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June 10, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; 2012-2013

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers one producer and exporter of the subject merchandise, Shin Yang Steel Co., Ltd. (Shin Yang). The period of review (POR) is May 1, 2012, through April 30, 2013. We preliminarily find that sales of the subject merchandise were not made at prices below normal value.

BACKGROUND

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR § 351.213(b), Shin Yang and United States Steel Corporation, a domestic producer (petitioner), requested an administrative review of the antidumping duty order on certain circular carbon steel pipes and tubes from Taiwan on May 24, 2013 and May 31, 2013, respectively.[1] On June 28, 2013, in accordance with 19 CFR § 351.221(c)(1)(i), we published a notice of initiation of administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes.[2]

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[1] U.S. Steel Corporation also requested reviews of several other companies; however, it later withdrew its review requests for those other companies, and the reviews were rescinded with respect to those other companies. *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2012–2013*, 78 FR 49255 (August 13, 2013).
[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 38924 (June 28, 2013).

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[3]

On January 31, 2014, we extended the deadline for the preliminary results to June 18, 2014.[4]

We are conducting this administrative review of the order in accordance with section 751(a) of the Act.[5]

SCOPE OF THE ORDER

The merchandise subject to the order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.[6]

DISCUSSION OF THE METHODOLOGY

<u>Fair Value Comparisons</u>

Pursuant to section 773(a) of the Act and 19 CFR § 351.414(c)(1), to determine whether Shin Yang's sales of certain circular welded carbon steel pipes and tubes were made in the United States at less than normal value, we compared the export price (EP) to the normal value (NV) as described in the "Export Price" and "Normal Value" sections of this notice.

<u>Product Comparisons</u>

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Order" section of this notice, above (*i.e.*, the foreign like product), that were in the ordinary course of trade for purposes of determining an appropriate normal value for comparison to the U.S. export price. In order to define products sold in the home and U.S. markets, we relied on five physical characteristics:

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[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.
[4] *See* memorandum from Steve Bezirganian, International Trade Analyst, Antidumping and Countervailing Duty Operations VI to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2012-2013," (January 31, 2014).
[5] Note that additional details pertaining to the actual programming and output appear in "Analysis Memorandum for Shin Yang Steel Co. Ltd.: Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan, 2012-2013 Administrative Review," dated concurrently with this memorandum and herein incorporated by reference.
[6] *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Antidumping Duty Order*, 49 FR 19369 (May 7, 1984).

specification/grade, nominal diameter, nominal wall thickness, coating and end finish. If contemporaneous home market sales were reported of merchandise which was identical to subject merchandise sold in the U.S. market, then we calculated NV based on the monthly weighted-average home market prices of all such sales. If there were no contemporaneous home market sales of identical merchandise, then we identified home market sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR § 351.414(e), and calculated NV based on the monthly weighted-average home market prices of all such sales. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market, we calculated NV based on constructed value (CV).

<u>Determination of Comparison Method</u>

Pursuant to 19 CFR § 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to EPs (or CEPs) of individual export transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR § 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in investigations. In recent investigations and reviews, the Department has applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR § 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. The Department finds that the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, state) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

For Shin Yang, based on the results of the differential pricing analysis, the Department finds that 18.80 percent of Shin Yang's export sales pass the Cohen's *d* test, which does not confirm the existence of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions or time periods. As such, the Department finds that these results do not support consideration of an alternative to the average-to-average method. Accordingly, the Department has determined to use the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Shin Yang.

Date of Sale

19 CFR § 351.401(i) of the Department's regulations states that, normally, the Department will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. Furthermore, consistent with the Department's practice, we use the shipment date as the date of sale where the shipment date occurs before the invoice date because the price and quantity are fixed at the time of shipment.[7]

For U.S. sales, Shin Yang noted terms of sale are subject to change after order contracts are issued, up until the time of shipment, and commercial invoices are issued at or about the time of shipment.[8] Therefore, in conformance with our normal practice, in the absence of information indicating a different date of sale better reflects the date on which the material terms of sale are established, we are using invoice date as date of sale. For all U.S. sales, Shin Yang reported in the sale date field the earlier of invoice date and shipment date from the plant or distribution warehouse.[9] This conforms to our long-standing practice of using as date of sale the earlier of

[7] See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-80 (Apr. 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (Jan. 31, 2007), and the accompanying Issues and Decision Memorandum at Comments 4 and 5; see also Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73422 (Dec. 10, 2012), and the accompanying Preliminary Issues and Decision Memorandum at 7, unchanged in Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35244 (June 12, 2013).
[8] *See* Shin Yang's September 3, 2013, questionnaire response at 18.
[9] *See* Shin Yang's December 19, 2013, questionnaire response at 41.

the invoice date or the shipment date, if no other date is more appropriate as date of sale.[10]

For all home market sales, Shin Yang reported the Government Uniform Invoice (GUI) date as the date of sale.[11] Shin Yang indicated the terms of sale are subject to change up until the issuance of the invoice, and that terms of sale did change after initial negotiation of terms of sale for some sales.[12] Therefore, for this administrative review, and consistent with the rebuttable presumption established in the Department's regulation, we have used Shin Yang's reported GUI date as the date of sale for all home market sales.[13]

Export Price

Shin Yang reported that all its U.S. sales of subject merchandise should be classified as EP sales.[14] Because Shin Yang's U.S. sales have been sold before the date of importation by the producer or exporter outside of the United States to unaffiliated purchasers in the United States, we are basing the U.S. price on EP, as defined in section 772(a) of the Act.

For EP sales, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2) of the Act. Movement expenses included foreign inland freight (from plant to warehouse, and from plant to port of exportation), foreign warehousing expenses, foreign brokerage fees, foreign trade promotion fees, foreign harbor maintenance fees, and international freight (consisting of ocean freight, bill of lading documentation fees, and containerization fees).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same level-of-trade (LOT) as the EP or CEP, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sale prices to comparison market sale prices at the next, most-similar, LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive the adjustments for CV for selling, general, and administrative expenses (SG&A) and profit.

Pursuant to 19 CFR § 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length affiliated) customers. The Department identifies the LOT based on: the starting price or constructed value for NV; the starting price for EP sales; and the starting price, as adjusted under section 772(d) of the Act, for CEP sales. If the comparison market sales were at a different LOT and the differences affect

[10] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 73 FR 55036 (September 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30664 (June 8, 1999), at Comment 5.
[11] *See* Shin Yang's September 19, 2013, questionnaire response at 22.
[12] *See* Shin Yang's September 3, 2013, questionnaire response at 18-20.
[13] Unless the date of shipment preceded the GUI date, in which case shipment date was used as date of sale, consistent with our date of sale analysis for U.S. sales, see above.
[14] *See* Shin Yang's September 19, 2013, questionnaire response at 65.

price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

As noted above, Shin Yang indicated its U.S. sales are EP sales. Shin Yang noted that all its sales in both markets are at a single level of trade.[15] It also stated that prices do not vary by channel of distribution.[16] Shin Yang's selling functions chart for its home market and U.S. sales indicates the selling functions performed for sales in both markets are virtually identical, with no significant variation across the broader categories of sales process/marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.[17] Therefore, we preliminarily determine that there is one level of trade for all sales in both the home market and the U.S. market and, consequently, no basis exists for a level-of-trade adjustment.

Normal Value

A. *Home Market Viability as Comparison Market*

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compare the volume of Shin Yang's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act.[18] Based on this comparison, we determined that Shin Yang had a viable home market during the POR. Consequently, we based NV on home market sales to unaffiliated purchasers made in usual quantities in the ordinary course of trade.

B. *Affiliation*

The Department may calculate normal value based on sales to an affiliated party only if it is satisfied that the prices to the affiliated party are comparable to the prices at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, whether sales to an affiliated party were made at arm's length prices.[19] We excluded from our analysis home market sales to an affiliated customer for consumption in the home market where we determined that the sales to that affiliated customer were not made at arm's length prices. To test whether the sales to an affiliated customer were made at arm's length prices, we compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR § 351.403(c) and

[15] *See* Shin Yang's September 19, 2013, questionnaire response, at 81-82.
[16] *See* Shin Yang's September 3, 2013, questionnaire response, at 16.
[17] *Id.* at Exhibit 9.
[18] *See* Shin Yang's September 19, 2013, questionnaire response, at Exhibit 2.
[19] *See* 19 CFR § 351.403(c).

in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, we determined that the sales to that affiliated customer were at arm's length prices.[20] We excluded from our analysis all sales to an affiliated customer for consumption in the home market where we determined that these sales, on average, were not sold at arm's length prices.

C. *Cost of Production Analysis*

The petitioner alleged that Shin Yang made home market sales of certain circular welded carbon steel pipes and tubes below the cost of production (COP). On November 13, 2012, the Department found that petitioner's allegation provided a reasonable basis to initiate a COP investigation, and such an investigation was initiated.[21]

1. *Calculation of Cost of Production*

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Shin Yang in its questionnaire responses for the COP calculations.

Based on our review of the record evidence, Shin Yang did not appear to experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating a period weighted-average cost of production.

2. *Test of Comparison Market Sales Prices*

As required under section 773(b)(1)(A) and (B) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, billing adjustments, direct and indirect selling expenses, and packing expenses.

Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in "substantial quantities," *i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP and where "the weighted average per unit price of the sales . . .

[20] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).
[21] *See* memorandum from Steve Bezirganian, International Trade Analyst, Office VI, AD/CVD Operations to Richard Weible, Director, Office VI, AD/CVD Operations, "The Petitioner's Allegation of Sales Below the Cost of Production for Shin Yang Steel Co., Ltd.," (October 31, 2013).

is less than the weighted average per unit cost of production for such sales."[22] Lastly, based on our comparison of prices to the weighted-average COPs for the POR, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.[23]

3. *Results of the COP Test*

Our cost test for Shin Yang revealed that for home market sales of Shin Yang of certain models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales from our analysis to determine NV and adjustments for CV.

For those U.S. sales of subject merchandise for which there were no home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act.[24]

D. *Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on packed, ex-factory or delivered prices to affiliated customers in the home market that passed the arm's-length test and to unaffiliated customers in the home market and that were made in the ordinary course of trade. We made adjustments to the gross prices to account for billing adjustments, discounts, and rebates, as appropriate. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also deducted home market movement expenses, pursuant to section 773(a)(6)(B) of the Act. Furthermore, we made adjustments for differences in circumstances of sale (COS); specifically, we made adjustments to NV for comparison to Shin Yang's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses, bank charges, and cargo certification fees) and U.S. commissions.[25] Where we compared Shin Yang's U.S. sales to home market sales of similar merchandise, we made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR § 351.411.

E. *Calculation of Normal Value Based on Constructed Value*

In accordance with section 773(e) of the Act, we calculated CV for Shin Yang based on the sum of its material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described in the "Cost of Production Analysis" section of this memorandum, above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Shin Yang in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market at the same level of trade.

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[22] *See* section 773(b)(2)(C)(ii) of the Act.
[23] *See* section 773(b)(2)(D) of the Act.
[24] *See* "Calculation of Normal Value Based on Constructed Value" section, below.
[25] *See* section 773(a)(6)(C)(iii) of the Act, and 19 CFR § 351.410(c).

Currency Conversion

We made currency conversion into U.S. dollars in accordance with section 773A of the Act and 19 CFR § 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at http://enforcement.trade.gov/exchange/index.html.

CONCLUSION

We recommend applying the above methodology for these preliminary results.

✓ Agree ____ Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

10 JUNE 214
Date