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International Trade Administration  
Washington, D.C. 20230

A-583-851  
Investigation  
Public Document  
E&C/IV: KH/KG

October 6, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of  
Sales at Less Than Fair Value: Non-Oriented Electrical Steel from  
Taiwan

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## SUMMARY

We analyzed the case and rebuttal briefs of interested parties in this antidumping duty investigation of non-oriented electrical steel ("NOES") from Taiwan. As a result of our analysis, we made changes from the Preliminary Determination to the margin calculation. The issues for which we received comments are discussed below.

## BACKGROUND

On May 22, 2014, the Department of Commerce (the "Department") published the Preliminary Determination in the Federal Register.<sup>1</sup> This investigation covers two producers or exporters of subject merchandise, China Steel Corporation ("CSC") and Leicong Industrial Company, Ltd. ("Leicong"). Petitioner in this proceeding is AK Steel Corporation. As stated in the Preliminary Determination, Leicong did not respond to the Department's original questionnaire. During the weeks of June 9, 2014, and June 16, 2014, the Department verified the information submitted by CSC for the final determination. Sales and cost verification reports were issued on July 18, 2014, and August 1, 2014, respectively.<sup>2</sup> The Department used standard verification procedures,

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<sup>1</sup> See Non-Oriented Electrical Steel from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 79 FR 29428 (May 22, 2014) ("Preliminary Determination").

<sup>2</sup> See Memorandum to the File from Karine Gziryan, Senior International Trade Compliance Analyst, and Krisha Hill, International Trade Compliance Analyst, to Robert Bolling, Program Manager regarding, "Verification of the Sales Questionnaire Responses of China Steel Corporation: Antidumping Duty Investigation of Non-Oriented Electrical Steel ('NOES') from Taiwan," dated July 18, 2014; see also Memorandum to the File from Gary Urso and James Balog, Senior Accountants, to Neal M. Halper, Office Director regarding, "Verification of the Cost Response of China Steel Corporation in the Antidumping Duty Investigation of Non-Oriented Electrical Steel from Taiwan," dated August 1, 2014 ("Cost Verification Report").



including examination of relevant accounting and production records, as well as original source documents provided by CSC. On August 11, 2014, we received case briefs from CSC and Petitioner.<sup>3</sup> On August 18, 2014, CSC submitted a rebuttal brief.<sup>4</sup>

## PERIOD OF INVESTIGATION

The period of investigation ("POI") is July 1, 2012, through June 30, 2013.

## SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term "substantially equal" means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B<sub>800</sub> value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (*i.e.*, fully annealed to develop final magnetic properties) or semi-processed (*i.e.*, finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404-8-4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of this investigation are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part (*i.e.*, lamination) for use in a device such as a motor, generator, or transformer.

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<sup>3</sup> See Letter from CSC to the Department regarding, "Non-Oriented Electrical Steel (NOES) from Taiwan – China Steel Case Brief," dated August 11, 2014; see also Letter from Petitioner to the Department regarding, "Non-Oriented Electrical Steel From Taiwan: Petitioner's Case Brief," dated August 11, 2014.

<sup>4</sup> See Letter from CSC to the Department regarding, "Non-Oriented Electrical Steel (NOES) from Taiwan – China Steel Rebuttal Brief," dated August 18, 2014.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

## DISCUSSION OF ISSUES

### **Comment 1: Whether the Department Should Exclude CSC's Sales Ultimately Destined to a Third Country from the Margin Calculation**

- Petitioner argues that the Department should not treat CSC's sales ultimately destined to a third country as U.S. sales in the final margin calculations because CSC knew at the time of sale that these sales were destined for the third country.
- Petitioner references negotiation e-mails and accompanying attachments for the sales invoice associated with sequence number (SEQNUMU) 77 in the U.S. sales database, and asserts that this documentation—submitted for the record by CSC—demonstrates conclusively that CSC knew at the time of the sale that the merchandise was destined for the third country. Specifically, Petitioner notes that the e-mails and attachments for the invoice associated with SEQNUMU 77, which are dated earlier than the approximate shipment date indicated in the commercial invoice between China Steel Global Trading Corporation ("CSGT"), a third party, and CSC's customer in the United States, reference a city in the third country where the merchandise will be delivered.
- Petitioner cites to Wonderful Chemical and the SAA,<sup>5</sup> and states that the Department applies a "knowledge test" to determine whether a respondent's sales are subject to antidumping duties. Petitioner references the SAA in claiming that a producer passes the knowledge test if the "producer knew or had reason to know at time of sale" the destination of goods. Petitioner further avers that the Department normally considers documentary or physical evidence more reliable than unsubstantiated statements and declarations when applying the knowledge test.
- In addition to the invoice associated with SEQNUMU 77, Petitioner argues that other sales destined for the third country should also be removed from the U.S. sales database. Petitioner cites to CSC's supplemental questionnaire response and notes that CSC had stated that sales destined for the third country should be removed from the U.S. sales database.
- CSC asserts that the Department correctly treated CSC's reported U.S. sales as U.S. sales in the Preliminary Determination. CSC states that at the time of sale to its unaffiliated U.S. customer, CSC understood that the products were destined for the United States as advised by CSC's unaffiliated U.S. customer. CSC maintains this understanding is also supported by contemporaneous documents prepared at the time of these U.S. sales. CSC also notes that the products were, in fact, shipped to the United States.
- CSC argues it is irrelevant whether the U.S. customer ships goods to the third country thereafter on its own initiative.

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<sup>5</sup> See Wonderful Chemical Industrial, Ltd v. United States, 259 F. Supp. 2d 1273, 1279 (Ct. Int'l Trade 2003) ("Wonderful Chemical"); see also Statement of Administrative Action Accompanying The Trade Agreements Act of 1979, H.R. Rep. No. 4537, at 388, 411 (1979), reprinted in 1979 U.S.C.A.N. 665, 682 ("SAA").

- CSC cites to its March 18, 2014, supplemental questionnaire response and states that the goods are arranged by CSC's U.S. customer to be directly shipped to the unaffiliated U.S. customer's own end-user customers in the United States.
- CSC states that it relied on the U.S. port/airport of discharge indicated in the U.S. customer's letter of credit to determine whether the sales are U.S. sales.
- CSC cites to the U.S. sales trace packages from verification and notes that all correspondence with the U.S. customer indicates that the goods are destined for the United States.

**Department's Position:** In the Preliminary Determination, we included a certain number of sales, which CSC indicated were ultimately destined for a third country, in the margin calculation program. Based upon a careful review of information on the record, we continued to include those sales in our calculation. We disagree with Petitioner that such sales should be excluded because we do not have sufficient evidence to determine that CSC, at the time of sale, had knowledge that such sales were ultimately destined for the third country.

We note that in CSC's first submission of its U.S. sales database, dated January 24, 2014, CSC reported the sales at issue as sales to the United States.<sup>6</sup> However, in a March 18, 2014, supplemental questionnaire response, CSC stated that in preparing a response to the Department's supplemental question regarding zip codes and destination of sales, it learned from its unaffiliated U.S. customer that certain sales initially sold to the unaffiliated customer were ultimately destined for a third country.<sup>7</sup> Accordingly, CSC removed such sales from its corresponding March 18, 2014, U.S. sales database. Additionally, in the April 8, 2014, second supplemental Sections B and C questionnaire, we specifically asked whether CSC, at the time of sale, had knowledge that such sales were ultimately destined for the third country.<sup>8</sup> CSC responded, "{b}ecause CSC's delivery term with this customer is FOB, CSC knows only the port of destination, as informed by the customer, rather than the ultimate destination. Accordingly, CSC, at the time of sale, did not know" that those sales to the U.S. customer were ultimately destined for the third country.<sup>9</sup> Additionally, CSC stated that sales shipped to the third country are sales from the U.S. customer to the third country, rather than from CSC to the third country.<sup>10</sup> Because CSC sold the merchandise to the U.S. customer, rather than to the third country customer, the Department requested CSC to include such sales in its U.S. sales database that it resubmitted to the Department.<sup>11</sup> Based on the information on the record, we found no inconsistencies or any evidence that CSC, at the time of sale, had knowledge that certain sales were ultimately destined for the third country. Also, we note that CSC first included those sales in its January 24, 2014, U.S. sales database considering them as U.S. sales based on the

<sup>6</sup> See Letter from CSC to the Department regarding, "Non-Oriented Electrical Steel (NOES) from Taiwan," dated January 24, 2014, for the Section C U.S. sales database.

<sup>7</sup> See Letter from CSC to the Department regarding, "Non-Oriented Electrical Steel (NOES) from Taiwan," dated March 18, 2014 ("First Supplemental Sections B and C Response") at 2SE-23.

<sup>8</sup> See Letter from the Department to CSC regarding, "Antidumping Duty Investigation on Non-Oriented Electrical Steel from Taiwan: Second Supplemental Sections B and C Questionnaire," dated April 8, 2014 at 6.

<sup>9</sup> See Letter from CSC to the Department regarding, "Non-Oriented Electrical Steel (NOES) from Taiwan," dated April 17, 2014 ("Second Supplemental Sections B and C Response") at 5SE-9.

<sup>10</sup> *Id.*

<sup>11</sup> CSC submitted a revised database including the sales ultimately bound to the third country in the Second Supplemental Sections B and C Response.

information in CSC's books and records, and only later excluded them upon finding additional information from the U.S. customer, as CSC stated in its March 18, 2014, supplemental questionnaire response. The Department performed its knowledge test at the time of sale and found no evidence that CSC at the time of sale was aware that those sales were destined for the third country.

The Department carefully examined all sales documentation with respect to CSC's export sales to the United States. We note that the record contains sales documentation for two sales that were ultimately shipped to the third country (i.e., the invoice associated with SEQNUMU 77, and another sale).<sup>12</sup> We note that the sales documentation (e.g., commercial invoices, bills of lading, etc.) for all U.S. sales demonstrate that the merchandise described in the sales documentation was shipped to the United States. Specifically, we note that the ports of destination for all sales are in the United States. Although we have supplemental sales documentation for the invoice associated with SEQNUMU 77 which indicates that the merchandise was later shipped from the U.S. customer to the third country,<sup>13</sup> this information does not demonstrate that CSC, at the time of sale, had knowledge that this sale was ultimately destined for the third country.

Petitioner, in its case brief, references e-mail correspondence submitted by CSC for the invoice associated with SEQNUMU 77 in asserting that CSC, at the time of sale, had knowledge that those sales were ultimately destined for the third country.<sup>14</sup> We have carefully reviewed this e-mail correspondence and have found that it contains discussion of certain shipments with the final destination in the third country. However, we are unable to tie the information pertaining to these shipments discussed in this e-mail correspondence (i.e., sales orders) specifically to the invoice associated with SEQNUMU 77 based on the corresponding sales documentation or the U.S. sales database. Although the e-mail correspondence contains some information that could relate to the invoice associated with SEQNUMU 77 (i.e., product grade, potential shipment schedule, and vessel name), we find that this information could apply to a broad category of shipments (e.g., same grades of products could be transported on the same vessel, being parts of completely different sales transactions). Accordingly, we find that the discussions in the e-mail correspondence regarding possible shipments to the third country are not necessarily related to the invoice associated with SEQNUMU 77. Additionally, we note that we do not have any documentation for the remaining sales indicating that CSC, at the time of sale, had knowledge that those sales were ultimately destined for the third country. We note that the record contains e-mail correspondence for two U.S. sales (i.e. invoice associated with SEQNUMU 77, and one other sale).<sup>15</sup> Although the e-mail correspondence for the other sale contains information on certain shipments with a destination to the third country, we likewise could not tie these shipments to the U.S. sales database. Therefore, we determined that the record evidence does

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<sup>12</sup> See First Supplemental Sections B and C Response at Exhibit CSC-2SE-4; see also Letter from CSC to the Department regarding, "Non-Oriented Electrical Steel (NOES) from Taiwan," dated February 21, 2014 ("First Supplemental Section A Response") at CSC-Exhibit SE-19-2; see also First Supplemental Sections B and C Response at Exhibit CSC-2SE-50-2; see also Second Supplemental Sections B and C Response at CSC-Exhibit 5SE-22.

<sup>13</sup> See First Supplemental Sections B and C Response at Exhibit-2SE-46.

<sup>14</sup> See Letter from CSC to the Department regarding, "Non-Oriented Electrical Steel (NOES) from Taiwan," dated April 1, 2014 ("Second Supplemental Section A Response") at CSC-Exhibit 3SE-8-2.

<sup>15</sup> See Second Supplemental Section A Response at CSC-Exhibit 3SE-8-1.

not support finding that CSC, at the time of sale, had knowledge that the sale for the invoice associated with SEQNUMU 77, and the one other sale for which we have e-mail correspondence, were destined for the third country. Likewise for those remaining sales ultimately bound to the third country, we also find that the record evidence does not support finding that CSC had knowledge, at the time of sale, that those sales were destined for a third country. Thus, we will continue to include all these sales ultimately bound to the third country in the margin calculation for the final determination.

**Comment 2: Difference between POI Net Cost of Manufacturing and Total Cost of Manufacturing**

- CSC points out that the Department's cost verification report stated that there was a difference between the POI cost of manufacturing and the extended total cost of manufacturing in the cost file.
- Pointing to information in a verification exhibit, CSC argued that this difference was the packing costs for secondary and salvage products which it excluded from the cost file.<sup>16</sup>

Petitioners did not comment on this issue.

**Department's Position:** We agree with CSC that there is no unreconciled difference because the amount in question is the packing costs for secondary and salvage products that were not included in the cost file. Therefore, for the final determination, we did not make an adjustment to CSC's manufacturing costs for an unreconciled difference between POI cost of manufacturing and extended total cost of manufacturing in the cost file.

**Comment 3: Fixed Overhead Costs (FOH) for CONNUM 16216011**

- CSC claims that in its cost verification report the Department incorrectly identified the FOH for CONNUM 16216011. CCS stated that this was probably a typographical error on the part of the Department.

Petitioners did not comment on this issue.

**Department's Position:** We agree with CSC that the Department inadvertently typed the wrong FOH amount for CONNUM 16216011. We corrected this error for the final determination.

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<sup>16</sup> See the Cost Verification Report.

## RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the Federal Register.

  
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Agree

\_\_\_\_\_  
Disagree

  
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Paul Piquado

Assistant Secretary  
for Enforcement and Compliance

6 OCTOBER 2014  
Date