

Nesteel Co., Ltd., et al. v. United States,
Consol. Court No. 20-03868, Slip Op. 21-132 (CIT September 27, 2021)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND**

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the *Remand Order* of the U.S. Court of International Trade (the CIT).¹ These final results of redetermination pertain to the 2017-2018 antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea (Korea).²

In the *Remand Order*, the CIT held that Commerce is not permitted to make a particular market situation adjustment to the cost of production as an alternative calculation methodology when using normal value based on home market sales, and that Commerce cannot adjust cost of production for purposes of the sales-below-cost test.³ The CIT remanded the *Final Results* to Commerce to reconsider its particular market situation determination and adjustment in light of the CIT's opinion.⁴

¹ See *Nesteel Co., Ltd., et al. v. United States*, Consol. Court No. 20-03868, Slip Op. 21-132 (CIT September 27, 2021) (*Remand Order*).

² See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71055 (November 6, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM)

³ See *Remand Order*.

⁴ *Id.*

II. LEGAL FRAMEWORK

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) added the concept of “particular market situation” in the definition of the term “ordinary course of trade,” and for purposes of constructed value under section 773(e) of Tariff Act of 1930, as amended (the Act).⁵ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” Although the Act does not define “particular market situation,” the Statement of Administrative Action (SAA) explains that examples where such a situation may exist include “where there is government control over pricing to such an extent that home market prices cannot be considered competitively set.”⁶

Further, section 504 of the TPEA amended the constructed value provision in section 773(e) of the Act by permitting Commerce to use alternative cost calculation methodologies upon a particular market situation finding. Under section 773(e) of the Act, when Commerce, in calculating constructed value, finds that a “particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade,” Commerce “may use another calculation methodology under this part or any other calculation methodology.”

III. BACKGROUND

In the *Final Results*, Commerce found that record evidence supported a finding that a particular market situation existed in Korea which distorted the costs of production of CWP

⁵ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

⁶ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.

due to the totality of circumstances.⁷ Specifically, Commerce found that a particular market distorted costs based on the totality of four factors: (1) Korean subsidies of hot-rolled steel coil; (2) Korean imports of hot-rolled steel coil from the People’s Republic of China; (3) strategic alliances between Korean hot-rolled steel coil (HRC) producers and CWP producers; and (4) distortions in the Korean electricity market.⁸ The CIT remanded the *Final Results* to Commerce to reconsider its particular market situation determination and adjustment in light of the CIT’s opinion.⁹

On October 8, 2021, we released the Draft Results to interested parties for comment.¹⁰ On October 13, 2021, we received comments from Hyundai Steel Company (Hyundai Steel)¹¹ and Nexteel Co., Ltd. (Nexteel).¹²

IV. ANALYSIS

In the *Remand Order*, the CIT held that “{n}othing in the statute grants Commerce the authority to modify the sales-below-cost test,” and that “Commerce’s particular market situation adjustment to cost of production is not in accordance with the law.”¹³ Additionally, the CIT concluded that “Commerce’s cost-based particular market situation determination is not in accordance with the law, and the Court thus does not consider whether Commerce’s particular market situation determination is supported by substantial evidence on the record.”¹⁴

⁷ See *Final Results* IDM at 8.

⁸ *Id.*

⁹ See *Remand Order* at 19.

¹⁰ See Draft Results of Redetermination Pursuant to Court Remand, *Nexteel Co., Ltd., et. al. v. United States*, Court No. 20-03868, Slip. Op. 21-132 (CIT September 27, 2021).

¹¹ See Hyundai Steel’s Letter, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Comments on Draft Remand Results,” dated October 13, 2021.

¹² See Nexteel’s Letter, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Nexteel’s Comments on Draft Remand Redetermination,” dated October 13, 2021.

¹³ See *Remand Order* at 14 and 16.

¹⁴ *Id.* at 18.

Thus, the CIT remanded the *Final Results* to Commerce to reconsider its particular market situation determination and adjustment in light of its opinion.¹⁵

Commerce continues to find that a particular market situation existed in Korea during the period of review that distorted the price of HRC, the principal material input for the production of the subject merchandise, and a significant component of the cost of production of the subject merchandise, based on the totality of circumstances of the five factors described above and in the *Final Results*.

Under section 504 of the TPEA, Congress provided that, when Commerce determines that a cost-based particular market situation exists, Commerce may, in accordance with section 773(e) of the Act, remedy the cost-based particular market situation through “any other calculation methodology.” Here, Commerce found the existence of a particular market situation in Korea that resulted in distortions in the Korean market for HRC. Yet, despite the clear intent of Congress for Commerce to remedy a particular market situation which may distort the costs of particular inputs used to produce the foreign-like product and subject merchandise, including when certain U.S. sale prices are compared with normal value based on constructed value, the CIT, in the *Remand Order*, held that Commerce is not permitted to make a particular market situation adjustment to the cost of production as an alternative calculation methodology when using normal value based on home market sales, and that Commerce cannot adjust the cost of production for purposes of the sales-below-cost test. Commerce thus, in accordance with the CIT’s *Remand Order*, is unable on remand to provide a remedy to address the particular market situation found in this administrative review when normal value is based on home market sales, contrary to the statutory intent of Congress.¹⁶ Because there is no other

¹⁵ *Id.* at 19.

¹⁶ *See Altx, Inc. v. United States*, 370 F.3d 1108, 1111 n.2 (Fed. Cir. 2004).

alternative for Commerce to make a particular market situation adjustment, under respectful protest,¹⁷ we recalculated the weighted-average dumping margin of Nexteel with no adjustment to account for the particular market situation that has been found to have existed during the period of review.

After considering comments in response to the Draft Results, we also recalculated the rate for the second mandatory respondent, Husteel Co., Ltd. (Husteel), for the sole purpose of recalculating the rates for SeAh Steel Corporation (SeAh) and Hyundai Steel, the non-examined companies which are parties to this litigation. We are not revising the cash deposit or assessment rates for Husteel because Husteel is not a party to this litigation and is therefore not entitled to the benefit of the recalculation.¹⁸ In recalculating the rate for Husteel, we did not apply a particular market situation adjustment for purposes of the sales-below-cost test. To calculate the rate for SeAh and Hyundai Steel, we have used the simple average of the recalculated rates for Nexteel and Husteel.

V. COMMENTS ON DRAFT RESULTS OF REDETERMINATION

Comment 1: Whether a Particular Market Situation Exists

Nexteel Comments

- Nexteel supports Commerce’s determination to remove any element of a PMS adjustment in the calculation of Nexteel’s costs.¹⁹
- Commerce misinterpreted the CIT’s instruction to “reconsider its particular market situation determination and adjustment” because Commerce continues to find a PMS in

¹⁷ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

¹⁸ See *Capella Sales & Servs. Ltd. v. United States*, 180 F. Supp. 3d 1293 (CIT 2016) (*Capella I*), *aff’d* by 878 F.3d 1329 (Fed. Cir. 2018); see also *Capella Sales & Servs. Ltd. v. United States*, 181 F. Supp. 3d 1255, 1263-64 (CIT 2016) (*Capella II*), *aff’d* by 878 F.3d 1329 (Fed. Cir. 2018) (finding that, when the plaintiff failed to participate in the original litigation and failed to preserve its right to a remedy when it could have done so, it is not entitled to the benefit of a recalculated rate).

¹⁹ See Nexteel’s Letter, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Nexteel’s Comments on Draft Remand Redetermination,” dated October 13, 2021 at 1-2.

Korea when it should have reversed its PMS determination in the remand determination.²⁰

- Commerce’s claim that the issue of its PMS determination is moot because it is not making a PMS adjustment on remand ignores the CIT’s analysis on the statute, and therefore, Commerce’s continued finding of PMS does not comply with the *Remand Order*.²¹
- If it is determined that Commerce cannot make a PMS adjustment in the margin calculations, Commerce has no reason to assess whether a PMS exists.²²

Commerce’s Position: We disagree with Nexteel. Although the CIT ruled that “{n}othing in the statute can be read to authorize a cost-based particular market situation determination *when Commerce bases normal value on home market sales*,”²³ “the Court . . . does not consider whether Commerce’s particular market situation determination is supported by substantial evidence on the record.”²⁴ Thus, the CIT did not decide the issue of whether Commerce’s particular market situation determination is supported by substantial evidence based upon the totality of four factors. For the reasons enunciated in the *Final Results*, we continue to find a particular market situation exists in Korea during the period of review.

²⁰ *Id.* at 2-3.

²¹ *Id.* at 4-5.

²² *Id.* at 5.

²³ *See Remand Order* at 18 (emphasis added).

²⁴ *Id.*

Comment 2: Whether to Recalculate the Margin for Husteel

Hyundai Steel Comments

- Commerce should recalculate Husteel’s final weighted-average dumping margin without a PMS adjustment solely for purposes of recalculating the non-examined companies’ rates.²⁵
- Given that Commerce determined that Husteel had a viable home market and used Husteel’s home market sales as the basis for normal value, the CIT’s analysis that the application of a PMS adjustment was not in accordance with law applies to the calculation of Husteel’s final AD rate and, as such, the non-examined companies’ rate is calculated erroneously.²⁶
- Hyundai Steel agrees Husteel is not entitled to any benefit of any recalculation to its final AD rate because it is not a participant in the litigation.²⁷

Commerce’s Position: After consideration of the comments on the Draft Results, we agree with Hyundai Steel’s argument that we should recalculate the rate for Husteel for the sole purpose of recalculating the non-examined companies’ rate. However, because Husteel is not party to this litigation, this recalculation only affects the non-examined companies’ rate.²⁸

VI. FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order*, Commerce, under respectful protest, recalculated the weighted-average dumping margins for the respondents below without making a cost-based particular market situation adjustment. Accordingly, the revised weighted-average dumping margins for these companies are listed in the chart below:

²⁵ See Hyundai Steel’s Letter, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Comments on Draft Remand Results,” dated October 13, 2021 at 2.

²⁶ *Id.* at 3.

²⁷ *Id.*

²⁸ See *Capella I*, 180 F. Supp. 3d at 1293; and *Capella II*, 181 F. Supp. 3d at 1255.

| Company | <i>Final Results Rate (percent)</i> | Remand Rate (percent) |
|--------------------------------------|--|------------------------------|
| Nexteel Co., Ltd. | 27.28 | 1.63 ²⁹ |
| Non-Examined Companies ³⁰ | 21.01 | 2.35 ³¹ |

Upon a final and conclusive decision in this litigation, Commerce will instruct U.S. Customs and Border Protection to liquidate appropriate entries for the November 1, 2017, through October 31, 2018, period of review consistent with these final results of redetermination.

10/29/2021

X 

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

²⁹ See Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Draft Remand Results Calculation for Nexteel Co., Ltd.,” dated October 8, 2021.

³⁰ The remand rate applies to non-examined companies who are party to this litigation: SeAh Steel Corporation and Hyundai Steel.

³¹ We calculated the rate for the non-examined companies using the simple average of the rates we calculated for the mandatory respondents, Nexteel and Husteel. See *Final Results* IDM. Accordingly, we have recalculated the rate for the non-examined companies using the simple average of the rates we calculated in this remand for Nexteel (shown above) and Husteel (we recalculated a rate for Husteel of 4.20 percent, solely for the purpose of recalculating the rates for SeAh and Hyundai Steel, the non-examined companies which are parties to this litigation). See Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Remand Results Calculation for Husteel Co., Ltd.,” dated concurrently with this redetermination.