

**Slip Op. 22-101**

**UNITED STATES COURT OF INTERNATIONAL TRADE**

**SEAH STEEL CORPORATION,**

**Plaintiff,**

**v.**

**UNITED STATES,**

**Defendant,**

**and**

**UNITED STATES STEEL  
CORPORATION, MAVERICK  
TUBE CORPORATION, IPSCO  
TUBULARS INC., TENARIS BAY  
CITY, INC., and VALLOUREC  
STAR L.P.,**

**Defendant-Intervenors.**

**Before: Jennifer Choe-Groves, Judge**

**Court No. 20-00150**

**OPINION**

[Sustaining the U.S. Department of Commerce’s remand results in the 2017–2018 administrative review of the antidumping duty order on oil country tubular goods from the Republic of Korea.]

Dated: August 29, 2022

Jeffrey M. Winton, Michael J. Chapman, Amrietha Nellan, and Vi N. Mai, Winton & Chapman PLLC, of Washington, D.C., for Plaintiff SeAH Steel Corporation.

Hardeep K. Josan, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for Defendant United States.

With her on the brief were Brian M. Boynton, Acting Assistant Attorney General, Jeanne E. Davidson, Director, and Claudia Burke, Assistant Director. Of counsel on the brief was Mykhaylo Gryzlov, Senior Counsel, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Thomas M. Beline, Myles S. Getlan, James E. Ransdell, and Nicole Brunda, Cassidy Levy Kent (USA) LLP, of Washington, D.C., for Defendant-Intervenor United States Steel Corporation.

Gregory J. Spak, Frank J. Schweitzer, Kristina Zissis, and Matthew W. Solomon, White & Case LLP, of Washington, D.C., for Defendant-Intervenors Maverick Tube Corporation, IPSCO Tubulars Inc., and Tenaris Bay City, Inc.

Roger B. Schagrin, Elizabeth J. Drake, and Luke A. Meisner, Schagrin Associates, of Washington, D.C., for Defendant-Intervenor Vallourec Star, L.P.

Choe-Groves, Judge: Plaintiff SeAH Steel Corporation (“SeAH” or “Plaintiff”) filed this action challenging the final results published by the U.S. Department of Commerce (“Commerce”) in the 2017–2018 administrative review of the antidumping duty order on oil country tubular goods (“OCTG”) from the Republic of Korea (“Korea”). See Certain Oil Country Tubular Goods from the Republic of Korea (“Final Results”), 85 Fed. Reg. 41,949 (Dep’t of Commerce July 13, 2020) (final results of antidumping duty administrative review; 2017–2018); see also Issues and Decision Mem. for the Final Results of the 2017–2018 Admin. Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea (July 6, 2020) (“Final IDM”), ECF No. 20-5.

Before the Court are the Final Results of Redetermination Pursuant to Court Remand Oil Country Tubular Goods from the Republic of Korea (“Remand Results”), ECF No. 80-1. See also United States Steel Corp.’s Comments Opp’n Remand Redetermination (“U.S. Steel’s Br.”), ECF No. 84; Def.’s Resp. Comments Regarding Remand Redetermination (“Def.’s Br.”), ECF No. 85; Comments of SeAH Steel Corp. Supp. Commerce’s January 24, 2022, Redetermination (“SeAH’s Br.”), ECF No. 86. For the reasons discussed below, the Court sustains the Remand Results.

### **BACKGROUND**

The Court presumes familiarity with the facts and procedural history of this case and recites the facts relevant to the Court’s review of the Remand Results. See SeAH Steel Corp. v. United States (“SeAH Steel I”), 45 CIT \_\_\_, \_\_\_, 539 F. Supp. 3d 1341 (2021). Commerce initiated this fourth administrative review (“OCTG IV”) of the antidumping duty order on OCTG from Korea for the period covering September 1, 2017 through August 31, 2018. Initiation of Antidumping and Countervailing Duty Admin. Reviews, 83 Fed. Reg. 57,411, 57,413–14 (Dep’t of Commerce Nov. 15, 2018) (initiation notice). Commerce selected Hyundai Steel Company (“Hyundai Steel”) and SeAH as mandatory respondents for individual examination. Certain Oil Country Tubular Goods from the Republic of Korea, 84 Fed. Reg. 63,615, 63,615 (Dep’t of Commerce Nov. 18, 2019) (prelim.

results of antidumping duty admin. review; 2017–2018); see also Decision Mem. for the Prelim. Results of the 2017–2018 Admin. Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea (Nov. 8, 2019) (“Prelim. DM”), PR 285.<sup>1</sup>

In the Final Results, Commerce assigned weighted-average dumping margins of 0% for Hyundai Steel, 3.96% for SeAH, and 3.96% for non-examined companies. Final Results, 85 Fed. Reg. at 41,950. Commerce based normal value on constructed value for Hyundai Steel and SeAH because neither mandatory respondent had a viable home market or third-country market during the period of review. Final IDM at 68.

Commerce applied a differential pricing analysis and calculated SeAH’s weighted-average duty margin by the alternative average-to-transaction method. Id. at 79–91. Commerce determined that a particular market situation existed in Korea based on a totality-of-the-circumstances assessment of five factors, namely: (1) subsidies from the Government of Korea to producers of hot-rolled coil, (2) the deluge of Chinese hot-rolled products exerting downward pressure on Korean domestic hot-rolled coil prices, (3) strategic alliances between Korean hot-rolled

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<sup>1</sup> Citations to the administrative record reflect the public record (“PR”) document numbers.

coil suppliers and Korean OCTG producers, (4) the Government of Korea's influence over the cost of electricity, and (5) steel industry restructuring efforts by the Government of Korea. See id. at 5–6. Commerce used a regression-based analysis to quantify the impact of the particular market situation in Korea and adjusted for the particular market situation determination by increasing the reported hot-rolled coil costs by a rate of 17.13%. See id. at 49, 61; Commerce's Final Analysis Mem. for SeAH (Jul. 21, 2020) ("SeAH Final Calculations Mem.") at 2, PR 350. Commerce utilized the 2018 financial statements of Tenaris S.A. ("Tenaris") and PAO TMK ("TMK") to calculate SeAH's constructed value profit and selling expenses. See Final IDM at 67. Commerce deducted SeAH's reported freight revenue up to actual freight cost and calculated SeAH's constructed export price profit rate using the Tenaris and TMK 2018 financial statements. See id. at 106, 109–11; see also Analysis of Data Submitted by SeAH Steel Corp. for Prelim. Results (Nov. 8, 2019) ("SeAH Prelim. Calculations Mem.") at 3, PR 290.

In SeAH Steel I, 45 CIT \_\_, \_\_, 539 F. Supp. 3d 1341, 1366 (2022), the Court sustained two issues: (1) Commerce's profit calculation included in SeAH's constructed export price and (2) Commerce's exclusion of freight revenue in calculating SeAH's constructed export price. The Court remanded two issues: (1) Commerce's determination of a particular market situation in Korea as unsupported by substantial evidence and (2) Commerce's application of the

Cohen's *d* test as part of the differential pricing analysis for further explanation.

Id.

On remand under protest, Commerce determined that “[n]otwithstanding Commerce’s objections to the Court’s position that the evidence on which Commerce relied in reaching its finding of an affirmative [particular market situation] determination was insufficient, Commerce is reversing its [particular market situation] finding and removing the adjustment to SeAH’s [cost of production] for purposes of this redetermination pursuant to remand.” Remand Results at 6. With respect to the Cohen’s *d* test for differential pricing, Commerce determined on remand that “it is unnecessary to address the issue of applicability of [the] Cohen’s *d* test for purposes of this redetermination, because the selection of the comparison method has no material effect on the results of this redetermination.” Id. at 8.

### **JURISDICTION AND STANDARD OF REVIEW**

The Court has jurisdiction under 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c), which grant the Court authority to review actions contesting the final results of an administrative review of an antidumping duty order. The Court will hold unlawful any determination found to be unsupported by substantial evidence on the record or otherwise not in accordance with the law. 19 U.S.C. § 1516a(b)(1)(B)(i). The Court also reviews determinations made on remand for

compliance with the Court’s remand order. Ad Hoc Shrimp Trade Action Comm. v. United States, 38 CIT \_\_\_, \_\_\_, 992 F. Supp. 2d 1285, 1290 (2014), aff’d, 802 F.3d 1339 (Fed. Cir. 2015).

## DISCUSSION

### I. Particular Market Situation

In SeAH Steel I, the Court reviewed Commerce’s determination that a particular market situation distorted the cost of production of OCTG based on the cumulative effect of five factors: (1) subsidization of Korean hot-rolled coil products by the Korean Government; (2) distortive pricing of unfairly-traded Chinese hot-rolled coil; (3) “strategic alliances” between Korean hot-rolled coil suppliers and Korean OCTG producers; (4) distortive government control over electricity prices in Korea; and (5) steel industry restructuring efforts by the Korean Government. SeAH Steel I at 1352. This Court stated:

In summary, the Court concludes that substantial record evidence does not support Commerce’s cumulative particular market situation determination in Korea for the 2017–2018 period of review because the record evidence does not demonstrate the existence during the period of review of the five factors allegedly underlying the particular market situation determination. The Court remands Commerce’s particular market situation determination for further explanation or reconsideration consistent with this opinion.

Id. at 1358 (emphasis added).

Commerce determined on remand that based on the evidentiary record and the “constraints imposed on [Commerce] by the Court’s ruling,” there was an

insufficient evidentiary basis to sustain an affirmative particular market situation determination. Remand Results at 7. Commerce explained that “[f]or this redetermination, under protest, we continue to find no [particular market situation] existed in Korea during the [period of review], and we have removed the [particular market situation] adjustment from our calculation of normal value.” Id. at 26.

U.S. Steel filed comments arguing that Commerce erred in the Remand Results by limiting its analytical review. Specifically, U.S. Steel alleges that “[b]ecause Commerce’s Remand Results adhere to strictures that contravene the Federal Circuit’s analysis in NEXTEEL, [28 F.4th 1226 (Fed. Cir. 2022)], remand is necessary for Commerce to render a [particular market situation] determination unencumbered by those unlawful restrictions.” U.S. Steel’s Br. at 2. U.S. Steel emphasizes the recent decision by the U.S. Court of Appeals for the Federal Circuit (“CAFC”) stating that, “[o]n remand, Commerce may seek to justify the particular market situation in accordance with this opinion.” NEXTEEL Co. v. United States, 28 F.4th 1226, 1238 (Fed. Cir. 2022). U.S. Steel contends that remand is warranted because “Commerce erroneously treated the Court’s observations with respect to Commerce’s Final IDM as having locked Commerce into those specific positions on remand. Such issues distorted Commerce’s analysis of the contribution of HRC imports, subsidization, government restructuring, and



electricity market control to the Korean [particular market situation].” U.S. Steel’s Br. at 20. U.S. Steel faults Commerce for impermissibly restricting its interpretation of the Court’s remand order in SeAH Steel I and thus rendering the Remand Results “legally erroneous.” Id.

The Government argues to the contrary that remand is not warranted and asks the Court to sustain the Remand Results. The Government asserts that “[c]ontrary to U.S. Steel’s assertion, Commerce did not ignore record evidence. Rather, Commerce reviewed the administrative record as a whole in light of the fact that the Court has already found much of the evidence insufficient to establish a particular market situation.” Def.’s Br. at 4. The Government contends that “Commerce did not reopen the record on remand and, thus, the evidence on the record is the same.” Id. at 5.

U.S. Steel focuses on the CAFC’s opinion in NEXTEEL Co. v. United States, 28 F.4th 1226 (Fed. Cir. 2022), stating that the U.S. Court of International Trade cannot direct Commerce to reach a particular outcome. See generally Def.’s Br.; see also NEXTEEL Co. v. United States, 28 F.4th 1226 (Fed. Cir. 2022). U.S. Steel’s argument is misplaced and inapplicable to this case.

First, the Court notes that Commerce’s determinations made on remand are reviewed for compliance with the Court’s remand order. Ad Hoc Shrimp Trade Action Comm. v. United States, 38 CIT \_\_, \_\_, 992 F. Supp. 2d 1285, 1290

(2014), aff'd, 802 F.3d 1339 (Fed. Cir. 2015). U.S. Steel argues incorrectly that it is contrary to law for Commerce to comply with the Court's remand order, when it is settled law that the Court will review Commerce's remand redeterminations in part to assess compliance with the Court's remand order. See id.

Second, the Court notes that in SeAH Steel I, this Court did not order the Government to arrive at any particular outcome on remand. Rather, this Court issued a broad, open-ended remand that ordered Commerce to "further explain or reconsider its particular market situation determination." SeAH Steel I at 1366. The Court neither precluded Commerce from revisiting all of the evidence and providing further explanation, nor prevented Commerce from reopening the record in its particular market situation analysis. Commerce stated in its Remand Results that "Commerce's analysis of the existence of a [particular market situation] is made independently based on the administrative record of this review, and in a manner that is consistent both with the statute, and here, the Court's remand opinion and order." Remand Results at 16. U.S. Steel urges the Court to remand the case for Commerce to undertake a new remand analysis, but the Court is not persuaded because Commerce already had an opportunity to re-examine or reopen the record in the open-ended remand but chose to remove the particular market situation adjustment upon reviewing the record. SeAH argues that the remand process was "plainly consistent with the Court's remand order and Commerce's

obligations on remand,” noting that “[i]n the remand proceeding, Commerce reconsidered its original decision in light of the findings in the Court’s opinion, re-examined the full record before it, solicited comments from all interested parties, and addressed all of the arguments and evidence presented by the parties. There is no basis on this record for faulting Commerce’s remand procedures.” SeAH’s Br. at 4.

The Government itself requests that the Court sustain, and not remand, the Remand Results, and the Court agrees with Defendant on this matter in light of the open-ended remand and Commerce’s consideration of the full record on remand.

## **II. Differential Pricing Analysis**

With respect to the Cohen’s *d* test for differential pricing, Commerce determined on remand that “it is unnecessary to address the issue of applicability of [the] Cohen’s *d* test for purposes of this redetermination, because the selection of the comparison method has no material effect on the results of this redetermination.” Remand Results at 8. Commerce explained that because it eliminated the particular market situation adjustment from the calculation of the cost of production and normal value, the weighted-average dumping margins calculated using the average-to-average method and alternative comparison methods are either zero or *de minimis*. Id. at 7. SeAH agrees with Commerce that the differential pricing analysis has been rendered moot because without the

particular market situation adjustment, the dumping margin for SeAH would be *de minimis* regardless of which comparison method is used by Commerce. SeAH's Br. at 13.

The Court concludes that because Commerce determined SeAH's dumping margin to be *de minimis*, it is reasonable for Commerce to not apply the differential pricing analysis. The Court sustains Commerce's determination on remand to not apply the differential pricing analysis to calculate SeAH's dumping margin.

### CONCLUSION

The Court sustains Commerce's Remand Results.

Judgment will be entered accordingly.

/s/ Jennifer Choe-Groves  
Jennifer Choe-Groves, Judge

Dated: August 29, 2022  
New York, New York