RESULTS OF REDETERMINATION ON REMAND

PURSUANT TO

HUSTEEL CO., LTD. AND SEAH STEEL CORPORATION, LTD. V. UNITED STATES

Consol. Ct. No. 06-00075, Slip Op. 08-62 (June 2, 2008 CIT)

I. SUMMARY

In accordance with the opinion of the Court of International Trade (Court), Slip Op. 08-62, Consol. Court No. 06-00075 (June 2, 2008) (Husteel Remand II), the Department of Commerce (Commerce) has prepared these results of redetermination on remand with respect to Results of Redetermination on Remand Pursuant to Husteel Co. Ltd. And SeAH Steel Corporation, Ltd. v. United States, (October 30, 2007) (Remand Redetermination). In its opinion, the Court remanded Commerce's Remand Redetermination finding that Commerce did not adequately explain its basis for determining that the prices of Husteel Co., Ltd.'s (Husteel) and SeAH Steel Corporation's (SeAH) (collectively "Plaintiffs") sales to the People's Republic of China (PRC) were not representative pursuant to section 773(a)(1)(B)(ii)(I) of the Tariff Act of 1930, as amended (the Act).

Specifically, the Court ordered Commerce to present persuasive evidence that Plaintiffs' sales for export to the PRC are not "representative" within the meaning of section 773(a)(1)(B)(ii)(I) of the Act. Further, the Court ordered that, if Commerce cannot present persuasive evidence that Plaintiffs' sales are not representative, Commerce will determine that the sales are representative. The Court also found that, should Commerce determine that the sales are representative, Commerce should determine, pursuant to 19 CFR § 351.404(e), whether the PRC or Canada should be selected as SeAH's third country comparison market. Lastly, the

Court ordered that if Commerce determines that the PRC should be used as the third country comparison market, Commerce will recalculate Plaintiffs' dumping margins accordingly.

In our Remand Redetermination and original final results of review, Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review, 71 FR 13091 (March 14, 2006) (Final Results), we analyzed all of the evidence on the record and found that the sales at issue were not representative. The Court has found this evidence to be unpersuasive. There is no additional evidence on the record with which to argue that these sales to the PRC are non-representative. Accordingly, Commerce finds SeAH's and Husteel's sales to the PRC to be representative. Further, Commerce has conducted an analysis of SeAH's potential third country comparison markets, in accordance with the Court's order. Pursuant to 19 CFR 351.404(e), Commerce finds the PRC to be the more appropriate third country comparison market for SeAH. Finally, Commerce has recalculated the dumping margins for both SeAH and Husteel, according to the Court's orders and the above determinations. As a result, we now determine SeAH's weighted-average dumping margin to be 0.59 percent, and Husteel's weighted-average dumping margin to be 0.62 percent, for the period August 1, 2003 through July 31, 2004.

II. BACKGROUND

The Final Results were published on March 14, 2006. In that review, neither Husteel nor SeAH reported viable home markets. Each company reported the PRC as its largest third country comparison market.[1] IPSCO Tubulars Inc. (Defendant-Intervenor) raised objections to the use of PRC sales as the basis for normal value (NV) for SeAH and Husteel. We did not use

[1] Each company sold the OCTG at issue for export to the PRC through an unaffiliated trading company in Korea.

either company's PRC sales as the basis for NV in the preliminary results.[2] See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 53340 (September 8, 2005) (Preliminary Results).

All parties argued the issue in their case briefs and rebuttal briefs. In our Final Results, we affirmed our decision not to use either company's sales to the PRC. Our rationale was that, unlike home market sales, section 773(a)(1)(B)(ii)(I) of the Act requires that third country prices be "representative." In the Final Results, we found that sales into a non-market economy (NME) may very well not be made at prices that reflect the fair value of the merchandise. See section 771(18)(A) of the Act. Therefore, we found that sales prices into an NME cannot be considered to be "representative," as required by the section 773(a)(1)(B)(ii)(I) of the Act. Both Husteel and SeAH appealed this decision.

In Husteel Co. Ltd. et al v. United States, Ct. No. 06-00075 (May 15, 2007) (Husteel Remand I), the Court remanded Commerce's Final Results for failure to explain adequately its basis for finding that the prices of Husteel's and SeAH's sales to the PRC were not representative pursuant to section 773(a)(1)(B)(ii)(I) of the Act. Specifically, the Court found that Commerce failed to explain: (1) why Plaintiffs' sales should be treated as sales into an NME; and (2) why Commerce treated Plaintiffs' price data differently than it treats price data for sales from market economy suppliers to NME respondents in its NME dumping cases.[3] The Court did find, however, that Commerce adequately distinguished its prior cases where it used

[2] SeAH also had OCTG sales to Canada that we used as the basis for normal value. Husteel did not have any other viable third country market. As such, we used constructed value as the basis for normal value.

[3] In our Final Results, Commerce distinguished its approach in its regulation providing for the valuation of market economy inputs purchased in a nonmarket economy using the actual market economy price paid, 19 CFR 351.408(c)(1), on the basis that it provides for the valuation of an input, but not the basis for establishing NV.

sales to the PRC as the basis for NV or where the PRC was used as the comparison market.[4] The Court also found that Commerce reasonably interpreted "representative" to mean determined on the basis of market principles.[5]

On September 5, 2007, Commerce requested an extension of time to file its Remand Redetermination. The Court granted Commerce's request on September 10, 2007, and extended the deadline to file its final remand redetermination until October 30, 2007. On September 7, 2007, Commerce issued its draft remand in the Memorandum to the File, through Barbara E. Tillman, Office Director, AD/CVD Operations, Office 6, from Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6: Draft Remand: Oil Country Tubular Goods from Korea (Draft Remand Results I). The Plaintiffs submitted timely comments on Commerce's Draft Remand Results I on September 20, 2007. On September 27, 2007, Defendant-Intervenor submitted timely rebuttal comments. On October 30, 2007, Commerce issued its Remand Redetermination. In the Remand Redetermination, Commerce continued to find that Plaintiffs' sales to the PRC were not representative. As a result, SeAH's and Husteel's dumping margins were unchanged from the Final Results.

As explained above, the Court has once again remanded this determination to Commerce with instructions to provide persuasive evidence that the sales to the PRC were not representative, and if it cannot provide such evidence, to make a determination on whether

[4] Both during the administrative review and in their court briefs, Plaintiffs argued that Commerce had accepted sales to the PRC as a third country market. Commerce distinguished its two prior cases where it used the PRC as a third country on the basis that one was decided prior to the Uruguay Round Agreements Act (URAA), before the requirement that third country sales be "representative;" and, for the other, no party raised the issue.

[5] The Court found that Commerce merely assumed that the actual prices paid to Plaintiffs did not reflect the fair value of the merchandise.

Canada or the PRC is the appropriate third country comparison market for SeAH,[6] and to recalculate the margins for both companies. On August 12, 2008, Commerce issued its second draft remand in the Memorandum to the File, through Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6: Draft Remand: Oil Country Tubular Goods from Korea (Draft Remand Results II). The Plaintiffs and Defendant-Intervenor submitted timely comments on Commerce's Second Draft Remand Results II on August 15, 2008. On August 18, 2008, the Plaintiffs submitted timely rebuttal comments.

III. REMAND ANALYSIS

A. Commerce finds Plaintiffs' sales to the PRC to be representative.

In ruling on Commerce's previous Remand Redetermination, the Court ordered that Commerce "present persuasive evidence" that Plaintiffs' sales to the PRC are not representative within the meaning of 19 U.S.C. 1677b(a)(1)(B)(ii)(I), or find these sales to be representative. Based on the evidence on the record of the review, and the Remand Redetermination, as well as the comments from the parties, Commerce finds that there is no additional evidence with which to argue that SeAH's and Husteel's sales to the PRC are non-representative. Therefore, in accordance with the Court's order, Commerce finds Plaintiffs' sales to the PRC to be representative.

B. Commerce finds the PRC to be the appropriate third country comparison market for SeAH.

In the June 2, 2008 remand, the Court ordered that, in the event Commerce finds the Plaintiffs' sales to the PRC to be representative, Commerce will then determine, pursuant to

[6] During the period in question, Husteel made sales only to the U.S. market and to the PRC. Therefore, we only need to evaluate whether Husteel's sales to the PRC were representative.

19 CFR 351.404(e), whether the PRC or Canada should be selected as SeAH' s third country comparison market. In accordance with section 773(a)(1)(B)(ii) of the Act, Commerce finds that SeAH's sales to the PRC and Canada meet the minimum five percent aggregate threshold by volume that is required for a third country to be selected as a comparison market. In calculating NV based on prices in a third country, "where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act . . . {Commerce} generally will select the third country based on the following criteria:

> (1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;
> (2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;
> (3) Such other factors as the Secretary considers appropriate."

19 CFR 351.404(e).

In accordance with 19 CFR 351.404(e)(2), Commerce notes that the volume of SeAH's sales to the PRC were considerably larger than the volume of its sales to Canada. Based on the comments by the parties, Commerce has included its analysis with regard to product similarity, in accordance with 19 CFR 351.404(e)(1), and finds the record is clear that there are similar matches in both the PRC and Canadian markets. See Comment 5 below. Commerce also finds that there is no other information on the record of this case that warrants finding Canada to be the more appropriate choice for use as a comparison market third country to the PRC pursuant to 19 CFR 351.404(e)(3). Therefore, because the volume of sales to the PRC is far greater than the volume of sales to Canada and because there is no other information on the record which indicates that Canada would be a more appropriate comparison market based on the criteria of 19 CFR 351.404(e), Commerce finds the sales to the PRC should be used as the third country comparison market for SeAH.

C. Recalculation of Plaintiffs' weighted-average dumping margins.

The Court ordered that, if Commerce determines that sales to the PRC are representative and that they should be used as the third country comparison market, Commerce will recalculate Plaintiffs' dumping margins accordingly. In accordance with this order and the determinations in this remand, Commerce has recalculated the Plaintiffs' weighted-average dumping margins. See Husteel's Final Remand Calculation Memorandum, and SeAH's Final Remand Calculation Memorandum, dated concurrently with these results of redetermination.

VI. COMMENTS FROM THE PARTIES

Comment 1: Treatment of SeAH's and Husteel's Sales to the PRC

The Defendant-Intervenor argues that SeAH's and Husteel's sales to Korean trading companies should be treated as sales into an NME because these sales were conditioned upon the trading companies' sales to the PRC purchaser. The Defendant-Intervenor explains that in its initial Remand Determination, Commerce found that the prices of the PRC third country sales were not representative of market prices. The Defendant-Intervenor notes that Commerce explained its decision by arguing that Congress' incorporation of the knowledge test into the statute was predicated upon the assumption that the market to which a middleman trading company sells affects the producer's pricing to the middleman. Specifically, Commerce stated that "there would be no reason for Congress to include this definition of export price in the law unless it viewed the producers' knowledge that it is selling into a particular market as affecting that producer's pricing decisions." See Commerce's Remand Redetermination at 16.

The Defendant-Intervenor contends that the Korean producers' knowledge alone that the unaffiliated Korean trading company intended to sell the subject merchandise to purchasers in the PRC may not, as the Court intimated, provide a sufficient justification to show that market

conditions in the PRC affect the price from the Korean producers to the Korean trading companies, since such knowledge alone does not link the Korean trading company sales to the PRC purchasers with the sales between the Korean producers and the Korean trading companies. However, the Defendant-Intervenor argues, there are facts of record which have not been addressed that are contrary to Commerce's position in the Draft Remand Results II. The Defendant-Intervenor argues that these facts expressly link the price between the Korean producers and the non-market conditions in the PRC. The Defendant-Intervenor argues that the facts on the record show that the Korean trading companies negotiated the terms of sale with the PRC purchasers before concluding their purchases from the Korean producers, thereby expressly conditioning their purchases from the Korean producers on the established terms of the subsequent sales to the PRC consumers. See SeAH's Sales Verification Report, Ex. 12. Even more specifically, the Defendant-Intervenor maintains that the PRC customers provided, to the Korean producers, the specifications of the subject merchandise they intended to acquire before the sale was made by the Korean producers to the Korean trading companies. Id. Furthermore, the Korean producers themselves, rather than the Korean trading companies, shipped the merchandise from Korea to the PRC purchasers and the Korean trading companies never took physical possession of the goods.[7]

Thus, the Defendant-Intervenor contends, it is clear that the terms of the purchases by the Korean trading companies from the Korean producers were expressly conditioned upon the terms of a subsequent sale by the Korean trading companies to the PRC consumers. The Korean trading companies, in essence, merely brokered the sales at issue between the Korean producers

[7] See Husteel's April 8, 2005 Response at 2; P.R. 56, DI App. 2 at 1; Prop. R. 28, DI App. 3 at 1. SeAH uses trading companies as middlemen for its PRC sales of the subject merchandise. See SeAH's Sales Verification Report, Ex. 7.

and the PRC consumers.[8] The Defendant-Intervenor argues that the price the PRC purchasers were willing to pay the Korean trading companies was largely determined by pricing conditions in the PRC, because if the PRC purchasers could buy OCTG for a lower price in the PRC than from Korea, they would not likely purchase from the Korean trading companies. The Commerce Remand Determination stated in this regard that "Plaintiffs, in turn price the OCTG sold to the trading companies based on the conditions in the PRC." Remand Determination at 17. The Defendant-Intervenor argues that market-economy trading companies can be expected to purchase the product from producers at a lower price than the price they receive from selling the product. Therefore, Defendant-Intervenor argues, the price at which the Korean producers sell to the Korean trading companies was directly influenced by the purchasers in the PRC.

The Defendant-Intervenor accordingly requests that Commerce present evidence in this remand redetermination, as indicated above, regarding the linkage of sales between the Korean producers and the Korean trading companies to the sales between the Korean trading companies and the PRC purchasers, as "persuasive evidence" that the prices of the Husteel and SeAH shipments of the subject merchandise to the PRC were not representative of market prices.

Plaintiffs argue that the primary document relied upon by the Defendant-Intervenor to support their argument is a facsimile purchase inquiry from the unrelated Korean trading company to SeAH. Plaintiffs argue that the inquiry from the trading company lists the name of its customer, the proposed terms of delivery, and the destination. Plaintiffs argue that the inquiry says nothing about the price the trading company has negotiated with its PRC customer, nor does it say that the terms in the purchase inquiry are expressly conditioned on the terms of sale to their PRC customer. Further, the Plaintiffs argue that this line of argument has already been considered and rejected by the Court:

[8] See SeAH Sales Verification Report, Ex. 12.

> . . . the nonmarket-economy buyer cannot, merely by virtue of being located in a nonmarket economy, dictate the price it will pay based on the domestic price of the merchandise inside the nonmarket economy. In fact, the domestic economic conditions are irrelevant to such a transaction. Instead, the nonmarket-economy buyer must pay the price the merchandise fetches on the world market.[9]

In sum, Plaintiffs argue that the Defendant-Intervenor has offered no evidence or persuasive argument that should cause the Department to reconsider its conclusion that Plaintiffs' sales to the PRC are representative and thus can serve as the basis for NV.

Commerce's Position

There is no additional evidence on the record with which to make a persuasive argument to the Court regarding this issue. As the Plaintiffs point out, Commerce has already unsuccessfully made very similar arguments in this proceeding, relying upon the same evidence, which the Court has found unpersuasive. Specifically, on page 5 of our Remand Redetermination, Commerce argued that the trading companies' purchase orders clearly indicate their customers were located in the PRC and that the trading companies acted as representatives of their PRC customers. The Court found these facts to be unpersuasive. See Husteel Remand I, at 17. Moreover, the Court previously stated that there is nothing on the record to support the Defendant-Intervenor's contention that "Plaintiffs' sales to the trading companies were unduly influenced by the less-than-market-price Defendant-Intervenor alleges that the trading companies received from the Chinese buyers." See Husteel Remand I, at 17. The Plaintiffs reported, and Commerce and the Court affirmed, that SeAH's and Husteel's sales to the PRC, through trading companies, were correctly classified as sales to the PRC. Therefore, Commerce continues to find these sales to be PRC sales for the purposes of this final remand redetermination.

[9] See Husteel Remand II, at 11.

Comment 2: Best Information Available vs. Representativeness

The Defendant-Intervenor argues that the Court, in Husteel Remand II, indicated that Commerce's finding that the prices paid by the PRC purchasers are not representative of market prices "appeared to contradict the agency's position in a related line of antidumping investigations" in which "Commerce regularly accepts sales price data from market economy suppliers to an NME buyer" involving inputs used by the NME buyer to produce the subject merchandise. See Husteel Remand II at 5. The Defendant-Intervenor argues that Commerce's acceptance of the price that NME subject merchandise producers pay market-economy input suppliers as the surrogate value of the input does not require a finding that the surrogate value is "representative" of market prices.

The Defendant-Intervenor explains that, unlike the requirement of "representativeness" for the price of subject merchandise, surrogate values need be only the "best information available." Therefore, the Defendant-Intervenor argues, it is reasonable for Commerce to find that the price NME purchasers pay market suppliers, of both subject merchandise and inputs used to produce subject merchandise, is affected by conditions in the NME, as well as by conditions in the market economy. As a result, the Defendant-Intervenor contends, the NME buyer's purchases of subject merchandise may not be representative of market prices, and therefore not suitable for normal valuation, whereas the NME buyer's purchases of inputs may nonetheless be the best information available from which to value the input for normal valuation. Therefore, the Defendant-Intervenor maintains that the law and the facts persuasively indicate that the PRC third country sales at issue are not representative of market prices, and, accordingly, respectfully requests that Commerce calculate the NV based on SeAH's third country sales to Canada, and upon Husteel's constructed value, as was done for the Final Results.

Plaintiffs contend that the Defendant-Intervenor seeks to draw a distinction between the statutory requirement that third country sales in a market economy case be "representative" and the requirement in NME dumping cases that the surrogate values need only be based on the "best information available." Plaintiffs assert that this distinction has been considered and repeatedly rejected by the Court. Specifically, Plaintiffs quote the Court, "{t}herefore, there appears to this Court no reason to treat the price data for sales between a market economy supplier and a nonmarket-economy buyer differently in the two situations." See Husteel Remand I, at 20-21. Therefore, Plaintiffs argue, Commerce should continue to find that the PRC sales are representative.

Commerce's Position

The Defendant-Intervenor is reiterating arguments that the Court has already found unpersuasive. Commerce agrees with the Defendant-Intervenor that there is a clear distinction between "representative" and "best information available." Although the price of an input from a market economy country may be the "best information available" for calculation of normal value, it should not necessarily also render a price to an NME country from a market economy country "representative." Commerce argued this point in its Remand Redetermination. However, the Court found this argument to be unpersuasive. See Husteel Remand I, at 17-21. Although we respectfully disagree with the Court, Commerce is complying with the Court's orders.

In Husteel Remand II, the Court ordered Commerce to present persuasive evidence that Plaintiffs' sales for export to the PRC are not "representative" within the meaning of section 773(a)(1)(B)(ii)(I) of the Act. Further, the Court ordered that, if Commerce cannot present persuasive evidence that Plaintiffs' sales are not representative, Commerce will determine that

the sales are representative. See Husteel Remand II, at 19. Commerce has already unsuccessfully made the arguments the Defendant-Intervenor is offering; the Court rejected these arguments, and there is no additional evidence on the record to support a renewal of these arguments. Therefore, in accordance with the Court's order, Commerce continues to find that the sales to the PRC are representative.

Comment 3: Price Analysis of OCTG Sales

The Defendant-Intervenor argues that the prices at which the Korean producers sold the OCTG to market economies during the POR evince their unrepresentativeness. According to the Defendant-Intervenor, the disparity between SeAH's PRC sales prices and its sale prices to the United States and Canada cannot be explained by only the threading and coupling performed on the U.S. and Canadian sales. Therefore, the Defendant-Intervenor argues, the PRC sales prices are clearly not driven by market forces.

Further, the Defendant-Intervenor argues that Commerce is also directed to disregard prices in determining the surrogate value of inputs when it has reason to believe or suspect that the prices may be dumped or subsidized.[10] While the prices at issue in the present case involve sales of the subject merchandise rather than surrogate values of inputs used to produce the subject merchandise, the Defendant-Intervenor argues that the disparity in prices between Korean producers' sales to market economies and sales to the PRC suggest that the Korean producers' sales to the PRC may have been dumped. The Defendant-Intervenor argues that this

[10] The Court of International Trade has addressed the reason or believe suspect standard related to market economy inputs stating:

> The "reason to believe or suspect" standard first appeared in the legislative history for 19 U.S.C. § 1677b, which states that "in valuing such {nonmarket economy} factors, {Commerce} shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." See Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100-576 at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623.

See Sichuan Changhong Electric Co. Ltd. v. United States, 460 F. Supp 2d 1338 (CIT 2006).

provides additional evidence that the PRC prices are distorted and not suitable for normal valuation. Therefore, the Defendant-Intervenor argues, the facts on the record persuasively indicate that the PRC third country sales at issue are not representative of market prices, and requests that Commerce make this finding in its final remand redetermination.

Plaintiffs contend that the Defendant-Intervenor's argument is based on a flawed pricing analysis. Specifically, Plaintiffs point out that the prices in question are gross unit prices and do not account for differences in product characteristics (e.g., end finish), sales terms, level of trade (the U.S. sales values are the CEP resale prices), and freight costs. Plaintiffs argue that the differences in freight from Korea to the PRC, as opposed to from Korea to the United States or to Canada, alone likely account for much of the supposed price differences identified by the Defendant-Intervenor's analysis. As such, Plaintiffs argue, the price "disparity" that the Defendant-Intervenor has identified is based on a skewed comparison and cannot be relied upon as support for its argument.

Plaintiffs further maintain that the Defendant-Intervenor's argument that these sales to the PRC have been dumped is unfounded. Plaintiffs argue that the Defendant-Intervenor's argument cannot be squared with the fact that Plaintiffs' sales to the PRC are analyzed by Commerce as third country sales, and as a surrogate for NV, and hence are subject to Commerce's sales-below-cost test. Plaintiffs argue that based on that test, Commerce used as the basis for NV only those sales that passed the cost test. As such, Plaintiffs argue, these sales are suitable for NV and comparison to U.S. sales, and were not "dumped," as suggested by the Defendant-Intervenor.

Commerce's Position

In its Remand Redetermination, Commerce placed on the record price data that it determined supported its argument that Plaintiffs' sales to the PRC were non-representative. However, the Court found the arguments based upon this data to be unpersuasive. Although we disagree with Plaintiffs that the cost test demonstrates that sales to the PRC are not "dumped," Commerce does agree that there is no information on the record to provide a reasonable basis to believe or suspect that the sales to the PRC were dumped. With no additional evidence on the record with which to continue this line of argument, Commerce finds the Plaintiffs' sales to the PRC to be representative.

Comment 4: Particular Market Situation in the PRC

The Defendant-Intervenor contends that even if Commerce finds that the prices of Korean producers' PRC sales are representative of market prices, these sales should be excluded from consideration in determining the NV because there is a "particular market situation" in the PRC that prevents a proper comparison with the export price. See 19 U.S.C. § 1677b(a)(1)(B)(ii).[11] Therefore, the Defendant-Intervenor argues, the price of third country sales of subject merchandise must be both "representative" of market prices and not subject to a "particular market situation."

[11] The Court in Husteel Remand I noted in this regard that:

> The normal value of subject merchandise is the price at which the respondent first sells the merchandise for consumption in the respondent's home market. Where home-market price is not available, Commerce will use the price at which the respondent first sells the merchandise for consumption in a third country, if: a) the price is "representative;" b) the sales are of sufficient aggregate quantity or value; and c) Commerce does not determine that a "particular market situation" in the third country prevents a proper comparison with the export price. 19 U.S.C. § 1677b(a)(1)(B)(ii) (2000).

Husteel Remand I at 1285.

Referring to one of its arguments in the administrative review, the Defendant-Intervenor states that 19 U.S.C. § 1677b(a)(1)(B)(ii) requires Commerce to disregard third country prices when there is a "particular market situation in such other {third} country {that} prevents a proper comparison {of third country prices} with export price or constructed export price." The Defendant-Intervenor points out that Commerce did not previously address this issue because it determined that the prices of the Korean producers' PRC sales were not "representative" of market prices under the statute.

The Defendant-Intervenor maintains that, like "representativeness," a "particular market situation" is not defined in the Act. The Defendant-Intervenor, however, notes that the Statement of Administrative Action (SAA) accompanying the URAA states that such a situation might exist "where there is government control over pricing to such an extent that . . . prices cannot be considered to be competitively set." See SAA, H.R. Doc. No. 103-316, (1994) at 822. The Defendant-Intervenor argues that prices cannot be considered to be competitively set when the purchaser is located in an NME, since supply and demand forces in an NME do not operate to produce competitive prices. The Defendant-Intervenor contends that the specific application of 19 U.S.C. § 1677b(a)(1)(B)(ii) to third country markets, and the SAA's statement that a particular market situation in such a third country might exist "where there is government control over pricing to such an extent that . . . prices cannot be considered to be competitively set," certainly applies in the present case involving the PRC as a third country market.

Further, the Defendant-Intervenor argues that the existence of a particular market situation in the PRC is further implicit in Commerce's classification of the PRC as an NME. In particular, the Defendant-Intervenor argues, section 771(18) of the Act states that an NME "does not operate on market principles of cost or pricing structures, so that sales of merchandise in

such a country do not reflect the fair value of the merchandise." The Defendant-Intervenor also contends that the Federal Circuit has stated in this regard that "the antidumping statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources." Sigma Corp. v. United States, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997). Therefore, the Defendant-Intervenor argues, a government's control of prices is an indicator of both the classification of a market as an NME and the existence of a particular market situation.

For these reasons, the Defendant-Intervenor argues that, even if Commerce finds that the prices of Korean producers' PRC sales are representative of market prices, these sales should be excluded from consideration in determining NV because there is a "particular market situation" in the PRC that prevents a proper comparison of third country PRC prices with the export price.

Plaintiffs argue that under the particular market situation provision, Commerce may disregard third country sales only when it determines that "the particular market situation in such other country prevents a proper comparison with the export price or constructed export price." 19 U.S.C. § 1677b(a)(1)(B)(ii)(III). However, Plaintiffs argue, the only "particular market situation" identified by the Defendant-Intervenor is the fact that the PRC is an NME. Plaintiffs state that this is the same basis on which the Defendant-Intervenor previously argued that Plaintiffs' sales were not "representative." Plaintiffs contend that the Defendant-Intervenor would have Commerce simply presume that there cannot be a "proper comparison" using Plaintiffs' third country sales from the mere fact that the PRC is an NME.

Plaintiffs argue that the Court has already twice reversed Commerce for presuming that prices from a market economy into an NME are not valid market prices suitable for use as NV. Plaintiffs point to the Court explanation in its most recent remand to Commerce:

> Setting aside the problem of Commerce glossing over the fact that Plaintiffs actually sold their merchandise to unrelated trading companies located in Korea—a market economy—Commerce never considers the possibility that this could be one of those situations where a nonmarket-economy buyer purchases the subject merchandise at the world, or market, price. Given this possibility, it does not make sense for Commerce to start from the presumption that the Chinese buyers dictated a distorted, nonmarket price to Respondents. As a result, the Court will not allow Commerce to exclude Respondents' sales price data as unrepresentative without presenting evidence to support that conclusion.

Husteel Remand II at 12. Plaintiffs argue that the Court's conclusions in this regard apply with equal force to the Defendant-Intervenor's suggestion that the PRC's status as an NME for antidumping purposes constitutes a "particular market situation" that prevents a "proper" comparison between export price and NV using Plaintiffs' third country sales to the PRC.

Plaintiffs further contend that the Defendant-Intervenor's argument also ignores the fact that the sales that will be used as the basis for NV are the sales between Plaintiffs and unrelated trading companies in Korea, not the PRC. Thus, Plaintiffs argue, the market in question is actually Korea, and not the PRC. Plaintiffs contend that the Court has already found that the prices between Plaintiffs and the unrelated Korean trading companies are freely negotiated and set. Plaintiffs point to the Court's own finding: "{i}t is trivial to say that, absent evidence to the contrary, sales negotiated between unrelated parties operating in a market economy are assumed to be at market prices." See Husteel Remand I at 16. Therefore, Plaintiffs argue, there is no basis for finding that a particular market situation exists in this case.

Commerce's Position

As the Defendant-Intervenor points out, this argument, that the Plaintiffs' sales to the PRC should not be used as NV because there is a particular market situation in the PRC, was made during the administrative review. See Final Results and accompanying Issues and Decision Memorandum at page 3. Commerce did not address the particular market situation

argument in the administrative review, and based on the evidence on the record, instead found that Plaintiffs' sales to the PRC were not "representative." Since that time, Commerce has argued before the Court that: 1) there is a clear price disparity found in sales to the PRC when compared to sales to the rest of the world that indicates those sales are not set by market forces, 2) sales prices to the PRC are influenced by the government control of the market in the PRC, even if the sales are through a market economy trading company, when the producer has knowledge of the final destination of the sales, and 3) there is a distinction between Commerce's "best information available" practice for market economy inputs and "representativeness" when selecting the appropriate third country comparison market. On each point, the Court has consistently rejected or found unpersuasive Commerce's arguments. As Plaintiffs note, given that the Court has rejected every argument put forth to support Commerce's position on representativeness, the only fact left on the record that provides the basis to argue either the "representativeness" argument put forth by Commerce, or the particular market situation argument offered by the Defendant-Intervenor, is a claim that the PRC's status as an NME is by itself cause to affirmatively find sales to the PRC unrepresentative, or that a particular market situation exists.

Given that the Court has already found that NME status alone cannot be the basis for finding sales unrepresentative, and given that the Court has now found all of the other evidence proffered by Commerce to support its determination that these sales to the PRC are unrepresentative to be unpersuasive, Commerce finds there is no other evidence and no other grounds currently on the record with which to make a persuasive argument for a particular market situation in the PRC. Therefore, Commerce continues to find that the PRC is the appropriate third country market upon which to base Plaintiffs' NV.

Comment 5: Similarities of the Foreign Like Product

The Defendant-Intervenor contends that the statute at 19 U.S.C. § 1677(16), as well as the Department's regulations at section 351.404(e)(2), require Commerce to consider the physical similarity of the subject merchandise sold in third countries as the first criterion in selecting third country sales most appropriate for comparison to U.S. sales in deriving dumping margins. The Defendant-Intervenor argues that Commerce's present selection of SeAH's PRC sales as the most appropriate third country sales for comparison with U.S. sales, without considering the physical similarity of the foreign like product sold to the PRC and Canada with the subject merchandise sold in the United States, is not in accordance with law. The Defendant-Intervenor argues that this issue was squarely addressed by the CIT in Viraj Forgings, Ltd. v. United States, which stated:

> Commerce is incorrect when it argues that there is no hierarchy or structure in the selection of the third country comparison market. Section 1677(16) establishes just such an approach and suggests a hierarchy for how Commerce should conduct its comparisons for model matching. See NSK Ltd. v. United States, 217 F. Supp. 2d 1291, 1300, 26 Ct. Int'l Trade 650 (CIT 2002). Commerce's regulation, 19 C.F.R. § 351.404(e), provides additional guidance on how to select the most appropriate foreign like product for comparison purposes. This authority to interpret and determine markets and products most appropriate for comparison does not, however, permit Commerce to disregard general and accepted principles of statutory construction.
>
> . . . In 19 C.F.R. § 351.404(e), Commerce is first instructed to look to a third country that has a product similar to that sold in the United States, and if this is not feasible, to look to a third country that has a large volume of sales. Only then is Commerce to look to any other factors that it deems appropriate. Id. Given this seriatim instruction, 19 C.F.R. § 351.404(e) has a descending hierarchy of criteria from which Commerce must select the appropriate third country comparison market. See, e.g., NSK Ltd., 217 F. Supp. 2d at 1296-97. Here Commerce did not try to work its way through the enumerated hierarchy of the regulation and its failure to do so lead to absurd results.[8] Commerce deviated from the canons of statutory construction and based its third country selection on the second enumerated criteria without indicating whether it considered the other enumerated criteria in making its determination. Commerce thus has failed to provide a reasonable explanation of its analysis.

> Footnote 8. For example, if the court were to follow Commerce's reasoning of selecting the appropriate third country based upon the volume of sales without considering the similarity of merchandise sold in both potential comparison markets (as seems to be suggested by Commerce's explanation), then this approach could lead to the comparison of products that are either entirely dissimilar or dissimilar enough that all matches would be based upon constructed value rather than on a price to price basis after adjusting for DIFMER. This would run contrary to the logic of 19 C.F.R. § 351.404(e).

Viraj Forgings, Ltd. v. United States, 350 F. Supp. 2d 1316, 1323 (CIT 2004).

The Defendant-Intervenor argues that SeAH's Canadian sales are more similar to its U.S. sales than SeAH's PRC sales. The Defendant-Intervenor maintains that the foreign like product is the threaded and coupled OCTG sold to the first unaffiliated purchaser in Canada, because this merchandise is identical to the threaded and coupled OCTG sold to the first unaffiliated U.S. purchaser. See, e.g., Plaintiffs' Rule 56.2 Memorandum at 6-7. In contrast, the Defendant-Intervenor argues, the OCTG sold to the PRC was not threaded and coupled, but was plain-end. The Defendant-Intervenor notes that Plaintiffs have stated that "the OCTG sold by SeAH for export to both the PRC and the United States was plain-end pipe," but failed to explain that the U.S. sales of plain-end pipe to which it referred were inter-company transfers between SeAH and its U.S. selling affiliate Pusan Pipe America.[12] See Plaintiffs' Rule 56.2 Memorandum at 7. The Defendant-Intervenor also points out that SeAH's U.S. affiliate threaded the plain-end pipe in the United States and added a coupling so that the pipe sold to the first unaffiliated purchaser in the United States was threaded and coupled. *Id.*

[12] SeAH and Husteel Letter, March 7, 2005, at 4-5.

The Defendant-Intervenor argues that the statute identifies the starting point for determining antidumping margins as the U.S. price paid by an "unaffiliated purchaser."[13] The statute further requires that the price for the foreign like product is established by matching foreign sales to the sale to the unaffiliated U.S. purchaser that was used to determine the export price or constructed export price.[14] Additionally, the Defendant-Intervenor argues that the Federal Circuit has found that there is no basis for determining antidumping margins when there is no sale to an unaffiliated party in the United States, even when the merchandise enters U.S. customs territory and is sold to a U.S. affiliate of the producer.[15] Therefore, the Defendant-Intervenor contends, U.S. sales to affiliated parties accordingly cannot be used in determining the export price or constructed export price. The Defendant-Intervenor argues that the statute thus directs Commerce to match foreign market sales with U.S. sales to unaffiliated parties, rather than with U.S. sales to affiliated parties. The Defendant-Intervenor explains that SeAH's third country sales to the PRC and Canada should therefore be compared to the threaded and coupled merchandise SeAH sells to the first unaffiliated U.S. purchaser to ascertain whether the PRC or Canadian sales are more similar to U.S. sales.

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[13] Specifically, "export price" is defined as "the price at which the subject merchandise is first sold . . . to an unaffiliated purchaser in the United States or unaffiliated purchaser for exportation to the United States." "Constructed export price" is defined as "the price at which the subject merchandise is first sold . . . to a purchaser not affiliated with the producer or exporter." 19 U.S.C. § 1677a(a) and (b)(emphasis added).

[14] See 19 U.S.C. § 1677b(a)(1)(A)&(B) ("the price at which the foreign like product is first sold" "shall be the price . . . of the sale used to determine the export price or constructed export price.")

[15] In Extruded Rubber Thread from Malaysia the Department stated: "because there is no sale to an unaffiliated party in the United States, despite the fact that the goods have entered into the U.S. customs territory, there is no means by which the Department can calculate a United States price with respect to these particular imports. See The Torrington Company v. United States, 82 F.3d 1039, 1044-1047 (Fed. Cir. 1996)." Final Results of Antidumping Duty Administrative Review, 62 FR 33588 (June 20, 1997).

In addition, the Defendant-Intervenor argues that the grades of OCTG in the PRC sales do not match all the grades of U.S. sales, unlike the grades of the OCTG in the Canadian sales, which do. Further, the Defendant-Intervenor notes that while there is a difference between the volume of sales that SeAH has reported to the PRC and to Canada (with the PRC as the larger volume), the Defendant-Intervenor contends that this difference, by itself, is not so pronounced as to strongly favor the PRC sales. Therefore, the Defendant-Intervenor argues that SeAH's sales to Canada are preferred under the statute and Commerce's regulations over its sales to the PRC.

For these reasons, the Defendant-Intervenor argues that, even if the prices of Plaintiffs' PRC sales were found to be "representative" of market prices, and no "particular market situation" existed in the PRC, SeAH's third country sales to Canada are preferred under the statute and Commerce's regulations over its sales to the PRC because the Canadian sales are more similar to U.S. sales to the first unaffiliated purchaser in the United States than are the PRC sales.

Plaintiffs argue that based on the criteria of 19 C.F.R. § 351.404(e), the first criterion to be considered in selecting a third country market is whether the "foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries." Plaintiffs claim that, contrary to the Defendant-Intervenor's claim, the products SeAH exported to the PRC were more similar to the subject merchandise exported to the United States than the products SeAH exported to Canada. Specifically, Plaintiffs argue, the merchandise that entered the United States was plain end pipe, for which SeAH reported the CONNUM and the physical characteristics in accordance with section C of the questionnaire and section 772 of the Tariff Act of 1930, as amended,

19 U.S.C. § 1677a. The net CEP calculated by deducting all expenses and charges, including the further manufacturing costs incurred in the U.S. for threading and coupling, and an element of profit, is the U.S. price of the plain end pipe that entered the United States.[16] Therefore, Plaintiffs contend, the most similar product for comparison purposes is unquestionably the plain end merchandise sold to the PRC, not the threaded and coupled pipe sold to Canada.

Plaintiffs contend that the Defendant-Intervenor's argument, that Canada is the most appropriate comparison market, centers entirely on a single faulty premise. Plaintiffs argue that the most similar product for comparison purposes is the product "that entered" the United States and the product for which the net CEP is calculated under section 772, i.e., plain end pipe of the same grade. Plaintiffs agree that the price to the unaffiliated U.S. customer is indeed the starting point for Commerce's determination of antidumping margins, but it is the price of the merchandise that entered the United States that is the reference point for determining net CEP, i.e., the price of the plain end pipe shipped by SeAH.

Plaintiffs argue that, by claiming that the selection of the most similar comparison market should be based on the further manufactured product that was sold to the unaffiliated U.S. customer, the Defendant-Intervenor's argument deviates from section 772 of the Act and from Commerce's practice (as adopted in section C of the questionnaire), which is structured to develop the price to the unaffiliated U.S. purchaser for the product that entered the United States. Commerce can follow the statute and its practice by directly comparing identical or similar plain end pipe sold by SeAH to the U.S. market and to the PRC.

Further, Plaintiffs disagree with the Defendant-Intervenor's characterization of the volume of sales between the PRC and Canada as being similar. Plaintiffs argue that there is a

[16] See Letter from Kaye Scholer LLP to the U.S. Department of Commerce, Case No. A-580-825 (Jan. 18, 2005), submitting SeAH's Response to Sections B-E of Questionnaire, Exhibit C-2.

substantial difference in the volume of sales to each country.[17] In addition, Plaintiffs state that while all of the grades of OCTG that are sold to the United States are not also sold to the PRC, the volume of the sales to Canada in two of the three grades in question that were shipped to the United States is very minor in relation to total U.S. sales.[18] Lastly, Plaintiffs argue that Commerce should note in its final remand redetermination that apart from being the largest volume market, the products SeAH exported to the PRC were also more similar to the subject merchandise exported to the United States than was the OCTG SeAH exported to Canada. Therefore, based on these facts, and a proper reading of 19 CFR 351.404(e)(1), Plaintiffs argue that the PRC is the appropriate third country to select as the comparison market.

Commerce's Position

In the instant case, Commerce's decision to select the PRC as the comparison market for SeAH's sales to the United States is based on Commerce's consideration of all of the statutory criteria, as well as the criteria outlined in 19 CFR 351.404(e). The Preamble to Commerce's regulations states "that Section 351.404(e) is sufficiently clear that (1) not all of the three criteria need be present in order to justify the selection of a particular market, and (2) no single criterion is dispositive." See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27358 (May 19, 1997). Accordingly, Commerce chooses a third country market that meets one or more of these criteria. In practice, Commerce normally relies on volume to determine the selection of a third country market. See, e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile, 70 FR 44889 (August 4, 2005) (selecting the largest third country market as the basis for NV;

[17] See Letter from Kaye Scholer LLP to U.S. Department of Commerce, Case No. A-580-825 submitting SeAH's Section A Response to Questionnaire at Exhibit A-1.

[18] See March 7, 2005 Letter at 4, see also SeAH's January 18, 2005 Response at 4 and Exhibit B-2, and March 7, 2005 Letter at 4.

unchanged in final results); Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination To Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile, 67 FR 51182 (August 7, 2002) (selecting the largest third country market as the basis for NV; unchanged in final results); Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 17357 (April 9, 1998) (unchanged in final results).

In the instant case, while parties did raise, in the administrative review, the issue of whether the PRC exports are more similar to the U.S. exports than the Canadian exports, we did not address it because we found sales to the PRC to be unrepresentative. In the Final Results, Commerce used sales to Canada as the third country comparison market and found similar matches for every U.S. sale. See Final Results and the Memorandum to the File: Analysis of SeaH Steel Corporation ("SeAH") for the Final Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe, from Korea, dated March 7 2006, and Memorandum to the File: Analysis of Husteel Co., Ltd. ("Husteel") for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea, dated August 31, 2006 (unchanged in the Final Results).[19] In our draft remand results, we used sales to the PRC as the third country comparison market and found similar price-to-price matches for almost every U.S. sale.

[19] We have also used Canada as the third country market in previous administrative reviews. See, e.g., Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 46999 (September 10, 2001) (unchanged in final results), and Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Oil Country Tubular Goods From Korea, 60 FR 6507 (February 2, 1995) (also unchanged in final determination).

If no party raises the issue of product similarity, Commerce's normal practice is to rely on volume to select the third country comparison market. While each party contests the other party's arguments on similarity, Commerce finds the record is clear that there are similar matches in both markets, and the volume of sales to the PRC is greater than the volume of sales to Canada. Furthermore, Plaintiffs acknowledge that the majority of OCTG sold in all three markets is of the same grade. Under these circumstances, it is appropriate to rely on volume to select the third country market. On this basis, we have chosen the PRC as the comparison market.

In addition, we disagree with the Defendant-Intervenor's argument that, even though the volume of sales to the PRC is greater than the volume of sales to Canada, the volumes are similar, and as such, we should use Canada as the comparison market. While the record shows that the quantity sold to each market is similar in comparison with the quantity sold to the U.S. market, the quantity sold to the PRC is still greater than the quantity sold to Canada, and, as such, there is no basis for choosing Canada rather than the PRC. Accordingly, because SeAH's volume of sales to the PRC is greater than its volume of sales to Canada, Commerce finds that the PRC is the appropriate third country comparison market.[20]

The Defendant-Intervenor cites Viraj Forgings, Ltd. v. United States, where the Court previously described 19 CFR 351.404(e) as a descending hierarchy of criteria. See Viraj Forgings, Ltd. v. United States, 350 F. Supp. 2d 1316, 1323 (CIT 2004). Commerce respectfully disagrees that there is a hierarchy in 19 CFR 351.404(e). Commerce had no opportunity to appeal this finding because the Court dismissed that case on other grounds. In instances where a hierarchy is intended in the regulations, the regulations make the presence of

[20] With respect to the third criterion in 19 CFR 351.404(e), Commerce finds that there were no other factors on the record to consider in its selection of the appropriate third country market.

the hierarchy clear. See e.g., 19 CFR 351.511(a)(2). This is not the case with 19 CFR 351.404(e). In fact, the Preamble to the regulations explains that "no single criterion is dispositive." See Antidumping Duties; Countervailing Duties, 62 FR 27,296, 27, 358 (May 17, 1997).

Our third country comparison market selection decision for SeAH was made in accordance with Commerce's normal practice. Therefore, given the above reasoning, we find no basis to reconsider our decision in this remand to rely on the PRC as the appropriate comparison market for SeAH's sales. Accordingly, we have continued to use the reported PRC sales data in our final remand margin calculations.

Comment 6: Corrections to the weighted-average dumping margin calculations

In its comments on Commerce's Draft Remand Results II, the Plaintiffs made several arguments concerning ministerial errors in the calculations of weighted-average dumping margins. Commerce agrees, in part, with Plaintiffs' arguments concerning these errors. For the allegations of ministerial errors that occurred as a result of this remand redetermination, Commerce agrees that these are ministerial errors and has corrected them in the final calculations. There corrections are addressed in Husteel Co. Ltd. Remand Calculation Memorandum to the File (Husteel's Final Remand Calculation Memorandum), and SeAH Steel Corporation, Ltd. Remand Calculation Memorandum to the File (SeAH's Final Remand Calculation Memorandum), dated concurrently with these results of redetermination.

However, for three alleged errors: 1) Commerce basing the universe of SeAH's sales on the date of sale during the period of review, rather than on the date of entry, 2) Commerce basing the universe of Husteel's sales on the date of sale during the period of review, rather than on the date of entry, and 3) Commerce including only sales above cost in SeAH's calculation of CEP

profit, Commerce has determined that Plaintiff's ministerial error allegations are untimely because the alleged errors relate to Commerce's original calculations in the Preliminary Results, and the Final Results. Thus, Plaintiffs had opportunities, during the underlying administrative proceeding, to allege these ministerial errors, and they did not. Because we have determined that these ministerial error allegations are untimely, we have not addressed the merits of these allegations. See e.g., Torrington Co. v. United States, 22 CIT 136 (1998) (finding Torrington's allegation during a remand proceeding of a ministerial error in the original calculation in the administrative review is time-barred).

V. RESULTS PURSUANT TO REMAND

For these results of redetermination, pursuant to the Court remand, Commerce now determines SeAH's weighted-average dumping margin to be 0.59 percent, and Husteel's weighted-average dumping margin to be 0.62 percent.

_____

David M. Spooner
Assistant Secretary
for Import Administration

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Date