




A-580-874  
Investigation  
Public Document  
AD/CVD IV: JB-W, DJ

DATE: December 17, 2014

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Antidumping Duty Investigation: Certain Steel Nails From the  
Republic of Korea

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## I. SUMMARY

The Department of Commerce ("the Department") preliminarily determines that certain steel nails ("nails") from the Republic of Korea ("Korea") are being, or are 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 estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On May 29, 2014, the Department received an antidumping duty ("AD") petition concerning imports of nails from Korea,<sup>1</sup> which was filed in proper form by Mid Continent Steel & Wire, Inc. ("Petitioner"). In June 2014, the Department requested information and clarification of certain areas of the petition. Petitioner filed timely responses to these requests. On June 25, 2014, the Department published notice of the initiation of the AD investigation of nails from Korea in the *Federal Register*.<sup>2</sup>

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, the scope of the investigation), and instructed all parties to submit comments by

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<sup>1</sup> See Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam, dated May 29, 2014 ("petition").

<sup>2</sup> See *Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 36019 (June 25, 2014) ("Initiation Notice").



July 8, 2014, and to submit rebuttal comments by July 18, 2014. In addition, we set aside time for parties to submit comments regarding product characteristics, and instructed all parties to submit comments by July 8, 2014, and to submit rebuttal comments by July 15, 2014.

In the *Initiation Notice*, we stated that the petition named 40 companies in Korea as producers/exporters of nails, and we stated our intention to select respondents based on United States Customs and Border Protection (“CBP”) entry data for the Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings listed in the scope of the investigation.<sup>3</sup> Therefore, we obtained CBP data for entries of subject merchandise during the period of investigation (“POI”). The Department released the CBP entry data under administrative protective order (“APO”) on June 19, 2014.<sup>4</sup> On July 28, 2014, the Department stated its intention to limit the number of respondents examined in the instant investigation to no more than two producers/exporters.<sup>5</sup> Because of the large number of companies identified in the petition, and after careful consideration of our resources, we concluded that it would not be practicable in this AD investigation to examine all known producers/exporters of the subject merchandise. For the reasons stated in the Respondent Selection Memorandum, the Department selected the following two producers/exporters of subject merchandise as mandatory respondents: Daejin Steel<sup>6</sup> and Jinheung Steel Corporation (“Jinheung Steel”).

On July 18, 2014, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of nails from Korea.<sup>7</sup>

On July 29, 2014, we issued AD questionnaires to Daejin Steel and Jinheung Steel. Between August 29, and December 5, 2014, Daejin Steel, Jinheung Steel and Jinheung Steel’s U.S. affiliate, Illinois Tool Works Inc. (“ITW”), submitted timely responses to the Department’s sections A, C, and D supplemental questionnaires. Petitioner submitted comments on the supplemental responses between September 10, and November 6, 2014.

On August 11, 2014, pursuant to section 773(b) of the Act, Petitioner submitted a country-wide allegation that sales in the home market of Korea were made at or below the cost of production.<sup>8</sup>

On October 10, 2014, Petitioner requested a postponement of the preliminary determination.<sup>9</sup> On December 9, 2014, Daejin Steel and Jinheung Steel requested a postponement of the final

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<sup>3</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty Investigation of Certain Steel Nails from The Republic of Korea: Respondent Selection,” dated July 28, 2014 (“Respondent Selection Memorandum”).

<sup>4</sup> See Memorandum to the File, “Antidumping Duty Investigation of Certain Steel Nails from The Republic of Korea: Release of Customs and Border Protection Data,” dated June 19, 2014.

<sup>5</sup> *Id.*

<sup>6</sup> On July 28, 2014, the Department selected Daejin Steel Co. Ltd. as a mandatory respondent. On August 4, 2014, Daejin Steel informed the Department that the correct name of the company is simply Daejin Steel.

<sup>7</sup> See *Certain Steel Nails From India, Korea, Malaysia, Oman, Taiwan, Turkey, and Vietnam*, 79 FR 42049 (July 18, 2014).

<sup>8</sup> See Letter from Petitioner to the Department, regarding “Certain Steel Nails from the Republic of Korea: Country-Wide Below-Cost Allegation,” dated August 11, 2014.

determination and an extension of provisional measures.<sup>10</sup> Additionally, on December 10, 2014, Petitioner requested that the Department fully postpone the final determination in the event that the Department makes a negative preliminary determination.<sup>11</sup>

On November 24, 2014, Petitioner filed comments for the Department to consider in its preliminary determination.<sup>12</sup>

### **III. PERIOD OF INVESTIGATION**

The POI is April 1, 2013, through March 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was May 2014.<sup>13</sup>

### **IV. POSTPONEMENT OF PRELIMINARY DETERMINATION**

On October 22, 2014, pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(b)(2), the Department determined that it was appropriate to postpone the preliminary determination. Specifically, the Department postponed the deadline for issuing the preliminary determination by 42 days.<sup>14</sup>

### **V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

Pursuant to sections 735(a)(2) and 733(d) of the Act, on December 9, 2014, Daejin Steel and Jinheung Steel requested that the Department postpone the final determination, and requested that the Department extend provisional measures from four months to six months.<sup>15</sup> Additionally, on December 10, 2014, Petitioner requested that the Department fully postpone the final determination in the event that the Department makes a negative preliminary determination.<sup>16</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters, Daejin Steel and Jinheung Steel, account for a significant proportion of

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<sup>9</sup> See Letter from Petitioner to the Department, regarding "Petitioner's Request for Postponement of the Preliminary Determination," dated October 10, 2014.

<sup>10</sup> See Letter from Daejin Steel to the Department, regarding "Certain Steel Nails from Korea; Extension Request for Final Results," dated December 9, 2014; *see also* Letter from Jinheung Steel to the Department, regarding "Antidumping Duty Investigation of Certain Steel Nails from Korea -- Extension Request," December 9, 2014.

<sup>11</sup> See Letter from Petitioner to the Department, regarding "Certain Steel Nails from the Republic of Korea: Extension Request of Final Determination," dated December 10, 2014.

<sup>12</sup> See Letter from Petitioner to the Department, regarding "Petitioner's Pre-Preliminary Determination Comments," dated November 24, 2014.

<sup>13</sup> See 19 CFR 351.204(b)(1).

<sup>14</sup> See *Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 79 FR 63082 (October 22, 2014).

<sup>15</sup> See Letter from Daejin Steel to the Department, regarding "Certain Steel Nails from Korea; Extension Request for Final Results," dated December 9, 2014; *see also* Letter from Jinheung Steel to the Department, regarding "Antidumping Duty Investigation of Certain Steel Nails from Korea -- Extension Request," December 9, 2014.

<sup>16</sup> See Letter from Petitioner to the Department, regarding "Certain Steel Nails from the Republic of Korea: Extension Request of Final Determination," dated December 10, 2014.

exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the accompanying preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months pursuant to section 773(d) of the Act and 19 CFR 351.210(e)(2). Suspension of liquidation described in the accompanying preliminary determination notice will be extended accordingly.

## **VI. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.<sup>17</sup> Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision). Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

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<sup>17</sup> The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.



Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## **VII. 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.<sup>18</sup> The Department specified that any such comments were due by July 8, 2014, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by July 18, 2014.<sup>19</sup>

On July 8, 2014, IKEA Supply AG and IKEA Distributions Services Inc. (collectively "IKEA"), Target Corporation, and The Home Depot, interested parties in the investigation, each submitted comments to the Department, expressing concern that the scope would cover nails that were packaged with other types of merchandise (*e.g.*, ready-to-assemble furniture, *etc.*) for use with such other merchandise. These parties believe the existing scope exclusion for nails numbering less than 25 is inadequate, and urge that the language of the scope be modified to broaden the exclusion of nails packaged with non-subject merchandise. On July 18, 2014, Petitioner submitted rebuttal comments, noting the language of the scope as written is clear, and rejecting the aforementioned parties' proposed changes. On October 17, 2014, Target Corporation and The Home Depot submitted additional comments, reiterating their concerns regarding the coverage of nails packaged with non-subject merchandise. On October 24, 2014, Petitioner submitted additional comments, again advocating that the Department reject the arguments of Target Corporation and The Home Depot. On November 3, 2014, IKEA also submitted additional comments, reiterating the concerns it had expressed in its earlier submission. We are now evaluating the comments received but, for purposes of this preliminary determination, no change to the scope is being made at this time.

## **VIII. RESPONDENT SELECTION**

Section 777A(c)(1) of the Act directs the Department to determine individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters or

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<sup>18</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997).

<sup>19</sup> See *Initiation Notice*, 79 FR at 36020.

producers under section 777A(c)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual weighted-average dumping margins because of the large number of exporters and producers involved in the investigation.

After careful consideration, as noted in the “Background” section above, the Department determined that it was not practicable to examine more than two respondents in this investigation.<sup>20</sup> Based upon CBP data, the Department selected the producers/exporters accounting for the largest volume of subject merchandise exported from Korea during the POI: Daejin Steel and Jinheung Steel.

## **IX. DISCUSSION OF METHODOLOGY**

### **A. Fair Value Comparisons**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of nails from Korea to the United States were made at LTFV, we compared the export prices (“EP”) and the constructed export prices (“CEP”) to the normal value (“NV”), as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this memorandum.

#### *1) Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” analysis to determine whether application of the average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>21</sup> The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in 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

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<sup>20</sup> See Respondent Selection Memorandum.

<sup>21</sup> 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.

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 respondents. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarters within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* 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 5 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” 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 EPs and CEPs 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 CEPs and EPs that differ significantly such that an alternative comparison method

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

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

## *2) Results of the Differential Pricing Analysis*

### Daejin Steel

Based on the results of the differential pricing analysis, the Department finds that more than 33 percent and less than 66 percent of Daejin Steel's export sales pass the Cohen's *d* test, and confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.<sup>22</sup> Further, the Department determines that the average-to-average method can appropriately account for such differences for Daejin Steel because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test.<sup>23</sup> Accordingly, the Department has determined to use the average-to-average method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Daejin Steel.

### Jinheung Steel

Based on the results of the differential pricing analysis, the Department finds that more than 66 percent of Jinheung Steel's export sales pass the Cohen's *d* test, and confirm the existence of a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.<sup>24</sup> Further, the Department determines that the average-to-average method cannot appropriately account for such differences for Jinheung Steel because there is a meaningful difference in the weighted-average dumping margins when calculated using the

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<sup>22</sup> See Memorandum to the File, "Preliminary Determination Analysis for Daejin Steel" ("Daejin Steel Preliminary Analysis Memorandum"), dated concurrently with this memorandum.

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

<sup>24</sup> See Memorandum to the File, "Preliminary Determination Analysis for Jinheung Steel" ("Jinheung Steel Preliminary Analysis Memorandum"), dated concurrently with this memorandum.



average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which are identified as passing the Cohen's *d* test.<sup>25</sup> Accordingly, the Department has determined to use the average-to-transaction method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Jinheung Steel.

## **X. PRODUCT COMPARISONS**

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On July 8, 2014, Petitioner, IKEA, Overseas International Steel Industry, LLC, Target Corporation, and The Home Depot submitted comments on product characteristics. On July 18, 2014, Petitioner submitted rebuttal comments on the product characteristics.

We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining models of the merchandise under consideration sold in the United States. The Department identified the following 10 criteria for matching U.S. sales of subject merchandise to NV: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment. These criteria were included in the questionnaires issued to Daejin Steel and Jinheung Steel, as well as the questionnaires issued to the respondents in the concurrent investigation of nails from Malaysia, Oman, Taiwan, and the Socialist Republic of Vietnam.

## **XI. DATE OF SALE**

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the United States Court of International Trade ("CIT") held that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'"<sup>26</sup> Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>27</sup> This normally includes the price, quantity, delivery terms and payment terms.<sup>28</sup> Both Daejin Steel and Jinheung Steel reported the sale invoice date as the date of sale for its U.S. sales because all material terms are set at the time

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<sup>25</sup> *Id.*

<sup>26</sup> See *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*").

<sup>27</sup> See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

<sup>28</sup> See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Issue 2 "Date of Sale," Comment 1.

of invoice.<sup>29</sup> Accordingly, we preliminarily determine that invoice date is the appropriate date of sale for Daejin Steel and Jinheung Steel.

## **XII. AFFILIATION**

The Act requires the Department to consider certain persons affiliated. Specifically, section 771(33) of the Act, provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

Regarding control, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”) further explains that control may be found to exist within corporate groupings.<sup>30</sup> The Department’s regulations at 19 CFR 351.102(b)(3) state that, in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

Jinheung Steel reported that the following affiliated companies (in addition to Jinheung Steel) were involved in the production, sale, and distribution of subject merchandise during the POI: (1) Jinsco International Corporation (“Jinsco”), (2) Duo-Fast Korea Co. Ltd. (“DFK”), and (3) Illinois Tool Works Inc., (“ITW”). According to Jinheung Steel, its Korean affiliate, DFK, produced and exported collated steel and aluminum nails (which it produced by processing bulk nails produced by Jinheung Steel).<sup>31</sup> Additionally, Jinheung Steel reported that its Korean affiliate, Jinsco, operated as a trading and facility management company responsible for import

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<sup>29</sup> See Daejin Steel section C questionnaire response, dated September 15, 2014, at 13. See also Jinheung Steel’s section C questionnaire response, dated September 15, 2014, at 11, and ITW’s section C questionnaire response, dated September 15, 2014, at 9.

<sup>30</sup> See SAA, H.R. Doc. 103-316 (1994), at 838, *reprinted in* 1994 U.S.C.C.A.N. 4040 *et seq.* (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

<sup>31</sup> See Jinheung Steel’s Section A Response, dated August 29, 2014, at 8.

and export operations for Jinheung Steel and DFK.<sup>32</sup> Jinheung Steel reported that its U.S. affiliate, ITW, purchased subject merchandise from DFK and resold the subject merchandise to U.S. customers,<sup>33</sup> and ITW, which is represented by separate counsel in this proceeding, identified itself as an affiliated entity of Jinheung Steel within the meaning of the Act.<sup>34</sup>

Jinheung Steel described the nature of the affiliation of the above-referenced companies that it reported as affiliates involved in the production, sale, and distribution of merchandise during the POI. Jinheung Steel reported that Jinheung Steel, Jinsco and DFK are privately-held corporations established under Korean law, which are controlled by the same family.<sup>35</sup> Specifically, Jinheung Steel reported that Mr. Gu-Ya Park held the majority of shares in Jinheung Steel and DFK, while his son, Mr. Tae-Ho Park held the majority of the shares in Jinsco, and also held an ownership interest in Jinheung Steel.<sup>36</sup> Jinheung Steel further reported that the shares of DFK that are not owned by Gu-Ya Park are owned by Duo-Fast Corporation, which is a wholly-owned subsidiary of ITW.<sup>37</sup>

Based on our review of the ownership interest reported by Jinheung Steel, we agree with Jinheung Steel's assertion that Jinheung Steel, Jinsco, DFK, and ITW are affiliated companies. Mr. Gu-Ya Park and his son Mr. Tae-Ho Park are expressly identified as affiliated persons pursuant to section 771(33)(A) of the Act. Consistent with this statutory provision and our findings above, we consider Mr. Gu-Ya Park and Mr. Tae-Ho Park to be affiliated parties. Because Jinheung Steel, Jinsco, and DFK are under the control of these family members, we find them to be affiliated parties within the meaning of section 771(33)(F) of the Act. Furthermore, because Mr. Gu-Ya Park and ITW control DFK, we find that ITW is affiliated with the Park family companies within the meaning of section 771(33)(F) of the Act.

### **XIII. EXPORT PRICE/CONSTRUCTED EXPORT PRICE**

Section 772(a) of the Act defines EP as "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 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)." In accordance with section 772(a) of the Act, we used the EP methodology for Daejin Steel because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States, and the use of the CEP methodology was not otherwise warranted based on the facts of record.

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<sup>32</sup> *Id.*

<sup>33</sup> See Jinheung Steel's Section A Response, dated August 29, 2014, at 19-20, and Appendix A-1.

<sup>34</sup> See ITW's Section A Response, dated August 29, 2014, at 1.

<sup>35</sup> See Jinheung Steel's Section A Response, dated August 29, 2014, at 9.

<sup>36</sup> The percentage of ownership held by members of the Park family may not be publically disclosed. For the proprietary information relied on by the Department in considering the level of ownership in Jinheung Steel, Jinsco, and DFK held by members of the Park family during the POI, see Jinheung Steel's Section A Response, dated August 29, 2014, at 9-10.

<sup>37</sup> See Jinheung Steel's Section A Response, dated August 29, 2014, at 10.

For certain of Jinheung Steel's sales we used the EP methodology because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States, and the use of the CEP methodology was not otherwise warranted based on the facts of record. We used CEP methodology for the remainder of Jinheung Steel's sales, in accordance with section 772(b) of the Act, because the subject merchandise was first sold in the United States by a U.S. seller affiliated with the producer and EP methodology was not otherwise indicated.<sup>38</sup> Specifically, we used CEP methodology for sales of Jinheung Steel's subject merchandise sold to unaffiliated customers by its U.S. affiliate, ITW.

#### Daejin Steel

We based EP on packed prices to the first unaffiliated customer for all sales destined for the United States. We based the starting price on the prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.<sup>39</sup>

#### Jinheung Steel

We calculated EP on packed prices to the first unaffiliated customer for all sales destined for the United States. We based the starting price on the prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.<sup>40</sup> We added an amount to the starting price for duty drawback pursuant to 772(c)(1)(B) of the Act.

We calculated the CEP based free-on-board and delivered to unaffiliated purchasers in, or for exportation to, the United States. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. 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 indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

### **XIV. NORMAL VALUE**

#### Daejin Steel

##### A. Comparison-Market Viability

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*



that prevents a proper comparison with the EP. Section 773(a)(1)(C) of the Act and 19 CFR 351.404(b)(2) contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we compared Daejin Steel's volume of home market and third-country sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act and 19 CFR 351.404(b)(2). Daejin Steel's aggregate volumes of sales of foreign like product in the home market or in the third-country markets were not greater than five percent of each company's sales of subject merchandise to the United States. Therefore, Daejin Steel's sales in the home market or in the third-country markets are not viable as a comparison market. Consequently, we based NV on constructed value ("CV") for Daejin Steel.

#### B. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because Daejin Steel did not have a viable comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative ("G&A") expenses, interest expenses, U.S. packing expenses, and profit in the calculation of CV. We relied on Daejin Steel's submitted materials and fabrication costs, G&A, interest expenses, and U.S. packing costs, except in instances where we determined that the information was not valued correctly, as described below. Based on our examination of the record evidence, Daejin Steel did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on Daejin Steel's submitted cost data except as follows:

1. Duty reimbursement is typically used as an adjustment to the sales prices, not as an adjustment to the cost of production. As such, we disallowed duty reimbursement which was used to offset the reported cost of manufacturing.
2. We included losses on the disposal of tangible assets in the G&A expenses and used the cost of goods sold reflected in Daejin Steel's audited financial statements as the denominator in the G&A expense ratio calculation.<sup>41</sup>

Because Daejin Steel does not have a viable home or third-country market, we are unable to calculate a CV profit using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third country sales made in the ordinary course of trade. When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in

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<sup>41</sup> See Memorandum from Ji Young Oh to Neal M. Halper re: Cost of Production and Constructed Value Adjustments for the Preliminary Determination – Daejin Steel Co., dated December 17, 2014.

connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”).

Because Daejin Steel makes only nails and did not sell any non-subject comparable merchandise in the home market during the POI,<sup>42</sup> we are unable to calculate a profit under section 773(e)(2)(B)(i), *i.e.*, based on sales of the same general category of product. Further, as Daejin Steel is one of two respondents in this investigation, due to the concern of exposing proprietary information, we are unable to calculate a profit under 773(e)(2)(B)(ii), *i.e.*, based on the average of the preferred method profit from the other exporters or producers being examined. Thus, we must calculate profit under section 773(e)(2)(B)(iii), *i.e.*, any other reasonable method.

We have considered seven possible options for CV profit under section 773(e)(2)(B)(iii) based on the information on the record of this investigation: the profit reflected in the income statement for the other Korean respondent in this investigation, Jinheung Steel Co., Ltd. (“Jinheung”),<sup>43</sup> the profit reflected in the income statement for a Korean nail producer, HIC Corporation (“HIC”),<sup>44</sup> the profit reflected in the income statement for a Korean steel wire rod and bar producer, Kosteel Co. Ltd. (“Kosteel”),<sup>45</sup> the profit reflected in the audited financial statements for Husteel Company, Ltd. (“Husteel”), a Korean producer of steel pipes and tubes,<sup>46</sup> the profit reflected in the audited financial statements for two Taiwanese manufacturers of screws and fasteners, Chun Yu Work and Co., Ltd. (“Chun Yu”) and Sumeeko Industries Co. Ltd. (“Sumeeko”),<sup>47</sup> the profit reflected in the audited financial statements for Sundaram Fasteners Limited (“Sundaram”), an Indian producer of auto parts and fasteners,<sup>48</sup> and the profit reflected in the audited financial statements of Hi-tech Fastener Manufacture (Thailand) Co., Ltd. (“Hi-tech”), a Thai producer of screws and rivets.<sup>49</sup>

We acknowledge that each of these options has its limitations. The difficulty of this issue revolves around the conflict between having CV profit reflect the production and sale of merchandise in the market under consideration and the need for the profit to reasonably reflect the merchandise under investigation. With respect to the financial statement data submitted for three of the Korean producers, Jinheung, HIC, and Kosteel, the public financial statement data submitted for these companies is incomplete. Specifically, only the income statement of these producers was provided, not the complete financial statements (*i.e.*, audit report, balance sheet,

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<sup>42</sup> See Daejin Steel’s August 29, 2014 Section A response at 16.

<sup>43</sup> See Daejin Steel’s Submission of Comment on CV Profit dated October 31, 2014.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See Petitioner’s submission of Certain Steel Nails from the Republic of Korea: Country-Wide Below-Cost Allegation, dated August 20, 2014 at Exhibit 9.

<sup>47</sup> See Petitioner’s Submission of New Factual Information on Constructed Value Profit and Selling Expenses, dated October 31, 2014 at Exhibits 2A, 2B and 11C.

<sup>48</sup> *Id.* at Exhibit 10A.

<sup>49</sup> *Id.* at Exhibit 7B.

cash flow statement, and accompanying financial statement footnotes). The absence of entire footnotes or complete translations precludes the Department from fully evaluating the financial information set forth in these financial statements.<sup>50</sup> Likewise, while public CV profit data submitted for Jinhueng was incomplete, the financial statement data submitted by Jinheung is business proprietary information, which cannot be used for this purpose. With respect to Husteel, while it is a Korean producer and we have complete usable financial data, we do not consider steel pipes and tubes to be comparable merchandise to the merchandise under investigation. With regard to the two Taiwanese producers (*i.e.*, Chun Yu and Sumeeko) we note that these financial statements are unusable because portions of the submitted financial statements lack English translation. For Sundaram, and Hi-tech, we note that although each of these companies produces comparable merchandise, neither one of them produces or sells in the market under consideration. Finally, although Sundaram does produce some comparable merchandise, a large proportion of its production consists of various automobile parts that are not comparable to nails.

Thus, in having to choose a reasonable source for CV profit data amongst the available options before us, we have preliminarily determined to use the profit earned by Hi-tech, a Thai producer of comparable merchandise, in accordance with section 773(e)(2)(B)(iii) of the Act. However, we are unable to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category ("profit cap"), because the record does not contain public information for making such calculation.

Section 776(a)(1) of the Act provides that, if necessary information is not available on the record, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Therefore, because there is no other information available on the record, as facts available, we are not quantifying a profit cap in applying option (iii) of section 773(e)(2)(B) of the Act.

With respect to selling expenses, because Daejin Steel does not have a viable home market or third-country market, the Department does not have comparison market selling expenses to use in its calculations, as directed by section 773(e) of the Act. As an alternative, in calculating selling expenses, the Department has used the same financial statements that it used to calculate CV profit, in accordance with section 773(e)(2)(B)(iii) of the Act. For more information, *see* Daejin's Preliminary Analysis Memorandum.

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<sup>50</sup> *See, e.g., Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 14499 (March 12, 2012), and accompanying Issues and Decision Memorandum at Comment 2.

## Jinheung Steel

### A. 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 equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Jinheung Steel's volume of home market sales of the foreign like product to its respective volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act and 19 CFR 351.404(b)(2). Based on this comparison, we determined that Jinheung Steel's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

### B. DFK Transactions

During the POI, Jinheung Steel sold merchandise under consideration to DFK, an affiliated home-market customer. DFK performed minor processing on the nails (*i.e.*, processing bulk nails into collated nails) and sold them to unaffiliated home-market customers.<sup>51</sup> Jinheung Steel/DFK reported the DFK's sales of Jinheung Steel's nails to unaffiliated home-market customers, and we have included these arm's-length transactions sold through Jinheung Steel's affiliate, DFK, in our margin calculations.

### C. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP.<sup>52</sup> The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on CV, those of the sales from which we derived selling, general, and administrative expenses and profit.<sup>53</sup> For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.<sup>54</sup> In this investigation, Jinheung Steel reported both EP and CEP sales to the United States.

To determine if the home-market sales are made at a different LOT than EP or CEP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer.<sup>55</sup> If home-market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, and the

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<sup>51</sup> See Jinheung Steel's Section A Response, dated August 29, 2014, at 3

<sup>52</sup> See also section 773(a)(7)(A) of the Act.

<sup>53</sup> See 19 CFR 351.412(c)(1)(iii).

<sup>54</sup> See 19 CFR 351.412(c)(1)(i).

<sup>55</sup> See 19 CFR 351.412(c)(2).



difference affects price comparability, then we make a LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.<sup>56</sup>

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 an 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 was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>57</sup>

With respect to home-market sales, Jinheung Steel reported that it sold merchandise under consideration to unaffiliated distributors or end-users in Korea, and that its affiliated processor, DFK, sold merchandise under consideration to unaffiliated distributors in Korea.<sup>58</sup> Jinheung Steel reported that both Jinheung Steel and DFK made home market sales through a single channel of distribution.<sup>59</sup> We examined the selling activities performed and found that Jinheung Steel and DFK both performed the following selling functions: sales forecasting; strategic planning; personnel training; sales promotion; packing; inventory maintenance; order and input processing; market research; warranty services; and freight and delivery services.<sup>60</sup> Accordingly, based on the selling activities categories, we find that Jinheung Steel performed sales and marketing, inventory maintenance and warehousing, and warranty and technical services at the same or a similar level of intensity for all customers and terms of delivery in the home market.<sup>61</sup> Therefore, we preliminarily determine that there is one LOT in the home market.

With respect to EP sales of subject merchandise to U.S. customers, Jinheung Steel reported that Jinheung Steel and its affiliates, DFK and Jinsco, sold subject nails to U.S. distributors through the following channels of distribution: (1) direct sales to unaffiliated U.S. customer; (2) U.S. sales through affiliated trading company, Jinsco, as intermediary; (3) DFK sales through Jinheung Steel as intermediary; and (4) U.S. sales through unaffiliated Korean intermediaries. We examined these channels of distribution and preliminarily determined that all EP sales constitute one LOT.<sup>62</sup>

We then examined the selling activities performed by Jinheung Steel and its affiliates for CEP sales to U.S. customers. Jinheung Steel's U.S. affiliate, ITW, reported that it sold subject merchandise to unaffiliated retailers and distributors through two channels of distribution: (1) direct sales, and (2) warehouse sales.<sup>63</sup> To determine the LOT of CEP sales we first considered

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<sup>56</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-61733 (November 19, 1997).

<sup>57</sup> See, e.g., *OJ from Brazil*, 75 FR at 51001.

<sup>58</sup> See Jinheung Steel's Section A Response, dated August 29, 2014, at 20, and Appendix A-4.

<sup>59</sup> *Id.*, at 20, and Appendices A-3 and A-4.

<sup>60</sup> *Id.*, at Appendix A-4.

<sup>61</sup> See Jinheung Steel's Preliminary Analysis Memorandum.

<sup>62</sup> *Id.*

<sup>63</sup> See ITW's Section A Response, dated August 29, 2014, at 11, and Exhibit A-6.

selling activities performed by Jinheung Steel's U.S. affiliate DFK, which sold subject merchandise to U.S. affiliate, ITW. Next, we examined the selling CEP selling activities reported by U.S. affiliate, ITW. Based upon our review of these selling activities, we preliminarily find that all CEP sales to U.S. customers were made at one LOT.<sup>64</sup>

Having determined that all reported U.S. EP sales were made at one LOT, and that all U.S. CEP sales were made at one LOT, we then compared these two LOTs to determine whether there was a significant difference between them. Our review of the selling functions performed by Jinheung Steel and its affiliates show that the respondent performed a greater number of selling functions for CEP sales than for EP sales. Furthermore, when the CEP selling activities performed by DFK and ITW are considered together, we find that the number of these activities combined with the reported level of selling activities indicates that the CEP sales are at a more advanced LOT than EP sales. Therefore, based on the totality of selling activities reported for CEP sales, we preliminarily find that Jinheung Steel's U.S. sales constitute two LOTs (*i.e.*, the LOT of EP sales, and the more advanced LOT of CEP sales).<sup>65</sup>

Because there is only one LOT in the home market, and, therefore an LOT adjustment is not possible, we considered whether a CEP offset was warranted. Our comparison of the home market LOT and the CEP LOT indicates that the CEP LOT is at a more advanced marketing stage than the home market LOT. Accordingly, a CEP offset pursuant to section 773(a)(7)(B) of the Act is warranted.

#### D. Cost of Production

As noted in the Background section above, we received a country-wide allegation from Petitioner that sales of nails in the Korean market were made at prices below the cost of production ("COP") during the POI. Based on our analysis of these allegations, we found that there were reasonable grounds to believe or suspect that sales of nails in the home market were made at prices below their COPs. Accordingly, on September 5, 2014, the Department initiated sales-below-COP investigations of Jinheung Steel's sales.<sup>66</sup>

##### 1. *Calculation of COP*

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 general and administrative expenses, interest expenses, and comparison market packing costs.<sup>67</sup> We examined the cost data and preliminarily determined that our quarterly cost methodology is not

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<sup>64</sup> See Jinheung Steel's Preliminary Analysis Memorandum.

<sup>65</sup> *Id.*

<sup>66</sup> See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, regarding "Petitioner's Country-Wide Allegation of Sales Below the Cost of Production," dated September 5, 2014.

<sup>67</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted below.<sup>68</sup>

### Jinheung Steel

We relied on Jinheung Steel's COP data as submitted except as follows:

1. We recalculated Jinheung Steel's scrap offset so that it was limited to the quantity of scrap that could have been generated during the POI based on average yield losses.
2. We revised Jinheung Steel's POI cost of manufacturing to ensure that beginning work-in-process inventory was included and that ending work-in-process inventory was excluded.<sup>69</sup>

### *2. Test of Comparison Market Sales Prices*

With respect to each respondent, on a product-specific basis, pursuant to section 773(b)(1)(B) of the Act, we compared the adjusted weighted-average COPs to the home 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 and packing expenses. The prices for each respondent were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.<sup>70</sup>

### *3. Results of the 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 extended period of time, such sales were made in substantial quantities; and, (2) such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with section 773(b)(2)(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 within an extended period of time within the meaning of section 773(b)(2)(B) of the Act, 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."<sup>71</sup> Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP within an extended period of time, we disregard the below-cost sales when, 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

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<sup>68</sup> See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013) and accompanying Preliminary Decision Memorandum at Section D "Cost of Production."

<sup>69</sup> See Memorandum from Kristin L. Case to Neal M. Halper re: Cost of Production and Constructed Value Adjustments for the Preliminary Determination – Jinheung Steel Corporation, dated December 17, 2014.

<sup>70</sup> See Daejin Steel's Preliminary Analysis Memorandum and Jinheung Steel's Preliminary Analysis Memorandum.

<sup>71</sup> See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013) and accompanying Preliminary Decision Memorandum at Section D "Cost of Production."

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 Jinheung Steel's comparison market sales were made within an extended period of time 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.<sup>72</sup>

#### **E. Calculation of Normal Value Based on Comparison Market Prices**

We calculated NV for Jinheung Steel's based on the reported packed, ex-factory or delivered prices to comparison market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments. 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 comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, for Jinheung Steel's, 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 subject merchandise.<sup>73</sup> For detailed information on the calculation of NV, *see* Jinheung Steel's Preliminary Analysis Memorandum.

### **XV. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

### **XVI. U.S. INTERNATIONAL TRADE COMMISSION NOTIFICATION**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 735(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of nails from Korea

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<sup>72</sup> *See* Jinheung Steel's Preliminary Analysis Memorandum.

<sup>73</sup> *See* 19 CFR 351.411(b).



before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

## **XVII. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>74</sup> Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.<sup>75</sup>

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>76</sup> This summary should be limited to five pages total, including footnotes.

Interested parties that wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.<sup>77</sup> Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.<sup>78</sup> Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,<sup>79</sup> on the deadlines established above.

## **XVIII. VERIFICATION**

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

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<sup>74</sup> See 19 CFR 351.224(b).

<sup>75</sup> See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

<sup>76</sup> See 19 CFR 351.309(c)(2) and (d)(2).


<sup>77</sup> See 19 CFR 351.310(c).

<sup>78</sup> See 19 CFR 351.303(b)(2)(i).

<sup>79</sup> See 19 CFR 351.303(b)(1).

## **XIX. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree



\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

  
\_\_\_\_\_  
(Date)