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AD/CVD 1: DSB Team

December 3, 2012

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

FROM: Gary Taverman   
Senior Advisor  
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Administrative Review  
of the Antidumping Duty Order on Diamond Sawblades and Parts  
Thereof from the Republic of Korea

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## SUMMARY

The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on diamond sawblades and parts thereof ("diamond sawblades") from the Republic of Korea ("Korea"). The period of review ("POR") is November 1, 2010, through October 23, 2011. This review covers imports of diamond sawblades from three manufacturers/exporters: Ehwa Diamond Industrial Co., Ltd. ("Ehwa"); Hyosung D&P Co., Ltd. ("Hyosung"); and Shinhan Diamond Industrial Co., Ltd. ("Shinhan"). The Department preliminarily finds that Shinhan and Ehwa made sales of the subject merchandise below normal value. For Hyosung, we have determined to apply adverse facts available ("AFA") because it failed to act to the best of its ability by failing to provide the information necessary to determine an antidumping duty rate. Pursuant to an order issued by the U.S. Court of International Trade ("CIT") on October 24, 2011, liquidation of the entries covered by this administrative review is enjoined. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

## BACKGROUND

On November 4, 2009, the Department published an antidumping duty order on diamond sawblades from Korea. *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009) ("Order"). On November 1, 2011, the Department published a notice of opportunity to request an administrative review of the Order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR



67413 (November 1, 2011). On November 30, 2011, the Diamond Sawblades Manufacturers' Coalition ("Petitioner") requested that the Department conduct a review of exports of subject merchandise from the following companies: Ehwa; Hyosung; and Shinhan (including their respective affiliates). Also on November 30, 2011, Ehwa and Shinhan submitted their own requests for an administrative review. On December 30, 2011, in accordance with section 751(a) of the Act, we initiated an administrative review of all three requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 82268 (December 30, 2011).

On January 5, 2012, the Department issued antidumping duty questionnaires to Ehwa, Shinhan, and Hyosung. The Department received responses to Section A of its original questionnaire from Ehwa and Shinhan on February 9, and February 16, respectively. The Department received responses to Sections B through E of its original questionnaire from Shinhan on March 30, 2012. Ehwa submitted responses to Sections B through D on April 2, 2012. We confirmed that Hyosung received the Department's questionnaires on January 9, 2012.<sup>1</sup> However, Hyosung did not respond to the Department's questionnaire or communicate with the Department in any other way in this segment of the proceeding.

On February 21, 2012, Ehwa requested that it be excused from reporting certain information relating to U.S. sales of merchandise further manufactured in the United States by its affiliated U.S. customer, General Tool, Inc. ("General Tool"). Ehwa claimed that the value of the further processing that occurred in the United States substantially exceeded the value of the imported components and, given the small portion of Ehwa products that were further manufactured, a full examination of these sales would be unnecessarily burdensome to the Department. Ehwa also stated that other appropriate bases existed for calculating the constructed export price ("CEP") of these sales. Petitioner submitted comments on Ehwa's request on March 2, 2012. Ehwa responded to Petitioner's comments on March 14, 2012. On November 2, 2012, the Department granted Ehwa a provisional exemption from responding to Section E of the Department's questionnaire.<sup>2</sup>

On July 27, 2012, we extended the deadline for the preliminary results by 120 days to November 29, 2012.<sup>3</sup> As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline is now December 1, 2012.<sup>4</sup> *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for

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<sup>1</sup> *See* Memorandum to File, entitled "Confirming Delivery of Antidumping Duty Administrative Questionnaire to Hyosung Diamond Industrial Co., Ltd.," dated February 13, 2012.

<sup>2</sup> *See* Department's letter to Ehwa, entitled Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the Republic of Korea: Provisional Exemption from Section E Response," dated November 2, 2012.

<sup>3</sup> *See* Memorandum to Gary Taverman, entitled "Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated July 27, 2012.

<sup>4</sup> As that date falls on a Saturday, the preliminary results are due no later than December 3, 2012. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

Import Administration, entitled, “Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy,” dated October 31, 2012.

In May and September 2012, the Department issued supplemental questionnaires to Ehwa and Shinhan. The Department received responses to these supplemental questionnaires from Ehwa and Shinhan in June, July, and November 2012.

## **SCOPE OF THE ORDER**

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of this order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of these orders. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of this order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of this order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department added HTSUS 6804.21.00.00 to the scope description pursuant to a request by CBP.

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

## **PERIOD OF REVIEW**

The POR is November 1, 2010, through October 23, 2011.

## **FRAUD ALLEGATION**

On March 29, 2012, Petitioner submitted an allegation that Chinese and Korean producers of diamond sawblades had sold subject merchandise in the United States bearing a false country of origin designation and requested that the Department take information related to this allegation into consideration in both the first and second administrative reviews. The Department rejected Petitioner's March 29, 2012 submission due to bracketing deficiencies, but accepted an amended version of this letter on April 5, 2012. Petitioner submitted additional information regarding its customs fraud allegation on April 5, and April 9, 2012, which related to both the first and second administrative reviews. Ehwa and Shinhan submitted comments on the allegation on April 11, and April 13, 2012, respectively. On April 18, 2012, the Department requested that Petitioner provide additional documentation related to its fraud allegation, which Petitioner provided on May 1, 2012.

Petitioner requests that the Department take information related to this allegation into consideration in both the first and second administrative reviews. We continue to examine this allegation. The Department recently completed verifications in the first administrative review. We intend to release the verification reports and issue a post-preliminary analysis addressing the fraud allegation.

## **DISCUSSION OF METHODOLOGY**

### Application of Facts Available

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if, (1) necessary information is not available on the record or (2) an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(d) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is submitted in a timely manner, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information.

Because Hyosung did not respond to the Department's antidumping duty questionnaire, we preliminarily determine that necessary information is not available on the record to serve as the basis for the calculation of a margin for Hyosung. *See* section 751(a)(1) of the Act. We also preliminarily find that Hyosung failed to provide information within the deadlines established by

the Department. *See* section 751(a)(2)(B) of the Act. Specifically, the Department issued Hyosung the initial questionnaire (Sections A – E) on January 5, 2012. Although we confirmed that Hyosung received this questionnaire, Hyosung did not respond. Hyosung also did not request an extension of time to respond to the initial questionnaire. Therefore, pursuant to sections 776(a)(1) and 776(a)(2)(B) of the Act, the Department preliminarily determines that the use of the facts otherwise available is warranted for Hyosung. Because Hyosung failed to provide any information, sections 782(d) and (e) of the Act are not applicable in this case.

#### Adverse Facts Available

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. By electing not to respond to the Department’s questionnaire, Hyosung has not cooperated to the best of its ability in this review. Therefore, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See* Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N 4040, 4199.

The Department’s practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.<sup>5</sup>

Pursuant to the Department’s practice, we are preliminarily assigning to Hyosung an AFA rate of 121.19 percent, which is the AFA rate assigned to Hyosung in the preliminary results of the first administrative review. *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011) (“AR1 Preliminary Results”). Because this is a preliminary rate from the first administrative review and we have not to date issued the final results of that review, we will reevaluate the selection of this margin as AFA once the final results of the first administrative review are issued.

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<sup>5</sup> *See Certain Stilbenic Optical Brightening Agents From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012).

## Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>6</sup> The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>7</sup> The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>8</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>9</sup>

Unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for an antidumping margin is the investigation and prior administrative determinations. If the Department chooses as facts available a calculated dumping margin from the investigation or a prior segment of the proceeding, it is not necessary to question the reliability of the margin.<sup>10</sup>

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin has relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated.<sup>11</sup>

In this case, there are no circumstances present to indicate that 121.19 percent is not appropriate for use as AFA. Regarding reliability, the Department considers this margin to be reliable because it is derived from transaction-specific margins developed from actual sales and cost data reported by respondent company Shinhan in the first review. Although the Department has not published the final results for that review, if Shinhan’s calculated rate changes for those final

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<sup>6</sup> See 19 CFR 351.308(c) and (d); See also the SAA at 870.

<sup>7</sup> See the SAA at 870.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See *Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52012 (September 8, 2008) unchanged in *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 73 FR 74141 (December 5, 2008); see also *Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, and Notice of Intent to Revoke Order in Part*, 69 FR 5949, 5953 (February 9, 2004), unchanged in *Antifriction Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55576-77 (September 15, 2004).

<sup>11</sup> See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997).

results, the Department will reexamine this rate's reliability for the final results of the instant review. Regarding relevancy, the Department considers this margin to be relevant to Hyosung because the AFA rate falls well within the range of transaction-specific margins calculated in this review for Shinhan and Ehwa. See Memorandum from David Layton, International Trade Analyst, to Susan Kuhback, Senior Office Director, through Yasmin Nair, Program Manager entitled "Adverse Facts Available Rate for Hyosung D&P Co., Ltd." dated December 3, 2012 ("AFA Memo") at 2 for further discussion of our corroboration of the selected AFA rate.

### Comparisons to Normal Value

To determine whether Ehwa's and Shinhan's (collectively, "the respondents") sales of diamond sawblades to the United States were made at less than normal value ("NV"), the Department compared CEP to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice below. The Department applied the average-to-average comparison methodology adopted in the *Final Modification for Reviews*.<sup>5</sup> In particular, the Department compared monthly, weighted-average CEPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market ("HM") during the POR that fit the description in the "Scope of the Order" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to CEP sales. We compared CEP sales to sales made in the HM, where appropriate. We have relied upon fourteen criteria to match CEP sales of subject merchandise to comparison-market sales of the foreign like product. These criteria, in order of importance are: (1) physical form; (2) diameter; (3) type of attachment; (4) cutting edge; (5) diamond mesh size; (6) total diamond weight; (7) diamond grade; (8) segment height; (9) segment thickness; (10) segment length; (11) number of segments; (12) core metal; (13) core type; and (14) core thickness.

We limited matches on the basis of physical form (*i.e.*, CEP sales of finished sawblades can only match to HM sales of finished sawblades; CEP sales of segments can only match to HM sales of segments; and CEP sales of cores can only match to HM sales of cores). Accordingly, the margin program we are using for Shinhan and Ehwa restricts both identical and similar product matches within the first product characteristic, "Physical Form." See Memorandum from David Layton, International Trade Analyst, to Yasmin Nair, Program Manager, "Preliminary Results Calculation for Shinhan Diamond Industrial Co., Ltd. in the Second Review of Diamond Sawblades and Parts Thereof from the Republic of Korea," dated December 3, 2012 ("Shinhan Prelim Calc Memo") at 2-3, and Memorandum from Sergio Balbontin, International Trade Analyst, to Yasmin Nair, Program Manager, "Preliminary Results Calculation for Ehwa Diamond Industrial Co., Ltd. in the Second Review of Diamond Sawblades and Parts Thereof from the Republic of Korea," dated December 3, 2012 ("Ehwa Prelim Calc Memo") at 2-3. Where there were no sales of identical merchandise in the HM made in the ordinary course of trade to compare to CEP sales, we compared CEP sales to sales of the most similar foreign like product made in the ordinary course of trade, while still controlling for physical form (*e.g.*, we allowed matching of a CEP sale to HM sales if physical form was identical, but the HM sale was

within a window period that precedes the CEP sale by three months or is subsequent to the CEP sale by two months). Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using constructed value (“CV”).

### Date of Sale

Section 351.401(i) of the Department’s regulations states that the Department normally 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. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

For U.S. sales, each respondent reported the date of sale as the date of invoice.<sup>12</sup> Shinhan reported that its affiliates in the United States generally invoice their customers on the shipment date or within one day of shipment.<sup>13</sup> Ehwa’s U.S. sales database indicates that its invoice date and shipment dates also generally coincide.<sup>14</sup> Therefore, for each respondent’s U.S. sales, the Department preliminarily determines that it is appropriate to use the earlier of the date of invoice or the date of shipment as date of sale.

For HM sales, both respondents reported invoice date as date of sale because both permit HM customers to make order changes up to that time.<sup>15</sup> Both Ehwa and Shinhan reported that the invoice establishes the material terms of sale. Therefore, for HM sales, the Department determines that it is appropriate to use invoice date as date of sale for both companies. This determination is consistent with the *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) (“*Final LTFV Determination*”).

### Constructed Export Price

For the price to the United States, each respondent reported making only CEP sales. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by, or for the account of the producer or

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<sup>12</sup> See Ehwa’s April 2, 2012 Questionnaire Response (“Ehwa QR”) at C-14. *See also* Shinhan’s March 30, 2012 Questionnaire Response (“Shinhan QR”), Section C, at 14.

<sup>13</sup> See Shinhan QR, Section C, at 15.

<sup>14</sup> See Ehwa QR at Exhibit C-1 and U.S. sales SAS data base submitted with Ehwa QR.

<sup>15</sup> See Ehwa QR at B-13. *See also* Shinhan QR, Section B, at 12.



exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

## **Ehwa**

We calculated a CEP for all of Ehwa's U.S. sales because the subject merchandise was sold directly to General Tool, Ehwa's U.S. affiliate, prior to being sold to the first unaffiliated purchaser in the United States.<sup>16</sup> We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include expenses incurred for inland freight, domestic brokerage and handling, and U.S. brokerage and handling. In addition, we made deductions from the U.S. starting price for discounts, rebates, and billing adjustments. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Ehwa and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

The Department interprets section 772(c)(1)(B) of the Act as requiring that any duty drawback be added to CEP if two criteria are met: (1) import duties and rebates are directly linked to, and dependent upon, one another, and; (2) raw materials were imported in sufficient quantities to account for the duty drawback received on exports of the manufactured product. The first prong of the test requires the Department "to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties." *See Far East Machinery v. United States*, 699 F. Supp. 309, 311 (CIT 1988). This ensures that a duty drawback adjustment will be made only where the drawback received by the manufacturer is contingent on import duties paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw material (upon which it paid import duties) to account for the exports upon which it claimed its rebates. *Id.*

Ehwa reported that it received certain "drawback" amounts associated with duties paid on imported inputs pursuant to the Korean Government's individual application system, where the duty is rebated based upon each applicant's use of the imported input.<sup>17</sup> As the applicable criteria have been met in the case of Ehwa, we made additions to the starting price for duty drawback in accordance with section 772(c)(1)(B) of the Act.

## **Shinhan**

We calculated a CEP for Shinhan's U.S. sales because the subject merchandise was sold directly to three U.S. affiliates, Shinhan Diamond America, Inc., Diteq Corporation, or Asahi Diamond America,<sup>18</sup> prior to being sold to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include expenses incurred for inland freight, domestic brokerage

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<sup>16</sup> See Ehwa's February 9, 2012 Section A Questionnaire Response ("Ehwa AQR") at A-16 – 17, and Ehwa QR Section C, generally.

<sup>17</sup> See Ehwa QR at C-28 and Exhibit C-11.

<sup>18</sup> See Shinhan's February 16, 2012 Section A Questionnaire Response ("Shinhan AQR") at 7, 17 and Shinhan QR Section C, generally.

and handling, and U.S. brokerage and handling. In addition, we made deductions from the U.S. starting price for discounts, rebates, and for billing adjustments. In accordance with section 772(d)(2) of the Act, where applicable, we also made a deduction from U.S. starting price for the cost of further manufacture in the United States. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Shinhan and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

As discussed above, the Department will add duty drawback to U.S. price only if the respondent demonstrates that it has satisfied the Department's two-prong test. Shinhan reported that it received certain "drawback" amounts associated with duties paid on imported inputs pursuant to the Korean Government's individual application system, where the duty is rebated based upon each applicant's use of the imported input.<sup>19</sup> As the applicable criteria have been met, we made additions to Shinhan's starting price for duty drawback in accordance with section 772(c)(1)(B) of the Act.

### Normal Value

#### A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of diamond sawblades in the HM to serve as a viable basis for calculating NV, the Department compared the respondents' HM sales of the foreign-like product to their volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Pursuant to section 773(a)(1)(B) of the Act, because each respondent's reported aggregate volume of HM sales of the foreign-like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, the Department determined that the HM was viable for comparison purposes.

#### B. Level of Trade

Section 773(a)(1)(B) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) ("CTL Plate"). To determine whether NV sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects 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 make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV

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<sup>19</sup> *See* Shinhan QR, Section C, at 29 and Appendices C-18 and C-19.

under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See CTL Plate*, 62 FR at 61732 and *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

In this review, we obtained information from each respondent regarding the marketing stages involved in making the reported HM and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

## **Ehwa**

As stated, during the POR, Ehwa made its U.S. sales through General Tool.<sup>20</sup> That is, all of the subject merchandise sold in the United States was purchased and imported by General Tool. The Department bases its CEP LOT analysis on the sale to the producer/exporter's U.S. affiliate and, thus, examined only the "General Tool" LOT identified by Ehwa. *See Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1313 (Fed. Cir. 1997) and *Torrington Co. v. United States*, 146 F. Supp. 2d 845, 875 (CIT 2001).

For its HM sales, Ehwa reported two LOTs based on customer types, distributors and end-users.<sup>21</sup> Our analysis, however, revealed that there were no significant differences in the selling activities between the two reported HM LOTs. We, thus, compared one U.S. LOT to one HM LOT.

Based upon: (1) the quantity of selling activities undertaken for the HM LOT but not for the U.S. LOT; and (2) the difference in level of intensity of the selling activities performed in both markets, we preliminarily determine that the HM sales are at a more advanced LOT than the sales to the U.S. market. Therefore, we are granting Ehwa a CEP offset to NV. *See* sections 773(7)(B) and 772(d)(1)(D) of the Act.

For further discussion of Ehwa's LOT information and our analysis, *see* Memorandum from Sergio Balbontin, International Trade Analyst, to Yasmin Nair, Program Manager, "Level of Trade Analysis," dated December 3, 2012, a public version of which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of Commerce.

## **Shinhan**

Shinhan reported, during the POR, one channel of distribution in the HM, sales by Shinhan from its factory or warehouses.<sup>22</sup> Shinhan also responded that it sold subject merchandise in the HM to three customer types: distributors (one of which was affiliated), unaffiliated end-users, and

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<sup>20</sup> *See* Ehwa AQR at A-16, 17

<sup>21</sup> *See* Ehwa QR at C-12-13 and 20.

<sup>22</sup> *See* Shinhan AQR at 12 and Exhibit A-6.

retailers.<sup>23</sup> On this basis, Shinhan claimed a single HM LOT.<sup>24</sup> For the U.S. market, Shinhan identified six different channels of distribution and one LOT.<sup>25</sup>

Shinhan's reported LOT information, which is designated business proprietary, does not support a LOT adjustment. However, we have granted Shinhan a CEP-offset.

For further discussion of Shinhan's LOT information and our analysis, *see* Memorandum from David Layton, International Trade Analyst, to Yasmin Nair, Program Manager, "Level of Trade Analysis," dated December 3, 2012, a public version of which is on file electronically via IA ACCESS

### C. Sales to Affiliated Customers

Shinhan made sales in the HM to affiliated customers.<sup>26</sup> The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, the sales were made at arm's length prices. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's length, the Department compared the starting prices of sales to affiliated customers to those of sales to unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to affiliated parties was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, the Department determined that the sales made to affiliated parties were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). In accordance with this practice, only Shinhan's sales to affiliated parties made at arm's length were included in the Department's margin analysis. *See* Shinhan Prelim Calc Memo.

### D. Cost of Production Analysis

In the final determination of the investigation, the Department disregarded some sales by Ehwa and Shinhan because they were made at prices below the cost of production ("COP").<sup>27</sup> *See Final LTFV Determination*. Under section 773(b)(2)(A)(ii) of the Act, previously disregarded below-cost sales provide reasonable grounds for the Department to believe or suspect that both respondents made sales of the subject merchandise in the HM at prices below the COP in this review. Whenever the Department has reason to believe or suspect that sales were made below the COP, we are directed by section 773(b) of the Act to determine whether, in fact, there were below-cost sales.

Pursuant to section 773(b)(1) of the Act, the Department may disregard sales that were made at less than the COP in its calculation of NV, if such sales were made in substantial quantities over

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<sup>23</sup> *Id.*

<sup>24</sup> Shinhan QR, Section B, at 22.

<sup>25</sup> *See* Shinhan AQR at 12 -13 and Appendix A-6. *See also* Shinhan QR, Section C, at 13 and 22.

<sup>26</sup> *See* Shinhan AQR at 2-3.

<sup>27</sup> In *ARI Preliminary Results*, the Department also disregarded some sales by Ehwa and Shinhan because they were made at prices below the COP. The final results for the first administrative review of diamond sawblades and parts thereof from Korea will follow the issuance of the preliminary results for the second administrative review.

an extended period of time at prices that would not permit recovery of costs within a reasonable period. The Department will find that a respondent's below-cost sales represent "substantial quantities" when 20 percent or more of the volume of its sales of a foreign-like product are at prices less than the COP; however, where less than 20 percent of the volume of a respondent's sales of a foreign-like product are at prices less than the COP, the Department will not disregard such sales because they are not made in substantial quantities. *See* section 773(b)(2)(C) of the Act. Further, in accordance with section 773(b)(2)(B) of the Act, the Department normally considers sales to have been made within an extended period of time when the sales are made during a period of one year. Finally, if prices which are below the per-unit COP at the time of sale are not above the weighted-average per-unit COP for the POR, the Department will not consider such prices to provide for the recovery of costs within a reasonable period of time. *See* section 773(b)(2)(D) of the Act.

#### 1. Test of Home Market Prices

On a product-specific basis, the Department compared the respondents' adjusted weighted-average COP figures for the POR to their HM sales of the foreign-like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. HM prices were exclusive of any applicable movement charges and indirect selling expenses.

The Department found that, for certain sales of Ehwa's and Shinhan's foreign-like product, more than 20 percent of their sales were at prices below the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. *See* Ehwa Prelim Calc Memo; *see also* Shinhan Prelim Calc Memo. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, the Department excluded these below-cost sales and used both respondents' remaining above-cost sales of foreign-like product, made in the ordinary course of trade, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### 2. Calculation of COP

The Department calculated Ehwa's and Shinhan's COP on a product-specific basis, based on the sum of their costs of materials and fabrication for the merchandise under review, plus amounts for selling, general, and administrative ("SG&A") expenses, financial expenses, and the costs of all expenses incidental to placing the foreign-like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

The Department relied on the COP information submitted in the responses to our cost questionnaires with the following adjustments for each company.

#### **Ehwa**

We relied on the COP data submitted by Ehwa in its June 29, 2012, section D supplemental response. Based on our review of record evidence, Ehwa did not experience significant changes

in the cost of manufacturing (“COM”) during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

In accordance with the transactions disregarded rule of section 773(f)(2) of the Act, we adjusted Ehwa’s COM to reflect the market value of inputs purchased from an affiliate. For additional details on this adjustment, *see* Memorandum from Kristin Case, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Ehwa Diamond Industrial Co., Ltd.,” dated December 3, 2012.

## **Shinhan**

We relied on the COP data submitted by Shinhan in its July 27, 2012, section D supplemental response. Based on our review of record evidence, Shinhan did not experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

### **E. Constructed Value**

In accordance with section 773(e) of the Act, we calculated CV for Ehwa and Shinhan based on the sum of 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 notice, 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 Ehwa and Shinhan in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

### **F. Calculation of Normal Value**

The Department calculated NV based on the prices Ehwa and Shinhan reported for their respective HM sales which were made in the ordinary course of business. The Department added U.S. packing costs and deducted HM packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act, respectively. The Department also made adjustments to NV, consistent with section 773(a)(6)(B)(ii) of the Act, to account for loading fees and for inland freight from the plant to the customer, where appropriate. In addition, the Department made adjustments to NV to account for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, by deducting direct selling expenses incurred by Ehwa and Shinhan on their HM sales (*i.e.*, credit expenses and commissions) and adding U.S. direct selling expenses (*i.e.*, credit expenses and commissions), as appropriate. *See* 19 CFR 351.410(c) *see also* Shinhan Prelim Calc Memo and Ehwa Prelim Calc Memo.

### **Currency Conversion**

Pursuant to 19 CFR 351.415 and section 773A of the Act, we made currency conversions based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. *See* Import Administration website at <http://ia.ita.doc.gov/exchange/index.html>.

Recommendation

We recommend applying the above methodology for these preliminary results of review.

✓  
Agree

                      
Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

December 3, 2012  
(Date)