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FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

Husteel Co., Ltd. et al. v. United States,
Consol. Court No. 19-00112, Slip Op. 20-125 (CIT August 26, 2020)

I. SUMMARY

The Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (the Court) issued in *Husteel Co., Ltd. et al. v. United States*, 471 F. Supp. 3d 1349, (CIT 2020) (*Husteel II*). This action arises out of the final results in the 2016-2017 administrative review of the antidumping duty (AD) order on welded line pipe (WLP) from the Republic of Korea (Korea).[1] The Court remanded to Commerce its: (1) rejection of SeAH Steel Corporation's (SeAH's) third country sales to calculate normal value (NV); (2) particular market situation (PMS) determination and resulting adjustment to the reported cost of production (COP) for WLP; (3) reliance on the constructed value (CV) profit ratio and selling expenses calculated for Hyundai Steel Company (Hyundai Steel) in the first administrative review; (4) reclassification of NEXTEEL Co. Ltd.'s (NEXTEEL's) reported losses relating to the suspended production of certain product lines; (5) adjustment to NEXTEEL's CV to account for sales of

[1] *See Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 27762 (June 14, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM); *see also Welded Line Pipe from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017*, 84 FR 35371 (July 23, 2019) (*Amended Final Results*).

non-prime products; (6) refusal to employ its quarterly cost methodology to calculate SeAH's costs; (7) allocation of the general and administrative (G&A) expenses of SeAH's U.S. affiliate Pusan Pipe America (PPA) across all of SeAH's U.S. sales of WLP sold through PPA; and (8) calculation of the rate assigned to the non-examined companies in light of any adjustments made to the calculations for either respondent stemming from this remand. In light of the Court's remand order, on remand Commerce: (1) relied on SeAH's third country sales to calculate NV; (2) found insufficient evidence of a PMS that distorts the COP of WLP; (3) no longer relied on Hyundai Steel's CV profit and selling expense ratios to calculate NV for NEXTEEL and SeAH; (4) provided further explanation regarding its reclassification of NEXTEEL's reported losses associated with suspended production as G&A expenses; (5) provided further explanation regarding its adjustment of NEXTEEL's CV to account for sales of non-prime products; (6) provided further explanation regarding the use of its annual weighted-average costs methodology to calculate SeAH's costs; (7) provided further explanation regarding its classification of PPA's G&A expenses as indirect selling expenses across all products sold by PPA in the United States during the period of review (POR); and (8) revised the rate calculated for the non-examined companies in light of the calculation adjustments made in response to this remand. As a result of correcting an error in our draft remand calculations for SeAH, the revised weighted-average dumping margins for NEXTEEL and SeAH are 11.91 percent and 7.24 percent, respectively. Moreover, as a result of Commerce's recalculation of the weighted-average dumping margins for the mandatory respondents, the revised review-specific rate applied to the non-selected respondents is 9.32 percent.

II. BACKGROUND

Commerce published the *Final Results* on June 14, 2019.[2] As discussed in the *Final Results*, Commerce: (1) rejected SeAH's third country comparison market sales to Canada based on the Canadian International Trade Tribunal's (CITT's) determination that those sales were dumped;[3] (2) determined that a PMS exists in the Korean market, which distorted the COP of WLP, and made an adjustment to the respondent's cost of HRC to account for the PMS;[4] (3) relied on the CV profit ratio and selling expenses calculated for Hyundai Steel in the first administrative review for the purposes of this administrative review;[5] (4) included NEXTEEL's suspended losses as part of its G&A expenses;[6] (5) adjusted NEXTEEL's reported costs to account for sales of non-prime products;[7] (6) did not use quarterly cost averaging periods in its calculation of CV for SeAH;[8] and (7) allocated PPA's G&A expenses to all products sold in the United States.[9]

In its August 26, 2020 opinion, the Court remanded the *Final Results* to Commerce, concluding that Commerce's decision to reject SeAH's comparison market sales to Canada was unsupported by substantial evidence.[10] As the Court explained, Commerce relied solely on the CITT's findings, and failed to "address detracting evidence that Canadian antidumping law is materially inconsistent with U.S. antidumping law."[11]

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[2] *See Final Results*; *see also Amended Final Results*.
[3] *See Final Results* IDM at Comment 10.
[4] *Id.* at Comments 1-3.
[5] *Id.* at Comment 4.
[6] *Id.* at Comment 9.
[7] *Id.* at Comment 8.
[8] *Id.* at Comment 12.
[9] *Id.*
[10] *See Husteel II*, 471 F. Supp. 3d at 1359—1361.
[11] *Id.* at 1361

Further, the Court held that Commerce's PMS determination was not supported by substantial evidence.[12] According to the Court, Commerce failed to substantiate each of the four factors upon which it based the PMS finding (*i.e.*, (a) Korean imports of hot-rolled steel coil (HRC) from China; (b) the government of Korea (GOK)'s subsidization of hot-rolled steel products; (c) strategic alliances; and (d) government involvement in the Korean electricity market).[13] The Court pointed out that Commerce predicated its PMS adjustment on the cumulative effect of these factors without substantiating its findings regarding each one or explaining how they prevent a proper comparison between U.S. price and NV.[14]

Additionally, the Court held that Commerce's reliance on Hyundai Steel's CV profit ratio and selling expense information calculated in the prior segment of this proceeding as the basis for CV profit and selling expenses in this administrative review was unlawful.[15] As the Court explained, under section 773 of the Tariff Act of 1930, as amended (the Act), Commerce must rely on the "weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review."[16] The Court noted that Commerce relied on Hyundai Steel's CV profit ratio and selling expenses from the first administrative review, rather than information calculated in the current review.[17] Further, the Court held that, to the extent that Commerce continues to rely on Hyundai Steel's information from the first review as the only reasonable profit cap under section 773(e)(2)(B)(iii) of the Act, this determination is also unsupported by substantial evidence.[18]

[12] *Id.* at 1361-1366.
[13] *Id.* at 1362-1363.
[14] *Id.* at 1363-1364.
[15] *Id.* at 1364-1366.
[16] *Id.* at 1364.
[17] *Id.*
[18] *Id.*

Moreover, the Court held that Commerce failed to explain fully how its chosen methodology to lower the reported value of prime products to account for non-prime products is in accordance with its standard practice and why this methodology is reasonable.[19] The Court noted that, while Commerce outlined three factors to consider in determining how to classify and value non-prime products, it only considered one of these factors in its analysis.

The Court also found that Commerce failed to address NEXTEEL's argument that Commerce's reallocation of NEXTEEL's costs from suspended production contravenes the plain requirements of section 773(f)(1)(A) of the Act.[20]

Further, the Court held that Commerce failed to justify its decision to calculate SeAH's costs using an annual weighted average, rather than quarterly averages. Specifically, the Court noted that, while Commerce acknowledged that SeAH's reported cost fluctuations during the POR were "significant," the data did not demonstrate that sales prices and costs were linked.[21] However, the Court pointed out that the costs and prices between the first and second quarters (*i.e.*, the only period during which SeAH experienced a significant cost fluctuation) do appear to be reasonably correlated. Therefore, the Court held that, if Commerce continues to base NV on CV for SeAH, it must either reconsider the use of quarterly averages or explain its continued reliance on annual averages.[22]

Additionally, the Court held that Commerce must reconsider its determination to apply SeAH's affiliate PPA's G&A expense ratio to both resold and further manufactured products. Specifically, the Court noted that Commerce did not explain: (1) whether it is treating PPA's G&A expenses as indirect selling expenses; or (2) why it is authorized to do so under the Act.

[19] *Id.* at 1367.
[20] *Id.* at 1367-1368.
[21] *See Final Results* IDM at Comment 12.
[22] *See Husteel II*, 471 F. Supp. 3d at 1369.

Finally, the Court remanded to Commerce its calculation of the rate assigned to the non-examined companies to reflect any adjustments to its calculation of the dumping margins for NEXTEEL and SeAH.

III. ANALYSIS

A. SeAH's Third Country Sales

For purposes of the *Final Results*, we followed the methodology used in the *Preliminary Results* and based NV on CV in calculating SeAH's weighted-average dumping margin.[23] The Court held that our decision was based solely on the CITT's findings and we failed to consider "detracting evidence that Canadian dumping law is materially inconsistent with U.S. dumping law."[24] The Court made the same finding in its remand on the first administrative review of this proceeding, with almost identical facts on this issue.[25]

As we stated in our previous remand redetermination, we disagree with the Court's holding, which requires Commerce to disregard a *formal* finding of dumping and obligates the agency to reevaluate that determination. However, given that we lack sufficient record evidence to perform the requisite analysis (*i.e.*, determine whether SeAH's comparison market sales to Canada would be found to have been dumped under U.S. law), consistent with the Court's remand order, and under protest,[26] we are relying on SeAH's Canadian sales for purposes of NV.

B. PMS Determination

In the underlying determination, Commerce concluded that the weight of the evidence on the record of the administrative review, cited in the *Final Results*, demonstrated the existence of

[23] *See Final Results* IDM at Comment 10; *see also Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 84 FR 4046 (February 14, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.
[24] *See Husteel II*, 471 F. Supp. 3d at 1360.
[25] *See Husteel Co., Ltd. et al. v. United States*, 426 F. Supp.3d 1376, 1392-1394 (CIT 2020).
[26] *See, e.g., Viraj Group v. United States*, 476 F.3d 1349 (Fed. Cir. 2007) (*Viraj Group*).

a PMS with respect to the individual and cumulative effects of: (1) Korean subsidies on the HRC input into WLP; (2) Korean imports of HRC from China; (3) strategic alliances between Korean HRC and WLP producers; and (4) distortions in the Korean electricity market.[27] The Court found that Commerce failed to substantiate each of these factors. According to the Court, although Commerce found that a PMS existed based on the cumulative effect of these four factors, Commerce failed "to explain how each factor lends credence to the finding that a PMS distorts the costs of HRC during the POR such that Commerce could not properly determine a CV of WLP that could be properly compared to the EP (or CEP)."[28]

We respectfully disagree with the Court's opinion that Commerce failed to demonstrate that the cumulative effect of the four factors distorted the costs of HRC which, in turn, prevented a proper comparison of CV to U.S. price. In the *Final Results*, Commerce detailed how the record evidence supported our conclusion.[29] Although Commerce continues to believe that this explanation was adequate, we recognize that the Court disagrees. For purposes of this remand, however, we are unable to expand our explanation further based on the record to support this position in a manner that would satisfy all of the Court's concerns. Accordingly, in light of the Court's remand order, and under protest,[30] we are unable to determine that a PMS exists that distorts the COP of WLP, and therefore, we have recalculated the respondents' weighted-average dumping margins without a PMS adjustment to the COP for the sales-below-cost test.

C. Reliance on Hyundai Steel's CV Profit and Selling Expenses

Because we are now relying on SeAH's third country sales as the CV profit and selling expenses for NEXTEEL, rather than data from Hyundai Steel, this issue is moot.

[27] *See Final Results* IDM at Comment 1.
[28] *See Husteel II*, 471 F. Supp. 3d at 1363-1363.
[29] *See Final Results* IDM at Comment 2.
[30] *See Viraj Group*, 476 F.3d at 1349.

D. Reclassification of NEXTEEL's Reported Losses

In the underlying administrative review, NEXTEEL recognized certain losses associated with suspended production lines related to non-WLP products.[31] It is Commerce's normal practice to include routine shutdown expenses (*i.e.*, maintenance shutdowns) in a respondent's reported costs and to associate them with the products produced on those lines.[32] However, in the underlying review, the suspended loss was not related to a routine shutdown; rather, it related to NEXTEEL's suspension of production on certain lines for an extended period of time.[33] Unlike a routine maintenance shutdown, once a production line is suspended, it no longer relates to ongoing production and revenue generation. A company can suspend production lines for numerous reasons; for example, a company may decide to suspend a production line while it assesses whether it should permanently close the production line, or the company has no current sales or needs to inventory the product produced on those production lines. Regardless of the reason for the extended suspension of production activity, in contrast to routine maintenance shutdowns, products are not produced on those suspended production lines to recover the costs associated with them.[34]

We disagree with NEXTEEL's argument, highlighted by the Court, that Commerce should follow the treatment of the suspended losses in NEXTEEL's normal books and records. The costs of suspended lines were transferred directly to the cost of goods sold (COGS), in accordance with NEXTEEL's normal accounting treatment.[35] Consistent with section

[31] *See* NEXTEEL's May 15, 2018 Section D Questionnaire Response (NEXTEEL's May 15, 2018 DQR) at 10.
[32] *See, e.g., Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148 (April 9, 1997), and accompanying IDM at Comment 9.
[33] *See* Memorandum, "Verification of the Cost Response of NEXTEEL Co., Ltd. in the Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea," dated December 11, 2018 at Exhibit 6.
[34] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 15.
[35] *See* NEXTEEL's May 15, 2018 DQR at 10.

773(f)(1)(A) of the Act, Commerce normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sales of merchandise. However, in those instances where it is determined that a company's normal books and records do not reasonably reflect the production costs of the merchandise under consideration, Commerce's practice has been to adjust these costs as necessary.[36] Because NEXTEEL suspended the production lines for an extended period of time during the POR, no revenue from those products, was generated for that period, and the associated costs were necessarily covered by all the other products produced by NEXTEEL. Therefore, we reasonably associated these costs with the general operations of the company as a whole (*i.e.*, with general expenses), and not specific to products associated with that production line (*i.e.*, COGS).

E. Adjustment to NEXTEEL's CV to Account for Non-Prime Products

Our practice with respect to non-prime products is to analyze the products sold as non-prime to determine how such products are treated in the respondent's normal books and records, whether they remain in scope, and likewise whether they can still be used in the same applications as the prime subject merchandise.[37] We consider these factors because non-prime products cover a wide spectrum of products and situations. By considering the different criteria, we are able to better analyze the case-specific facts and come to a reasoned decision. For

[36] *See, e.g., Acetone from the Republic of Korea: Final Determination in the Less-Than-Fair-Value Investigation*, 85 FR 8252 (February 13, 2020), and accompanying IDM at Comment 1.
[37] *See, e.g., Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27233 (June 14, 2017), and accompanying IDM at Comment 3; *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*WLP from Korea LTFV Final*), and accompanying IDM at Comment 9; and *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.

example, sometimes the downgrading of a product is minor, and the product remains within a product group, is reported as in-scope merchandise, and can still be used in the intended applications. Other times, the downgraded product differs so significantly that it no longer belongs to the same group or it cannot be used for the same applications as the prime product (which likely means it was originally intended to be in-scope product but no longer remains so). Yet other times the product is not capable of being used for the same applications but is still reportable as in-scope merchandise. In each of these situations, we must start with how the company normally values such products in its normal books and records and assess whether such method is reasonable in light of the reasons for it to be considered non-prime and whether the product's market value is significantly impaired, often to a point where its full cost cannot be recovered and assigning full costs to that product would not be reasonable.[38]

With this distinction in mind, we reviewed the information on the record of the underlying review with regard to the non-prime merchandise. When evaluating a company's reported costs, Commerce's primary guidance is outlined in section 773(f)(1)(A) of the Act, which directs that the reported costs should be calculated based on a respondent's normal books and records if such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. In this regard, Commerce first looks to how the respondent normally treats the product in its normal books and records because we would depart from those records if that treatment was found to not fairly reflect costs. For example, a respondent may value the non-prime products at the original full cost or they may write-down the product costs to net realizable value. In this case, NEXTEEL's normal treatment in its books and records was to assign full cost to these non-prime products.[39]

[38] *See WLP from Korea LTFV Final* IDM at Comment 8.
[39] *See* NEXTEEL's May 15, 2018 DQR at 4.

Whether a product can be used for its originally-intended applications is an important distinction because, if a product cannot be used in the same applications, the product's market value is usually significantly impaired and may not be sufficient to recover production costs.[40] In such cases, we need to consider the proper valuation and allocation of costs to the downgraded merchandise.[41] As explained above, in NEXTEEL's normal books and records, the costs of the non-prime products are calculated in the same way as the costs of the prime products.[42] In the underlying review, the products at issue are products classified as non-prime products at the forming stage. As a result of the identified defects, these downgraded products cannot be used for applications defined under API 5L because non-prime products do not satisfy this API standard.[43] Customers do not attempt to use non-prime line pipe in line pipe applications because of the potential liabilities and cost in the event of a pipe failure.[44] As such, the non-prime products are generally used instead for structural purposes such as a piling.

According to NEXTEEL, the scope of the order does not indicate that the product must be used as line pipe, but rather is "of a kind" used for oil and gas pipe.[45] In this instant case, NEXTEEL's WLP was downgraded to non-prime at the end of the forming production process and was never certified to be sold as WLP to be used for oil and gas pipe.[46] NEXTEEL explained that non-prime WLP products do not meet specification API 5L, which governs WLP,

[40] *See, e.g., Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014), and accompanying IDM at Comment 18; and *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014), and accompanying IDM at Comment 15.
[41] *Id*.
[42] *See* NEXTEEL's May 15, 2018 DQR at 4.
[43] *See* NEXTEEL's July 3, 2018 Section D Supplemental Response (NEXTEEL's July 3, 2018 DQR) at 5.
[44] *Id*.
[45] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders*, 80 FR 75056 (December 1, 2015).
[46] *See* NEXTEEL's July 3, 2018 DQR at 5.

indicating a significant impairment.[47] NEXTEEL's non-prime WLP products do not have the same certifications as prime products and cannot be used for applications defined under API 5L because non-prime products do not satisfy this API standard.[48] As a result, NEXTEEL does not issue a mill certificate for non-prime products.[49] Prime products are used in pipeline transportation systems in the petroleum and natural gas industries, as permitted by API 5L usage. As noted, non-prime products are generally used for structural purposes such as a piling. As a practical matter, customers do not attempt to use non-prime line pipe in line pipe applications because of the potential liabilities and cost in the event of a pipe failure.[50] All the of foregoing information indicates that the products could not be sold for their intended use which likely negatively impacted their pricing. As noted, NEXTEEL's normal treatment in its books and records is to assign full cost to these non-prime products and the record shows that the market value for these products was [ ] percent of the assigned cost, which is not reasonable.[51] Further, the impairment, or excess cost over net realizable value, should be burdened onto the prime-merchandise, as it is normal for a certain percentage of output to be defective or impaired. Accordingly, because NEXTEEL's non-prime merchandise: (1) cannot be used in the same general applications as its prime merchandise; (2) was not physically equivalent to those kinds of pipe used in the oil and gas industry for transport of oil, rendering it outside the scope of this order; and (3) commands a price that cannot recover the cost assigned to such products, therefore assigning full costs to these products is not reasonable because it shifts unrecoverable costs away

[47] *Id.*
[48] *Id.*
[49] *Id*.
[50] *Id*.
[51] *See* Memorandum, "Antidumping Administrative Review of Welded Line Pipe from the Republic of Korea: Cost of Production and Constructed Value Adjustment for Final Determination – NEXTEEL Co., Ltd.," dated June 7, 2019 (NEXTEEL COP Memorandum) at Attachment 2B. The average cost assigned to non-prime WLP is [ ] Korean won (KRW) per metric ton (MT), while the average revenue received for non-prime WLP is [ ] KRW per MT, which shows that the sales value of the non-prime WLP is [ ] percent of the cost.

from prime merchandise and burdens non-prime products with costs they cannot recover above their market value.

F. Quarterly Cost Methodology for Calculating SeAH's CV

The Court remanded for clarification or reconsideration whether Commerce's use of SeAH's annual weighted-average costs is appropriate, despite the fact that SeAH's prices and costs appear to be correlated during the period of time between the first and second quarters.

Our normal practice is to calculate weighted-average costs for the period of investigation (POI) or POR.[52] However, Commerce recognizes that possible distortions may result if our normal POI or POR-average cost methodology is used during a period of significant cost changes. In determining whether it is appropriate to deviate from our normal methodology and rely on shorter cost averaging periods, Commerce has established two criteria that must be met, *i.e.*, significance of cost changes and linkage between the costs and sales prices during the shorter averaging periods.[53] A significant change in cost for this purpose is defined as a greater than 25 percent change in the cost of manufacturing (COM) between the high and low quarters during a 12-month POI or POR.[54] This approach is in line with International Accounting Standard 29 (defining high inflation of 100 percent over a three-year period as approximately 25 percent inflation per year), from which Commerce drew guidance in establishing its 25 percent significance threshold for cost changes within a 12-month period.

[52] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying IDM at Comment 5 (explaining Commerce's practice of computing a single weighted-average cost for the entire period); *see also Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 78 FR 35248 (June 12, 2013) and accompanying IDM at Comment 6.
[53] *See, e.g., Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) and accompanying IDM at Comment 2.
[54] *Id*.

Because the cost changes for control numbers (CONNUMs) test met the significance threshold, we evaluated whether there was a reasonable linkage between the quarterly weighted-average per-unit costs and the sales prices of WLP during the shorter cost periods.[55] In establishing linkage, we may look at evidence such as the existence of a surcharge or pricing mechanism that provides for a link between prices and costs.[56] Absent a surcharge or other pricing mechanism, Commerce will look for evidence that changes in selling prices reasonably correlate to changes in unit costs. In performing this analysis in the instant case, we analyzed the cost and price trends for the largest volume U.S. CONNUMs examined in the significance of cost changes test. For each of the CONNUMs, we examined the quarterly average prices and costs over the entire POR. As part of our analysis, we looked at the relative magnitude of changes in the prices and costs and whether, from quarter-to-quarter, the prices and costs moved in the same direction. Our analysis revealed that the magnitude of the changes in the quarterly costs and sales prices of WLP were not comparable and that, while both the cost and sales prices for all the CONNUMs increased from the first to the second quarter, the cost and sales prices moved in opposite directions from the second to third quarter and from the third to fourth quarter (*i.e.*, cost trended downward while sales prices increased), which suggests that the sales prices were not reasonably correlated to SeAH's changing costs (*i.e.*, sales prices did not respond to changes in cost). As such, we found that for the majority of the POR, quarterly prices and costs of WLP do not appear to be reasonably correlated and that linkage does not exist.[57] Accordingly, we determined that SeAH did not meet the linkage part of the two-prong test on whether to use

[55] *See, e.g., Final Results of the Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 76 FR 76939 (December 2, 2011), and accompanying IDM at Comment 1.
[56] *Id*.
[57] *See Final Results* IDM at Comment 12; *see also* SeAH's August 3, 2018 Supplemental Section D Response at Appendix SD-5.

quarterly average costs. Therefore, we found that the use of Commerce's quarterly cost methodology was not warranted.

Commerce sometimes uses its quarterly-cost methodology because we recognize that possible distortions may result if our normal POR-average cost methodology is used during a period of significant cost changes.[58] We recognize that in a significant cost change environment, comparing sales occurring during a low-cost period to an annual average cost may result in sales being below cost simply due to the timing of the sale. Therefore, under these circumstances, performing the cost test using shorter cost averaging periods may be appropriate. However, before resorting to the alternative shorter cost averaging period methodology, we must also ensure that prices are reacting to the changes in cost and that the prices are reasonably correlated to the changes in costs within the shorter cost averaging and price comparison periods. Otherwise, Commerce would end up using shorter cost averaging periods when the prices being compared to those costs within the shorter periods have not been set in reaction to the changing costs. In this case where changes in prices are not reasonably correlated with the changes in costs from quarter to quarter, we find that deviating from our normal annual average costs and resorting to shorter cost averaging and price comparison periods is no more accurate than our normal annual average cost and price comparison methodology. As such, under such conditions, we find that our decision to continue to use our normal annual average cost methodology is reasonable.

Under our normal methodology when performing the cost test, we compare the sales prices that occurred throughout the POR to a single POR average cost to determine whether sales were made below cost. If it is determined that we should use shorter cost averaging periods (*i.e.*,

[58] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010), and accompanying IDM at Comment 1.

quarterly costs), we calculate quarterly average costs for each quarter of the POR and compare prices within each quarter to that same quarter's average cost. The decision whether to use the quarterly cost methodology impacts the mechanics of the dumping calculation over the entire POR, not just one or two quarters. In the dumping calculation under the quarterly cost methodology, costs for the entire POR, not just one or two quarters, are calculated on a quarterly average basis and sales throughout the entire POR, not just one or two quarters, are compared to the related quarter's costs. Likewise, our analysis of whether changes in prices and costs are reasonably correlated is not limited to only one or two quarters or to only those quarters with the most significant cost changes. It is done over the same period in which we have sales, *i.e.*, the entire POR.

We agree with the Court that both prices and costs are correlated between the first and second quarter of the POR. However, because resorting to the quarterly cost method means that we would be comparing sales throughout the entire POR to the related quarterly average costs, we must analyze and find correlation between the sales and cost throughout the entire POR (or at least the majority of the quarters), not just between two quarters.

Establishing whether linkage exists is important to our analysis. In recent determinations,[59] Commerce explained that our definition of linkage does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices charged by a company. Commerce acknowledges that

[59] *See, e.g., Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008), and accompanying IDM at Comment 4; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010), and accompanying IDM at Comment 1.

being able to reasonably link sales prices and costs during a shorter cost period is important in deciding whether to depart from our normal annual average cost methodology. In this case, we evaluated whether the sales prices during the shorter cost averaging period were reasonably correlated with the COM during the same period.

When Commerce has found that there is a significant change in cost between the high and low quarters, Commerce has evaluated whether there was linkage between the cost and sales prices throughout the POI/POR. In *Ferrovanadium from Korea*, we stated that "we compared the quarterly average prices and the recalculated quarterly average COM and found that the quarterly sales prices and COM moved in the same direction for all quarters and the slope lines for the quarterly sales prices and costs trended consistently throughout the POI."[60] We further stated that "{b}ecause the prices and costs appear to be reasonably correlated, we determined that linkage between quarterly costs and sales prices existed during the POI."[61] In *PSF from Korea*, we stated that "the record evidence shows divergent trends between sales prices and costs for the CONNUMs analyzed and there was no consistent companion trend of prices and costs."[62] Given this, we found that "a reasonable linkage does not exist."[63] Because we find there is no linkage throughout the POR between SeAH's reported sales and costs, we continue to find that the use of annual weighted-average CONNUM costs is warranted.

G. Allocation of G&A Expenses for SeAH's Affiliate, PPA

According to the Court, Commerce described at length its methodology for determining PPA's expense ratio, but neither clarified whether it is treating PPA's G&A expenses as indirect

[60] *See Final Determination of Sales at Less-Than-Fair-Value Ferrovanadium from the Republic of Korea*, 82 FR 14874 (March 16, 2017) (*Ferrovanadium from Korea*), and accompanying IDM at Comment 8.
[61] *Id.*
[62] *See Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the Republic of Korea*, 75 FR 64252 (October 7, 2010) (*PSF from Korea*), and accompanying IDM at Comment 2.
[63] *Id.*

selling expenses, nor explained why it is authorized to do so under the Act. Therefore, the Court remanded the issue for Commerce to provide further explanation as to whether it is treating PPA's G&A expenses as indirect selling expenses under the Act, and if so, why it is so authorized, or for reconsideration.[64] In the *Final Results*, Commerce explained that PPA's G&A functions support the general activities of the company as a whole, *i.e.*, both the further manufacturing and reselling activities.[65] Consequently, we applied PPA's G&A expense ratio to the total cost of the further manufactured products, *i.e.*, the further manufacturing costs plus the cost of the imported WLP that was further manufactured, as well as the production cost for all non-further manufactured WLP products resold by PPA."[66] We continue to believe Commerce's approach in the *Final Results* was reasonable because: (1) it avoids burdening only the further manufactured sales with PPA's G&A expenses; (2) it is consistent with Commerce's approach when calculating the COP of the merchandise under consideration; and (3) G&A expenses are generally related to the activities of the entire company.[67] Thus, we find that it was appropriate to allocate proportionally such G&A expenses to all the sales of the company which, in this case, incorporates both the directly resold products, and the products resold after further processing.

Regarding the Court's requirement to provide record evidence supporting the treatment of PPA's G&A expenses as selling expenses, we note that it is not disputed that PPA is SeAH's affiliated U.S. sales entity which exists to generate sales in North America.[68] Thus, PPA's primary function is to facilitate SeAH's U.S. sales. Further, it is not disputed that PPA has no production capabilities of its own and thus, the extent of its further manufacturing costs is the fee

[64] *See Husteel II*, 471 F. Supp. 3d at 1370.
[65] *See Final Results* IDM at Comment 13.
[66] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – SeAH Steel Corporation," dated June 7, 2019 at 2.
[67] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020), and accompanying IDM at Comment 16.
[68] *See*, *e.g.*, SeAH's April 16, 2018 Section A Questionnaire Response at 13-14.

PPA pays to unaffiliated processors for the processing services provided in the United States.[69] Clearly, PPA's G&A expenses support the general operations of this selling entity and are recovered by PPA through both direct and further processed sales.

Section 772(d) of the Act provides that the price used to establish constructed export price (CEP) must be reduced by:

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

Further, under section 772(d)(2) of the Act, Commerce is also directed to reduce CEP by "the cost of any further manufacture or assembly (including additional material and labor)..."

The plain language of section 772(d)(2) of the Act specifically deals with the further manufacturing costs, such as additional material and labor costs but, unlike the statutory language for the COP and CV in sections 773(b)(3) and (e) of the Act, G&A expenses are not explicitly defined as being included in further manufacturing under section 772(d)(2) of the Act. On the other hand, section 772(d)(1)(D) of the Act, covering the adjustments to CEP, is broadly

[69] *Id.* at 49 ("The Line Pipe sold to U.S. customers through PPA's Houston office was processed in the United States (by applying an epoxy coating to the imported pipe) prior to shipment to the unaffiliated customer. The processing for the pipe sold through PPA's Houston office was performed entirely by an unaffiliated processor located in the United States, who was paid a fee based on the type of processing performed and the quantity of pipe processed.")

written to include "any selling expenses not deducted" under the other subparagraphs. Therefore, after consideration of the plain language of the statute, we believe that the G&A expenses of SeAH's U.S. affiliated selling entity should be treated as part of the deduction for indirect selling expenses, rather than part of the deduction for further manufacturing.

G&A expenses are not attributable to specific products because they support the general operation of a company as a whole; thus, they are not inventoriable expenses, but recognized as period costs. The G&A expenses of the U.S. affiliated selling entity are associated with supporting and accomplishing the greater selling function of the entity, which is to advance sales in the U.S. market for the respondent, SeAH. As discussed above, the record demonstrates that PPA is primarily a selling entity, and that its G&A activities support those selling operations. Therefore, to comport with the plain language of the Act, and as supported by record evidence, we determined that PPA's G&A expenses support its sales activities and, thus, should be included in indirect selling expenses. This approach is consistent with Commerce's policy that, if the U.S. affiliated selling entity provides no further-manufacturing services, then everything that the entity does is considered part of its selling activities.[70]

Under the same fact pattern in other litigation, Commerce treated PPA's G&A expenses as indirect selling expenses.[71] The only difference between treating these expenses as indirect selling expenses, rather than as G&A expenses, is that as indirect selling expenses, these expenses are allocated based on relative sales revenue (*i.e.*, the total G&A expenses will be included with other indirect selling expenses and allocated to all sales), whereas when these

[70] *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33550 (June 28, 1995), where Commerce stated that "we have treated the G&A expenses of Siderca Corp. as a selling expense, since the primary function of Siderca Corp. is one of a selling agent."
[71] *See* Final Results of Redetermination Pursuant to Court Remand Oil 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) (OCTG Remand Redetermination).

expenses of the U.S. selling entity are treated as G&A costs of further manufacturing, these expenses are allocated based on relative cost of sales (*i.e.*, the G&A expenses are calculated as a ratio of the COGS).

We believe that this methodology for allocating the U.S. affiliated selling entity's G&A expenses as indirect selling expenses, as applied here and in the OCTG Remand Redetermination, is based on a reasonable interpretation of sections 772(d)(2) and 772(d)(1)(D) of the Act, given that the Act is silent on how to treat the U.S. affiliated selling entity's G&A expenses in the calculation of the CEP. The Court recently accepted the use of this methodology to treat PPA's same G&A expenses in *NEXTEEL*.[72] Thus, based on the reasons explained above, for purposes of this redetermination, we have 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) as indirect selling expenses under section 772(d)(1)(D) of the Act.[73]

IV. INTERESTED PARTY COMMENTS

On October 23, 2020, Commerce released the draft results of redetermination to all interested parties and invited interested parties to comment.[74] On October 30, 2020, we received comments from Maverick Tube Corporation and IPSCO Tubulars Inc. (collectively, Domestic

[72] *See NEXTEEL Co. Ltd. et al. v. United States*, 461 F. Supp. 3d 1336, 1343 (CIT 2020) (*NEXTEEL*) (where the Court concluded that: (1) substantial evidence supported Commerce's conclusion that PPA is SeAH's U.S. affiliate and that its primary function is to facilitate SeAH's sales; and (2) Commerce's treatment of PPA's G&A as indirect selling expenses was in accordance with law).
[73] *See* Memorandum, "Margin Calculations for SeAH Steel Corporation Pursuant to Draft Results of Redetermination," dated concurrently with this draft remand redetermination (SeAH Draft Results Calculation Memorandum), dated October 23, 2020.
[74] *See* "Draft Results of Redetermination Pursuant to Court Remand: Welded Line Pipe from the Republic of Korea, *Husteel Co., Ltd. et al. v. United States*, Consol. Court No. 19-00112, Slip Op. 20-125 (CIT August 26, 2020)," issued on October 23, 2020 (Draft Remand Results).

Interested Parties);[75] California Steel Industries and Welspun Tubular LLC USA (collectively, Domestic Producers);[76] NEXTEEL;[77] SeAH;[78] Husteel Co., Ltd. (Husteel);[79] and Hyundai Steel Company (Hyundai Steel).[80]

Comment 1: SeAH's Third Country Sales

Domestic Interested Parties Comments

- Commerce's decision in the *Final Results* to reject the use of SeAH's Canadian sales based on the CITT determination was a reasonable interpretation of the statute and based on substantial record evidence.[81]
- If Commerce continues to use SeAH's sales to Canada as the basis for NV in the final remand results, it should continue to issue its redetermination under protest.[82]

Commerce's Position:

As noted above, we disagree with the Court's holding on this issue. Despite their disagreement with the Court's holding, Domestic Interested Parties do not point to any record evidence that would allow Commerce to overcome the Court's objections. Accordingly,

[75] *See* Domestic Interested Parties' Letter, "Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2016-2017, Remand: Comments on Draft Results of Redetermination Pursuant to Court Remand," dated October 30, 2020 (Domestic Interested Parties Comments).
[76] *See* Domestic Producers' Letter, "Welded Line Pipe from the Republic of Korea: Comments on Draft Remand Results," dated October 30, 2020 (Domestic Producers Comments).
[77] *See* NEXTEEL's Letter, "Welded Line Pipe from the Republic of Korea: NEXTEEL's Comments on Draft Remand Redetermination," dated October 30, 2020 (NEXTEEL Comments).
[78] *See* SeAH's Letter, "Comments of SeAH Steel Corporation on Draft Redetermination on Remand in Consolidated Court No. 19-00112," dated October 30, 2020 (SeAH Comments).
[79] *See* Husteel's Letter, "Welded Line Pipe from the Republic of Korea, 12/1/2016-11/30/2017 Administrative Review, Case No. A-580-876: Comments on Draft Remand Redetermination," dated October 30, 2020 (Husteel Comments).
[80] *See* Hyundai Steel's Letter, "Welded Line Pipe from the Republic of Korea, 12/1/2016 – 11/30/2017 Administrative Review, Case No. A-580-876: Comments on Draft Remand Redetermination," dated October 30, 2020 (Hyundai Steel Comments).
[81] *See* Domestic Interested Parties Comments at 6-10.
[82] *Id*. at 7.

consistent with the Court's remand order, and under respectful protest,[83] we continue to rely on SeAH's Canadian sales as the basis for NV for these final results of redetermination.

Comment 2: PMS Determination

Domestic Producers Comments

- Commerce's decision to submit the remand results under protest is proper, considering that the agency's PMS finding in the underlying proceeding is supported by substantial evidence.[84]

Husteel Comments

- Commerce's draft remand results complied with the Court's remand instructions, and Commerce should not amend its draft redetermination.[85]

Hyundai Steel Comments

- Commerce's draft remand results complied with the Court's remand instructions to reverse its finding of a PMS in Korea with respect to HRC inputs.[86]

NEXTEEL Comments

- Commerce's draft remand complies with the Court's remand instruction on the issue of the PMS adjustment.[87]

Commerce's Position:

As noted above, we disagree with the Court's holdings with respect to the PMS determination. Accordingly, consistent with the Court's remand order, and under respectful protest,[88] we are unable to determine that a PMS exists that distorts the COP of WLP, and

[83] *See Viraj Group*, 476 F. 3d at 1349.
[84] *See* Domestic Producers Comments at 2-4.
[85] *See* Husteel Comments at 1-2.
[86] *See* Hyundai Steel Comments at 1-2.
[87] *See* NEXTEEL Comments at 2-3.
[88] *See Viraj Group*, 476 F. 3d at 1349.

therefore, we have recalculated the respondents' weighted-average dumping margins without a PMS adjustment to the COP for the sales-below-cost test for these final results of redetermination.

Comment 3: Reliance on Hyundai Steel's CV Profit and Selling Expenses

Domestic Interested Parties Comments

- Commerce should reverse its decision to use SeAH's third country sales, and instead use Hyundai Steel's CV profit and selling expense ratios from the 2014-2015 administrative review, as the best information available. This information is on the record of this review and using it would be consistent with Commerce's practice and Court precedent.[89]

NEXTEEL Comments

- Because Commerce determined that it was unreasonable to continue to use Hyundai Steel's CV profit information from the 2014-2015 administrative review, rather than SeAH's third country sales, as the basis for CV profit and selling expenses for NEXTEEL, Commerce's draft remand determination is consistent with the Court's opinion on this issue.[90]

Hyundai Steel Comments

- Commerce's draft remand results complied with the Court's remand instructions and Commerce should not amend it.[91]

Commerce's Position:

As noted above, we disagree with the Court's holding on the issue of SeAH's third country sales. Despite their disagreement with the Court's holding, Domestic Interested Parties

[89] *See* Domestic Interested Parties Comments at 3.
[90] *See* NEXTEEL Comments at 3.
[91] *See* Hyundai Steel Comments at 1-2.

do not point to any record evidence that would allow Commerce to overcome the Court's objections on that issue. Accordingly, consistent with the Court's remand order, and under respectful protest,[92] because we continue to rely on SeAH's Canadian sales as the basis for SeAH's NV, we also continue to rely on SeAH's Canadian sales as the basis for CV profit and selling expenses for NEXTEEL for the purposes of these final results of redetermination.

Comment 4: Quarterly Cost Methodology for Calculating SeAH's CV

Domestic Interested Parties Comments

- Commerce properly calculated COP and CV for SeAH based on its normal annual weighted-average cost methodology because Commerce found that a reasonable linkage did not exist over the entire POR.[93]
- Commerce's approach is supported by substantial evidence, is in accordance with the law, and Commerce's additional explanation in the draft remand results complied with the Court's instructions.[94]

SeAH Comments

- Evidence on the record of this review confirms that SeAH's quarterly prices and costs were highly coordinated. Specifically, in the draft remand results, Commerce acknowledged that: (1) the magnitude of cost changes during the review period was sufficiently large to justify the use of quarterly weighted-average per-unit costs in its cost analysis; and (2) the movement of prices and costs were correlated between the first and second quarter of the review period.[95]

[92] *See Viraj Group*, 476 F. 3d at 1349.
[93] *See* Domestic Interested Parties Comments at 3.
[94] *Id*.
[95] *See* SeAH Comments at 7.

- Commerce explained that, because resorting to the quarterly cost method means that it would be comparing sales throughout the POR to the related quarterly costs, Commerce must analyze and find correlation between the sales and cost throughout the entire POR, not just between two quarters. However, the flaw in this reasoning is that under Commerce's approach, significant cost changes must result in commensurate price changes to justify the application of the quarterly-cost method.
- Accordingly, it is reasonable to assume that if cost differences are not "significant," then Commerce cannot expect prices to move in lockstep with such "insignificant" cost changes. The existence or absence of a correlation between costs and prices can only be relevant for periods which the cost changes were significant.

Commerce's Position:

Commerce has an established a two-prong test to determine whether using an alternative quarterly cost methodology is warranted. There must be a significant cost change and linkage between the costs and sales prices during the shorter averaging period.[96] A significant change in cost for this purpose is defined as a greater than 25 percent change in the COM between the high and low quarters during a 12-month POI or POR.[97] In establishing linkage, Commerce will look for evidence that changes in selling prices reasonably correlate to changes in unit costs. Accordingly, this established two-prong test has reasonable and predictable criteria that can be relied upon from case to case to determine whether Commerce should deviate from its established practice of using the annual weighted-average cost. Otherwise in every case there can be outliers and differing facts that are only argued by interested parties if it is beneficial.

[96] *See, e.g., Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying IDM at Comment 2.
[97] *Id*.

Our analysis revealed that the magnitude of the changes in the quarterly costs and sales prices of WLP were not comparable and that, while both the cost and sales prices for all the CONNUMs increased from the first to the second quarter, the cost and sales prices moved in opposite directions from the second to third quarter and from the third to fourth quarter (*i.e.*, cost trended downward while sales prices increased), which suggests that the sales prices were not reasonably correlated to SeAH's changing costs (*i.e.*, sales prices did not respond to changes in cost).[98] As such, we found that, for the majority of the POR, quarterly prices and costs of WLP do not appear to be reasonably correlated and that linkage does not exist.[99] Accordingly, we determined that SeAH did not meet the linkage part of the two-prong test on whether to use quarterly average costs. Therefore, we found that the use of Commerce's quarterly cost methodology was not warranted.

Comment 5: Reclassification of NEXTEEL's Reported Losses

NEXTEEL Comments

- The Court found that Commerce did not "address NEXTEEL's argument that Commerce's practice of reallocating its losses contravenes the plain requirements of {section 773(f)(1)(A) of the Act} in this instance." On remand, Commerce has continued not to explain its practice or address the argument that the practice contravenes the statute.
- Commerce has not explained how it determined that it was reasonable to reallocate costs from COGS to G&A, in contravention of NEXTEEL's allocation in its normal books and records.

[98] *See Final Results* IDM at Comment 12; *see also* SeAH's August 3, 2018 Supplemental Section D Response at Appendix SD-5.
[99] *Id.*

- Commerce does not explain on what basis it reached the determination in this case that NEXTEEL's "normal books and records do not reasonably reflect the production costs of the merchandise under consideration."
- Suspended losses are not related to the company's overall management of its operations, but rather consisted of expenses NEXTEEL incurred on specific production lines that were temporarily suspended. The expenses in question here are clearly manufacturing-related. Although production was suspended, those costs were still associated with those specific lines and those specific, non-subject products.
- Commerce has not pointed to anything in support of that determination or articulated a standard for differentiating between routine shutdowns (which do not warrant cost reclassification) and more prolonged shutdowns (a situation which Commerce views as appropriate to reclassify costs).
- Commerce has also not explained why it considers these particular suspensions to have been "for an extended period of time during the POR." Commerce has still not pointed to anything with specificity to provide clarity to respondents as to which production suspensions may be reasonably considered to be "temporary" and which might be considered to go on for an "extended period."[100]

Domestic Interested Parties Comments

- Commerce offered further explanation of Commerce's practice that the costs for non-routine shutdowns (including maintenance shutdowns) are considered to be related to the general operations of the company as a whole.

[100] *See* NEXTEEL Comments at 8-10.

- Commerce provided additional elaboration in explaining that, because the suspension of production occurred for an extended period of time, Commerce considered the suspension nonroutine, and the associated costs to be related to the general operations of the company as a whole, and not specific to products associated with that production line.[101]

Commerce's Position:

We disagree with NEXTEEL's assertion that Commerce did not explain its practice or address the argument that the practice contravenes the statute. In the draft remand results, we stated that, consistent with section 773(f)(1)(A) of the Act, Commerce normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sales of merchandise. However, in those instances where it is determined that a company's normal books and records do not reasonably reflect the production costs of the merchandise under consideration, Commerce's practice has been to adjust these costs as necessary.[102] The costs in question, which NEXTEEL excluded, are not assigned to product costs in NEXTEEL's cost accounting system, but rather are expensed in aggregate directly to COGS. Just because Commerce included these non-product costs as G&A expenses, it does not contravene the statute. Commerce's normal practice in determining whether particular items should be included in G&A is to review the nature of the item and its relation to the general operations of the company as a whole.[103] In this instant case, NEXTEEL suspended certain

[101] *See* Domestic Interested Parties Comments at 4.
[102] *See, e.g., Acetone from the Republic of Korea: Final Determination in the Less-Than-Fair-Value Investigation*, 85 FR 8252 (February 13, 2020), and accompanying IDM at Comment 1.
[103] *See Magnesium Meta; from Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February 24, 2005), and accompanying IDM at Comment 10.

production lines for an extended period of time during the POR. No revenue from any products normally produced on those lines was generated for the period because those production lines were suspended and not producing products.[104] As such, the costs associated with the suspended production lines were necessarily covered by all the other products NEXTEEL produced. Commerce reasonably associated these costs with the general operations of the company as a whole (*i.e.*, with the production and sale of all products), and not specific to products associated with that production line as there were no products produced and sold from those suspended production lines. Section 773(b)(3)(B) of the Act directs Commerce to include as part of COP costs associated with the general operations of the company (*i.e.*, normal costs that are not directly associated with a product). We also disagree with NEXTEEL that the expenses in questions are clearly manufacturing-related expenses as they were not reflected in the company's normal books and record in inventory or product costs. When products are being produced on these production lines, the expenses may relate to manufacturing-specific products; however, during these long down periods, no products were manufactured as the operations were suspended.[105]

NEXTEEL's argument that suspended losses consisted of expenses NEXTEEL incurred on specific production lines is off point as there were no products produced to which to attach such costs. In the suspended loss schedule provided by NEXTEEL during the cost verification, it was evident that expenses related to the suspended production line were incurred continuously for very long periods.[106] The production shutdown started before the POR and continued after the POR, establishing that it was not a routine shutdown but a prolonged shutdown for an

[104] *See* NEXTEEL's May 15, 2018 DQR at 10.
[105] *Id*.
[106] *See* Memorandum, "Verification of the Cost Response of NEXTEEL Co., Ltd. in the Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea," dated December 11, 2018.

extended period.[107] Costs related to a prolonged shutdown are absorbed by the operations of the whole company and are considered general in nature.[108] A routine shutdown (*i.e.* maintenance shutdowns for short periods) are required by the company to repair machines to keep them efficient. While no specific time is associated with a routine shutdown, normally the shutdown is short-term. In the instant case, the shutdown was not a short-term, routine shutdown.

Comment 6: Adjustment to NEXTEEL's CV to Account for Non-Prime Products

NEXTEEL Comments

- The Court concluded that Commerce's determination on the issue of non-prime production costs was unreasonable because it was inconsistent with Commerce's stated practice for attributing the COP for non-prime products.
- Commerce's draft does not comply with the Court's order because Commerce did not explain how its determination in this case accords with past practice in light of record evidence.
- Commerce explained that its determination was based on the following considerations, among others, which are not in keeping with the standard that Commerce set out in the *Final Results* and in the draft remand results. Specifically, Commerce stated that non-prime product: (1) was not physically equivalent to those kinds of pipe used in the oil and gas industry for transport of oil, rendering it outside the scope of this order; and (2) commands a price that cannot recover the cost assigned to such products and assigning full costs to these products is not reasonable because it shifts unrecoverable costs away

[107] *Id*. at Exhibit 6.
[108] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review: 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 34.

from prime merchandise and burdens non-prime products with costs they cannot recover above their market value.

- After establishing this test as its standard practice, Commerce proceeded to not follow it in the first instance in the *Final Results*. The Court ordered Commerce to do so on remand, but Commerce still has not done so.
- In the draft remand results, Commerce has established a new standard, which seems to require that market value of the non-prime product cover the COP for the full COP to be attributed to the products. However, that standard is not in the statute, regulations, or past practice, nor does the draft remand results establish why that test is appropriate.
- Commerce recognizes that the actual costs of these products are what NEXTEEL reported, and Commerce has not found those costs to be distorted. Commerce does not identify anything in the reported costs that would justify diverging from NEXTEEL's normal books and records. It is not until a later point in time after the production costs were incurred and recorded – at the time of testing at the earliest, or time of sale at the latest – that Commerce would seem to arrive at a different conclusion as to whether the costs may be distorted.
- If the non-prime product remains in scope, then there is no basis to adjust the costs because it is a reportable transaction and Commerce's sales-below-cost analysis is specifically designed to address such sales. On the other hand, if the product is out of scope, then the entire issue is moot because the booked costs, along with the sales, would need to be entirely excluded from the analysis.[109]

Domestic Interested Parties Comments

[109] *See* NEXTEEL's Comments at 3-8.

- Commerce complied with the Court's remand instructions and fully explained its practice to assess whether a product is "non-prime" on a case-by-case basis, considering factors such as: (1) the products' treatment in the respondent's normal books and records; (2) whether they remain in scope; and (3) whether they can still be used in the same applications as prime subject merchandise.
- Commerce applied this three-prong test in its draft remand determination, offered additional justification as to the reasonableness of its test, and explained how it considered the record evidence in reaching its determination in the underlying review.
- Commerce explained that NEXTEEL's treatment of the non-prime products' cost is unreasonable because it ultimately shifts unrecoverable costs away from prime merchandise and burdens non-prime products with costs that they cannot recover above their market value.
- Commerce also explained that whether the non-prime WLP is in-scope is not dispositive because it was not classifying the product in this exercise as being out of scope or not reportable, but only as a way to evaluate the significance of the impairment.
- Commerce again considered whether the non-prime WLP could be used for its originally intended applications, and determined that it could not, including because non-prime products do not satisfy the API 5L standard.[110]

Commerce's Position:

We disagree with NEXTEEL that Commerce's determination on the issue of non-prime production costs was unreasonable because it was inconsistent with Commerce's stated practice of attributing the COP for non-prime products. Commerce, in the draft remand results, clarified

[110] *See* Domestic Interested Parties Comments at 4-5.

its practice, explained why its practice is reasonable, and identified how its determination accords with its practice in light of the record evidence.[111] Specifically, we explained that our practice with respect to non-prime products is to analyze the products sold as non-prime to determine whether they are truly the production of "good" product or if they are more akin to yield loss and the sale of the scrapped "bad" product in an attempt to recover whatever value they can get. Our analysis looked at several factors including: (1) how such products are treated in the respondent's normal books and records; (2) whether they remain in scope; and (3) whether they can still be used in the same applications as the prime subject merchandise.[112] We clarified why the practice was reasonable because we evaluate the company's reported costs with Commerce's primary guidance outlined in section 773(f)(1)(A) of the Act, which directs that the reported costs should be calculated based on a respondent's normal books and records if such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. We note that writing down inventory values when products values are impaired is consistent with GAAP in Korea.[113] Commerce first looks to how the respondent normally treats the product in its normal books and records because we would depart from those records if that treatment was found to not fairly reflect costs.[114] Lastly, we discussed that our determination accords with our practice in light of the record evidence when we evaluated how NEXTEEL's non-prime products cannot be used in the same general application as its prime products, how the non-prime products were not

[111] *See* Draft Remand Results at 9 and 10.
[112] *Id*.
[113] *See* NEXTEEL's April 17, 2018 Section A Questionnaire Response at Exhibit A-10 (Korean companies follow the Korean Accounting Standards for Non-Public Entities (KAS-NPE) or Korean International Financial Reporting Standards (K-IFRS) 1002 on Inventories).
[114] *See* Draft Remand Results at 9 and 10.

physically equivalent to those kinds of pipe used in the oil and gas industries, are non-scope products, and cannot command a price that would recover the cost assigned to such products.[115]

NEXTEEL argues that we stated that the non-prime products command a price that cannot recover the cost assigned to such products; therefore, assigning full costs to these products is not reasonable because it shifts unrecoverable costs away from prime merchandise and burdens non-prime products with costs they cannot recover above their market value.[116] In relation to this, NEXTEEL argues that Commerce has established a new standard which seems to require that the market value of the non-prime product cover the COP for the full COP to be attributed to the products which is nowhere in the statue, regulations or past practice.[117] The discussion of the market value is to demonstrate the extent of the impairment of the non-prime products in order to help evaluate whether the non-prime products are in fact good production or are, in effect, yield loss. The non-prime products at issue here are impaired – they cannot be used in the same applications as the prime subject merchandise – and are not in-scope merchandise. Furthermore, their market value is significantly less than that of the reportable prime merchandise.[118] Accordingly, we do not consider them to be good production. As such, we assigned a salvage value to these products equivalent to whatever salvage value the product could command.

NEXTEEL argues that Commerce's approach identifies impairment at different times, and thus disregards the timing of the impairment (*e.g.*, not until a later point in time after the production costs were incurred and recorded – at the time of testing at the earliest, or time of sale at the latest – such that Commerce would seem to ignore that the product was produced and

[115] *Id.* at 11-12.
[116] *Id*.
[117] *Id.* at 6.
[118] *See* NEXTEEL COP Memorandum at Attachments 2A and 2B.

generated all of the production costs). We disagree. It does not matter at what stage of the production process the product becomes bad production because it is still bad production. It is still part of the overall yield loss to the company and should not be allocated a cost akin to good production. Instead, the non-prime product should be given credit for whatever salvage value it can command.[119]

Lastly, the non-prime product cannot simply be excluded from the analysis if it is found to be outside of the scope because the prime products must carry the burden of the impairment.[120] This is reasonable because a certain amount of damaged or defective product is expected when producing large volumes of products, and thus is looked at as a cost of producing good products. Commerce must consider the valuation of the non-prime products when reviewing the cost of the subject merchandise. Therefore, NEXTEEL's arguments on Commerce's draft remand results regarding non-prime products have no merit.

Comment 7: Allocation of G&A Expenses for SeAH's Affiliate, PPA

Domestic Interested Parties Comments

- In the *Final Results,* Commerce allocated the G&A expenses of SeAH's U.S. affiliate PPA to imported pipe, whether further manufactured or not, sold in the United States. In the draft remand results, Commerce complied with the Court's instructions, offering further explanation of the legal and factual bases for its established approach and clarification that it is treating PPA's G&A expenses as indirect selling expenses.[121]

[119] *See 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.
[120] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying IDM at Comment 7.
[121] *See* Domestic Interested Parties Comments at 4.

SeAH Comments

- Because the G&A expenses incurred by PPA are not indirect selling expenses, only the portion of the G&A expenses fairly attributable to further manufacturing operations may be deducted from CEP. The remaining G&A expenses do not fall under any of the permissible adjustments to CEP, and therefore cannot be deducted from CEP in Commerce's calculations.
- Although PPA's primary business activity is facilitating SeAH's U.S. sales, PPA's G&A functions support additional activities that go beyond mere sales support.[122]
- In situations where a company is engaged in a combination of selling and non-selling activities, it is not reasonable to treat G&A activities as purely sales functions.[123]
- Commerce attempted to reclassify all of PPA's G&A expenses as "indirect selling expenses" by simply redefining the nature of PPA's operation for the purposes of the draft remand results, despite the fact that there is no new information concerning PPA's operations on the record. Commerce's recharacterization of PPA's activities in the draft remand results is simply a *post hoc* rationalization to justify the use of a methodology not permitted by law.
- To the extent that PPA's activities with respect to imported WLP require more attention from PPA's management than its U.S. manufacturing activities, it may be reasonable to allocate a portion of the G&A expenses to the manufacturing activities based on the relative contributions of these activities to COGS.[124]

[122] *See* SeAH Comments at 12 (citing SeAH's Rebuttal Case Brief (April 12, 2019) at 1-2).
[123] *Id*. at 13 (citing Potts & Fiss, *Policy Paper #H: Definition of 'Selling Expenses' in the Context of the Exporter's Sales Price Provisions*, Potts/Fiss (undated) (Policy Paper #H)).
[124] *See* SeAH Comments at 14.

- Expenses incurred for management, accounting, and financial operations for a company that has both manufacturing and selling activities are G&A expenses, not selling expenses.[125]
- Commerce's treatment of U.S. G&A expenses as selling expenses in the draft remand results is inconsistent with Commerce's treatment of G&A expenses incurred in the home market. In particular, when calculating the amount of home market indirect selling expenses that can be deducted as a CEP offset under 19 CFR 351.412(f), Commerce only includes the expenses of the exporter's sales departments, and does not include any allocation of G&A expenses.[126]

Commerce's Position:

Commerce 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. Apart from paying a processing fee to its toll processors, which we accounted for as further manufacturing costs, PPA is predominantly a selling entity and, thus, it is reasonable to treat its G&A expenses as selling expenses.[127]

Section 772(d) of the Act provides that the price used to establish CEP must be reduced by:

> (1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in

[125] *Id*. (citing Policy Paper #H; *Final Determinations of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, 14146-47 (March 25, 1994); *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009), and accompanying IDM at Comment 5(b); and *Nexteel*, Slip Op. 20-85).
[126] *See* SeAH Comments at 15.
[127] *See* SeAH's May 14, 2018 Sections B through E Questionnaire Response at 3.

selling the subject merchandise (or subject merchandise to which value has been added)--

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C).

Further, under section 772(d)(2) of the Act, Commerce is also directed to reduce CEP by "the cost of any further manufacture or assembly (including additional material and labor)…" The plain language of section 772(d)(2) of the Act deals with further manufacturing costs such as additional material and labor costs; however, unlike the statutory language for COP and CV in sections 773(b)(3) and 773(e) of the Act, G&A expenses are not explicitly defined as being included in further manufacturing under section 772(d)(2) of the Act. On the other hand, the statutory language under section 772(d)(1)(D) of the Act, covering the adjustments to CEP, is broadly written to include "any selling expenses not deducted" under the other subparagraphs. Moreover, the SAA explains that section 772(d)(1)(D) of the Act provides for the deduction of indirect selling expense from constructed export price.[128] The SAA further defines "indirect selling expenses" as "expenses which do not meet the criteria of 'resulting from and bearing a direct relationship to' the sale of the subject merchandise, do not qualify as assumptions, and are

[128] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316 (1994) (SAA) at 824

not commissions."[129] In calculating indirect selling expenses, Commerce "will generally include the G&A expenses incurred by the United States selling arm of a foreign producer" and this longstanding practice has been previously sustained by the Court.[130] Therefore, after further consideration of the plain language of the statute, the SAA, our practice, judicial decisions, and the record evidence, we find the G&A expenses of SeAH's U.S. affiliated selling entity should be treated as part of the deduction for indirect selling expenses, and not part of the deduction for further manufacturing.

We believe that this methodology for allocating the U.S. affiliated selling entity's G&A expenses as indirect selling expenses, as applied here and in the OCTG Remand Redetermination, is based on a reasonable interpretation of sections 772(d)(2) and 772(d)(1)(D) of the Act, given that the Act is silent on how to treat the U.S. affiliated selling entity's G&A expenses in the calculation of the CEP. The Court recently accepted this methodology for treatment of PPA's same G&A expenses in *NEXTEEL*.[131] Thus, based on the reasons explained above, for purposes of this redetermination, we have 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) as indirect selling expenses under section 772(d)(1)(D) of the Act.[132]

Finally, SeAH contends that, when Commerce calculates the amount of home market indirect selling expenses that can be deducted as a CEP offset, Commerce only includes the expenses of the exporter's sales departments, and does not include any allocation of G&A

[129] *Id.*
[130] *See Aramide Maatschappij V.o.F. v. United States*, 901 F. Supp. 353 (CIT 1995).
[131] *See NEXTEEL*, 461 F. Supp. 3d at 1342 (where the Court concluded that: (1) substantial evidence supported Commerce's conclusion that PPA is SeAH's U.S. affiliate and that its primary function is to facilitate SeAH's sales; and (2) Commerce's treatment of PPA's G&A expenses as indirect selling expenses was in accordance with law).
[132] *See* SeAH Draft Results Calculation Memorandum, for further discussion of this recalculation.

expenses. We note that PPA, the U.S. selling entity, and SeAH, the producer, serve two different roles. PPA is dedicated to facilitating the sales of SeAH's merchandise in the U.S. market and, as such, it is reasonable to treat its general expenses as indirect selling expenses, allocated over sales revenue. SeAH, however, is dedicated to the production of merchandise and as such, its general expenses were treated as G&A costs, allocated over the cost of sales. Therefore, given these facts, we find that it is appropriate for Commerce's treatment of G&A expenses incurred by the home market producer and the U.S. affiliate to differ.

Comment 8: Ministerial Errors in Recalculating SeAH's Margin

Domestic Interested Parties Comments

- If Commerce continues to use SeAH's Canadian sales as the basis for NV, it should revise SeAH's margin to correct a ministerial error that understates SeAH's margin.
- Specifically, in the margin calculation program, Commerce converted Korean Won amounts to U.S. dollars and then converted these values to U.S. dollars a second time.[133]

SeAH Comments

- Commerce made four ministerial errors in the program used to recalculate SeAH's margin. Specifically, Commerce incorrectly: (1) set the first date of sale for the comparison market sales to be examined in the comparison market program; (2) deducted direct selling expenses twice in calculating the net comparison market price; (3) set the first date of sale in the margin program for the window period of comparison market sales to be compared to U.S. sales; and (4) calculated the CEP offset amount by excluding indirect selling expenses.[134]

[133] *See* Domestic Interested Parties Comments at 20 (citing SeAH Draft Results Calculation Memorandum).
[134] *See* SeAH Comments at 16-17.

Commerce's Position:

We agree that we made the ministerial errors identified by both Domestic Interested Parties and SeAH. Correcting these errors results in a revised margin of 7.24 percent for SeAH.[135]

V. FINAL RESULTS OF REDETERMINATION

We recalculated SeAH's weighted-average dumping margin using the company's Canadian sales as the basis for NV and without making the PMS adjustment to the COP. Additionally, we corrected for the ministerial errors in SeAH calculations, as discussed above. As a result, SeAH's estimated weighted-average dumping margin is 7.24 percent.[136] We also recalculated NEXTEEL's estimated weighted-average dumping margin without making the PMS adjustment to the COP. As a result, NEXTEEL's weighted-average dumping margin is 11.91 percent.[137] These changes to the mandatory respondents' margins resulted in a change in the calculation of the review-specific rate applicable to the non-selected respondents, which is now 9.32 percent.[138] Because the weighted-average dumping margins and the review-specific rate are

[135] *See* Memorandum, "Margin Calculations for SeAH Steel Corporation Pursuant to Final Results of Redetermination," dated concurrently with these final results of redetermination, for further discussion.
[136] *Id.*
[137] *See* Memorandum, "Margin Calculations for NEXTEEL Pursuant to Draft Results of Redetermination," dated October 23, 2020.
[138] *See* Memorandum, "Calculation of the Review-Specific Average Rate for the Final Results of Redetermination," dated concurrently with these final results of redetermination.

different from that in the *Amended Final Results*, we intend to issue a *Timken* notice with the amended final results should the Court sustain these final results of redetermination.

Dated: January 7, 2021

1/7/2021

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance