

**FINAL 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. 18-00169, Slip Op. 20-2 (CIT January 3, 2020)**

**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*, Slip Op. 20-2, Consol. Court No. 18-00169 (CIT 2020) (*Husteel*). This action arises out of the final results in the 2015-2016 administrative review of the antidumping duty (AD) order on welded line pipe (WLP) from the Republic of Korea (Korea).<sup>1</sup> The Court remanded to Commerce its: (1) rejection of SeAH Steel Corporation's (SeAH's) third country sales to calculate normal value (NV); (2) finding of a particular market situation (PMS) in the Korean market for the hot-rolled coil (HRC) input; and (3) PMS adjustment to the respondents' cost of production (COP) for the purposes of the sales-below-cost test. In light of the Court's remand order, and under protest, on remand, Commerce: (1) relied on SeAH's third country sales to calculate NV; (2) determined that there is no PMS that distorts the COP of WLP; and (3) recalculated the weighted-average dumping margins for the mandatory respondents Hyundai Steel Company (Hyundai Steel) and SeAH without the PMS

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<sup>1</sup> See *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*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; 2015-2016*, 83 FR 39682 (August 10, 2018) (*Amended Final Results*).

adjustment to the COP for the sales-below-cost test. As a result of correcting an error in our draft remand calculations for SeAH, the revised weighted average dumping margins for Hyundai Steel and SeAH are 9.24 percent and 4.70 percent, respectively. Moreover, as a result of Commerce’s recalculation of the weighted-average dumping margins for the mandatory respondents, the review-specific rate applied to the non-selected respondents is revised to 6.97 percent.

## **Background**

Commerce published the *Final Results* on July 18, 2018.<sup>2</sup> 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;<sup>3</sup> (2) determined that a PMS exists in the Korean market, which distorted the COP of WLP;<sup>4</sup> and (3) made an adjustment to the respondents’ cost of HRC to account for the PMS.<sup>5</sup>

In its January 3, 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.<sup>6</sup> As the Court explained, Commerce relied solely on the CITT’s findings, and “failed to consider contradictory evidence that Canadian antidumping law

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<sup>2</sup> See *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*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; 2015–2016*, 83 FR 39682 (August 10, 2018).

<sup>3</sup> See *Final Results* IDM at Comments 1 and 12; see also Memorandum, “Final Results Margin Calculation for SeAH,” dated July 11, 2018.

<sup>4</sup> See *Final Results* IDM at Comment 1.

<sup>5</sup> *Id.*

<sup>6</sup> See *Husteel* at 26-29.

was materially inconsistent with U.S. law.”<sup>7</sup> The Court also faulted Commerce for inconsistency – accepting the same information (*i.e.*, SeAH’s comparison market) in another proceeding.<sup>8</sup>

Further, the Court held that Commerce’s PMS determination was not supported by substantial evidence.<sup>9</sup> According to the Court, Commerce failed to substantiate three out of the four factors upon which it based the PMS finding (*i.e.*, (a) Korean imports of HRC from China; (b) strategic alliances; and (c) government involvement in the Korean electricity market).<sup>10</sup> The Court elaborated that, even if Commerce adequately supported these factors, it must demonstrate how these alleged distortions in the Korean market prevented a proper comparison between U.S. price and NV.<sup>11</sup>

Finally, the Court held that Commerce’s PMS adjustment to Hyundai Steel’s COP for purposes of the sales-below-cost test was unlawful.<sup>12</sup> As the Court explained, the statutory scheme under section 773 of the Tariff Act of 1930, as amended (the Act), “precludes Commerce’s PMS adjustment to the COP for purposes of a below-cost sales analysis.”<sup>13</sup> The Court elaborated that the amendment to section 773(e) of the Act, permitting a PMS adjustment to COP for purposes of calculating NV based on constructed value (CV), was not made to sections 773(b)(1) (determination of sales below COP) or 773(f) (calculation of COP) of the

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<sup>7</sup> *Id.* at 27.

<sup>8</sup> *Id.* at 27-28 (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), and accompanying IDM at Comments 1 and 5).

<sup>9</sup> *Id.* at 21-25.

<sup>10</sup> *Id.* at 23-24.

<sup>11</sup> *Id.* at 25.

<sup>12</sup> *Id.* at 8-21.

<sup>13</sup> *Id.* at 8 (emphasis added).

Act.<sup>14</sup> Therefore, the Court concluded, “{t}he words of the statute cannot support the adjustment made {} by Commerce.”<sup>15</sup>

The Court remanded for Commerce to further consider and/or explain its decisions with respect to these issues.<sup>16</sup>

## Analysis

### A. *SeAH’s Third Country Sales*

For purposes of the *Final Results*, we rejected SeAH’s third country sales and based NV on CV in calculating SeAH’s weighted-average dumping margin.<sup>17</sup> The Court held that our decision was based solely on the CITT’s findings, and that we “failed to consider contradictory evidence that Canadian antidumping law was materially inconsistent with U.S. law.”<sup>18</sup> Of note, the Court explained that the CITT applied the equivalent of facts available to SeAH for failing to report home market sales of merchandise produced by another manufacturer, a requirement inconsistent with the Act.<sup>19</sup>

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. Given that we lack sufficient record evidence to perform the compulsory 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,<sup>20</sup> we are relying on SeAH’s Canadian sales for purposes of NV.

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<sup>14</sup> *Id.* at 13-21.

<sup>15</sup> *Id.* at 21.

<sup>16</sup> *Id.* at 30.

<sup>17</sup> See *Final Results* IDM at Comment 12.

<sup>18</sup> See *Husteel* at 27.

<sup>19</sup> *Id.*

<sup>20</sup> See *Viraj Group v. United States*, 476 F. 3d 1349 (Fed. Cir. 2007) (*Viraj Group*).

## ***B. PMS Determination and Adjustment***

In the underlying determination, the Department concluded that the weight of the evidence on the record of the administrative review, cited in the *Final Results*, demonstrated the existence of 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.<sup>21</sup> The Court, however, found that Commerce failed to substantiate the latter three factors. According to the Court, not only is there “no evidence on the record” that Chinese overcapacity impacted the Korean market in some way specific to it, but Commerce’s reliance on the cumulative effect of unsubstantiated distortions (*i.e.*, strategic alliances and government involvement in the Korean electricity market) in arriving at its PMS determination, circumvented “a meaningful review of the sufficiency of the record.”<sup>22</sup> The Court elaborated that, even if these factors were supported by record evidence, Commerce, nonetheless, failed to demonstrate how they would prevent a proper comparison between U.S. price and NV.<sup>23</sup>

Accordingly, consistent with the Court’s remand order, and under protest,<sup>24</sup> we are unable to find 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. Because we did not make an affirmative PMS determination, we do not reach the issue of the resulting PMS adjustment.

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<sup>21</sup> See *Final Results* IDM at Comment 1.

<sup>22</sup> See *Husteel* at 24.

<sup>23</sup> *Id.* at 25.

<sup>24</sup> See *Viraj Group*, 476 F. 3d at 1349.

## Interested Party Comments

On February 14, 2020, Commerce released the draft results of redetermination to all interested parties and invited parties to comment.<sup>25</sup> On February 27, 2020, we received comments from California Steel Industries (California Steel) and Welspun Tubular LLC USA (Welspun); Maverick Tube Corporation (Maverick) and IPSCO Tubulars Inc. (Tenaris); Husteel Co., Ltd. (Husteel); Hyundai Steel; and SeAH.<sup>26</sup> We address the parties' comments below.

### Comment 1: SeAH's Canadian Sales

#### *Maverick and Tenaris Comments*

- Commerce's decision in the *Final Results* to reject the use of SeAH's Canadian sales based on the CITT determination was based on a reasonable interpretation of the statute and on substantial record evidence.<sup>27</sup>
- If Commerce continues to use SeAH's sales to Canada for NV in the final remand results, it should continue to issue its redetermination under protest.<sup>28</sup>

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<sup>25</sup> 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. 18-00169, Slip Op. 20-2 (CIT January 3, 2020)," issued on February 14, 2020 (Draft Remand Results).

<sup>26</sup> See Letters dated February 27, 2020, from California Steel and Welspun, "Welded Line Pipe from the Republic of Korea: Comments on Draft Remand Results" (California Steel and Welspun Comments); from Maverick and Tenaris, "Welded Line Pipe 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" (resubmitted as a public document on March 9, 2020) (Maverick and Tenaris Comments); from Husteel, "Welded Line Pipe from the Republic of Korea, 5/22/2015–11/30/2016 Administrative Review, Case No. A-580-876: Husteel's Comments on Draft Remand Redetermination," (Husteel Comments); from Hyundai Steel, "Welded Line Pipe from the Republic of Korea: Comments on the Draft Remand Redetermination" (Hyundai Steel Comments); and from SeAH, "Comments of SeAH Steel Corporation on Draft Redetermination on Remand in Consolidated Court No. 18-00169" (SeAH Comments).

<sup>27</sup> See Maverick and Tenaris Comments at 2-11.

<sup>28</sup> *Id.* at 3.

### *Husteel Comments*

- Commerce's draft remand redetermination complied with the Court's remand instructions, and Commerce should not amend its draft redetermination.<sup>29</sup>

### *Commerce's Position:*

As noted above, we disagree with the Court's holding on this issue. Despite their disagreement with the Court's holding, Maverick and Tenaris fail to point to any record evidence that would allow Commerce to overcome the Court's objections. Accordingly, consistent with the Court's remand order, and under respectful protest,<sup>30</sup> we continue to rely on SeAH's Canadian sales as the basis for NV for these final results of redetermination.

### **Comment 2: PMS Finding and Adjustment**

#### *California Steel and Welspun Comments*

- Commerce's decision to submit the remand results under protest is proper considering the fact that the agency's PMS finding and subsequent adjustment in the underlying proceeding were lawful and supported by substantial evidence.<sup>31</sup>

### *Husteel Comments*

- Commerce's draft remand redetermination complied with the Court's remand instructions, and Commerce should not amend its draft redetermination.<sup>32</sup>

### *Hyundai Steel Comments*

- Commerce's draft remand redetermination complied with the Court's remand instructions, and Commerce should not amend its draft redetermination.<sup>33</sup>

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<sup>29</sup> See *Husteel Comments* at 1-2.

<sup>30</sup> See *Viraj Group*, 476 F. 3d at 1349.

<sup>31</sup> See *California Steel and Welspun Comments* at 2-6.

<sup>32</sup> See *Husteel Comments* at 1-2.

<sup>33</sup> See *Hyundai Steel Comments* at 2-3.

*Commerce's Position:*

As noted above, we disagree with the Court's holdings on these issues. Despite their disagreement with the Court's holdings, California Steel and Welspun fail to point to any record evidence that would allow Commerce to overcome the Court's objections. Accordingly, consistent with the Court's remand order, and under respectful protest,<sup>34</sup> we continue to calculate the mandatory respondents' margins without regard to a PMS adjustment for these final results of redetermination.

**Comment 3: Constructed Export Price (CEP) Offset for SeAH's Canadian Sales**

*SeAH Comments*

- In the draft remand redetermination, Commerce relied on SeAH's Canadian sales to calculate NV, but did not grant SeAH a CEP offset.<sup>35</sup>
- Commerce denied the CEP offset in the underlying proceeding because it determined that SeAH's CEP level of trade (LOT) was less advanced than that of its Canadian sales.<sup>36</sup>
- SeAH's affiliate Pusan Pipe America performed similar selling activities for its sales to both the United States and Canada; however, its activities were not considered in the CEP LOT, but are included in the Canadian sales' LOT. Thus, in order to make a proper LOT comparison between SeAH's CEP and Canadian sales, Commerce should modify SeAH's margin calculation to include a CEP offset.<sup>37</sup>

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<sup>34</sup> See *Viraj Group*, 476 F. 3d at 1349.

<sup>35</sup> See SeAH Comments at 1 (citing Memorandum, "Margin Calculations for SeAH Steel Corporation Pursuant to Draft Results of Redetermination," dated February 14, 2020 (SeAH Draft Results Calculation Memorandum) at Attachment 2).

<sup>36</sup> *Id.* at 1-2 (citing SeAH's April 5, 2017 Section A Questionnaire at 28; and *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 1023 (January 9, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM) at 20.

<sup>37</sup> *Id.* at 2-4 (citing 19 CFR 351.412(c)(ii) and (iii); and SeAH's April 5, 2017 Section A Questionnaire Response at Appendix A-5).

*Commerce's Position:*

In the *Preliminary Results*, we considered whether SeAH's Canadian sales were at a different LOT than its U.S. sales. Based on our analysis, we determined "that the selling functions SeAH performed for its sales to its U.S. and Canadian customers are the same" and therefore "SeAH's sales to Canada during the {period of review} were made at the same LOT as its U.S. sales."<sup>38</sup> As we did not rely on SeAH's Canadian sales for NV in the *Final Results*, we considered the issue moot.<sup>39</sup> For this remand redetermination, we find no basis to change our analysis from the *Preliminary Results*. Accordingly, we have not granted a CEP offset to SeAH in this remand redetermination.

**Comment 4: Ministerial Error in Recalculating SeAH's Margin.**

*Maverick and Tenaris Comments*

- If Commerce continues to use SeAH's Canadian sales as the basis for NV, it should revise SeAH's margin to correct the ministerial error that understates SeAH's margin. Specifically, Commerce converted certain Canadian sales and expense data to U.S. dollars, and then converted these values to U.S. dollars a second time.<sup>40</sup>

*Commerce's Position:*

We agree that we made a ministerial error in recalculating SeAH's margin by converting certain sales and expense data to U.S. dollars in the margin program when these amounts were already reported in U.S. dollars.<sup>41</sup> Correcting this error results in a revised margin of 4.70 percent for SeAH.

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<sup>38</sup> See *Preliminary Results* PDM at 19-20.

<sup>39</sup> See *Final Results* IDM at Comment 13.

<sup>40</sup> See *Maverick and Tenaris Comments* at 11-12 and Attachment 1 (citing SeAH Draft Results Calculation Memorandum).

<sup>41</sup> 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.

## 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 error in SeAH calculations, as noted by Maverick and Tenaris. As a result, SeAH's estimated weighted-average dumping margin is 4.70 percent.<sup>42</sup> We also recalculated Hyundai Steel's estimated weighted-average dumping margin without making the PMS adjustment to the COP. As a result, Hyundai Steel's weighted-average dumping margin is 9.24 percent.<sup>43</sup> 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 6.97 percent.<sup>44</sup> Because the weighted-average dumping margins and the review-specific rate are 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.

3/31/2020

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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>42</sup> *Id.*

<sup>43</sup> See Memorandum, "Margin Calculations for Hyundai Steel Pursuant to Draft Results of Redetermination," dated February 14, 2020.

<sup>44</sup> See Memorandum, "Calculation of the Review-Specific Average Rate for the Final Results of Redetermination," dated concurrently with these final results of redetermination.