

Hyundai Steel Company v. United States,
Consolidated Court No. 18-00154, Slip Op. 22-67 (CIT June 15, 2022)
Circular Welded Non-Alloy Steel Pipe from the Republic of Korea

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT 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 Court) in *Hyundai Steel Company v. United States*, Court No. 18-00154, Slip Op. 22-67 (CIT June 15, 2022) (*Remand Order*). These final results of redetermination concern the 2015-2016 *Final Results* of the antidumping duty order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea).¹ In its *Remand Order*, the Court held that Commerce calculated SeAH Steel Corporation's (SeAH) dumping margin improperly using an average of dumping rates based in part on a particular market situation determination that the Court determined is unsupported by substantial evidence.² The Court remanded the *Third Redetermination* to Commerce to recalculate SeAH's dumping margin in accordance with its holding.³

¹ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM), as modified by *Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, dated February 26, 2020 (*First Redetermination*); *Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, dated February 2, 2021 (*Second Redetermination*); and *Final Results of Redetermination Pursuant to Court Remand*, dated September 8, 2021 (*Third Redetermination*).

² See *Remand Order* at 25.

³ *Id.*

II. BACKGROUND

A. *Final Results*

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 due to the totality of circumstances.⁴ Specifically, Commerce found that because of the “collective impact of Korean {hot-rolled coil (HRC)} subsidies, Korean imports of HRC from China, strategic alliances, and government involvement in the Korean electricity market, a {particular market situation} exists in Korea which distorts the cost of production for CWP.”⁵

B. *First Redetermination*

Subsequently, the Court found that Commerce’s determination of the existence of a particular market situation in the *Final Results* was unsupported by substantial evidence and remanded the issue to Commerce for further proceedings⁶ and, in response, Commerce issued its *First Redetermination*. In the *First Redetermination*, Commerce considered an additional fifth factor, steel industry restructuring effort by the Korean government, and in evaluating the totality of circumstances based on all five factors, Commerce continued to find that a particular market situation existed in Korea. In response to the *First Redetermination*, Hyundai Steel Company (Hyundai Steel) argued for the first time that Commerce’s determination contravened the statute by adjusting the cost of production for purposes of the sales-below-cost test.⁷ We declined to address this argument in the *First Redetermination*, because Hyundai Steel had not raised this argument previously and, therefore, was not considered by the Court as part of its holding.⁸

⁴ See *Final Results* IDM at Comment 1.

⁵ *Id.*

⁶ See *Hyundai Steel Company v. United States*, 415 F. Supp. 3d 1293 (CIT 2019).

⁷ See *First Redetermination* at 24.

⁸ *Id.* at 39.

C. *Second Redetermination*

The Court remanded the *First Redetermination* to Commerce to explain the statutory authority to conduct a cost-based particular market situation analysis when normal value is based on home market sales and to adjust the cost of production for purposes of the sales-below-cost test of section 773(b) of the Tariff Act of 1930, as amended, specifically within the context of relevant caselaw from the Court.⁹ In the *Second Redetermination*, Commerce provided its interpretation of the statutory authority in accordance with the Court's order.¹⁰

After considering Commerce's analysis in the *Second Redetermination*, the Court remanded the matter again to Commerce to reconsider its particular market situation determination and adjustment in light of its holding that Commerce may not adjust the cost of production when using normal value based on home market sales, and that Commerce is not authorized to adjust the cost of production for purposes of the sales-below-cost test.¹¹

D. *Third Redetermination*

In the *Third Redetermination*, Commerce recalculated the weighted-average dumping margin of Hyundai Steel with no adjustment to account for the particular market situation that Commerce had found to have existed during the period of review (POR). Commerce also recalculated the rate for the second mandatory respondent, Husteel Co., Ltd. (Husteel), for the sole purpose of calculating the rate for SeAH, the non-examined company which is a party to this litigation. In recalculating Husteel's rate, Commerce continued to apply a particular market situation adjustment for normal value in situations where normal value was determined based on constructed value.¹²

⁹ See *Hyundai Steel Company v. United States*, 483 F. Supp. 3d 1273 (CIT 2020).

¹⁰ See *Second Redetermination*.

¹¹ See *Hyundai Steel Company v. United States*, 531 F. Supp. 3d 1344 (CIT 2021).

¹² See *Third Redetermination*.

E. *Remand Order*

In the *Remand Order*, the Court addressed the *Third Redetermination*. With respect to the first factor, the subsidization of HRC production by the Government of Korea (GOK), the Court held that the “administrative record filed with the Court in this case does not include Attachment 11 to {Wheatland Tube Company’s (Wheatland)} Allegation” and that the “confidential version of Attachment 11 indicates only ‘Exhibit Filed Separately as Spreadsheet’ but gives no further indication of whether such separate filing is included anywhere in the record.”¹³

Respectfully, however, we note that, in fact, Attachment 11 does appear on the record. Attachment 11 consists of two Excel spreadsheets, and both spreadsheets appear on the record in Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) as barcodes 3630820-81 and 3630820-82.¹⁴

The Court further held that it was “unable to locate ‘Exhibit 12’ to ‘Attachment 13’ that purportedly supports Commerce’s assertions.”¹⁵ The Government acknowledged in its filing with the Court in this litigation that Exhibit 12 to Attachment 13 was “missing among the exhibits to Wheatland’s record submission” and we agree that the document was not included in that submission.¹⁶

¹³ See *Remand Order* at 14.

¹⁴ See Wheatland’s Letter, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Allegation of a Particular Market Situation,” dated October 16, 2017 (PMS Allegation), at Attachment 11.

¹⁵ See *Remand Order* at 14-15.

¹⁶ See Defendant’s Response in Opposition to Plaintiffs’ Rule 56.2 Motions for Judgment upon the Agency Record, dated May 7, 2019, at n. 4. The Government also explained in its Response in Opposition to Plaintiffs’ Rule 56.2 Motions, however, that the information at issue appeared elsewhere on the record. Specifically, the Government explained that “in addition to the fact that the evidence primarily stems from Commerce’s public determination in *Hot-Rolled Steel from Korea*, the same information appears in multiple other places in the record.” *Id.* (citing, e.g., PMS Allegation at 7-8, n.18, 16-19, n. 47, 53-63, Attachment 1, Attachment 13, Exhibit 6 at 5-6, n.11-13, and Sub-Exhibit 10 (containing a copy of *Hot-Rolled Steel from Korea* IDM); and Wheatland’s Letter, “Certain Circular Welded Non-Alloy Steel Pipe from Korea: Wheatland Rebuttal Brief,” dated January 22, 2018, at 2-4 and n.1).

In addition, the Court found this factor to be deficient “because Exhibit 4 to Attachment 13 consists only of particular market situation *allegations* by Maverick (relating to a different proceeding), not actual factual findings or evidence.”¹⁷

Based on these findings, the Court held that Commerce’s conclusion that subsidization of HRC production by the GOK contributed to a particular market situation in Korea was unreasonable and not supported by substantial evidence on the administrative record.¹⁸

With respect to the second factor, significant overcapacity in Chinese steel production resulting in flooding of the Korean steel market with imports of low-priced Chinese steel products, the Court found that the evidence cited by Commerce failed to demonstrate that the oversupply of Chinese products was particular to the Korean market during the POR, especially in light of potentially contrary evidence on the record.¹⁹

With respect to the third factor, the strategic alliances between certain Korean HRC suppliers and Korean producers of CWP, the Court stated that the information cited by Commerce in the *Third Redetermination* for its analysis, a declaration, found at Wheatland’s PMS Allegation at Attachment 13, Exhibit 4, Attachment 4, was “completely redacted.”²⁰

In fact, Commerce’s citation to the redacted version of the proprietary declaration in the *Third Redetermination* was an unfortunate mis-citation, and the complete, proprietary version of the declaration is not only also on the administrative record, but can be found two attachments later in Wheatland’s PMS Allegation, at Attachment 15.²¹ For this reason, first in the

¹⁷ See *Remand Order* at 16 (emphasis in original).

¹⁸ *Id.*

¹⁹ *Id.* at 18 (citing *Final Results* IDM at 12, which cited PMS Allegation at Attachment 3, Exhibit 6 (containing Maverick’s Letter, “Certain Oil Country Tubular Goods from the Republic of Korea: Particular Market Situations and Other Factual Information Submission,” dated September 6, 2016, at Exhibit 4, which consists of a Bloomberg article which reports that “{t}here are signs that the worst of the Chinese deluge {of cheap products} may be over”)).

²⁰ *Id.* at 18-19.

²¹ See PMS Allegation at Attachment 15, which can be found in ACCESS at barcode 3630820-77.

Government's Opposition to the Rule 56.2 Motion, and then again in the Government's Response to Remand Comments, the Government raised the issue for the Court, pointed to the administrative record, and explained to the Court that "an unredacted copy of {the} declaration" could be found in Attachment 15.²² Nonetheless, despite these explanations and clarifications from the Government, the Court concluded in its holding that it was precluded from evaluating whether substantial evidence on the record supports Commerce's determination as a result of the mis-citation in the *Third Redetermination*.²³

With respect to the fourth factor, government control over electricity prices, the Court found that the relevance of a cited document was not explained, and that the other cited evidence did not address whether Korean steel manufacturers received subsidies as to electricity or whether the GOK's regulation of the electricity market contributed to a particular market situation during the POR.²⁴

Finally, with respect to the fifth factor, the GOK's plan to restructure the private steel industry in Korea, the Court found that Commerce's citation to the Korean Ministry of Strategy and Finance's press release and the Invest Chosun article did not support the fifth factor of its particular market situation analysis.²⁵

Based on the above, the Court held that "Commerce calculated SeAH's dumping margin improperly using an average of dumping rates based in part on a particular market situation

²² See Defendant's Response in Opposition to Plaintiffs' Rule 56.2 Motions for Judgment upon the Agency Record, dated May 7, 2019, at 26; see also Defendant's Response to Plaintiff's Comments Regarding the Remand Redetermination, dated May 13, 2020, at 23.

²³ See *Remand Order* at 19.

²⁴ *Id.* at 20-22.

²⁵ *Id.* at 24 (citing *First Redetermination* at 11-12, which cited PMS Allegation at Attachment 14, Exhibit 12 (containing "Korean Ministry of Strategy and Finance, Press Release: Government Unveils 2017 Action Plan to for Industrial Restructuring" (January 25, 2017), and at Attachment 12, Exhibit 3 (containing "Severe Excess Supply in Steel Pipe, Cold Rolled and Plate Sectors...Concerns Loom over Dongkook Steel and SeAH Group," Invest Chosun, dated May 20, 2016)).

determination that is unsupported by substantial evidence” on the administrative record.²⁶ Thus, the Court remanded the *Third Redetermination* to Commerce to recalculate SeAH’s dumping margin in accordance with its holding.²⁷

F. *Draft Results of Redetermination*

On July 12, 2022, we released the Draft Results to interested parties for comment.²⁸ No party commented on the Draft Results.

III. ANALYSIS

For the reasons summarized above, the Court found that Commerce’s determination that a particular market situation existed in Korea during the POR that distorted the price of HRC, the principal material input to produce the subject merchandise and a significant component of the cost of production of the subject merchandise, was unsupported by substantial evidence on the administrative record.

The Court held that the information relied upon by Commerce in the *Third Redetermination* was incomplete and inadequate, and therefore, the evidence relied upon by Commerce did not support the finding of a particular market situation. In accordance with the *Remand Order*, under respectful protest,²⁹ we, therefore, first recalculated the weighted-average dumping margin of Husteel with no adjustment to account for the particular market situation, for the sole purpose of recalculating SeAH’s rate. We then calculated the average of Husteel’s recalculated rate and the other mandatory respondent Hyundai Steel’s rate from the *Second*

²⁶ *Id.* at 25.

²⁷ *Id.*

²⁸ See Draft Results of Redetermination Pursuant to Court Remand, *Hyundai Steel Company v. United States*, Consolidated Court No. 18-00154, Slip Op. 22-67, dated July 12, 2022 (Draft Results).

²⁹ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

Redetermination, and applied it to SeAH, the non-examined company which is a party to this litigation.

We received no comments on the Draft Results.

IV. FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order*, Commerce, under respectful protest, recalculated the weighted-average dumping margins for SeAH without making a particular market situation adjustment. Accordingly, the revised weighted-average dumping margin for SeAH is listed in the chart below:

Company	<i>Final Results</i> Rate (Percent)	Remand Redetermination Rate (Percent)
SeAH Steel Corporation	19.28	9.77 ³⁰

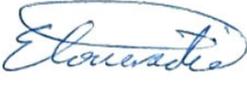
Upon a final and conclusive decision in this litigation, Commerce will instruct U.S. Customs and Border Protection to liquidate appropriate entries for the November 1, 2015, through October 31, 2016, POR, consistent with the final results of redetermination. Because the weighted-average dumping margins for SeAH and Hyundai Steel³¹ are different than in the *Final*

³⁰ We calculated the rate for SeAH using the simple average of the rates we calculated for the mandatory respondents, Hyundai Steel and Husteel. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017), and accompanying Preliminary Decision Memorandum, at 4, unchanged in *Final Results*. Accordingly, we have recalculated the rate for SeAH using the simple average of the rate we calculated for Hyundai Steel in the *Second Redetermination* (i.e., 12.92 percent) and the rate we calculated for Husteel, in this redetermination, which is 6.61 percent (*see* Memorandum, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Draft Remand Results Calculation Memorandum for Husteel Co., Ltd.,” dated July 12, 2022).

³¹ In the *Third Redetermination*, Commerce recalculated the weighted-average dumping margin of Hyundai Steel with no adjustment to account for the particular market situation. *See Third Redetermination* at 10. Hyundai Steel’s revised margin is 12.92 percent. *Id.*

Results, we intend to issue a *Timken Notice* with amended final results should the Court sustain these final results of redetermination.

8/2/2022

X 

Signed by: Abdelali Elouaradia
Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance