reasonable for Commerce to find them to be comparable for purposes of CONNUM construction in the *Final Results*. As comparable products, Commerce reasonably coded SeAH's proprietary grade OCTG as "080," the same as N-80 grade OCTG.

However, Commerce did not disregard the heat treatment, the sole distinguishing feature between the proprietary grades and N-80 grade products. Commerce's model match

[137] *See* OCTG AR1 Redetermination at 8.
[138] *See* SeAH's Letter, "Oil Country Tubular Goods from the Republic of Korea –Response to June 26 Supplemental Questionnaire," dated July 17, 2017, at Appendix SA-12-A.

methodology already includes a separate heat treatment field as the ninth model match characteristic. If an identical match is available, Commerce will compare identical matches. Only, if such identical match is not available, Commerce will use the most similar match (*e.g.*, N-80 and SeAH's proprietary grade that competes with N-80 products). If the heat treatment is elevated from its ninth-highest ranking in the model match hierarchy above more important model match characteristics, as SeAH suggests, more similar products would be disregarded based solely on heat treatment and comparison could be made with less similar products, which is contrary to the goal of the model match methodology.

Within the model match methodology, Commerce differentiated between SeAH's proprietary grades of OCTG and N-80 grade OCTG by accepting a different heat treatment field value in the ninth-highest field of our model match methodology, which allows for the distinction of production process that SeAH reported. We find that this is reasonable because, while the physical characteristics of SeAH's proprietary products are comparable to N-80, certain aspects of the production process are not. We consider heat treatment to be a production process feature of OCTG, in that it does not, in and of itself, indicate a product's performance capabilities, nor does it, in and of itself, account for significant differences in mechanical and physical characteristics. To the extent that differences in production process could, in theory, result in different physical or mechanical characteristics, on this record, we see no evidence that heat treatment resulted in differences that are so significant that they must be captured at the earlier stage of our model match methodology than the heat treatment criterion.

This does not alter the model match methodology. Rather, this explanation seeks to further distinguish between a product's physical characteristics and its production processes, as

instructed by the Court.[139] In the CONNUM characteristics in this proceeding, grade is the third-highest product characteristic, and SeAH acknowledges that grade standards have different criteria and dimensions.[140] Within the grade product characteristic, and consistent with our practice, Commerce must determine if the differences in grade, including, but not limited to, physical characteristics and productions processes, can be captured in lower product characteristics so that comparable products can be determined.

Specifically, as explained above, SeAH's proprietary grades have the same "mechanical properties" (*i.e.*, tensile strength and hardness) required by the N-80 specification, but do not undergo heat treatment. Since the primary difference between SeAH's proprietary grade products and N-80 grade products is heat treatment, a production process, we find that it would disrupt the intended model matching hierarchy to consider heat treatment in the third-highest product characteristic field for grade, rather than in the model match field specifically intended for addressing differences in heat treatment. We find that it is appropriate to capture any differences in heat treatment (a production process) in the appropriate heat treatment field of the model match methodology.

We find no compelling reason to change the model match methodology that we adopted in the original investigation by elevating heat treatment differences to a higher level in our model match hierarchy. The existing model match methodology captures the similarities and differences (heat treatment) between SeAH's proprietary grades and the N-80 grade at the appropriate level in its hierarchy. Such an approach provides for predictability and consistent treatment of similarly situated products in all segments of this proceeding; it combines product grades with comparable physical characteristics, but still differentiates between products with

[139] *See Remand Order* at 21.
[140] *See* SeAH Case Brief at 8-9

differences in heat treatment through a separate field in our model match hierarchy. Furthermore, this analysis and methodology of coding SeAH's proprietary grades as N-80 grade for the CONNUM construction was affirmed by the Court with respect to the *AR1 Remand Results*.[141]

4) Deduction of G&A Expenses as U.S. Selling Expenses

The Court determined that Commerce's decision to deduct G&A expenses from constructed export price (CEP) in the *Final Results* was unsupported by substantial evidence on the record and remanded the issue to Commerce to clarify or reconsider its methodology.[142] The Court found that Commerce's explanation did not clarify why Commerce deducted PPA's G&A expenses for resold products, or how Commerce determined that it would apply all of PPA's G&A expenses to resold products.[143]

To address the Court's concerns about the lack of clarity in our original explanation, we will clarify our explanation on this technical issue here. We previously explained

> PPA's G&A activities support the general activities of the company as a whole, including: (1) the sale and further manufacture of further manufactured products; and (2) the sale of non-further manufactured products. Accordingly, for further manufactured products, we applied PPA's G&A ratio to the total cost of further manufacture for these products. In addition, we applied PPA's G&A ratio to the cost of the imported pipe, regardless of whether the pipe was further manufactured in the United States. In applying PPA's G&A ratio to the cost of the imported pipe, we have attributed a portion of PPA's G&A activities, which includes selling functions, to the resold products. [144]

Consistent with the Court's decision, we will explain further why we exercised our statutory discretion in this manner. To clarify, Commerce did not apply all of PPA's G&A

[141] *See Nexteel Co., Ltd. v. United States*, Consol. Court No. 17-00091, Slip. Op. 19-116 (September 4, 2019) (*OCTG from Korea I*).
[142] *See Remand Order* at 24.
[143] *Id*.
[144] *See Final Results* IDM at 87-88.

expenses to directly resold products, as the Court's opinion appears to suggest. To the contrary, the record evidence demonstrates that Commerce allocated PPA's G&A expenses *proportionately* to all of the products PPA sold (*i.e.*, products which PPA directly resold and products which PPA further processed and then resold).[145]

We continue to find that Commerce's approach in the *Final Results* was reasonable, because G&A expenses relate to the entire activities of the company, and because it is appropriate to allocate proportionally such G&A expenses to the entire activities of the company, which here incorporate both directly resold products and products resold after further processing.[146]

Our approach of allocating the G&A expenses of SeAH's U.S. affiliate PPA, both to directly resold products and to further manufactured products, is consistent with Commerce's normal practice.[147] In *Hot-Rolled Steel from Brazil*, for example, Commerce explained how the G&A expenses of an affiliated U.S. importer, which engaged in both further manufacturing and selling activities, should be treated:

> G&A activities support the general activities of a company as a whole, including its sales and manufacturing functions. Therefore, consistent with our decision in *Line Pipe from Korea*, we find it is appropriate to allocate G&A expenses to all company activities where the company engages in both further manufacturing and reselling activities…. Thus, if we are now applying the G&A expense ratio to the total cost of all further manufactured and non-further manufactured goods, then the denominator of the ratio, which as reported includes only further processing costs, must be revised to include not only the further processing costs, but also the

[145] *Id.*
[146] *Id.*
[147] *See Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from the Republic of Korea*), and accompanying IDM at Comment 20; *see also Certain Hot-Rolled Steel Flat Products from Brazil; Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016) (*Hot-Rolled Steel from Brazil*), and accompanying IDM at Comment 5.

> cost of the imported coils that were further processed, as well as the cost of all non-further manufactured products.[148]

This is exactly the calculation methodology that Commerce applied in this case.

In *CTL Plate France*, Commerce also faced the same issue and used the same allocation of G&A:

> The record evidence indicates that BSPC engages in both further manufacturing and reselling activities. Therefore, consistent with our decisions in *Cold-Rolled Steel from Brazil*, *Line Pipe from Korea*, and *Hot-Rolled Steel from Brazil*, we find that it is appropriate to allocate G&A expenses to all company activities.[149]

Therefore, we find that it would distort the accuracy of calculations if we were to allocate a company-wide G&A expense rate to only the further manufacturing portion of cost, but not to the full cost of the further manufactured products (*i.e.*, pipe costs plus the costs of further manufacturing (FURMANU)) and to the pipe costs of the directly resold products, both of which are represented in the denominator of the G&A rate calculation.

The antidumping statute, 19 U.S.C. § 1677a(d), provides that the price used to establish CEP must be reduced by certain expenses, such as direct selling expenses, indirect selling expenses, and costs of any further manufacture or assembly. The courts explained that, "in calculating U.S. prices using the {constructed export price} methodology, Commerce is to deduct any expenses generally incurred by or for the account of… the affiliated seller in the United States, in selling subject merchandise."[150] In other words, the statute *requires* that

---

[148] *See Hot-Rolled Steel from Brazil* IDM at Comment 5.

[149] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate France*), and accompanying IDM at Comment 17 (where Commerce explained: "In such instances, it is appropriate that the denominator of the G&A expense ratio be revised to include not only the further processing costs, but also the cost of the imported subject merchandise that was further processed and the cost of all non-further manufactured products (*i.e.*, the total cost of goods sold) because the G&A expenses incurred relate to all of the company's operations. Further, to ensure that the denominator of the ratio and the per-unit cost to which it is applied are on the same basis, we apply the G&A expense ratio to the per-unit further manufacturing cost plus the COP of the underlying subject merchandise.").

[150] *See United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1336 (CIT 2010).

Commerce deduct both the selling expenses and costs of further manufacture from the price used to determine CEP. Accordingly, if all G&A expenses incurred by an affiliated U.S. reseller can be treated as indirect selling expenses when the affiliated U.S. reseller only performs reselling activities, and all G&A expenses incurred by an affiliated U.S. further-manufacturer/reseller can be treated as further manufacturing expenses when the affiliated U.S. further manufacturer/reseller performs both further manufacturing and reselling activities, Commerce unquestionably has the authority to allocate G&A expenses to both types of activities when both activities occur and make appropriate deductions.

Further, our approach is mathematically balanced and reasonable. PPA, SeAH's affiliated reseller in the United States, employs individuals responsible for overseeing, coordinating, and supporting sales of both further manufactured and non-further manufactured products. Thus, PPA's G&A activities support the general activities of the company, encompassing the sale and further manufacture of products, and the sale of non-further manufactured products. Moreover, the denominator of the G&A expense ratio as calculated by SeAH (*i.e.*, the cost of goods sold from the financial statements) includes both directly resold and further manufactured OCTG (*i.e.*, the cost of the imported pipe plus the further manufacturing costs). Accordingly, for further manufactured products, we applied PPA's G&A expense ratio to the total cost of further manufacturing, plus the COP of imported OCTG pipe that was further manufactured, and we included the amount as further manufacturing under 19 U.S.C. § 1677a(d)(2). Additionally, we applied PPA's G&A expense ratio to the COP of the imported OCTG for products not further manufactured and included the amount as indirect selling expenses under 19 U.S.C. § 1677a(d)(1)(D).

To be clear, our application of PPA's G&A rate does not over- or under-apply G&A expenses, but, rather, properly assigns the reseller's G&A expenses proportionally to both groups of products. If an affiliated importer is engaged in both directly reselling subject merchandise and further manufacturing activities for other merchandise, the G&A ratio should not be applied solely to the further manufacturing activities, but, rather, should be also applied to the cost of the imported pipe, whether such pipe is resold further manufactured or without further manufacturing. Further manufacturing activity does not extinguish or reduce the cost of such pipe, but rather increases such cost by the cost of the further manufacturing activity. Here, the denominator used in PPA's G&A expense ratio includes the cost of all imported pipe, plus the cost of further manufacturing activities, thus capturing all relevant costs. Accordingly, applying such a ratio to only the cost of further manufacturing would improperly result in a mismatch between the basis used in the G&A expense ratio calculation and the basis on which the ratio is applied. Second, PPA performs G&A activities for both further manufactured products (which are not performed in-house, but, rather, tolled out to unaffiliated processors) and products that were directly resold without undergoing further manufacture. Thus, it is appropriate to assign PPA's G&A expenses to both imported non-further manufactured products and imported products that were further manufactured.

Finally, Commerce's treatment of PPA's G&A is fully consistent with how Commerce treated SeAH's home market costs. While SeAH's reported G&A expenses are included as part of the COP of the OCTG as directed under 19 U.S.C. § 1677b(b)(3)(B), SeAH did not report or disclose any purchased and directly resold OCTG products in the home market, so there was no

need to allocate SeAH's G&A to such product.[151] Accordingly, we will continue to apply the G&A expense ratio to both PPA's resold and further manufactured products.

D. Interested Party Comments on Draft Results of Redetermination

On October 4, 2019, we released our Draft Results of Redetermination to interested parties.[152] On October 16, 2019, we received comments from SeAH,[153] NEXTEEL,[154] and the domestic interested parties.[155] No other interested parties submitted comments.

Issue 1: Application of Total Adverse Facts Available to NEXTEEL

Domestic Interested Parties' Comments

- The Court's opinion presents the opportunity for respondents to submit incomplete, erroneous, or misleading translations with no consequences, which would stifle the investigative process.[156]
- The Court's opinion re-weighs the evidence, which is "not permitted by statute or binding appellate court precedent."[157] The Court's decision does not allow Commerce to continue the application of AFA to NEXTEEL, which is concerning because similar facts have been deemed sufficiently reasonable bases for applying total AFA in cases such as *Lightweight Thermal Paper from Germany*,[158] *Ironing Tables from China*,[159] *Pure*

[151] *See* SeAH's Letter, "Response of SeAH Steel Corp., Ltd. to the Department's January 13 Questionnaire Section A," dated March 18, 2016, at 2.
[152] *See* Draft Results of Redetermination.
[153] *See* SeAH Draft Remand Comments.
[154] *See* NEXTEEL Draft Remand Comments.
[155] *See* Domestic Interested Parties Grade and G&A Comments; and Domestic Interested Parties AFA and PMS Comments.
[156] *See* Domestic Interested Parties AFA and PMS Comments at 2.
[157] *Id.* at 3.
[158] *Id.* at 4, citing *Papierfabrik August Koehler SE v. United States*, 843 F. 3d 1373, 1378–80 (Fed. Cir. 2016).
[159] *Id.* at 4, citing *Since Hardware (Guangzhou) Co. v. United States*, 34 C.I.T. 1262, 1271–74 (2010).

Magnesium from China,[160] and *Frozen Warmwater Shrimp from China*.[161] These cases find that, "Congress granted Commerce broad legal authority to disregard the entirety of a respondent's questionnaire responses when any aspect of those responses are tainted with misrepresentation, misleading statements or documents, or fraud."[162]

- The Court has focused on the information and explanation provided by NEXTEEL after the misleading was discovered, rather than the fact that NEXTEEL provided a misleading translation in its financial statement.[163]
- Section 782(e) of the Act provides legal basis for Commerce to disregard all submitted information if the submissions are, "so incomplete that it cannot serve as a reliable basis for reaching the applicable determination" or the party has failed to act to the best of its ability in submitting accurate information.
- Therefore, Commerce should announce a policy which reaffirms the essentialness of accurately translated submissions and use this redetermination to announce a policy of applying total AFA in the event that misleading translations of financial statements are submitted.[164]

NEXTEEL's Comments

- In the Draft Results of Redetermination, Commerce erroneously made adjustments to total COP (TOTCOP), rather than total cost of manufacturing (TOTCOM). Commerce should adjust the programming language to correct this.[165]

[160] *Id.* at 4, citing *Tianjin Magnesium Int'l Co. v. United States*, 2011 Ct. Intl. Trade LEXIS 100, at 7–8 (August 10, 2011).
[161] *Id.* at 4, citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 802 F. 3d 1339, 1354–57 (Fed. Cir. 2015).
[162] *Id.* at 4.
[163] *Id.* at 6.
[164] *Id.* at 8-9.
[165] *See* NEXTEEL Draft Remand Comments at 43-44.

- Commerce did not comply with statutory requirements when it artificially reclassified the costs associated with suspended production as costs "related to the general operations of the company as a whole."[166]
- Commerce must rely upon a company's normal books and records when they are prepared with the home country's GAAP and reasonably reflect the costs of production.[167]
- Because Commerce reclassified costs associated with suspended production as G&A expenses, rather than COGS, the amount of COGS was reduced by the amount of reclassified G&A expenses. Commerce should not reclassify these costs and use the information as reported.[168]

Commerce's Position:

Commerce respectfully disagrees with the Court's conclusion "that the showing that NEXTEEL did not act to the best of its ability and willfully withheld information is weak."[169] Even so, under protest, we have complied with the Court's order and calculated NEXTEEL's dumping margin based on NEXTEEL's reported data rather than adverse facts available. We are mindful of the domestic interested parties' concerns and we continue to be troubled by the fact that NEXTEEL mistranslated a portion of its own financial statement and did not use a professional translator to translate such an important document. However, as domestic interested parties acknowledge, the Court's decision does not allow Commerce to continue to apply AFA to NEXTEEL in this case, and Commerce has complied with the Court's decision in this remand redetermination.

[166] *Id.* at 44-45.
[167] *Id.* at 45.
[168] *Id.* at 46.
[169] *See Remand Order* at 10.

With respect to the domestic interested parties' suggestion that Commerce should announce a new policy reaffirming the essentialness of submitting accurate translations, Commerce does not believe that such a step is necessary or appropriate in the context of this remand. The Court's decision is limited to the specific facts on the record of this particular case, and Commerce does not interpret the Court's decision as establishing a broad policy or rule that endorses submission of incorrect or misleading translations for other cases.

We agree with NEXTEEL regarding adjustments made to TOTCOP rather than TOTCOM. We corrected this adjustment.[170]

We disagree with NEXTEEL that the adjustment for suspended production losses does not comply with the statutory requirements. These costs affect the company as a whole, not just specific products and the reclassification of these expenses as G&A expenses is appropriate.

Issue 2: Particular Market Situation

Domestic Interested Parties' Comments

- Commerce's Draft Results of Redetermination explained that the Court had misunderstood its statement that it found the same or similar circumstances. This statement, as Commerce explained in the Draft Results of Redetermination, applied specifically to the respondents' argument that the facts in the Korean market had changed from the prior review cycle to the instant review cycle. [171]
- Commerce should also note U.S. Steel's submitted exhibits, which demonstrate a significant increase in the volume and value of Chinese exports of hot-rolled steel to

[170] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Redetermination Calculations Memorandum – NEXTEEL Co., Ltd." dated concurrently with this redetermination (NEXTEEL Analysis Memorandum).
[171] *See* Domestic Interested Parties AFA and PMS Comments at 11.

Korea, a "very close mutual relationship in the steel trade" between China, Japan, and Korea, and further evidence for Commerce's fifth factor – Korean government involvement – demonstrated by the Korean government's restructuring efforts.[172]

- The evidence for a PMS is more voluminous and more complete in the instant review than in the prior review, and supports Commerce's finding of a PMS.[173]

NEXTEEL's Comments

- The Court directly ruled that Commerce's finding of a PMS in the instant review relied on its finding of a PMS in the prior review and was unsupported by record evidence. The only possible conclusion of the Court's order was that Commerce was not to reexamine or reexplain the analysis, but to reverse the decision to find a PMS. Commerce is seeking to grant itself a remand by reexamining the record.[174]
- In its Draft Results of Redetermination, Commerce has examined only the evidence which supports its finding of a PMS. At a minimum, it must examine the data presented as to the COP of hot-rolled steel, and if these costs do not accurately reflect the cost or production in the ordinary course of trade.[175]
- Commerce's Draft Results of Redetermination does not supply a threshold for the cost of HRC in the ordinary course of trade. NEXTEEL has provided numerous submissions and exhibits to determine this threshold. [176]
- NEXTEEL has demonstrated that steel prices move on a global basis, and that steel scrap prices move in the same direction as the price of finished goods. This indicates that

[172] *Id.* at 12, citing U.S. Steel PMS Allegation.
[173] *Id.* at 12-13.
[174] *See* NEXTEEL Draft Remand Comments at 2-3.
[175] *Id.* at 4-5.
[176] *Id.* at 5-6.

movements in steel prices are in "lock step" throughout the world, and are moving in the same direction as input costs.[177]

- NEXTEEL disagrees that Commerce has any basis to insert surrogate value methodologies in a market economy like Korea, but these data, when properly reviewed, still confirm that the costs of inputs are within the ordinary course of trade.[178]
- Commerce's adjustment to NEXTEEL's and SeAH's HRC input costs has a valuation which is too high and unsupported by record evidence.[179]
- Commerce's analysis of electricity costs is arbitrary and looks only to benchmarks which Commerce believes support its case.[180]
- None of the factors in Commerce's analysis support the finding of a PMS.[181]
- The Court has rejected Commerce's logic and analysis in finding the first factor of subsidization twice. This is not a new analysis and is not consistent with the Court's conclusion.[182]
- Commerce's determination in *Hot-Rolled Steel Flat Products from Korea* was based entirely on the application of AFA and is, thus, inapplicable in this, or the prior, review. Relying on an AFA rate amounts to an application of AFA in this unrelated review. This rate was also revised, on remand, and is expressly not based on accuracy.[183]
- Since *Hot-Rolled Steel Flat Products from Korea* Commerce has confirmed that the subsidies for which it applied AFA in *Hot-Rolled Steel Flat Products from Korea* are not

[177] *Id.* at 6.
[178] *Id.* at 8-10.
[179] *Id.* at 10.
[180] *Id*. at 11.
[181] *Id.* at 12.
[182] *Id.* at 12-13.
[183] *Id.* at 13-16.

being received by POSCO.[184] Commerce ignores this finding in its Draft Results of Redetermination when establishing the PMS adjustment. Commerce should consider the most recent rates of subsidization established for HRC inputs if it intends to conduct a new review of the PMS allegations.[185]

- Commerce does not cite to any evidence that POSCO passed any benefit from alleged subsidies to NEXTEEL.[186] Commerce cannot avoid the requirements established by the countervailing duty law regarding upstream subsidies by renaming the subsidy a PMS.[187]
- Commerce must perform a "competitive benefit" analysis and determine if any competitive benefit has been passed through to a downstream producer. It has not done that in the Draft Results of Redetermination. Rather it assumes, with no evidence, that the full benefit has passed through to NEXTEEL.[188]
- Commerce relies on an inter-agency Korean government working paper to account for the impact of Chinese imports, but this document does not demonstrate "downward pressure on domestic steel prices." Instead, it refers to price differentials between domestic and Chinese steel, and indicates the Chinese imports are "primarily for construction," not pipe production.[189] This document also claims that Chinese exports

[184] *Id*. at 17, citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017).
[185] *Id*. at 20.
[186] *Id*.
[187] *Id*. at 21.
[188] *Id*. at 22.
[189] *Id*. at 23, citing Maverick's Supplemental PMS Allegation, at Exhibit 5 (containing "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).

are targeted toward other large global areas, not just Korea; this does not indicate that China is overflooding the Korean market with cheap steel, thereby creating a PMS.[190]

- Commerce also relies on a published article to demonstrate market conditions that constitute a PMS, but this article discussed market conditions outside of the POR. The article also does not discuss prices, or a meaningful impact on prices in Korea.[191] NEXTEEL submitted materials demonstrating that prices for hot-rolled inputs were increasing throughout the POR.[192]
- The Draft Results of Redetermination overlooks record evidence that no PMS exists, including documentation that NEXTEEL sourced very little HRC from China, or that imports from China, which are only one source of imports, are not distorting the Korean market.[193]
- Chinese imports of hot-rolled products are only 20 percent of total imports to Korea. If these products were truly flooding the Korean market, causing a PMS, then no other imports would be able to compete. These are competing and are able to make up 80 percent of the total imports.[194]
- Commerce's finding of a strategic alliance relies on record evidence which the Court has already found to be insubstantial. Commerce's conclusion that strategic alliances exist, and are a factor in creating a PMS, is speculative.[195]

[190] *Id.* at 24.
[191] *Id.* at 24-25, citing Maverick's Supplemental PMS Allegation at Exhibit 2 (containing *China's Steel Exports Reaching 100 Mt: What it Means to Asia and Beyond*, Asian Steel Watch, dated January 2016).
[192] *Id.* at 25 -26.
[193] *Id.* at 27-28.
[194] *Id.* at 28-29.
[195] *Id.* at 30-31.

- Commerce has previously found, and the Court has affirmed, that the Korean Government's provision of electricity was not for less than adequate renumeration.[196]
- Commerce compares electricity prices in Korea to those in Japan. Japanese prices appear to be an outlier, and Commerce fails to explain why this comparison supports its conclusion that the Korean electricity market is distorted.[197]
- The *Remand Order* does not permit Commerce to find new factors of PMS, including the fifth factor of steel industry restructuring.[198] Further, Commerce should not consider this element since it was not alleged in the underlying review. Commerce has found that the petitioner in a PMS allegation bears the burden of substantiating the allegation.[199]
- Commerce's finding that steel industry restructuring constitutes a factor of a PMS is not supported by record evidence because there is no evidence of actual restructuring. The documents cited by Commerce do not allege any steps taken by the Korean government to restructure the steel industry, or the specific impact that these steps would have on the steel industry.[200]
- Since the documents cited by Commerce in its finding of restructuring are not within the POR, they are irrelevant, and Commerce should remove this factor from its analysis.[201]
- Commerce did not apply a PMS adjustment to NEXTEEL in the *Final Results*; rather it applied an AFA adjustment, and, thus, had not yet ruled on the appropriate manner to apply a PMS adjustment.[202]

[196] *Id.* at 32-33.
[197] *Id.* at 33-34.
[198] *Id.* at 34.
[199] *Id.* at 35-36.
[200] *Id.* at 36-37.
[201] *Id.* at 38.
[202] *Id.* at 39.

- Commerce's PMS adjustment is unlawful, even if the Court accepts that a PMS exists. The Court has not yet addressed this.[203]
- The AFA CVD rate used by Commerce in the *Final Results* is no longer in effect.[204] Commerce should have sought to improve its calculations since the PMS adjustment in the *Final Results* was based on an inaccurate AFA rate.[205]
- By relying on an AFA rate, Commerce has not fulfilled its duty to reach a reasonable decision.[206]

SeAH's Comments

- Commerce's Draft Results of Redetermination does not comply with the Court's decision. While the Court did not expressly instruct Commerce to recalculate the dumping margins without a PMS adjustment, as it did in the *AR1 Remand Order*,[207] the Court did not remand the *Final Results* for Commerce to revisit its analysis.[208]
- The Draft Results of Redetermination do not cite to evidence of Korean government programs which restructure producers of hot-rolled steel products or affect the prices of those products.[209]
- The announcement for the Korean government restructuring program that Commerce cites occurred beyond the POR, and, thus, had no impact during the POR.[210]

[203] *Id.*
[204] *Id.* at 40-41.
[205] *Id.* at 42.
[206] *Id.* at 43-44.
[207] *See AR1 Remand Order*.
[208] *See* SeAH Draft Remand Comments at 1-3.
[209] *Id.* at 4.
[210] *Id.*

- Commerce has previously found that Korean government's steel restructuring program did not provide countervailable subsidies to Korean steel producers. Evidence shows that this program was never actually implemented.[211]
- Because the Korean government restructuring program did not occur during the POR, it could not have interacted with the other four factors during the POR, as Commerce claims.[212]
- There is no evidence that any distortions in the Korean electricity prices distorted the costs or prices of HRC in Korea.[213]
- Commerce has reviewed Korean electricity prices on prior occasions and has found that Korean steel producers have not received electrical subsidies.[214]
- The comparison between the Japanese and Korean steel prices is not relevant. There is also no evidence that the Korean prices are distorted, not the Japanese prices. Any difference between the two prices is explainable without government control, due to external factors which created an electricity-supply shortage in Japan.[215]
- Japanese producers sold HRC to SeAH at prices lower than its Korean suppliers, indicating that higher electricity prices did not result in more expensive HRC inputs.[216]
- The fact that SeAH L&S, part of the SeAH Group, operates a processing center for POSCO does not create a strategic alliance and does not affect the price of HRC.[217]

[211] *Id.* at 4-5.
[212] *Id.* at 5-6.
[213] *Id.* at 6-7.
[214] *Id.* at 7.
[215] *Id.* at 8.
[216] *Id.* at 9.
[217] *Id.*

- SeAH L&S does not supply any steel coils to SeAH Steel Corporation, which produces OCTG. Rather, SeAH L&S's primary focus is logistics. [218]
- Commerce has previously reviewed this relationship and found no affiliation. Without an affiliation, there cannot possibly be a strategic alliance.[219]
- The evidence cited by Commerce claims only that POSCO gave its pipe producers "insider" prices while charging other customers a different price for the same input. However, this is not price-fixing or a trade-restraint scheme. Furthermore, since POSCO sold its shareholdings in SeAH in 2013, any prior arrangements have no bearing on the POR. The Court has already found this argument of a silent agreement between POSCO and Korean OCTG producers to be unpersuasive.[220]
- Commerce's finding of countervailable subsidies received by POSCO was based on AFA, not an analysis of those subsidies. In a subsequent investigation, Commerce found that POSCO actually received subsidies at a much lower percentage than the AFA rate.[221]
- Japanese producers sold HRC to SeAH at lower prices than SeAH paid POSCO and there have been no claims that the Japanese producers received subsidies. If the Korean government needed to subsidize domestic producers in order to allow those producers to compete then the Japanese producers would not have been able to compete at lower prices. This demonstrates that the Korean prices were not distorted.[222]
- The antidumping statute does not permit an automatic adjustment when Commerce determines there is a PMS, rather it allows Commerce to make an adjustment only when,

[218] *Id.* at 9-10.
[219] *Id.* at 10-11.
[220] *Id.* at 11-12.
[221] *Id.* at 12-13.
[222] *Id.* at 14.

as a result of a PMS, the cost of materials and other inputs do not "accurately reflect the cost of production in the ordinary course of trade." The Draft Results of Redetermination does not address whether the alleged distortions resulted in HRC prices that do not "accurately reflect the cost of production in the ordinary course of trade," and, therefore, Commerce has not met the statutory requirement for making an adjustment.[223]

- While a PMS may involve market-wide conditions, the relationship between input prices and input costs in the ordinary course of trade is necessarily company-specific.[224]
- Because the Draft Results of Redetermination does not make a market-wide or company-specific comparison of electricity prices and HRC to the "cost of production in the ordinary course of trade," the statutory requirements for adjusting constructed value are not met.
- The Draft Results of Redetermination has the effect of applying AFA to a cooperative respondent. It would be unlawful to penalize SeAH for the alleged non-cooperation of POSCO.[225]
- Commerce's reliance on product specificity is unpersuasive since none of the subsidies in *Hot-Rolled Steel Flat Products from Korea* were specific to a particular product.[226]
- Commerce has conducted administrative reviews subsequent to *Hot-Rolled Steel Flat Products from Korea* which are more contemporaneous and found subsidy rates much lower than those based on AFA. Additionally, the AFA rate applied in *Hot-Rolled Steel Flat Products from Korea* was reduced, pursuant to remand.[227]

[223] *Id.* at 14-16.
[224] *Id.* at 16.
[225] *Id.* at 18.
[226] *Id.* at 19.
[227] *Id.* at 21.

Commerce's Position:

A. Commerce's Redetermination is in Compliance with the Court's *Remand Order*

With respect to NEXTEEL's argument that in the instant review Commerce relied on its finding of a PMS in the prior review and, thus, the Court had to find that it unsupported by substantial evidence, we have based our findings in this remand determination on the administrative record of *this* review. Neither the record evidence, nor our analysis, are identical to the record evidence and analysis in the first administrative review. Each determination stands on its own and has its own analysis and administrative record. Our analysis of record evidence in this remand redetermination is specific to *this* review and contains an additional factor and evidence that we did not discuss in the first administrative review. It is not appropriate for NEXTEEL to conflate these two separate administrative determinations.

We disagree with NEXTEEL and SeAH that the Court ruled that Commerce was prohibited from reexamining this issue and, if appropriate, modifying our analysis regarding PMS in this remand redetermination. In the *AR1 Remand Order*, the Court indeed directed Commerce to reach a particular result with respect to the first administrative review: "Commerce is instructed to reverse the finding of a particular market situation and recalculate the dumping margin for the mandatory respondents and non-examined companies."[228] In contrast, the Court remanded the issue of PMS here "for further proceedings."[229] The plain meaning of the language "for further proceedings" does not stand for the proposition that the agency is directed to reach a particular result, unlike the language "instructed to reverse the finding of a particular market situation." If the Court directed the same result here, as it did in

[228] *See AR1 Remand Order* at 18.
[229] *See Remand Order* at 18.

the first administrative review, it would have used the same language as it used in the *AR1 Remand Order*, but it did not.

NEXTEEL's argument is speculative, presumptuous, and unpersuasive. Commerce has fully complied with the Court's order and provided a robust analysis of the record evidence before it. Additionally, there is nothing in the Court's instructions which would prohibit Commerce from employing a more robust analysis and including consideration of a fifth factor under the totality of circumstances approach which the Court found reasonable.

To the extent that respondents argue that the burden to establish proof of a PMS lies with the petitioner, we agree. However, this does not mean that Commerce may not examine and analyze all of the evidence that the petitioner submitted. There is no statutory requirement that Commerce must mimic the petitioner's analysis with respect to a PMS allegation in every respect. Under the totality of circumstances approach, Commerce may consider additional factors that may demonstrate the existence of a PMS, as long as they are supported by the record evidence submitted by the petitioner or other parties. The additional factor that Commerce considered is part of the totality of circumstances before it. Therefore, Commerce's consideration of the fifth factor is appropriate and is fully consistent with Commerce's approach of evaluating the totality of circumstances.

We disagree with NEXTEEL that we have only examined evidence which support a finding of PMS and did not consider other evidence on the record. NEXTEEL's assertion is incorrect. Commerce reviewed all of the evidence on the record in this remand determination. Out of the multitude of documents on the record, there is no requirement that Commerce specifically reference each and every document in its analysis and explain its relevance, weight, significance, or lack thereof. While Commerce considered all documents on the record, it is

sufficient for the agency to discuss the key documents that are important in its determination, which is what Commerce did. This analysis provides the Court and interested parties with an explanation of the facts and record evidence that provided the basis for Commerce's finding that a PMS existed in Korea. In other words, Commerce has provided an explanation for its decision, referenced the most relevant documents with respect to its conclusions, and the path of the agency is reasonably discernable here.

B. Cost of HRC Inputs and Distortive Pricing of Chinese HRC

NEXTEEL claims that Commerce must first establish a threshold for the cost of HRC in the ordinary course of trade, but this incorrect, and the statute establishes no such requirement. The statute instructs Commerce to determine if a PMS exists "such that that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."[230] It does not instruct Commerce to quantify the ordinary course of trade for any and all inputs of a product. Rather, if it is established that a subsidy was received in the production of inputs, then the cost of materials no longer reflects the COP in the ordinary course of trade, and, according to the statutory requirement, Commerce must determine if this constitutes a PMS. Commerce reasonably relied on *Hot-Rolled Steel Flat Products from Korea* to establish that the costs of HRC inputs were distorted such that the COP of OCTG was not in the ordinary course of trade and found, based on the totality of other factors, that a PMS existed.

Similarly, SeAH argues that Commerce cannot make an adjustment simply because it has determined that there is a PMS. Rather, Commerce must determine that the PMS distorts prices such that they cannot "accurately reflect the cost of production in the ordinary course of trade."

[230] *See* Section 773(e) of the Act.

As Commerce demonstrated above, such distortion exists in Korea; however, Commerce disagrees with SeAH that a granular, company-specific analysis of inputs is necessary. Commerce is required, by statute, to determine particular circumstances within a market. By definition, this determination is not company-specific. We disagree with SeAH's argument that a company-specific analysis is necessary as long as evidence supports a finding that a PMS exists in the market.

NEXTEEL's argument regarding global steel prices is irrelevant to Commerce's analysis of a PMS in Korea. Even if prices move in the same direction of inputs, that does not affect the findings of distorted prices of inputs in the Korean market. Prices of inputs can increase or decrease, which, in turn, may raise or lower the price of OCTG. That has no relevance on Commerce's findings that prices of HRC inputs in Korea were distorted. However, we are not persuaded by the argument that all steel markets are the same and that the steel prices in such markets are synchronized. In fact, the record evidence suggests otherwise. The GOK's document titled, "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," states that China is responsible for 60 percent of the global excess supply of steel, and that this excess supply is "especially targeted" towards Korea.[231] Under basic principles of supply and demand, it is logical and reasonable to conclude that if China's excess supply of steel is "especially targeted" towards Korea, conditions and prices in Korean steel market will differ from the steel markets that are not targeted.

Regarding Commerce's valuation of NEXTEEL and SeAH's HRC inputs, and the adjustment made to account for the finding of a PMS, Commerce maintains that our valuation is

[231] *Id*. at Exhibit 5 (containing, "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).

reasonable, as stated in the *Final Results*. In determining an AFA rate for POSCO in *Hot-Rolled Steel Flat Products from Korea*, and as explained in the *Final Results*, "Commerce did not find that the AFA rate itself was inaccurate, but, rather, that we could not calculate an accurate rate for POSCO in that proceeding due to POSCO's failure to submit 'complete, accurate and reliable data.'"[232] In fact, as stated in the *Final Results*, POSCO may have chosen not to cooperate in *Hot-Rolled Steel Flat Products from Korea* because doing so would have produced an even higher CVD rate.[233] Our decision to apply AFA was affirmed by the Court, [234] even though the AFA rate was revised on remand from 58.68 percent to 41.57 percent.[235] We agree with SeAH that we should apply the revised rate of 41.57 percent[236] that the Court affirmed and have revised our calculations accordingly.[237]

NEXTEEL's and SeAH's continued assertions that Commerce has found that POSCO was subsidized at much lower rates in the subsequent POR of *Hot-Rolled Steel Flat Products from Korea* are misplaced. Commerce's determinations regarding the level of POSCO's subsidization in subsequent PORs have no bearing on subsidization during the earlier period of time at issue in this proceeding. The levels of subsidization and the amount of benefit may change up or down during the different time periods. Commerce has reasonably relied on this information to determine the valuation of NEXTEEL and SeAH's HRC because it is the timeliest, most input-specific information available for the POR of the instant review of OCTG

[232] *See Final Results* IDM at Comment 1 (citing *Hot-Rolled Steel Flat Products from Korea* at Comment 5).
[233] *See Final Results* IDM at Comment 1.
[234] *See POSCO v. United States*, Consol. Court No. 16-00027, Slip. Op. 19-52 (May 1, 2019).
[235] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony With Amended Final Determination of the Countervailing Duty Investigation*, 84 FR 23019 (May 21, 2019).
[236] SeAH incorrectly states that the rate for POSCO was reduced to 42.47 percent. In reality, however, the rate was reduced to 41.57 percent and we have used this lower amount to make an appropriate adjustment.
[237] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Redetermination Calculations Memorandum – SeAH Steel Corporation." dated concurrently with this redetermination (SeAH Analysis Memorandum); and NEXTEEL Analysis Memorandum.

and the most appropriate for determining a value of HRC inputs. If Commerce were to use the most recent rates of subsidization established for HRC, as NEXTEEL and SeAH suggest, the data for subsidization would post-date the POR (*i.e.*, would be derived from the future periods in relation to the POR). We are not persuaded that such approach is warranted here, where we have relevant information that does not post-date the POR and, thus, does not present the timing problem of using information that did not exist at the time of the POR.

Record evidence demonstrates downward pressure on domestic steel prices.[238] NEXTEEL and SeAH appear to argue that there is no connection between cheap Chinese steel imports and Korean subsidies to the Korean steel industry, yet the record demonstrates that during the POR, as Chinese steel flooded the global market, the Korean government was needed to help strengthen the domestic steel industry and enable Korean industry continue to sell steel at artificially low prices prevailing in the market.[239] NEXTEEL points out that the overcapacity of Chinese steel was a global problem, and record evidence shows that the excess supply was "especially targeted" toward several key places, one being Korea.[240] NEXTEEL's argument that distorted pricing caused by a global excess may be a factor in certain other countries potentially creating other particular market situations outside of Korea is irrelevant to this proceeding. The impact of this years-long trend of overcapacity is documented in the article cited above, which

[238] *See* Maverick's Supplemental PMS Allegation at Exhibit 5 (containing, "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).
[239] *See* Maverick's Supplemental PMS Allegation at Exhibit 2 (containing article, *China's Steel Exports Reaching 100 Mt: What it Means to Asia and Beyond*, Asian Steel Watch, dated January 2016), and Exhibit 5 (containing "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).
[240] *Id.* at Exhibit 5 (containing "Announcement for and Excerpts from Relevant Ministries of the Government of Korea, Proposal for Strengthening the Competitiveness of the Steel Industry," dated September 30, 2016).

discusses market conditions in Korea.[241] Additionally, NEXTEEL's and SeAH's argument that the article was published after the POR is inconsequential. The article discusses the years-long trend and documents the conditions that led to a PMS during the POR.

NEXTEEL presents a graph in which it claims that prices for HRC were "generally increasing throughout the POR."[242] As an initial matter, Commerce mistakenly cited to the U.S. Steel PMS Allegation at Exhibit 2; the correct citation is for U.S. Steel PMS Allegation at Exhibit 1, which contains the data for steel prices that was used for that portion of Commerce's analysis. Exhibit 1 contains the Global Trade Atlas data for Chinese exports of hot-rolled products to South Korea. The last column shows the years-long trend of decreasing prices of Chinese steel imports of hot-rolled products to South Korea. The POR, though not the largest drop in the history of steel prices, represents a decrease of eight percent.[243] Furthermore, in the graph that NEXTEEL submits, it highlights a portion which includes the POR. Within the POR, there are price fluctuations down, then up, and then down again. However, these fluctuations in the POR also include the lowest price levels for hot-rolled steel in over ten years. NEXTEEL's graph only further demonstrates Commerce's finding of a years-long trend of hot-rolled steel prices. Since the end of 2010 and beginning of 2011, the prices, even accounting for fluctuations, have been in a downward trend, which culminated in the POR with the lowest prices in over a decade.[244] NEXTEEL's argument tries to focus on one temporal fluctuation, while ignoring the general trend, *even its own submission* provides an illustration of this trend.

[241] *See* Maverick's Supplemental PMS Allegation at Exhibit 2 (containing article, *China's Steel Exports Reaching 100 Mt: What it Means to Asia and Beyond*, Asian Steel Watch, dated January 2016).
[242] *See* NEXTEEL Draft Comments at 25-26.
[243] *See* U.S. Steel PMS Allegation at Exhibit 1.
[244] *See* NEXTEEL Rebuttal Comments at 25-26.

In Asian Steel Watch, the increase in the volume of hot-rolled exports is discussed. While we acknowledge that this article was published during the POR, it provides a narrative for the increase of these exports. When coupled with the graph that NEXTEEL submitted, this indicates that while prices have been declining for a decade, Chinese exports are rapidly increasing, creating price distortions. As stated in the article:

> Within China, people seem to openly acknowledge the coming of an era of steel exports exceeding 100 million tonnes. In 2015, Wuhan Iron and Steel completed construction of a coldrolling mill in Fangchenggang with a capacity of 2.1 million tonnes per annum. In 2015, Baosteel completed the No. 1 blast furnace of its Zhanjiang plant, which will have an annual output of 10 million tonnes. Both of these plants are in the China's southern coastal region, a geographically advantageous location for exporting to Southeast Asia and Korea. With decreasing domestic steel consumption, Chinese steelmakers are expected to concentrate efforts on entering overseas markets as a survival measure. According to Chinese media, China's annual steel exports will exceed 100 million tonnes during the period of China's 13th Five-Year Plan (2016-2020).[245]

NEXTEEL claims that prices of hot-rolled steel increased during the POR, but does not demonstrate that any increased prices were within the normal course of trade. Simply pointing out price increases does not speak to whether or not the examined prices are within the normal course of trade. Indeed, fluctuations in the price of HRC inputs can occur in a PMS, thus NEXTEEL's argument does not refute the evidence considered by Commerce in the Draft Results of Redetermination. Commerce has not argued that there are no price fluctuations in the POR, or even that those fluctuations do not include price increases. Rather, Commerce considered the overall trend of prices and pointed to an overall downward trend during the POR.

[245] *See* U.S. Steel PMS Allegation at Exhibit 2 (containing article, *China's Steel Exports Reaching 100 Mt: What It Means to Asia and Beyond*, Asian Steel Watch, dated January 2016).

NEXTEEL argues that the price it paid for its hot-rolled steel inputs is in line with Steel Benchmarker data for the POR.[246] As we stated in the *Final Results*, "With respect to NEXTEEL's arguments based on a comparison of its purchases with Steel Benchmarker data, COMTRADE data, and GTA import data, we find that the data from these sources are for a broader category of products, which do not necessarily include the higher grade HRC used in the production of OCTG."[247] NEXTEEL is attempting to compare the average price it paid for higher grade HRC used in OCTG production in the POR to hot-rolled steel band. Despite Commerce's finding that two data sets are incomparable because of the differences in the products included in each data set, NEXTEEL has not presented more specific data, such as HRC prices, to support its "comparison" argument. Instead, NEXTEEL makes a similar argument a second time, again comparing its average cost of HRC inputs in OCTG, increased by the PMS adjustment, and compares this HRC specific price point to the data it has placed on the record of a broader category of hot-rolled products. These data sets are not comparable, and that remains true when NEXTEEL's prices are adjusted. This argument is distortive and compares what may be different grades of products with different values.

Similarly, NEXTEEL's argument that Chinese imports of hot-rolled steel products are only 20 percent of the total imports of HRC to Korea does nothing to refute the evidence. In our view, imports that account for 20 percent of the market are significant enough to put downward pressure on prices and distort the rest of the market. Furthermore, one would expect that the Chinese imports would have been even higher if Korean government did not provide countervailing subsidies to prop up its struggling steel industry. SeAH further argues that

[246] *See* NEXTEEL Rebuttal Comments at 7-9 (citing NEXTEEL's Letter, "Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Rebuttal Comments and Factual Information," dated August 15, 2017).
[247] *See* Final Results IDM at Comment 1.

Japanese HRC was sold in Korea during the POR and claims that if there were any distortion from the price of Chinese HRC then other HRC producers would not be able to compete. This is illogical. In essence, SeAH is claiming that anything short of a monopoly, or near-complete market domination held by Chinese HRC producers in the Korean market, cannot distort the market. Korea is one of the most significant markets for steel and one would expect that it would continue to have multiple participants, despite the presence of price distortions.

C. Electricity

With respect to electricity, record evidence demonstrates that electricity rates are "heavily regulated"[248] by the GOK. As explained above, the largest electric supplier in Korea is a government-controlled entity and the pricing is monitored by the government. Since electricity is a significant portion of the cost of producing OCTG, electricity prices which are not market-based will distort the COM. Contrary to NEXTEEL's argument, Commerce did not select only the documents which supported this finding; rather, we reviewed all submitted documents and found that the evidence supported a PMS finding. Additionally, no party takes an issue with the substance of these documents or claims that they are inaccurate. Although the entire record has been factored into this determination, in the Draft Results of Redetermination, we detailed the documents which were among the most significant, including the documents that provide the basis for our findings and conclusions.

Commerce compared Korea's electricity rates with contemporaneous electricity rates in Japan. NEXTEEL claims that this comparison fails to support a finding of a PMS. However, it is important to note that this comparison is based on data submitted to Commerce by NEXTEEL.

[248] *See* Maverick Electricity Allegation at 3 (referencing Korea Electric Power Corporation Form 20-F (April 30, 2016) (KEPCO 20-F)).

Indeed, it was NEXTEEL which requested that Commerce review the data from the International Energy Agency (IEA).[249] Within that data, the IEA separates the rates for the "EU15," grouping Korea with twelve other countries. Within those twelve other countries, four are in other continents or sub-continents (USA, Canada, Australia, and New Zealand). The rest are in Europe, with most currently in the EU or pending EU membership. Japan is the only other Asian economy in the chart of electricity rate comparisons *that NEXTEEL submitted.*[250] Incidentally, this speaks to NEXTEEL's argument that only record evidence was considered that supported a PMS finding. Commerce looked extensively at the evidence presented by NEXTEEL and SeAH, and continued to find compelling evidence of the existence of a PMS. Commerce reasonably compared Korea's electricity rates against the most comparable economy in the data, namely, Japan's. Although we recognize that electricity prices do not have to be uniform and may vary among markets, and various external factors could contribute to price differences, Japan is the most comparable economy to Korea on the record and the difference in electricity prices is dramatic. Contrary to what SeAH argues, the dramatic difference in electricity prices, when prices in Korea are significantly lower than prices in Japan, combined with the active role that the Korean government plays in Korea's electricity market through KEPCO and other means, contribute to our conclusion that electricity prices in Korea are likely to be distorted. Even if electricity prices were somewhat elevated in Japan due to external factors occurring between 2011 and 2013, SeAH offers no evidence that such external factors could account for the 43 percent difference between Japanese and Korean electricity rates that were in effect during the POR from 2015 to 2016.

[249] *See* NEXTEEL's Letter, "Oil Country Tubular Goods from the Republic of Korea: Particular Market Situation Rebuttal Comments and Factual Information," dated August 15, 2017, at Exhibit 10.
[250] *Id.*

Although NEXTEEL argues that Commerce has not determined that electricity has been provided for less-than-adequate-renumeration, this is not a CVD analysis. A PMS analysis has to do with market distortion and government intervention. Here, it is clear that the government uses electricity as a tool of its industrial policy and that electricity rates in Korea are set by the government rather than the market, resulting in significant potential for distortion.

D. Subsidization of HRC by the Government of Korea

NEXTEEL claims that the Court has twice rejected Commerce's analysis of subsidization. However, NEXTEEL improperly conflates the first and second administrative reviews. In the *AR1 Remand Order*, the Court stated that Commerce's PMS approach, which included our analysis of subsidization was "reasonable, in theory," but was not supported by record evidence. Moreover, the Government did not brief this issue in the first administrative review, so the Court made its findings without the benefit of considering the substantive arguments by the defendant. In this instant review, the Court remanded the PMS issue without engaging in substantive analysis of subsidization arguments and evidence supporting such analysis. Instead, the Court relied on its findings with respect to the first administrative review *in toto*, as if the two separate review determinations were one and the same, without directly addressing the Government's substantive arguments which were before the Court for the first time. On remand, Commerce provided a more robust analysis of the evidence, including the evidence that was not on the record of the first administrative review. Commerce's findings regarding government subsidization are supported by record evidence on the record of *this* review, and Commerce relied on the current record to continue its "reasonable" approach of examining the totality of circumstances, pursuant to the Court's instructions remanding the issue for further proceedings. Among other things, Commerce relied on its official determination, as

amended as a result of litigation, regarding subsidization of Korean HRC producers, which was tested through judicial review and affirmed by the Court.

Furthermore, contrary to NEXTEEL's argument, Commerce is not required to engage in an upstream subsidies analysis and cite to evidence that subsidies from POSCO were passed on as benefits to NEXTEEL. This is not a CVD determination. Commerce is not required to make a determination that NEXTEEL received an upstream subsidy here. It is sufficient to demonstrate that input prices in the market are distorted by subsidization of input producers in the market. The record evidence demonstrates that input producers received countervailable subsidies from the Korean government at a level of up to 41.57 percent, which in our view is sufficient to constitute a distortion to the normal operation of the market.

As noted above, the totality approach accounts for the interaction of the factors. Therefore, Commerce considered that POSCO and other hot-rolled steel producers received subsidies, substantially reducing the COP for HRC, as noted in the first factor. Then Commerce reviewed the second and third factors (overcapacity and strategic alliances) and found compelling evidence on the record that an increase in cheap steel from China depressed prices, and that various steel producers and OCTG producers engaged in price-fixing and trade restraint schemes.[251] In our totality approach, we acknowledge the fact that subsidization and strategic alliances were occurring within the same market at similar times. It would be illogical to conclude that these events are insular.

[251] *See* Maverick PMS Allegation at Exhibit 4 (containing Maverick's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea: Information and Comments Requiring Immediate Action," dated November 25, 2015, at Attachment 4).

F. Strategic Alliances

SeAH argues that the fact that SeAH L&S, which is part of the SeAH Group, operates a processing center for POSCO does not create a strategic alliance. This argument is not responsive to Commerce's findings. Commerce's analysis presented record evidence that companies within the SeAH Group were operating a processing center for an unaffiliated HRC supplier, POSCO,[252] and that steel producers and OCTG producers engaged in price-fixing or trade restraint schemes.[253] SeAH has not rebutted, or even disputed, the factual basis of Commerce's determination that companies within SeAH group operate a processing center of an unaffiliated HRC producer, POSCO. Instead, SeAH appears to argue that an affiliation is necessary to form a strategic alliance. SeAH does not cite any record evidence or legal authority to support its argument. We do not equate strategic alliances with affiliation. We see no basis to conclude that two or more unaffiliated companies cannot form a strategic alliance simply because they are unaffiliated. A strategic alliance does not require legal or operational restraint or direction, even if those things may occur over the course of a strategic alliance.

Record evidence shows that "POSCO gives its pipe producers the 'insider' price while charging customers that do not compete with its {hot-rolled} production a very different price for the same input," as recounted by SeAH.[254] This is an indication of an alliance based on competitive strategy in which the parties are not affiliated. Additionally, SeAH's argument that the Court has previously found this "silent agreement" between POSCO and Korean OCTG producers is inaccurate. The Court previously found that interpreting the "silent agreement" in a way that assumed that the prices for some unaffiliated OCTG producers were influenced, but that

[252] *Id.*
[253] *Id.*
[254] *See* SeAH Rebuttal Comments at 11 (citing Maverick PMS Allegation at Exhibit 4).

the prices for unaffiliated OCTG producers were not, is erroneous.[255] Commerce is making no assumptions that pricing is dependent on affiliation. However, we are citing to this pricing arrangement between POSCO and unaffiliated pipe producers to demonstrate strategic alliances, which, in turn, are one of the factors that Commerce considered under the totality approach.

H. Restructuring Efforts by the Korean Government

Commerce determined that there is an effort by the Korean government to assist in restructuring the steel industry in response to the years-long patterns within the steel industry. SeAH and NEXTEEL do not address these findings substantively. Instead, they attempt to make a timing argument suggesting that the restructuring of Korean steel industry did not occur during the POR. Contrary to arguments from SeAH and NEXTEEL, record evidence indicates that there was a working relationship between the Government of Korea and the Korean steel industry to develop a plan to restructure the steel industry due to factors present within the POR. The press release of this effort occurred a few short months beyond the POR, making it very clear that this is a joint public and private-industry plan that is in response to factors which existed during the POR. It is unreasonable to conclude that only in the months after the close of the POR new market factors arose, a plan was jointly developed between the Korean steel industry and the Korean government to restructure the industry at an accelerated pace, and a press release was created to inform all interested parties of the new restructuring plan. This factor demonstrates the effort from the Korean government to assist the Korean steel industry with the development of a restructuring plan during the POR. SeAH's argument regarding the implementation of this program is secondary to whether or not the Korean government has

[255] *See Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT, September 2, 2015).

played an active role in the effort toward restructuring, which has value on its own, is demonstrated by record evidence, and is outside the regular course of trade.

Issue 3: Classification of Proprietary SeAH Products

Domestic Interested Parties' Comments

- The Draft Results of Redetermination complies with the Court's instructions and demonstrates that Commerce's rationale is in full accord with record evidence.[256]
- The Court has previously affirmed Commerce's conclusion and should do so here.[257]
- Commerce correctly explained that there is a hierarchy of model match criteria based on the importance of characteristics. Physical characteristics, such as grade, are ranked above production processes, such as heat treatment.[258]
- Commerce recognized that the absence of heat treatment was the only distinguishing characteristic between SeAH's proprietary grade products and N-80 grade products.[259]
- Commerce noted that SeAH itself cited a physical characteristic when distinguishing its proprietary grade products from J-55 and K-55 grade products.[260] This further supports Commerce's treatment of SeAH's proprietary grade products.
- Commerce found that SeAH is directly marketing its proprietary grade products to compete with N-80 grade products.[261]
- The Draft Results of Redetermination fully account for the difference between N-80 grade products and SeAH's proprietary grade products, namely, heat treatment.[262]

[256] *See* Domestic Interested Parties Grade and G&A Comments at 4.
[257] *Id.* (citing *OCTG from Korea I*, Slip. Op. 19-116 at 11).
[258] *Id.* at 5.
[259] *Id.* at 5-6.
[260] *Id.* at 6-7.
[261] *Id.* at 7.
[262] *Id.* at 8.

SeAH's Comments

- Commerce's model match methodology relies on grade, not tensile strength, as a matching characteristic. Treating products with the same tensile strength as the same grade is inconsistent with API specifications.[263]
- There is significant overlap in the strength requirements for different API grades. Therefore, tensile strength is not enough to provide a basis for a product's grade categorization.[264]
- Valuing grade over heat treatment, as Commerce does in its model-match hierarchy, is inconsistent with API specifications.[265]
- SeAH compares its proprietary grade products' mechanical properties to the requirement for L-80 grade products, not N-80 grade products. Commerce concedes that SeAH's proprietary grade products meet the tensile strength requirements for both L-80 and N-80 grade products.[266]
- A pipe that has been stenciled as N-80 grade OCTG cannot be sold as a different item.[267]
- Commerce's methodology in the Draft Results of Redetermination is inconsistent with its past practice.[268]

Commerce's Position:

We disagree with SeAH that Commerce's treatment of SeAH's proprietary grades is unreasonable. In fact, the Court recently affirmed Commerce's treatment of SeAH's proprietary

[263] *See* SeAH Draft Remand Comments at 21-22.
[264] *Id.* at 22.
[265] *Id.* at 22-23.
[266] *Id.* at 24.
[267] *Id.*
[268] *Id.* (citing *Welded Line Pipe from the Republic of Korea* IDM at Comment 4).

grades in the litigation regarding the immediately preceding administrative review of this antidumping duty order.[269] As we explained above, Commerce's treatment of SeAH's proprietary grades is consistent with its model match hierarchy and fully accounts for the sole difference, heat treatment, between the proprietary grade products and N-80 grade products.

Commerce has above explained, in depth, why physical properties, such as grade, are valued higher in the CONNUM construction than production process, such as heat treatment. Additionally, Commerce has above explained why and how its model-match methodology is not intended to exactly align with API standards.

With regard to SeAH's argument that it compares its proprietary grade products to L-80 grade products, as well, this fact does not detract from Commerce's analysis. Even so, SeAH itself describes its proprietary grade products as sold "specifically to compete with N-80 grade products and upgradeable L-80 products" [270] and having "the same tensile strength required by the N-80 specification"[271] In an effort to classify SeAH's proprietary grades as accurately as possible, Commerce reasonably classified them with the API grade products against which they compete, not the products to which they would be comparable only after upgrade.

Issue 4: Deduction of G&A Expenses as U.S. Selling Expenses

Domestic Interested Parties' Comments

- Commerce explained that it allocated PPA's G&A expenses proportionately to all products sold by PPA. This is reasonable because G&A expenses relate to the entire

[269] *See OCTG from Korea I*, Slip. Op. 19-116.
[270] *See* SeAH's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea Response to July 1 Supplemental Questionnaire," dated July 28, 2016, at 11, n 6).
[271] *See* SeAH's Section C Questionnaire Response at 13, n.10.

activities of the company, and because PPA engaged in both sales and production activities.[272]

- Commerce explained that this approach prevented the distortion that would occur if the G&A expenses were allocated only to the further manufacturing portion of the cost, rather than the full cost of further manufactured products.[273]
- This approach complies with the statutory requirement that Commerce deduct both the selling expenses and costs of further manufacturing from the price used to determine CEP.[274]
- Commerce demonstrated that its allocation of G&A expenses is consistent with its prior practice.[275]
- Commerce explained that its approach was "mathematically balanced and reasonable."[276] This approach does not over- or under-apply PPA's G&A expenses. It is also consistent with how Commerce treats SeAH's home market costs.[277]

SeAH's Comments

- The Draft Results of Redetermination concede that PPA's reported G&A expenses related to all of PPA's activities, and not expenses incurred to support further manufacturing.[278]

[272] *See* Domestic Interested Parties Grade and G&A Comments at 10.
[273] *Id.* at 11.
[274] *Id.*
[275] *Id.*
[276] *Id.* at 12.
[277] *Id.* at 12-13.
[278] *See* SeAH Draft Remand Comments at 25.

- Commerce is not authorized by statute to deduct all expenses incurred by an affiliate when calculating CEP.[279]
- Commerce has previously recognized that the G&A expenses of a company that is performing sales and further manufacturing are G&A expenses, not selling expenses.[280]
- Commerce's method is distortive and inflates the dumping margin for respondents that qualify for a CEP offset, but whose home market indirect selling expenses are less than the sum of its U.S. indirect selling and G&A expenses.[281]
- The allocation is correct for all of PPA's activities based on cost of goods sold. But, as a matter of law, only G&A expenses that are allocated to account for further manufacturing activities can be deducted from CEP.[282]
- Commerce always disregards all home market G&A expenses when calculating a CEP offset, thus, there is an inconsistency between the treatment of U.S. and home market sales.[283]
- Commerce made this argument in *OCTG from Korea I* and the Court found the argument unpersuasive. Therefore, Commerce should revise its calculation.[284]

Commerce's Position:

Commerce has demonstrated that its approach complies with the statutory requirement that Commerce deduct both the selling expenses and costs of further manufacturing from the price used to determine CEP.

[279] *Id.* at 25-26.
[280] *Id.* at 26.
[281] *Id.* at 27.
[282] *Id.* at 28.
[283] *Id.*
[284] *Id.* at 29.

SeAH argues that Commerce has previously recognized that the G&A expenses of a company that is performing sales and further manufacturing are G&A expenses, not selling expenses, but it is significant that PPA is not performing further manufacturing on its own and does not maintain any production facilities for further manufacturing.[285] Rather, as explained above, these processes are performed by tollers, and SeAH's involvement in further manufacturing is perfunctory in nature and is limited to paying a processing fee, which we accounted for as a further manufacturing expense.[286] SeAH is asking that PPA be treated the same as companies performing further manufacturing (which have production facilities, factory overhead and other significant expenses associated with further manufacturing) when *PPA is not performing further manufacturing*. Apart from paying the processing fee to the tollers, which we accounted for, SeAH is predominantly a selling entity and, thus, it is reasonable to treat its G&A expenses as selling expenses.

SeAH contends that Commerce "always disregards all home-market G&A expenses when calculating a CEP offset," but offers no evidence of this claim. The courts have been clear that the statute requires a deduction of selling expenses.[287] Because these G&A expenses are indirect selling expenses, Commerce has properly deducted them when calculating the CEP.

Additionally, Commerce does not agree with SeAH that the Court has found Commerce's arguments unpersuasive. To the contrary, the Court has remanded this issue for clarification or reconsideration of Commerce's methodology."[288]. When a reviewing Court seeks further explanation or clarification from the agency, it does not mean that the Court has found the

[285] *See* SeAH Letter, "Response of SeAH Steel Corporation to the Department's January 13 Questionnaire Section E," dated March 6, 2017, at 1-2.
[286] *Id.*
[287] *See United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1336 (CIT 2010).
[288] *See* Remand Order at 24.

agency's position unpersuasive or that the agency must reverse its position. Rather, it means that the agency may provide further explanation and clarify its position, relying on the record evidence, which is what Commerce did here.

E. Final Results of Redetermination

Pursuant to the Court's remand order, we have reversed our application of AFA and reevaluated our application of PMS; we have also further explained our methodology employed in the *Final Results* with respect to the classification of SeAH's proprietary grades of OCTG and the deduction of G&A expenses as U.S. selling expenses. Based upon the result of our analyses, we have recalculated the weighted-average dumping margins for SeAH, NEXTEEL, and the non-examined companies. Accordingly, SeAH's margin changed from 6.75 percent in the *Final Results* to 5.41 percent in these final results of redetermination. NEXTEEL's margin changed from 75.81 percent in the *Final Results* to 46.71 percent in these final results of redetermination. The non-examined companies' margin changed from 6.75 percent in the *Final Results* to 26.06 percent in these final results of redetermination. Upon a final and conclusive decision in this litigation, Commerce will instruct U.S. Customs and Border Protection to liquidate appropriate entries for the September 1, 2015 through August 31, 2016, POR consistent with these final results of redetermination.

Dated: November 5, 2019

11/5/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance