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Administrative Review
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December 21, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the
Antidumping Duty Administrative Review: Welded ASTM A-312
Stainless Steel Pipe from the Republic of Korea; 2013-2014

SUMMARY

In response to requests from Petitioners and SeAH Steel Corporation (SeAH), the Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on welded ASTM A-312 stainless steel pipe from the Republic of Korea (Korea), pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).¹ This review covers SeAH and LS Metal Co., Ltd. (LS Metal) for the period of review (POR) December 1, 2013, through November 30, 2014. We preliminarily find that SeAH and LS Metal sold subject merchandise at less than normal value.

If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days after the publication of the accompanying preliminary determination notice in the *Federal Register*, unless extended, pursuant to section 751(a)(3)(A) of the Act.

BACKGROUND

The Department published the Order on December 30, 1992.² On December 2, 2014, we published a notice of opportunity to request an administrative review of the Order.³ In response

¹ Petitioners are Bristol Metals LLC, Felker Brothers Corporation, and Outokumpu Stainless Pipe, Inc.

² See *Antidumping Duty Order and Clarification of Final Determination: Certain Welded Stainless Steel Pipes from Korea*, 57 FR 62301 (December 30, 1992) (Order).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 71382 (December 2, 2014).



to that notice, Petitioners requested the review of SeAH and LS Metal on December 22, 2014, and SeAH requested for review of itself on December 31, 2014.⁴ Based on those requests, we initiated this review on February 4, 2015.⁵ We extended the due date for the preliminary results until December 21, 2015.⁶

On February 2, 2015, the Department released U.S. Customs and Border Protection data for U.S. imports during the POR.⁷

On March 2, 2015, the Department issued its antidumping duty questionnaire (Initial Questionnaire) to SeAH, which timely filed its initial responses; Petitioners submitted deficiency comments.⁸ From July to November, 2015, we issued supplemental questionnaires to the company and received timely responses.⁹ Further, Petitioners submitted pre-preliminary comments, to which SeAH responded.¹⁰ In addition, SeAH placed on the record information concerning the Department's differential pricing analysis pursuant to 19 CFR 351.301(c)(5).¹¹ Finally, Petitioners submitted supplemental pre-preliminary comments.¹²

⁴ See Petitioners' December 22, 2014 letter "Welded ASTM A-312 Stainless Pipe from Korea: Request for Administrative Review;" *see also*, SeAH's December 31, 2014 letter "Welded ASTM A-312 Stainless Pipe from Korea - Request for Administrative Review."

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041 (February 4, 2015).

⁶ See the Department's August 13, 2015 memorandum "Certain Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review;" *see also*, the Department's October 22, 2015 memorandum "Certain Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Second Extension of Time for Preliminary Results of Antidumping Duty Administrative Review."

⁷ See the Department's February 9, 2015 memorandum "Administrative Review of Antidumping Duty Order on Welded ASTM A-312 Stainless Pipe from Republic of Korea: release CBP data."

⁸ See the Department's March 2, 2015 letter to SeAH; *see also*, SeAH's April 6, 2015 response "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea: Response of SeAH Steel Corporation to Section A of the Department's Questionnaire;" *see also*, SeAH's April 22, 2015 response "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea for the 2013-14 Review Period - Response to Sections B, C and D of March 2 Questionnaire;" *see also*, Petitioners' June 3, 2015 letter "Stainless Steel Pipe From Korea: Comments on SeAH's A-D Responses."

⁹ See the Department's July 24, 2015 letter to SeAH "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: First Supplemental Questionnaire;" *see also*, SeAH's August 12, 2015 response "Response Of SeAH Steel Corporation to The Department's July 24 Supplemental Questionnaire;" *see also*, the Department's August 27, 2015 letter to SeAH "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Second Supplemental Questionnaire;" *see also*, SeAH's September 10, 2015 response "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea: Response of SeAH Steel Corporation to the Department's August 27 Supplemental Questionnaire;" *see also*, the Department's October 22, 2015 letter to SeAH "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Third Supplemental Questionnaire;" *see also*, SeAH's November 4, 2015 response "Administrative Review of the Antidumping Duty Order On Welded ASTM A-312 Stainless Steel Pipe from Korea Response to October 22 Supplemental Questionnaire."

¹⁰ See Petitioners' October 16, 2015 letter "Stainless Steel Pipe From Korea: Pre-Preliminary Comments;" *see also*, SeAH's October 22, 2015 letter "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea: Response to Domestic Producers' Pre-Preliminary Comments."

¹¹ See SeAH's November 20, 2015 submission which contains citations to (and excerpts from) academic books and articles, statements by experts on statistical issues, computer instructions, and output of mathematical calculations applied to the U.S. sales data that was previously submitted by SeAH.

¹² See Petitioners' December 9, 2015 letter "Stainless Steel Pipe From Korea: Pre-Preliminary Comments."

Also, on March 2, 2015, the Department issued the Initial Questionnaire to LS Metal.¹³ LS Metal timely responded to the Section A of the Initial Questionnaire, but its submission failed to comply with the Department's procedures governing business proprietary information. As a result, we rejected the response and provided instructions and an opportunity to refile the response.¹⁴ On May 6, 2015, LS Metal informed the Department that it would not respond to the Initial Questionnaire.¹⁵

SCOPE OF THE ORDER

The merchandise subject to the antidumping duty order is welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the orders also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

Welded ASTM A-312 stainless steel pipe is produced by forming stainless steel flat rolled products into a tubular configuration and welding along the seam. Welded ASTM A-312 stainless steel pipe is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for steel pipe include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of welded ASTM A-312 stainless steel pipe are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of the antidumping duty order is limited to welded austenitic stainless steel pipes. The HTSUS subheadings are provided for convenience and customs purposes. However, the written description of the scope of the orders is dispositive.

DISCUSSION OF THE METHODOLOGY

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

A. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether SeAH's sales of the subject merchandise from Korea to the United States were made at

¹³ See the Department's March 2, 2015 letter to LS Metal; *see also*, the Department's March 13, 2015 memorandum "Administrative Review of Antidumping Duty Order on Welded ASTM A-312 Stainless Pipe from Republic of Korea: LS Metal Initial Questionnaire" (Proof-of-Delivery).

¹⁴ See the Department's May 1, 2015 letter to LS Metal "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Rejection of Initial Questionnaire Response, Section A."

¹⁵ See the Department's July 29, 2015 memorandum "Letter from LS Metal."

less than normal value, the Department compared the constructed export price to the normal value, as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction 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 govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in less-than-fair-value investigations.¹⁶

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁷ The Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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 a respondent’s weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions

¹⁶ 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), and accompanying Issues and Decision Memorandum at Comment 1; see also *CP Kelco Oy v. United States*, 978 F. Supp. 2d 1315, 1324 (CIT 2014).

¹⁷ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 70163 (November 25, 2014), and accompanying Issues and Decision Memorandum at Comment 2.

published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value 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 (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). 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 is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that passes the Cohen’s *d* test accounts for more than 33 percent but less than 66 percent of the value of total sales, then the results support consideration of the application of the average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines 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 comparison 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 comparison 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 comparison method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method 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 SeAH, based on the results of the differential pricing analysis, the Department preliminarily finds that 91.78 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the resulting weighted-average dumping margins between the average-to-average method and the average-to-transaction method moves across the *de minimis* threshold. Thus, for the preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for SeAH.

B. Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, the Department 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 the Department is satisfied that a different date better reflects the date on which the material terms of sale are established.¹⁹

For its home-market sales, SeAH has reported the shipment invoice date as the date of sale, as it issues such invoices at the time of shipment. For its U.S. sales, SeAH reported the earlier of the date of shipment from Korea or the date of its U.S. affiliate Pusan Pipe America (PPA)'s invoice to the unaffiliated U.S. customer as the date of sale. SeAH explained that the price and quantity are subject to change, until the time of invoicing and shipment of the merchandise.²⁰ The

¹⁸ See Calculation for the Preliminary Results of SeAH Steel Corporation in the Antidumping Duty Administrative Review of Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea (Preliminary Analysis Memorandum).

¹⁹ See 19 CFR 351.401(i).

²⁰ See SeAH's April 6, 2015 response "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea: Response of SeAH Steel Corporation to Section A of the Department's Questionnaire" at 24; see also, SeAH's April 22, 2015 response "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea for the 2013-14 Review Period - Response to Sections B, C and D of March 2 Questionnaire" at 15.

Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²¹ For this reason, and consistent with the presumption established in the Department's regulation, we are relying on the sale dates reported by SeAH for both the home-market and U.S. market sales.

C. Product Comparisons

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

In accordance with section 771(16)(A) of the Act, we first attempted to compare products produced by SeAH sold in the U.S. and home markets that were identical with respect to the following characteristics: specification and grade, hot or cold finish, size, wall thickness schedule, and end finish. Where there were no home market sales of foreign like product that were identical in these respects to the merchandise sold in the U.S., in accordance with section 771(16)(B) and (C) of the Act, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

D. Constructed Export Price

Pursuant to section 772(b) of the Act, we preliminarily determine that SeAH's U.S. sales are constructed export price sales because the subject merchandise was first sold in the U.S. before the date of importation by an affiliate, Pusan Pipe America (PPA), to unaffiliated customers.

To establish constructed export price, starting from the gross unit price, we deducted movement expenses and selling expenses associated with economic activities occurring in the U.S. in accordance with sections 772(c)(2)(A) and 772(d) of the Act. Further, in accordance with section 772(f) of the Act and 19 CFR 351.402(d), we calculated the constructed export price profit rate using the expenses incurred by SeAH and its U.S. affiliate on their sales of the subject merchandise in the U.S. and the profit associated with those sales.

E. SeAH's Alleged Affiliation with POSCO Based on Close Supplier Relationship

We analyzed Petitioners' claim that SeAH and a stainless steel coil supplier, Pohang Iron & Steel Co., Ltd. (POSCO), are affiliated parties.²² Section 771(33)(G) of the Act provides for a finding

²¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warm water Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also, *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²² See Petitioners' June 3, 2015 submission, comment C at 8.

of affiliation of persons based on control, “if the person is legally or operationally in a position to exercise restraint or direction over the other person.” Furthermore, under 19 CFR 351.102(b)(3), the Department will not find affiliation on the basis of a close supplier relationship, among other factors, “unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” We typically analyze, as a threshold matter, whether the buyer or seller has in fact become reliant on the other, and analyze whether one of the parties is in a position to exercise restraint or direction over the other only after that threshold is met.²³ Here, SeAH reported that there was no supply agreement between it and POSCO, and that all sales were negotiated on a transaction-by-transaction basis.²⁴ Furthermore, SeAH stated that many other suppliers within Korea, and in Japan, China, Taiwan, and other countries are available to supply the relevant input,²⁵ which is generic in nature. The lone fact that SeAH purchased most of its stainless steel coil from POSCO is an insufficient basis to find that SeAH and POSCO rely on each other, much less whether one is in a position to exercise restraint or direction over the other. Even if a supplier sells 100 percent of its merchandise to a customer, if it is free to sell to other customers and there is no record evidence of restraint or direction, a close supplier relationship does not exist.²⁶ Accordingly, we preliminarily determine that SeAH and POSCO did not have a close supplier relationship, and therefore were not affiliated, during the period of review.

F. Normal Value

Home Market Viability and Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of SeAH’s home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act and 19 CFR 351.404. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), SeAH had a viable home market during the POR because the volume of its home market sales of the foreign like product was greater than five percent of its volume of U.S. sales of the subject merchandise. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based normal value on home market sales.

Affiliated-Party Transactions and Arm’s-Length Test

During the POR, SeAH made sales of merchandise under consideration in the home market to affiliated parties as defined in section 771(33) of the Act.²⁷ Consequently, we tested these sales

²³ See *Grain-Oriented Electrical Steel From the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014), and accompanying issues and decision memorandum at 7-8 (*GOES from the Czech Republic*).

²⁴ See SeAH’s April 6, 2015 Section A response at 17; see also, SeAH’s November 4, 2015 supplemental questionnaire response at 5.

²⁵ See SeAH’s November 4, 2015 supplemental questionnaire response at 12-13.

²⁶ See *GOES from the Czech Republic*, 79 FR 58324 and accompanying issues and decision memorandum at 8 (citing *TIJID, Inc. v. United States*, 29 C.I.T. 307, 320 (2005)).

²⁷ See Preliminary Analysis Memorandum.

to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to the affiliate were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing expenses.

Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length.²⁸ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.²⁹ We preliminarily found that SeAH's sales made to the affiliated parties were at arm's length and included those sales in our preliminary margin analysis.³⁰

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will determine normal value based on sales of the foreign like product at the same level of trade as U.S. sales. Sales are made at different level of trade if they are made at different marketing stages (or their equivalent).³¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³² In order to determine whether the home market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying level of trade for export price and comparison market sales (*i.e.*, normal value based on either home market or third country prices),³³ we consider the starting prices before any adjustments. For constructed export price sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³⁴

When the Department is unable to match sales of the foreign like product in the comparison market at the same level of trade as the export price or constructed export price, the Department may compare the U.S. sales to sales at a different level of trade in the comparison market. In

²⁸ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent, inclusive, of prices to unaffiliated customers in order for sales to that affiliate to be considered in the ordinary course of trade and used in the normal value calculation).

²⁹ See section 771(15) of the Act and 19 CFR 351.102(b).

³⁰ See Preliminary Analysis Memorandum.

³¹ See 19 CFR 351.412(c)(2).

³² *Id.*; see also *Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

³³ Where normal value is based on constructed value, we determine the normal value LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

³⁴ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

comparing U.S. sales at a different level of trade in the comparison market, where available data make it possible, we make an level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for constructed export price sales only, if the normal value level of trade is at a more advanced stage of distribution than the level of trade of the constructed export price sales and there is no basis for determining whether the difference in level of trade between normal value and constructed export price affects price comparability (*i.e.*, no level of trade adjustment is possible), the Department shall grant a constructed export price offset, as provided in section 773(a)(7)(B) of the Act.³⁵

In this administrative review, we obtained information from SeAH regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Generally, if the reported levels of trade are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that levels of trade are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

We preliminary determine that there is one level of trade in the home market because all home market sales are made through a single distribution channel and the selling activities do not vary within the channel.³⁶ Similarly, we preliminary determine that there is only one level of trade in the U.S. market because all U.S. sales were made through a single distribution channel and the selling activities to the affiliate (*i.e.*, PPA) do not vary within the channel.³⁷

In comparing the home market level of trade to the U.S. level of trade, we found that SeAH performed more selling activities in the home market than it did in the U.S. market, which indicates that home market sales were made at a different level of trade than U.S. sales. However, since only one level of trade exists in the home market, we could not match U.S. sales to the home market sales at the same level of trade, nor could we determine a level of trade adjustment or if there is a pattern of consistent price differences between sales at different level of trade in the home market. Further, no other information on the record would provide an appropriate basis for determining a level of trade adjustment. Consequently, as the home market sales and U.S. sales were made at different level of trade, but no appropriate basis for making level of trade adjustment exists, we find it is appropriate to make a constructed export price offset to normal value in accordance with section 773(a)(7)(B) of the Act.

We based the amount of the constructed export price offset on home market indirect selling expenses and limited the deduction to the amount of the indirect selling expenses deducted from constructed export price under section 772(d)(1)(D) of the Act. We applied the constructed export price offset to the normal value–constructed export price comparisons.

³⁵ See, *e.g.*, *Plate from South Africa*, 62 FR at 61732–33.

³⁶ See SeAH's April 6, 2015 response "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea: Response of SeAH Steel Corporation to Section A of the Department's Questionnaire" at 18-23.

³⁷ *Id.*

G. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to United States antidumping and countervailing law, including amendments to section 773(b)(2)(A) of the act.³⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.³⁹

Calculation of Cost of Production

We calculated cost of production 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. We relied on the cost of production information provided by SeAH in its questionnaire response.⁴⁰

Test of Comparison Market Sales Prices

To determine whether SeAH's home market sales had been made at prices below the cost of production, we computed weighted average COPs during the POR, and compared the weighted-average cost of production figures to home market sales prices of the foreign like product as required under section 773(b) of the Act. On a product-specific basis, we compared the cost of production to the home market prices, net of billing adjustments, any applicable movement charges, selling expenses, and packing expenses.

Results of the Cost of Production Test

In accordance with sections 773(b)(1)(A) and (b)(2)(C)(i) of the Act, where less than 20 percent of respondent's comparison market sales of a given product are at prices less than the cost of production, we did not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities" within an extended period of time. Where 20 percent or more of a respondent's comparison market sales of a given product are at prices below the cost of production, we disregard the below-cost sales when: 1) they are made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C)(i) of the Act, and 2) they are at prices which would not permit the recovery of all costs within a reasonable period of time based on our comparison of prices to the weighted-average COPs for the POR, in accordance with sections 773(b)(1)(B) and (b)(2)(D) of the Act.

In this case, we found that more than 20 percent of SeAH's home market sales of certain products were sold at prices below the cost of production within an extended period of time and

³⁸ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

³⁹ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁴⁰ See SeAH's April 22, 2015 response "Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from Korea for the 2013-14 Review Period - Response to Sections B, C and D of March 2 Questionnaire."

were at prices which would not permit the recovery of all costs within a reasonable period of time.⁴¹ 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 normal value.

H. Calculation of Normal Value Based on Comparison Market Prices

We calculated normal value based on the starting prices to home market customers. We made adjustments, where appropriate, to the starting price for billing adjustments in accordance with 19 CFR 351.401(c). In addition, where appropriate, we made deductions for inland freight expenses, in accordance with section 773(a)(6)(B)(ii) of the Act.

Pursuant to section 773(a)(6)(C) of the Act, we made adjustments for credit expenses. We made a constructed export price offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the constructed export price offset as the lesser of the indirect selling expenses on the home-market sales or the indirect selling expenses deducted from the starting price in calculating constructed export price. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made an adjustment to normal value to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a).

I. Currency Conversion

In accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. See <http://www.ia.ita.doc.gov/exchange/index.html>. See also 19 CFR 351.415.

J. Application of Facts Available and Use of Adverse Inferences

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

⁴¹ See Preliminary Analysis Memorandum.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (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 has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

The TPEA made amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁴² The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁴³

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, under the Act as amended by the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁴⁵

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave

⁴² See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

⁴³ *Id.*, 80 FR at 46794-95.

⁴⁴ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

⁴⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Further, under the Act as amended by the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. This new section also makes clear that when selecting an adverse facts available (AFA) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Use of Facts Available

On March 2, 2015, the Department sent a copy of the Initial Questionnaire through FedEx to the CEO of LS Metal, and later placed proof-of-delivery on the record.⁴⁶ LS Metal timely requested extensions to respond to the Initial Questionnaire, which the Department granted in full.⁴⁷

On April 13, 2015, LS Metal filed Section A response in which the bracketing and designation of business proprietary information was not consistent with the Department’s instructions and regulations. Further, LS Metal did not include the required company certification in the submission, nor did it serve a copy of the submission on the parties on the service lists. As a result, on May 1, 2015, the Department rejected the submission and provided instructions and an opportunity for LS Metal to refile its response.⁴⁸ On May 6, 2015, LS Metal informed the Department that it would not be responding to the Initial Questionnaire.⁴⁹ Thus, LS Metal never submitted a corrected Section A response and submitted no response whatsoever to other sections of the questionnaire.

In this case, LS Metal chose not to provide the information necessary to calculate a weighted-average dumping margin for these preliminary results. Specifically, LS Metal failed to respond to the initial questionnaire, thereby withholding, under section 776(a)(2)(A) of the Act, the data necessary to determine whether LS Metal sold subject merchandise into the United States at less than normal value, pursuant to section 773 of the Act. LS Metal’s failure to provide this necessary information has significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act. Thus, in reaching our preliminary results, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are relying upon facts otherwise available to make our determination.

⁴⁶ See the Department’s March 2, 2015 letter to LS Metal; *see also*, Proof-of-Delivery.

⁴⁷ See LS Metal’s March 18, 2015 letter “Administrative Review of the Antidumping Order on Welded ASTM A-312 Stainless Pipe from Korea for Review Period 13/12/01-14/11/30 - Request for Extension;” *see also*, the Department’s March 20, 2015 letter to LS Metal “Administrative Review of the Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Extension to the Deadlines for Responding the Initial Questionnaire.”

⁴⁸ See the Department’s May 1, 2015 letter to LS Metal.

⁴⁹ See LS Metal’s May 6, 2015 letter attached to the Department’s July 29, 2015 Memorandum to File.

Application of Facts Available With an Adverse Inference

The Department preliminarily finds that LS Metal failed to cooperate to the best of its ability in providing the requested information. In its May 1, 2015 letter, the Department provided specific instructions to LS Metal on how to correct its April 13, 2015 Section A response. LS Metal did not correct its submission, nor did it ask for further clarification or extension. In addition, LS Metal declined to respond to Sections B-D of the initial questionnaire after the Department granted the extension as requested. Thus, LS Metal failed to cooperate to the best of its ability in this proceeding. Accordingly, pursuant to section 776(b) of the Act, we find it is appropriate to apply AFA.

In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party, here, LS Metal, does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁵⁰

Selection and Corroboration of Information Used as Facts Available

In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.⁵¹

As AFA, we preliminarily assign to LS Metal the dumping margin of 31.70 percent, which is the highest rate accepted by the Department in the initiation of the investigation.⁵² This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁵³

When a respondent is not cooperative, such as LS Metal in this review, the Department has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.⁵⁴ If this was not the case, the party would have produced current information showing its rate to be less.⁵⁵ Further, by using the highest prior dumping margin that can be corroborated, we offer the assurance that the exporter will not benefit from refusing to provide information.

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal. Secondary

⁵⁰ See SAA at 870.

⁵¹ See section 776(b) of the Act.

⁵² See the Department's November 12, 2015 memorandum "Federal Register Notice of Initiation of Antidumping Duty Investigations," placing on the record *Initiation of Antidumping Duty Investigations: Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan*, 56 FR 65043, 65044 (December 13, 1991) ("Based on the comparisons of the prices accepted by the Department, the alleged dumping margins for WSSP from Korea range from 9.0 to 31.7 percent...").

⁵³ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

⁵⁴ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

⁵⁵ See *Rhone Poulenc*, 899 F.2d at 1190.

information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁵⁶ As clarified in the SAA, “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁷ To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information.⁵⁸ As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information.⁵⁹ Further, independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review.⁶⁰

The 31.70 percent rate that we are preliminarily assigning to LS Metal is derived from the initiation of the investigation. Specifically, based on the comparisons of the prices accepted by the Department, the alleged dumping margins ranged from 9.0 to 31.70 percent.⁶¹

LS Metal has not been individually examined in a prior segment of this proceeding. As such, the Department determined that the transaction-specific margins calculated for SeAH in the instant review are reliable and relevant, and found that the 31.70 percent petition rate falls within the range of those margins.⁶² As a result, we find the 31.70 percent rate to be corroborated “to the extent practicable.”⁶³ There is no information on the record that calls into question the relevance or reliability of the petition rate since LS Metal provided no company-specific commercial information. Therefore, we preliminarily determine that the AFA rate is corroborated for purposes of this administrative review.

⁵⁶ See SAA at 870.

⁵⁷ *Id.*

⁵⁸ See *Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 2511 (January 15, 2009) and accompanying Issues and Decision Memorandum at 8.

⁵⁹ See SAA at 869.

⁶⁰ See 19 CFR 351.308(d); SAA at 870.

⁶¹ See the Department’s November 12, 2015 memorandum “Federal Register Notice of Initiation of Antidumping Duty Investigations,” placing on the record the *Initiation of Antidumping Duty Investigations: Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan*, 56 FR 65043, 65044 (Dec. 13, 1991).

⁶² See SeAH’s Calculation Memorandum.

⁶³ See section 776(c) of the Act; SAA, at 870; 19 CFR 351.308(d).

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree

Paul Piquado

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 DECEMBER 2015
(Date)