



A-580-836


Admin. Rev. 2/1/13-1/31/14

Public Document

AD/CVD I: YJC

December 15, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Certain Cut-to-Length Carbon-
Quality Steel Plate Products from the Republic of Korea

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea). The review covers six producers/exporters of the subject merchandise. The period of review (POR) is February 1, 2013, through January 31, 2014. We preliminarily determine that companies subject to this review either made sales of the subject merchandise at prices below normal value (NV) or had no shipments during this POR.

Background

On February 10, 2000, we published in the *Federal Register* an antidumping duty order on CTL plate from Korea.¹ On February 3, 2014, we published in the *Federal Register* a notice of opportunity to request an administrative review of the order.²

On April 1, 2014, based on timely requests for administrative review, we initiated an administrative review of six companies.³ On April 14, 2014, we selected Dongkuk Steel Mill Co., Ltd. (DSM) for individual examination in this review.⁴ On October 17, 2014, we extended the due date for the preliminary results of this review from October 31, 2014, to December 15,

¹ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 79 FR 6159 (February 3, 2014).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 18262 (April 1, 2014).

⁴ See the memorandum entitled "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Respondent Selection," dated April 14, 2014.



2014.⁵ We are conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to length (not in coils) and without patterns in relief), of iron or non-alloy quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000,

⁵ See the Memorandum to Associate Deputy Assistant Secretary Gary Taverman entitled “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated October 17, 2014.

7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

Preliminary Determination of No Reviewable Entries

We received timely submissions from Hyosung Corporation (Hyosung), Samsung C&T Corporation (Samsung), and TCC Steel Corporation (TCC) reporting to the Department that they had no exports, sales, or entries of subject merchandise to the United States during the POR.⁶ We transmitted a “No-Shipment Inquiry” to U.S. Customs and Border Protection (CBP) regarding these three companies.⁷ Pursuant to this inquiry, we received no notifications from CBP of any entries of subject merchandise from these three companies. Accordingly, based on record evidence, we preliminarily determine that Hyosung, Samsung, and TCC had no reviewable entries during the POR. We will complete this review with respect to Hyosung, Samsung, and TCC and issue appropriate instructions to CBP based on the final results of this review.

Rates for Respondents Not Selected for Individual Examination

Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.⁸

In this review, we calculated a weighted-average dumping margin above zero or *de minimis* for the sole respondent selected for individual examination. Based on this, and analogous to the statutory provision concerning investigations, we determine that a reasonable method for determining the weighted-average dumping margins for the non-selected respondents in this review is to assign the rate calculated for DSM, which is the sole respondent selected for individual examination.

Comparisons to Normal Value

Pursuant to 19 CFR 351.414(c)(1) and (d), to determine whether DSM’s sales of CTL plate from Korea were made in the United States at less than NV, we compared the export price (EP) and

⁶ See the no shipment letters from Hyosung and Samsung, dated May 30, 2014, and TCC, dated May 14, 2014. See also the correction letter from Samsung, dated June 5, 2014. Hyosung reported that the correct name of Hyosung International in *Initiation Notice*, 79 FR at 18264, is Hyosung Corporation. See Hyosung’s no-shipment letter, dated May 30, 2014.

⁷ See the no shipment inquiries to CBP for Hyosung, Samsung, and TCC, dated July 24, 2014.

⁸ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and the accompanying Issues and Decision Memorandum at Comment 16.

constructed export price (CEP) to NV as described in the “Export Price,” “Constructed Export Price,” and “Normal Value” sections of this memorandum.⁹

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), we calculate individual dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping duty investigations, we examine whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of administrative reviews, we find that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.¹⁰ In recent investigations and the last completed review of this order, we applied a “differential pricing” analysis to determine whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹¹ We find the differential pricing analysis may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. We will continue to develop its approach in this area based on comments received in this and other proceedings, and on our additional experience with addressing the potential masking of dumping that can occur when we use the A-A method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs or CEPs 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 A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer code. Regions are defined using the reported destination code (*e.g.*, zip codes or cities) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the

⁹ In these preliminary results, we applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

¹⁰ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012).

¹¹ See, *e.g.*, *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 13275 (March 10, 2014) (2012-13 Prelim), and the accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 54264 (September 11, 2014) (2012-13 Final), and the accompanying Issues and Decision Memorandum at Comments 1, 2, 3, and 4.

reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that we use 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* test is applied 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 calculated 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 if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” – the second stage of the analysis – 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 A-T method to all sales as an alternative to the A-A 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 A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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 A-A method can appropriately account for such differences. In considering this question, we test 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 A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A 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 A-A 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 in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

For DSM, based on the results of the differential pricing analysis, we find that 65.99 percent of its U.S. sales pass the Cohen's *d* test and confirm the existence of a pattern of CEPs and EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.¹² Moreover, we determine that the A-A method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the A-A method and an alternative method based on the A-T method applied to the U.S. sales which pass the Cohen's *d* test.¹³ Accordingly, we determine the use of the A-T method for U.S. sales passing the Cohen's *d* test and the A-A method for U.S. sales not passing the Cohen's *d* test to calculate the weighted average dumping margin for DSM.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section above produced and sold by DSM in the comparison market during the POR to be foreign like product for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Specifically, we made comparisons to weighted-average comparison market prices that were based on all sales which passed the cost-of-production (COP) test of the identical product during the relevant or contemporary month.

Date of Sale

We 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, but may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the material terms of sale are established.¹⁴ For home market sales, DSM explained that the sales quantity and price may change between the time of the initial order and the shipment of the merchandise and that the date of shipment was the same as the sales invoice date. For U.S. sales, DSM explained that the essential terms of sale are fixed at the time of shipment and that the date of shipment precedes the sales invoice date. We used DSM's date of shipment as the date of sale for both the home market and U.S. sales because the date of shipment best reflects the date on which the material terms of sale are established.

¹² See the preliminary analysis memorandum for DSM, dated concurrently with this Preliminary Decision Memorandum.

¹³ *Id.*

¹⁴ See 19 CFR 351.401(i).

Level of Trade/CEP Offset

To the extent practicable, we determine NV for sales at the same level of trade (LOT) as CEP sales.¹⁵ When there are no sales at the same LOT, we compare CEP sales to comparison market sales at a different LOT. The NV LOT is that of the starting-price sales in the comparison market.

We examined the differences in selling functions reported in DSM's responses to our requests for information. DSM reported two types of customers in the home market: end-users and distributors. The selling activities associated with the two types of customers did not differ; therefore, we consider the two reported channels of distribution to constitute one LOT. In the U.S. market, DSM reported CEP sales to end users and distributors. The selling activities associated with the two types of customers did not differ; therefore, we considered the CEP to constitute only one LOT. We compared the selling activities at the CEP LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by DSM's U.S. affiliate Dongkuk International, Inc., that these levels were substantially dissimilar. For example, sales at the CEP level do not involve sales promotion/advertising, customer negotiation/contract, or invoicing unaffiliated customers while sales at the home market level include these activities. Therefore, we preliminarily determine the home-market sales to be at a different LOT and at a more advanced stage of distribution than the CEP LOT.¹⁶

Because there is only one LOT in the home market, we were unable to calculate a LOT adjustment based on DSM's home market sales of the foreign like product and we have no other information that provides an appropriate basis for determining a LOT adjustment. Moreover, because the CEP LOT did not exist in the home market, there is no basis for a LOT adjustment. For DSM's CEP sales, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP offset adjustment to NV is subject to the so-called offset cap, which is calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

In the U.S. market, DSM reported EP sales to an unaffiliated trading company. We considered all of DSM's EP sales to be at one LOT and similar to the home-market LOT. Therefore, no LOT adjustment was necessary.

Export Price

We based the price of DSM's U.S. sales of subject merchandise on EP, as defined in section 772(a) of the Act, for the subject merchandise DSM sold through an unaffiliated trading company to the first unaffiliated purchaser in the United States prior to importation. There is no evidence on the record to justify the application of the CEP methodology. We made deductions from the starting price for domestic movement expenses in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e).

¹⁵ See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412.

¹⁶ See DSM's supplemental response, dated September 19, 2014, at Exhibit A-40.

Constructed Export Price

The Department based the price of DSM's U.S. sales of subject merchandise on CEP, as defined in section 772(b) of the Act, for the subject merchandise sold, before importation, by a U.S.-based seller affiliated with the producer to unaffiliated purchasers in the United States. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and those indirect selling expenses associated with economic activities occurring in the United States. We also deducted the profit allocated to expenses deducted under section 772(d)(1) in accordance with section 772(d)(3) of the Act. Pursuant to section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets.

Normal Value

1. Overrun Sales

Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."

DSM reported home market sales of "overrun" merchandise, *i.e.*, sales of products that failed to meet the original customer's order specifications because of differences in size, chemical components, and/or strength. In the past, we examined various factors to determine whether "overrun" sales are in the ordinary course of trade.¹⁷ We have the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.¹⁸ These factors include, but are not limited to, the following: (1) whether the merchandise is "off-quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.¹⁹

Based on our analysis of these factors and the terms of sale, we preliminarily determine that DSM's overrun sales are outside the ordinary course of trade. Because our analysis includes business proprietary information, the analysis is available in a separate decision memorandum.²⁰

¹⁷ See *China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003); see also, e.g., 2012-13 Prelim and the accompanying Preliminary Decision Memorandum at 8-9, unchanged in 2012-13 Final.

¹⁸ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

¹⁹ See 2012-13 Prelim, and accompanying Preliminary Decision Memorandum at 8-9, unchanged in 2012-13 Final.

²⁰ See the memorandum entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Home Market Overruns," dated concurrently with this Preliminary Decision Memorandum.

2. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in Korea to serve as a viable basis for calculating NV, we compared DSM's volume of home market sales of the foreign like product to its U.S. sales volume, in accordance with sections 773(a)(1)(B) and (C) of the Act. Because the volume of DSM's home market sales of the foreign like product exceeded five percent of its aggregate U.S. sales volume of the subject merchandise, we preliminarily determine that DSM's home market is viable for comparison purposes.

3. Affiliated Parties

DSM made home market sales to a subsidiary of Dongkuk Industries Co., Ltd. (DKI). DKI owns 60 percent of this subsidiary. DSM's Chairperson, Sae Joo Chang, and CEO, Sae Wook Chang, are brothers. DKI's Chairperson and DKI's subsidiary's director, Sang Kuhn Chang, is an uncle of DSM's Chairperson, Sae Joo Chang, and CEO, Sae Wook Chang. Together the Chang family grouping owns the largest block of the outstanding shares of DSM and DKI.²¹

Members of a family are affiliates pursuant to section 771(33)(A) of the Act and 19 CFR 351.102(b)(3). The definition of family includes uncle-nephew relationships under section 771(33)(A) of the Act.²² Two or more persons directly or indirectly controlling, controlled by, or under common control with any person are affiliates under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). Further, 19 CFR 351.102(b)(3) states that in considering whether there is control, the Department will consider family groupings. In past reviews, we found that DSM and DKI are affiliated.²³ The U.S. Court of International Trade upheld our decision to find that DSM and DKI are affiliates in a separate review.²⁴

Therefore, we preliminarily find that DKI's Chairperson, Sang Kuhn Chang, and DSM's Chairperson, Sae Joo Chang, and CEO, Sae Wook Chang, are affiliated under section 771(33)(A) of the Act and 19 CFR 351.102(b)(3) because of their uncle-nephew relationship. We also preliminarily find that DSM, DKI, and DKI's subsidiary are affiliated under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3) because DSM, DKI, and DKI's subsidiary are under common control of the Chang family grouping.²⁵ Accordingly, we preliminarily treated DSM's home market sales to DKI's subsidiary as sales to an affiliated party and performed the arm's-length test for these sales.

²¹ See the Memorandum entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Affiliation of Dongkuk Steel Mill Co., Ltd., and Dongkuk Industries Co., Ltd.," and dated concurrently with this Preliminary Decision Memorandum. See also DSM's original response, dated June 4, 2014, at Exhibits A-21, A-22, and A-28 and supplemental response, dated September 19, 2014, at Exhibits A-34 and A-39.

²² See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1325-26 (CIT 1999).

²³ See, e.g., *2012-13 Prelim* and the accompanying Preliminary Decision Memorandum at 9-10, unchanged in *2012-13 Final*.

²⁴ See *Dongkuk Steel Mill Co. v. United States*, 29 CIT 724 (June 22, 2005).

²⁵ See the memorandum entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Affiliation of Dongkuk Steel Mill Co., Ltd., and Dongkuk Industries Co., Ltd.," dated concurrently with this memorandum which contains DSM's business-proprietary information for more details.

4. Affiliated Party Transactions and Arm's-Length Test

We may calculate NV based on a sale to an affiliated party only if we are 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.*, sales at arm's-length prices.²⁶ To test whether DSM's comparison market sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices.²⁷ We included in our calculations of NV those sales to affiliated parties that were made at arm's-length prices and excluded those sales that failed the arm's-length test.

5. Cost of Production

We disregarded sales below the COP in the last completed review in which we examined DSM.²⁸ Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that DSM made sales of the subject merchandise in its comparison market at prices below the COP in the current POR. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by DSM. We examined DSM's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data, adjusted and described below.

a. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act.

Except as stated below, we relied on the COP data submitted by DSM in its questionnaire responses for the COP calculation.

During the POR, DSM purchased slabs from its affiliates. Slab is a major input to the merchandise. Therefore, we analyzed DSM's affiliated transactions in accordance with section 773(f)(3) of the Act, and adjusted DSM's cost of manufacturing to reflect the higher of market price or transfer price.²⁹

²⁶ See 19 CFR 351.403(c).

²⁷ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

²⁸ See *2012-13 Prelim*, and accompanying Preliminary Decision Memorandum at 10-11, unchanged in *2012-13 Final*.

²⁹ See the preliminary analysis memorandum for DSM, dated concurrently with this memorandum.

b. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, billing adjustments, direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (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 of the COPs, 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.

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

6. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for DSM, we based NV on home market prices. We calculated NV based on prices to unaffiliated customers in Korea and prices to affiliated customers which were determined to be at arm's length.³⁰ We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in circumstances of sale (for imputed credit expenses and warranty expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in

³⁰ See the "Affiliated Party Transactions and Arm's-Length Test" section above.

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 products and the subject merchandise.³¹

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 dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

15 DECEMBER 2014
(Date)

³¹ See 19 CFR 351.411(b).