



A-580-871
Investigation
07/01/2012-06/30/2013
PUBLIC DOCUMENT
E&C VI: MF

May 2, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Decision Memorandum for the Preliminary Determination of the
Antidumping Duty Investigation of Grain-Oriented Electrical Steel
from the Republic of Korea

SUMMARY

The Department of Commerce (the Department) preliminarily determines that grain-oriented electrical steel (GOES) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013.

BACKGROUND

On September 18, 2013, the Department received an antidumping duty (AD) petition concerning imports of GOES from Korea and several other countries, filed in proper form by AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (collectively, the petitioners).¹ Further, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) submitted an entry of appearance to this investigation. The Department responded that it considers the UAW to be a domestic interested party to this proceeding.² The Department initiated this LTFV investigation on October 24, 2013.³ The

¹ See Antidumping Duty Petitions on Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, the Federal Republic of Germany, Japan, the Republic of Korea, Poland, and the Russian Federation, filed on September 18, 2013 (petition).

² See memorandum to the File from James Maeder, Director, Office II, AD/CVD Operations entitled "Antidumping Duty Investigations of Grain-Oriented Electrical Steel (GOES) from the People's Republic of China (the PRC), the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and Russia, and Countervailing Duty Investigation of GOES from the PRC: Status of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)" dated January 10, 2014.



Department set aside a period of time for parties to raise issues regarding product coverage and invited parties to submit comments within 20 calendar days of publication of the Initiation Notice.⁴ The Department also selected as a mandatory respondent the only known producer and exporter of GOES from Korea, POSCO, and invited parties to comment on that selection.⁵

On November 20, 2013, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of GOES from Korea.⁶

On January 8, 2014, POSCO requested an exemption from reporting downstream home market sales. On January 14, 2013, petitioners submitted comments on POSCO's request for an exemption from reporting downstream home market sales. POSCO's request was not granted by the Department. POSCO was instructed to report its downstream sales in its section B database (rather than in a separate database) as part of the second supplemental section A, B, and C questionnaire (see below).

On November 21, 2013, the Department issued section A of the AD questionnaire (i.e., the section relating to general information) to POSCO, and on November 25, 2013, the Department issued the remaining sections of the AD questionnaire to POSCO (amended on November 27, 2013, by the Department's memorandum to the file which corrected an error in one of physical characteristic fields reported in section B and C). On December 30, 2013, POSCO submitted its response to section A of the questionnaire (section A response). On January 10, 2014, petitioners submitted comments on POSCO's section A response. On January 30, 2014, POSCO submitted its responses to sections B, C, and D of the questionnaire. On February 12, 2014, petitioners submitted comments on POSCO's section B and C responses. On February 21, 2014, the Department issued a supplemental section A, B, and C questionnaire (first supplemental section ABC questionnaire) to POSCO. On February 21, 2014, petitioners submitted comments on POSCO's section D response. On March 12, 2014, POSCO submitted its response (except for the responses to two questions, for which it had been granted an extension) to the first supplemental section ABC questionnaire (first supplemental section ABC response); on March 14, 2014, POSCO submitted its responses to the first outstanding question. On March 14, 2014, the Department issued a supplemental section D questionnaire (first supplemental section D questionnaire) to POSCO. On March 18, 2014, POSCO submitted the remaining response to the first supplemental section ABC questionnaire, which was its response to section E of the Department's standard AD questionnaire (section E response). On March 19, 2014, the Department issued a supplemental section E questionnaire (supplemental section E questionnaire) to POSCO. On March 28, 2014, the Department issued a second supplemental section A, B, and C questionnaire to POSCO. On April 3, 2014, POSCO submitted its response to the first supplemental section D questionnaire. On April 7, 2014, POSCO submitted its response to the supplemental section E questionnaire (supplemental section E response). On

³ See Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations, 78 FR 65283 (October 31, 2013) (Initiation Notice).

⁴ Id.

⁵ Id., at 65288.

⁶ See Grain-Oriented Electrical Steel from China, Czech Republic, Germany, Japan, Korea, Poland, and Russia: Determinations, 78 FR 70574 (November 26, 2013) (ITC Preliminary).

April 9, 2014, the Department issued a second supplemental section D questionnaire to POSCO. Also on April 9, 2014, POSCO submitted its response to the second supplemental section ABC questionnaire. On April 14, 2014, petitioners submitted pre-preliminary decision comments on POSCO's questionnaire responses (petitioners' pre-preliminary comments). On April 17, 2014, POSCO submitted its response to the second supplemental section D questionnaire (second supplemental section D response). On April 22, 2014, POSCO submitted a rebuttal to petitioners' pre-preliminary comments (POSCO's pre-preliminary rebuttal). Also on April 22, 2014, the Department issued a third supplemental section D questionnaire to POSCO; the response to the third supplemental section D questionnaire is due after the preliminary determination and will be considered for the final determination.

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 partial closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.⁷ If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.⁸

On February 5, 2014, POSCO submitted a request for postponement of the final determination in the event of an affirmative preliminary determination and postponement of provisional measures, pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(e)(2).

On February 10, 2014, the petitioners made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent LTFV investigations on GOES, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), and on February 20, 2014, we postponed the preliminary determinations by 50 days.⁹ As a result, the revised deadline for the preliminary determination of this investigation is now May 2, 2014.

PERIOD OF INVESTIGATION

The POI is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition, which was September 2013.¹⁰

SCOPE OF THE INVESTIGATION

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy

⁷ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

⁸ 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).

⁹ See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Postponement of Preliminary Determinations in the Antidumping Duty Investigations, 79 FR 11082 (February 27, 2014).

¹⁰ See 19 CFR 351.204(b)(1).

steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Excluded 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 HTSUS as a transformer part (i.e., laminations).

SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period for interested parties to raise issues regarding product coverage.¹¹ The Department encouraged all interested parties to submit such comments within 20 calendar days of the date of signature of the Initiation Notice – i.e., by November 13, 2013.¹²

POSCO submitted comments on November 13, 2013, requesting that the Department clarify whether GOES that is further processed into shapes that are not square or rectangular, such as trapezoids, fall within the scope of the Department's investigation. The petitioners submitted rebuttal comments on December 11, 2013, stating such products should be within the scope of the investigation. ABB Inc., which identified itself as an interested party by virtue of it being a U.S. importer of GOES from Japan and the Russian Federation (Russia), submitted comments on December 19, 2013, claiming that the petitioners' rebuttal comments represented an attempt to expand the scope beyond the products made by the petitioners.

On January 10, 2014, POSCO requested clarification regarding whether "laminations" and "cores" are covered by the scope of this investigation. Specifically, POSCO stated that it believes that those products are downstream products manufactured from GOES, noting "the physical and mechanical properties of the steel can be altered by any combination of the stamping or shearing, heat treatment, additional coating processes for laminations or stamping, molding, and stacking for cores, resulting in a new and different article with very different end uses." On January 24, 2014, the petitioners stated they do not wish relief on lamination products which have been: (1) cut-to-shape of the final design in which they will be incorporated into a stacked core; (2) subjected to additional post-processing heat treatment; and (3) potentially punched to create holes in their surface and subjected to additional coating processes.

On January 28, 2014, POSCO submitted additional comments, and, alluding to certain "cut to shape" products described in other submissions that it had filed (the aforementioned November 13, 2013, submission; a November 20, 2013 submission involving physical characteristics and the model matching hierarchy; and a January 21, 2014, submission involving its Section A response in this investigation), indicated that such products for which it desires scope clarification may not have undergone heat treatment but may nevertheless be stacked into a stacked transformer core. In a memorandum to the file following a meeting between Department

¹¹ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997) (Preamble); see also Initiation Notice, 78 FR at 65283-84.

¹² Id.

officials and counsel to POSCO, the Department noted that “if the products are in the ‘drop in’ condition and suitable for production of cores without any further cutting/shaping, then based on the petitioners’ January 24, 2014 letter, these products should not be reported as subject merchandise.”

In a letter dated April 1, 2014, Custom Materials, Inc. asked that the wording of the scope be changed to explicitly exclude what it terms “off-cuts,” which allegedly are pieces of GOES of no greater than three inches in width that are cut from wider coils. Custom Materials, Inc. claims to import such merchandise and states that it is “traditionally sold as waste or scrap for remelting and recovery purposes.” However, we have made no changes to the language of the scope of this investigation to exclude so-called “off-cuts,” as these are strips of GOES in coils specifically covered by the investigation.

On April 29, 2014, the petitioners submitted revised scope language addressing POSCO’s request to exclude certain cut to shape products. We have incorporated that language in this preliminary determination.

PRODUCT COMPARISONS

In the Initiation Notice, we set aside a period of time for parties to raise issues regarding physical characteristics and the model matching hierarchy. On November 13, 2013, POSCO and the petitioners submitted comments on the physical characteristics. OJSC Novolipetsk Steel (NLMK) (a respondent in the concurrent LTFV investigation of GOES from Russia) and Baoshan Iron & Steel Co., Ltd. (a respondent in the concurrent LTFV investigation of GOES from China) submitted comments on the physical characteristics on November 15, 2013, and November 18, 2013, respectively. POSCO, NLMK, and the petitioners submitted rebuttal comments on November 20, 2013. The petitioners submitted additional rebuttal comments on December 11, 2013.

We considered the comments that were submitted and established the appropriate physical characteristics to use as a basis for defining models of the merchandise under consideration sold in the United States, and for identifying the identical or the most similar model sold in the comparison market that may serve as a basis for normal value (NV) for this LTFV investigation. The Department identified the following seven criteria for such purposes: maximum core loss, nominal thickness, permeability, domain refinement, coating, form, and nominal width. These physical characteristics and their associated reporting requirements were included in the questionnaires issued to POSCO. For purposes of consistency across the companion GOES investigations, the Department incorporates by reference any determinations made on the physical characteristics and the model match hierarchy in this investigation.

The Department’s practice is to use comparison market sales of the same product quality (i.e., prime- or second-quality) as that of the subject merchandise as the basis for normal value for the U.S. sales of the same subject merchandise. In POSCO’s section B and subsequent submission of home market sales, it reported sales of both prime- and second-quality merchandise. After further inquiry, POSCO reported that “non-prime” sales are put to the same use as “prime”

sales.¹³ POSCO was required to identify and re-report as “prime” certain “non-prime” sales; however, it neither identified them nor reported them, stating that “no direct linkage exists” between (a) its sales of “non-prime” subject merchandise to its home market affiliates and (b) its home market affiliates’ sales to their home market unaffiliated customers.¹⁴ For this preliminary determination, we therefore treated as “prime” all home market sales reported as “non-prime” that have a gross unit price which exceeds the weighted-average gross unit price of first-quality merchandise of the same product control number sold in the home market.¹⁵

RESPONDENT SELECTION

At the time of initiation, we selected as a mandatory respondent the only known producer and exporter of GOES from Korea, POSCO, and set aside a period of time for parties to comment on that selection.¹⁶ No parties submitted comments on the respondent selection.

DISCUSSION OF THE METHODOLOGY

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), in order to determine whether the sales of GOES from Korea to the United States were made at LTFV, we compared the EP to the NV, as described in the “Export Price” and “Normal Value” sections of this memorandum.

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average method) unless the Secretary determines another method is appropriate in a particular situation. The Department’s regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).¹⁷ In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).¹⁸ The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the average-to-transaction method. The Department will continue to develop its approach in this area based on comments received in this investigation 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.

¹³ See second section ABC supplemental response at 11.

¹⁴ *Id.*, at 1-2.

¹⁵ For a full explanation, see Analysis Memorandum.

¹⁶ See Initiation Notice, at 65283, 65288.

¹⁷ See 19 CFR 351.414(b)(1) and (2).

¹⁸ See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differ 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 in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by POSCO. 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 POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, 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 were found to 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, then 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For POSCO, based on the results of the differential pricing analysis, the Department finds that 68.20 percent of POSCO's export sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because there is a 25 percent relative change in the weighted-average dumping margins when calculated using the average-to-average method and an alternative comparison method based on the average-to-transaction method applied to all U.S. sales.¹⁹ Accordingly, the Department determined to use the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for POSCO.

C. Date of Sale

In the comparison market, POSCO reported the date of shipment as the date of sale.²⁰ Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the

¹⁹ For a full explanation, see the memorandum from Mark Flessner to Robert M. James entitled, "Grain-Oriented Electrical Steel from the Republic of Korea: Analysis of Data Submitted by POSCO for Preliminary Determination of Antidumping Duty Investigation; 2012-2013," dated May 2, 2014 (Analysis Memorandum).

²⁰ See section A response at A-29.

Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²¹ 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.²²

For home market sales, POSCO reported the date of shipment as the date of sale because the invoice is issued on the same day or one day after the date of shipment. POSCO's affiliates issue the shipping invoice on the same day as the date of shipment.²³ For U.S. sales, POSCO reported the date of shipment from the mill in Korea as the date of sale because the quantity and price terms can change up to the time of shipment from Korea. Based on the facts reported by POSCO, we accepted that the date of shipment better reflects the date on which POSCO (or its home market affiliates) established the material terms of sale.²⁴ Likewise, in the U.S. market, we accepted that the date of shipment better reflects the date on which POSCO (or its home market affiliates) established the material terms of sale.²⁵ In the U.S. market, the date of shipment, the date of invoice, and the date of sale are all the same date for each U.S. sale. Therefore, since invoice date does not precede shipment date under any circumstances in either market, we used date of shipment as date of sale.

D. Export Price

For POSCO's U.S. sales, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter of the subject merchandise to an unaffiliated purchaser for exportation to the United States (with the producer's knowledge that the subject merchandise was destined for the United States) prior to importation and CEP methodology was not otherwise warranted based on the facts of record. POSCO originally reported all of its U.S. sales as CEP sales through a complex chain of distribution.²⁶ However, the Department instructed POSCO to submit a revised U.S. sales database in which the first sale to an unaffiliated purchaser for exportation to the United States (with the producer's knowledge that the subject merchandise was destined for the United States) was recognized as the effective sale.²⁷ Petitioners argued that the first sale to an unaffiliated purchaser for exportation to the United States (with the producer's knowledge that the subject merchandise

²¹ See 19 CFR 351.401(i); see also Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²² 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).

²³ See section A response at 29-30.

²⁴ Id.

²⁵ Id.

²⁶ See section A response; see also section C response.

²⁷ See first supplemental section ABC questionnaire at 3; see also first supplemental section ABC response.

was destined for the United States) ought to be recognized as the effective sale.²⁸ POSCO, citing other proceedings, argues the contrary, since the sales eventually are made through its affiliates in the U.S. market.²⁹ The language of section 772(a) of the Act is clear and makes a precise provision for the facts in this proceeding: “The term ‘export price’ means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)” (emphasis added.) We therefore preliminarily determine that these are EP sales.

We based EP on packed prices to the first unaffiliated purchaser. We made deductions from the starting price for inland freight from the plant to the port and ocean freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

E. Normal Value

1. Home Market Viability

In order 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 compared the volume of POSCO’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)(C) of the Act and 19 CFR 351.404. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), the aggregate volume of home market sales of the foreign like product for POSCO was sufficient to permit a proper comparison with U.S. sales of the subject merchandise.

2. Affiliated-Party Transactions and the Arm’s-Length Test

During the POI, POSCO made sales of GOES in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm’s-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm’s-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement, direct selling and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department’s practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to that affiliated party were at arm’s length.³⁰ Sales to affiliated customers in the home market that were not made at arm’s-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.³¹

²⁸ See petitioners’ pre-preliminary comments at 2-4.

²⁹ See POSCO’s pre-preliminary rebuttal at 2-3.

³⁰ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

³¹ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³³ In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),³⁴ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³⁵

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁶

In this investigation, we obtained information from the respondent regarding the marketing stages involved in making the reported comparison market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution.

In the U.S. market, POSCO made sales through an unaffiliated trading company situated in the home market.³⁷ We note that Exhibit A-8 (POSCO Selling Functions Chart) compares the home market level of trade to the complex chain of distribution originally reported as CEP sales. We note that petitioners make the argument that the sale to the unaffiliated exporter in Korea ought to be treated in the same manner as a home market sale for the purpose of LOT analysis.³⁸

³² See 19 CFR 351.412(c)(2).

³³ *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

³⁴ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

³⁵ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

³⁶ See, e.g., OJ from Brazil, at Comment 7.

³⁷ See section A response at A-22.

³⁸ See petitioners' pre-preliminary comments at 4-8.

Respondents argue the contrary.³⁹ Both parties make their arguments in the context of a CEP offset. Since we preliminarily determined that there are no CEP sales, a CEP offset is not relevant. We nevertheless disagree with petitioners' contention that sales to the United States – and known to be destined for the United States -- through an unaffiliated Korean exporter ought to be treated in the same manner as a home market sale for the purpose of our LOT analysis. As Exhibit A-8 makes no reference to EP sales (as we preliminarily determined these U.S. sales to be), we preliminarily determine that there is insufficient basis on which to grant a LOT adjustment.

4. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that POSCO's sales of GOES in the home market were made at prices below the cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether POSCO's sales were made at prices below COP.

a. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for G&A expenses, interest expenses, and packing costs. Pursuant to section 773(f)(2) and (3) of the Act, we adjusted the transfer prices of inputs obtained from affiliated parties to reflect fair market values.⁴⁰ We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data.⁴¹

b. Test of Comparison Market Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the foreign market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling expenses. The prices were net of billing adjustments, movement charges, and direct and indirect selling expenses (exclusive of imputed interest expenses), where appropriate.

c. Results of COP Test

In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: 1) within an

³⁹ See POSCO's pre-preliminary rebuttal at 4-7.

⁴⁰ For further discussion, see Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - POSCO" dated concurrently with this memorandum.

⁴¹ See Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 2251 (January 10, 2013), and accompanying Decision Memorandum at 9; unchanged in Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value, 78 FR 33354 (June 4, 2013).

extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual-average cost test in this preliminary determination, we also applied our standard cost recovery test with no adjustments.

We found that, for certain products, more than 20 percent of POSCO's comparison market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

5. Calculation of NV Based on Comparison Market Prices

We calculated NV for POSCO based on the reported packed prices to affiliated and unaffiliated customers in the home market. We deducted movement expenses. We made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When basing NV on home market sale prices of similar merchandise, we also 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. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and the subject merchandise.⁴²

CURRENCY CONVERSION

We made currency conversions 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 date of the U.S. sales as certified by the Federal Reserve Bank.

⁴² See 19 CFR 351.411(b).

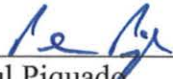
CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 MAY 2014

(Date)