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Investigation
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DATE: February 29, 2016

MEMORANDUM TO: Paul Piquado
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
Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel
Flat Products from the Republic of Korea

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain cold-rolled steel flat products (cold-rolled steel) 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 July 28, 2015, the Department received antidumping duty (AD) petitions covering imports of cold-rolled steel from Korea, which were filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA, LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively Petitioners).¹ The Department initiated this investigation on August 17, 2015.²

In the Initiation Notice, the Department notified the public that the Department intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of cold-

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom, dated July 28, 2015 (“Petitions”).

² See Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 FR 51198 (August 24, 2015) (Initiation Notice).



rolled steel from Korea during the period of investigation (POI) under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ On August 20, 2015, the Department released CBP import data to interested parties.⁴ On September 2, 2015, the Department received comments on the CBP data from Petitioners, Hyundai Steel Company (Hyundai Steel), and POSCO.⁵

Additionally, in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of cold-rolled steel to be reported in response to the Department's AD questionnaire.⁶ From September through December 2015, the following interested parties submitted comments on the scope of the investigation: Caparo Precision Strip, Ltd.; Sumitomo Corporation of America; POSCO; Hitachi Metals America, Ltd.; Electrolux Home Products, Inc.; Electrolux Home Care Products, Inc.; Nippon Steel & Sumitomo Metal Corporation; Nissan North America, Inc.; the Ministry of Economic Development of the Russian Federation; JFE Steel Corporation; and Ameri-Source Specialty Products, Inc. On September 18, 2015, December 1, 2015, and January 6, 2016, Petitioners submitted rebuttal scope comments in response to the scope comments of each of the interested parties that submitted scope comments.

On September 9, 2015, the Petitioners and Caparo Precision Strip, Ltd., Tata Steel UK Ltd., and Tata Steel IJmuiden BV, respondents in companion AD investigations on cold-rolled steel, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. Then, on September 16, 2015, the Petitioners filed rebuttal comments to comments on product characteristics comments filed by Caparo Precision Strip, Ltd., and Tata Steel UK Ltd. In addition, on September 16, 2015, Usinas Siderurgicas de Minas Gerais — Usiminas S.A., JSW Steel Ltd. and JSW Steel Coated Products Ltd., respondents in the companion AD investigations on cold-rolled steel, filed rebuttal comments to comments on product characteristics comments filed by the Petitioners.

The Department selected Hyundai Steel and Daewoo International Corporation (DWI) as mandatory respondents for this investigation.⁷ On September 18, 2015, we issued AD questionnaires to Hyundai Steel and DWI.⁸ On October 19, 2015, Hyundai Steel and

³ Id., 80 FR at 51203.

⁴ See Memorandum to All Interested Parties, "Releasing CBP import data to interested parties for respondent selection comments," dated August 20, 2015.

⁵ See Letter from ArcelorMittal USA, LLC, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea Re: Comments on Selection of Mandatory Respondents" (ArcelorMittal Respondent Selection Comments), dated September 2, 2015; Letter from Hyundai Steel, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Respondent Selection Comments" (Hyundai Steel Respondent Selection Comments), dated September 2, 2015; and Letter from POSCO, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Respondent Selection Comments," (POSCO Respondent Selection Comments), dated September 2, 2015.

⁶ See Initiation Notice, 80 FR at 51199.

⁷ See Memorandum to Christian March, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated September 15, 2015.

⁸ See Letter to Hyundai Steel, dated September 18, 2015; see also Letter to DWI, dated September 18, 2015. DWI and an affiliated producer, POSCO, submitted joint responses to this and the subsequent questionnaires issued to DWI. The Department is preliminarily collapsing DWI and POSCO (henceforward referenced as POSCO/DWI).

POSCO/DWI submitted timely responses to section A of the Department's AD questionnaire (i.e., the section relating to general information), and in November 2015, both companies responded to sections B and C of the Department's AD questionnaire (i.e., the sections relating to home market and U.S. sales). In November 2015, the respondents submitted timely responses to section D of the Department's AD questionnaire (i.e., the section relating to cost of production and constructed value). From October 2015 through February 2016, we issued supplemental questionnaires to Hyundai Steel and POSCO/DWI, and we received responses to these supplemental questionnaires from October 2015 through February 2016.

On September 11, 2015, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of cold-rolled steel from Korea.⁹

On November 30, 2015, the Department published the notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).¹⁰ As a result of the 50-day postponement, the revised deadline for the preliminary determination of this investigation was February 23, 2016.¹¹ On January 27, 2016, the Department tolled the deadlines for investigations by four business days.¹² The deadline for the preliminary determination of this investigation is now February 29, 2016.

On February 16, 2016, Petitioners submitted pre-preliminary comments for both Hyundai Steel and POSCO/DWI.¹³ On February 22, 2016, both mandatory respondents submitted pre-preliminary comments to the Department.¹⁴ In their comments on Hyundai Steel, Petitioners raised concerns regarding Hyundai's questionnaire responses and alleged that total adverse facts available (AFA) was warranted. As seen below, we preliminarily determine that Hyundai Steel cooperated with the Department in this proceeding and provided sufficient information to allow the Department to calculate a margin. Accordingly, we are not applying total AFA to Hyundai Steel in this preliminary determination.

We are conducting this investigation in accordance with section 733(b) of the Act.

⁹ See Affiliation and Collapsing section, below.

⁹ See Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom, 80 FR 55872 (September 17, 2015).

¹⁰ See Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 74764 (November 30, 2015).

¹¹ Id.

¹² See Memorandum to the Record, from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" dated January 27, 2016.

¹³ See Letter from Petitioners, entitled Cold-Rolled Steel Flat Products from Korea -- Petitioner's Pre-Preliminary Comments Concerning POSCO, (Petitioner's Pre-Prelim Comments on POSCO) and Cold-Rolled Steel Flat Products from Korea -- Petitioner's Pre-Preliminary

Comments Concerning Hyundai Steel," dated February 16, 2016 (Petitioner's Pre-Prelim Comments on Hyundai).

¹⁴ See Letters from Hyundai Steel and POSCO/DWI, entitled, "Certain Cold-Rolled Steel Products From Korea: Pre-Preliminary Comments," dated February 22, 2016.

III. PERIOD OF INVESTIGATION

The POI is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2015.¹⁵

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (e.g., in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (e.g., in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (e.g., in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, i.e., products which have been “worked after rolling” (e.g., products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or

¹⁵ See 19 CFR 351.204(b)(1).

- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;¹⁶
- Tool steels;¹⁷
- Silico-manganese steel;¹⁸

¹⁶ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

¹⁷ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹⁸ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.¹⁹
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.²⁰

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

V. ALL-OTHERS RATE

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins,

¹⁹ Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances, 79 Fed. Reg. 42,501, 42,503 (Dep’t of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.”

²⁰ Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders, 79 Fed. Reg. 71,741, 71,741-42 (Dep’t of Commerce, Dec. 3, 2014). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

and any margins determined entirely under section 776 of the Act. In this investigation, we calculated weighted-average dumping margins for Hyundai Steel and POSCO/DWI that are above de minimis and which are not based on total facts available. We calculated the all-others rate using a simple average of the dumping margins calculated for the mandatory respondents.²¹

VI. AFFILIATION AND COLLAPSING

Section 771(33)(E) of the Act, in pertinent part, identifies persons that shall be considered “affiliated” or “affiliated persons” as: any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization. Section 771(33)(F) of the Act further provides that persons shall be considered affiliated when there are two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.²² Section 771(33) of the Act further stipulates 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, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) notes that control may be found to exist within corporate groupings.²³ 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.²⁴

DWI and POSCO

For the reasons set forth in the proprietary Preliminary Affiliation Memorandum, which we incorporate by reference, we preliminarily determine that DWI and POSCO are affiliated pursuant to section 771(33)(E) of the Act because DWI is majority-owned by POSCO.²⁵

²¹ With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company’s publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was unavailable, we based the all-others rate on a simple average of the two calculated margins. See, e.g., Large Power Transformers From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 9204 (February 16, 2012), unchanged in Final Determination of Sales at Less Than Fair Value, 77 FR 40857, 40858 (July 11, 2012).

²² See section 771(33)(F) of the Act.

²³ See SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994) (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).

²⁴ See also Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27298 (May 19, 1997).

²⁵ For further discussion of this issue, see Memorandum to Scot Fullerton, Director, Office VI, “Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Less-Than-Fair-Value Investigation: POSCO and DWI Affiliation and Collapsing Memorandum” (POSCO/DWI Prelim Affiliation and Collapsing Memo), dated concurrently with this preliminary determination.

The Department relies on the totality of the circumstances in deciding when to treat affiliated parties as a single entity pursuant to 19 CFR 351.401(f). In this case, we have sufficient information to find that POSCO and DWI are affiliated. We further find the production facilities available to either company are essentially the same and substantial retooling of either manufacturing facility would not be required in order to restructure manufacturing priorities. Moreover, record evidence demonstrates significant potential for manipulation of prices and production between POSCO and DWI because of: 1) level of common ownership; 2) overlapping management; and 3) intertwined operations.²⁶

In accordance with 19 CFR 351.401(f) and the Department's practice,²⁷ we are treating POSCO and DWI as a single entity for the purposes of this preliminary determination.²⁸

VII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Hyundai Steel and POSCO/DWI's sales of the subject merchandise from Korea to the United States were made at less than normal value, the Department compared the export price (EP) and constructed export price (CEP) to the normal value (NV) as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A) Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (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 EPs (or CEPs) 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. 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.²⁹ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an

²⁶ See POSCO/DWI Prelim Affiliation and Collapsing Memo.

²⁷ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

²⁸ See POSCO/DWI Prelim Affiliation and Collapsing Memo.

²⁹ 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); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); or Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

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 a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods 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 customer codes reported by Hyundai Steel,³⁰ and based on the customer codes reported by POSCO/DWI.³¹ Regions are defined using the reported destination code (*i.e.*, zip code or state code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation 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 EP (or CEP) 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* coefficient 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 mean 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

³⁰ See Hyundai Steel's section C response at C-14 and exhibit C-5, dated November 10, 2015, ("Hyundai Steel's section C response").

³¹ See POSCO/DWI's section C response at C-14 and exhibit C-5, dated November 5, 2015 ("POSCO/DWI's section C response").

that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, 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, then 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 margins 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 margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

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

B) Results of the Differential Pricing Analysis

Hyundai Steel

For Hyundai Steel, based on the results of the differential pricing analysis, the Department preliminarily finds that 73.92 percent of the value of U.S. sales pass the Cohen's *d* test,³² 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 appropriate alternative method move

³² See Memorandum to the File, "Preliminary Determination Calculation for Hyundai Steel Company in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Republic of Korea," dated February 29, 2016 ("Hyundai Steel Preliminary Analysis Memorandum").

across the de minimis threshold is 25 percent or greater. Thus, for this preliminary determination, the Department finds that there is a meaningful difference between using the different comparison methods, and is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Hyundai Steel.

POSCO/DWI

For POSCO/DWI, based on the results of the differential pricing analysis, the Department preliminarily finds that 73.04 percent of the value of U.S. sales pass the Cohen's *d* test,³³ 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 relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method (*i.e.*, the average-to-transaction method) is 25 percent or greater. Thus, for this preliminary determination, the Department finds that there is a meaningful difference between using the different comparison methods, and is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for POSCO/DWI.

VIII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁴ Because the order/order confirmation date does not set the material terms of sales for both companies, we note for both Hyundai Steel and POSCO/DWI that the material terms of the sales (*i.e.*, quantity and value) in both markets are subject to change, up to the earlier of either shipment or invoice date. Given that date of sale is a significant threshold issue in that it establishes the universe of sales included in our dumping analysis, we intend to thoroughly examine the reported bases for date of sale at verification.

Hyundai Steel

For its home market sales, Hyundai Steel reported the earlier of shipment date (*i.e.*, the date the merchandise leaves the factory or warehouse), or invoice date in the field SALEDATH. Hyundai Steel normally recognizes a sale at the time of shipment from the factory. However, in some limited instances, customers requested that Hyundai Steel delay shipments to a later date. Consequently, certain home market sales that were invoiced during the POI had not yet shipped from Hyundai Steel's factory. In these instances, because Hyundai Steel has issued invoices for

³³ See Memorandum to the File, "Preliminary Determination Calculation for Daewoo International Corporation in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated February 29, 2016 (POSCO/DWI Preliminary Analysis Memorandum).

³⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

these sales, and ownership of the merchandise was transferred to the customer when the tax invoices were issued, Hyundai Steel has reported these sales in its sales database.³⁵

For its U.S. sales, Hyundai Steel reported the shipment date from Hyundai Steel's factory as the date of sale for its sales through unaffiliated distributors in Korea and those sales through Hyundai Corporation. For its U.S. sales through Hyundai Steel America (HSA) to unaffiliated processors, Hyundai Steel reported the date of shipment from HSA's warehouse as the date of sale. For U.S. sales through affiliated processors to unaffiliated processors, Hyundai Steel reported the date of shipment from the affiliated processor's facility as the date of sale. For both home market and U.S. sales, Hyundai Steel issues its commercial invoices (U.S. market) or tax invoices (home market) at or after the time of shipment.³⁶

Hyundai Steel also reported that for home market sales all material terms of sale (e.g., quantity and value) can change up to the point of shipment.³⁷ For U.S. sales, Hyundai Steel reported the shipment date from Hyundai Steel's factory as the date of sale, consistent with Department's practice of using the earlier of shipment or invoice date as the date of sale.³⁸ For the purposes of this preliminary determination, we used the shipment date or invoice date as the date of sale as indicated above for Hyundai Steel's home market sales and shipment date for the date of sale for Hyundai Steel's U.S. sales, consistent with the Department's normal methodology regarding date of sale because the material terms of sale (e.g., quantity) are still subject to change when orders are confirmed.³⁹

POSCO/DWI

For its home market sales, all of which were made by POSCO, POSCO/DWI reported the date of POSCO's shipping invoice as the date of sale.⁴⁰ POSCO/DWI stated that the shipping invoice is issued on the day of shipment from the factory.⁴¹ POSCO/DWI indicated the terms of sale of home market sales are finalized on that shipment date.⁴² For the purposes of this preliminary determination, we used the date of the shipment invoice as the date of sale for POSCO's home market sales, consistent with the Department's normal methodology regarding date of sale to use an earlier date if appropriate.

For the U.S. market, POSCO/DWI indicates it is reporting shipment date from the factory in Korea as the date of sale for the following sales, indicating quantity is subject to change until shipment from the factory in Korea: POSCO's U.S. sales to unaffiliated Korean trading companies (channel 1-1), DWI's direct (EP) sales to unaffiliated U.S. customers (channel 3-1),

³⁵ See Hyundai Steel's November 6, 2015, section B response (Hyundai Steel's section B response) at B-19.

³⁶ See Hyundai Steel's October 16, 2015, section A response (Hyundai Steel's section A response) at A-24 - A-25.

³⁷ See Hyundai Steel's November 18, 2015, supplemental section A response (Hyundai Steel's Supplemental A Response) at 6.

³⁸ Id. at 8 and also see Hyundai Steel's December 15, 2015, supplemental sections B-C response ("Hyundai Steel's Supplemental B-C Response") at 1-2.

³⁹ See 19 CFR 351.401(i) and Allied Tube & Conduit Corp. v. United States.

⁴⁰ See POSCO/DWI's November 5, 2015, section B response at B-20.

⁴¹ See POSCO/DWI's October 16, 2015, section A response at A-31, POSCO/DWI's December 7, 2015, supplemental sections A-C response at 11, and the January 21, 2016, Memorandum to the File.

⁴² See POSCO/DWI's October 16, 2015, section A response at A-31.

and those channel 2 sales by POSCO's U.S. affiliates involving merchandise POSCO ships directly to its U.S. affiliates' customers (channels 2-1 and 2-3).⁴³ For sales by POSCO's U.S. affiliates from its inventory (channels 1-2 and 2-2), POSCO/DWI is reporting the date of the invoice from the U.S. affiliate to its unaffiliated U.S. customer as the date of sale. For those channel 1-2 and 2-2 sales, POSCO/DWI notes the invoice is typically issued on the same day as the shipment, and that the quantity is subject to change up until shipment/invoicing from the affiliate to its customer.⁴⁴ POSCO/DWI states there are no explicit quantity tolerances for its U.S. sales, and that quantities eventually shipped to customers sometimes vary by more than the ten percent quantity tolerance that Petitioners claim is the normal industry standard.⁴⁵ For the preliminary determination, the Department is using the POSCO shipment date or the affiliate's invoice date, as appropriate, as the date of sale for POSCO/DWI's U.S. market sales, consistent with the Department's normal methodology regarding date of sale that the date of sale is normally the date of invoice (or the shipment date, if earlier) and because the material terms of sale (e.g., quantity) are still subject to change when orders confirmed. This is in accordance with 19 CFR 351.401(i), as noted above.⁴⁶

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Korea during the POI that fit the description in the "Scope of the Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents⁴⁷ in the following order of importance: painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, and heat treatment. For Hyundai Steel's and POSCO/DWI's respective sales of cold-rolled steel in the United States, the reported control number (CONNUM) identifies the characteristics of cold-rolled steel as it entered the United States.

⁴³ See POSCO/DWI's section C response at C-16 and POSCO/DWI's January 8, 2016, supplemental sections A-C response at 11.

⁴⁴ See, e.g., POSCO/DWI's January 8, 2016, supplemental sections A-C response at 11.

⁴⁵ *Id.* at 2-6.

⁴⁶ See also, e.g., Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 29426 (May 22, 2014) and accompanying Decision Memorandum at 16, unchanged at Non-Oriented Electrical Steel From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 79 FR 61612 (October 14, 2014) ("As the information on the record indicates that the material terms of sale...could change until the date of shipment or invoice, where applicable, for both U.S. and comparison market sales, for purposes of this preliminary determination, we used the date of shipment (if earlier than the date of invoice) or the date of invoice as the date of sale for POSCO's reported U.S. and comparison market sales.").

⁴⁷ See, e.g., POSCO/DWI's November 5, 2015 section B and C responses and Hyundai Steel's November 6, 2015 and November 9, 2015, section B and C responses.

X. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated certain Hyundai Steel and POSCO/DWI sales sold to the first unaffiliated purchaser in the United States prior to importation on an export price (EP) basis. In accordance with section 772(b) of the Act, for the remainder of Hyundai Steel's and POSCO's U.S. sales, we used constructed export price (CEP) because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Hyundai Steel and POSCO/DWI.

Hyundai Steel

We based Hyundai Steel's EP sales on a packed price to the first unaffiliated purchaser in the United States. The Department also made adjustments for billing adjustments, and U.S. and Korean brokerage and handling charges, as appropriate. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, marine insurance, foreign brokerage and handling, demurrage, U.S. customs duty, U.S. brokerage and handling, international freight, and U.S. inland freight. In addition, Hyundai reported expenses associated with loading subject merchandise onto trucks for shipment in "other direct selling expenses."⁴⁸ We have included those expenses in Hyundai's movement expenses.

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Hyundai Steel reported that it sold essentially all of its subject merchandise through its affiliated reseller/processor Hyundai Steel America (HSA). Hyundai Steel also reported CEP sales made by its affiliate Hyundai Corporation USA (HCUSA) during the POI.⁴⁹ Unlike POSCO/DWI, we did not increase U.S. price for Hyundai Steel because Hyundai Steel did not make a claim for a duty drawback adjustment.

We calculated the CEP based on a packed price to customers in the United States. We made deductions from the starting price (adjusted for billing adjustments) for any movement expenses (e.g., foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), 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 include direct selling expenses (imputed credit expenses and U.S. inventory carrying costs) and indirect selling expenses. In addition, the record evidence shows that Hyundai Steel demonstrated the adjustment to price for the cost of any further manufacturing in the United States for sales used in the calculations, in accordance with section 772(d)(2) of the Act.

⁴⁸ See Hyundai Steel's section C response at C-39 and exhibit C-18.

⁴⁹ See Hyundai Steel's section A response at A-15 and section C response at C-2.

POSCO/DWI

POSCO/DWI reported EP sales by POSCO to unaffiliated Korean trading companies and by DWI to unaffiliated U.S. customers during the POI.⁵⁰ Accordingly, we based EP on a packed price to the first unaffiliated purchaser, whether located in Korea or the United States.⁵¹ We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and certain additional U.S. movement expenses, as appropriate.⁵²

We also increased U.S. price for duty drawback. Section 772(c)(1)(B) of the Act states that EP (or CEP) shall be increased by “the amount of any import duties imposed by the country of exportation . . . which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback, the Department traditionally uses (and the Courts have sustained)⁵³ the following two-prong test:⁵⁴ (1) the import duty paid and the rebate payment were directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. The Department preliminarily determines that POSCO/DWI has provided information to satisfy each of the two prongs.⁵⁵

Based on POSCO’s satisfaction of the two-prong test, we preliminarily determine to grant a duty drawback adjustment to EP pursuant to 772(c)(1)(B) of the Act.⁵⁶

Under the Department’s practice, the Department has normally taken the amount of the duty forgiven or rebated for the year and divided it by the exports subject to the duty drawback for the year to arrive at an amount by which to adjust EP. However, the Department has realized that such a calculation results in an imbalance in the dumping calculations.⁵⁷ The imbalance results from the different bases used on the NV side and the EP side, and from the fact that the full amount of any duty may not be in the home market price. First, on the NV side of the dumping

⁵⁰ See, e.g., POSCO/DWI’s section A response at A-22 through A-24.

⁵¹ POSCO/DWI indicated POSCO was aware of the destination of the merchandise sold to the Korean trading companies. See POSCO/DWI’s November 16, 2015 supplemental section A response at 16.

⁵² For additional reference to these certain additional U.S. movement expenses, about which some information on the record is proprietary, see POSCO/DWI Preliminary Analysis Memorandum.

⁵³ See Saha Thai Steel Pipe (Public) Co. v. United States, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (Saha Thai).

⁵⁴ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61723 (October 19, 2006).

⁵⁵ See POSCO/DWI’s section C response at C-33 and Exhibit C-17, and POSCO/DWI’s December 7, 2015 supplemental section A-C response at 36-38 and Exhibits S-45 and S-46.

⁵⁶ See, e.g., Welded Line Pipe IDM at Comment 1; and Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014, 80 FR 76674 (December 10, 2015), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁷ See Certain Corrosion-Resistant Steel Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 63 (January 4, 2016), and accompanying Decision Memorandum at 14.

equation, the annual average cost for an input is the average cost of all input purchases, including the foreign-sourced input, which includes the duties; this is allocated over total production quantity. On the EP side, the rebated duty is allocated only to the export sales. Adjusting EP/CEP for the full amount of duties imposed which are rebated or not collected on export sales, over only export sales when the duty cost is allocated over total production, results in a different adjustment to the EP/CEP than reflected in the NV, creating an imbalance.

A duty drawback adjustment to EP and CEP is based on the principle that the “goods sold in the exporter’s domestic market are subject to import duties while exported goods are not.”⁵⁸ In other words, home market sales prices and cost of production are import duty “inclusive,” while export market sales prices are import duty “exclusive.” In Saha Thai, the CAFC stated:

The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty draw-back is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.⁵⁹

Thus, the CAFC recognized the duty drawback adjustment is intended to prevent dumping margins from being created or affected by the rebate or exemption of import duties on inputs used in the production of exported merchandise. However, the Department has realized that in certain situations, depending on how the duty drawback adjustment is calculated, a distortion in the dumping margin may result. In this case, on the NV side of the dumping equation, the duty paid on inputs was allocated over the total production quantity, while on the EP side the reported duty drawback was calculated using only the export sales quantity. This resulted in a per unit duty drawback adjustment that is different from the per unit amount of duties imbedded in NV. Accordingly, in order to accurately determine an adjustment for “the amount of import duties imposed . . . which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States,”⁶⁰ for the preliminary determination the Department will make an upward adjustment to EP/CEP for the per unit amount of import duty costs included in the reported cost of production (COP). We have added the resulting per-unit amount to the U.S. price.⁶¹

POSCO/DWI also classified some of its sales of merchandise under consideration to the United States as CEP sales because all such sales were invoiced and sold by U.S. affiliates, either as direct mill sales or from inventory maintained at U.S. warehouses.⁶² In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under consideration is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the

⁵⁸ See Saha Thai, 635 F.3d at 1349.

⁵⁹ Id.

⁶⁰ See Section 772(c)(1)(B) of the Act.

⁶¹ See POSCO/DWI Preliminary Analysis Memorandum.

⁶² See, e.g., POSCO/DWI’s section C response at C-16 and C-17.

account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We calculated CEP based on the packed prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. inland freight, and U.S. warehousing 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 included indirect selling expenses. We also made an adjustment to price for the cost of any further manufacturing or assembly (including repacking) for sales used in the calculations, in accordance with section 772(d)(2) of the Act. We also increased U.S. price for duty drawback, for the reasons and in the manner described above. In addition, pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.⁶³

XI. NORMAL VALUE

A. *Comparison 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 normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for Hyundai Steel and POSCO /DWI were greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.⁶⁴ Therefore, we used home market sales as the basis for NV for Hyundai Steel and POSCO/DWI, in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included Hyundai Steel's and POSCO/DWI's home market sales to affiliated parties for purposes of determining home market viability.⁶⁵

B. *Affiliated Party Transactions and Arm's-Length Test*

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not

⁶³ For additional details, *see* POSCO/DWI Preliminary Analysis Memorandum.

⁶⁴ *See, e.g.*, Hyundai Steel's section A response and POSCO/DWI's December 7, 2015 supplemental response at Exhibit S-32.

⁶⁵ *See Certain Oil Country Tubular Goods From Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).

affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁶⁶ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁶⁷

Hyundai Steel and POSCO/DWI reported they had sales of merchandise under consideration to affiliated parties in the home market during the POI.⁶⁸ Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length.⁶⁹ 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.⁷⁰

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁷¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷² In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁷³ we consider the

⁶⁶ See 19 CFR 351.403(c).

⁶⁷ See China Steel Corp. v. United States, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 55352, 55355 (September 7, 2011)).

⁶⁸ See Hyundai Steel's section A response at A-4, section B's response at B-4-B-6, and DWI's section A response at A-3.

⁶⁹ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value calculation).

⁷⁰ See 19 CFR 351.102(b).

⁷¹ See 19 CFR 351.412(c)(2).

⁷² *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 ("Orange Juice from Brazil").

⁷³ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁷⁴

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷⁵

Hyundai Steel

In the home market, Hyundai Steel reported that it made sales through two channels of distribution (*i.e.*, direct shipments to end-users or distributors). Hyundai Steel reported that it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; advertising; sales promotion; distributor/dealer training; procurement/sourcing services; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide rebates; provide cash discounts; pay commission; provide warranty services; provide guarantees; provide after sales services; perform repacking; freight and delivery arrangement; and post-sale warehousing.⁷⁶

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support.⁷⁷ Based on these selling function categories, we find that Hyundai performed sales and marketing, freight and delivery services, and warranty and technical support for its reported sales to affiliated and unaffiliated customers in the home market. Because Hyundai performed the same selling functions at the same relative level of intensity for all of its home market sales, we preliminarily determine that all home market sales are at the same LOT.

With respect to the U.S. market, Hyundai reported that it made sales through three channels of distribution: EP sales through unaffiliated Korean distributors (Channel 1); CEP sales through its affiliates HSA, Hyundai Corporation, and HCUSA⁷⁸ to unaffiliated processors (Channel 2); and CEP sales through its affiliate HSA to unaffiliated processors and affiliated processors (Channel 3).⁷⁹

⁷⁴ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁷⁵ See, e.g., Orange Juice from Brazil, at Comment 7.

⁷⁶ Hyundai Steel's November 10, 2015, section A supplemental questionnaire at 10 and exhibit SA-13.

⁷⁷ Id.

⁷⁸ See Hyundai Steel's section A response at A21-A25 and exhibit A-13. Hyundai Steel and Hyundai Corporation are affiliated through familial relationship. During the POI Hyundai made some sales of subject merchandise to a U.S. customer through these companies.

⁷⁹ Id., and Hyundai Steel's November 10, 2015, section A supplemental questionnaire at 10 and exhibit SA-13.

With respect to the U.S. LOT for Channel 1 and Channel 2 sales (EP sales to unaffiliated Korea distributors and CEP sales to HCUSA, respectively), Hyundai Steel reported that it performed the following selling functions for its sales to the United States: sales forecasting; strategic/economic planning; personnel training/exchange; advertising; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide warranty service (Channel 1 only);⁸⁰ and freight and delivery arrangements.

Based on the selling function categories noted above, we find that with respect to Channels 1 and 3, Hyundai Steel performed sales and marketing, freight and delivery services, technical services, and inventory management for U.S. sales. Because Hyundai performed the same selling functions at the same relative level of intensity (same or low/medium or medium/high) for its U.S. sales in Channel 1 and Channel 3 (with the exception of sales/marketing support, which is provided with different intensity in Channel 1 and Channel 3), we find the differences between Channel 1 and Channel 3 are too insignificant to warrant two different LOTs. Thus, we determine that Hyundai's U.S. sales through Channel 1 and Channel 3 are made at the same LOT.

With respect to the U.S. Channel 2 (CEP sales through its affiliate Hyundai Corporation and HCUSA, which sold subject merchandise to the United States to unaffiliated processors (Channel 2), Hyundai Steel reported that it performed the following selling functions for its sales to the United States: packing; inventory maintenance; order input/processing; direct sales personnel; technical assistance; and freight and delivery arrangements.

Based on the selling function categories noted above, we find that with respect to Channel 2, Hyundai Steel performed sales and marketing, freight and delivery services, and inventory management for U.S. sales; however, while Hyundai Steel provided selling functions in three of the four categories of selling functions, and those performed at the same level of intensity as in Channels 1 and 2, it did not provide eight of the selling functions included in Channels 1 and 3, and none in category 4, warranty and technical support.⁸¹ Because Hyundai provided notably fewer selling functions in Channel 2 than it did in Channels 1 and 3, we determine Channel 2 to be at another, less advanced LOT than Channels 1 and 3.

We compared the EP (Channel 1) and the CEP (Channel 3) LOT to the home market LOT and found that the selling functions Hyundai Steel performed for its home market customers are virtually the same as those performed for its U.S. customers at the same relative level of intensity. The only difference is that Hyundai provides warranty services for home market customers and does not provide this service for EP sales.⁸² This difference is not sufficient to determine that Hyundai's EP LOT is different from the home market LOT. Therefore, based on

⁸⁰ Id.

⁸¹ Id.; Sales forecasting, strategic/economic planning, personnel training/exchange exchange, advertising, sales promotion, packing, order input/processing, direct sales personnel, sales/marketing support, and market research, and category 4: Technical assistance and provide warranty services.

⁸² See Hyundai Steel's November 10, 2015, section A supplemental questionnaire at 10 and exhibit SA-13 and See Hyundai Steel's section A response at A21-A25 and exhibit A-13.

the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POI were made at the same LOT as Hyundai's EP sales through Channel 1 and its CEP sales (Channel 3). Consequently, we matched EP sales (Channel 1) and CEP sales (Channel 3) to home market sales at the same LOT, and determined no LOT adjustment was warranted.

Because of the totality of the facts and circumstances, we preliminarily determine that Hyundai Steel's home market sales during the POI were made at a same LOT as its CEP sales. Also, Hyundai Steel's home market LOT is not at a more advanced stage of distribution than its CEP LOT through Channels 1, 2, and 3, and thus, no LOT adjustment is possible. Consequently, there is no basis for considering a CEP offset with respect to Hyundai Steel. Accordingly, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

POSCO/DWI

POSCO/DWI states there is one level of trade in the home market for POSCO's sales reported in its final home market sales database, and that this level is more advanced than that for the various channels of trade for the U.S. sales of POSCO and DWI. POSCO/DWI requests a CEP offset for its U.S. sales to reflect the alleged differences in selling functions performed for home market sales versus U.S. sales. However, the Department preliminarily determines that almost all of the selling functions which POSCO/DWI states were not performed with respect to its U.S. CEP sales were in fact performed for those sales, as demonstrated from information on the record submitted by POSCO/DWI. Furthermore, POSCO/DWI acknowledged that various other selling functions were performed in both markets at comparable intensity levels.⁸³ Consequently, we do not find differing levels of trade in any of POSCO/DWI's markets and there is no basis for considering a CEP offset with respect to POSCO/DWI. Accordingly, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

D. 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), which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.⁸⁴ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁸⁵ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent

⁸³ For detailed discussion of this issue, which includes some references to proprietary information, see POSCO/DWI Preliminary Analysis Memorandum.

⁸⁴ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

⁸⁵ 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).

companies in all AD proceedings.⁸⁶ Accordingly, the Department requested this information from Hyundai Steel and POSCO/DWI.⁸⁷ We examined Hyundai Steel's and POSCO/DWI's cost data and preliminarily determine that our quarterly cost methodology is not warranted; therefore, we applied our standard methodology of using annual costs based on the reported data.⁸⁸

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.⁸⁹

We relied on the COP data submitted by Hyundai Steel and POSCO/DWI, except as follows:⁹⁰

⁸⁶ Id., 80 FR at 46794-95.

⁸⁷ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

⁸⁸ See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 75 FR 34980 (June 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁹ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁹⁰ See Memorandum to Neal M. Halper, Director, Office of Accounting, from Gina Lee, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Hyundai Steel Company," and Memorandum to Neal M. Halper, Director, Office of Accounting, from Ernest Z. Gziryman, Lead Accountant, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – POSCO and Daewoo International Co., Ltd." dated concurrently with this memorandum.

Hyundai Steel

We have excluded interest income related to loans and also a reversal of finance guarantee liabilities from the numerator of Hyundai Steel's financial expense ratio calculation.⁹¹

POSCO/DWI

We adjusted the cost of inputs purchased by POSCO/DWI from affiliated suppliers to reflect market price of the inputs in accordance with section 773(f)(2) of the Act.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(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 sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

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

We found that, for certain products, more than 20 percent of Hyundai Steel's and POSCO/DWI's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁹²

⁹¹ See Memorandum from Gina K. Lee to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Hyundai Steel Company," dated February 29, 2016.

⁹² See Hyundai Steel Preliminary Analysis Memorandum and POSCO/DWI Preliminary Analysis Memorandum.

E. *Calculation of NV Based on Comparison-Market Prices*

For those comparison products for which there were appropriate sales at prices above the COP for Hyundai Steel and POSCO/DWI, we based NV on comparison market prices. We calculated NV based on packed prices to customers in Korea.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of 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.⁹³

Hyundai Steel

The Department calculated NV based on delivered or ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and warehousing, under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

POSCO/DWI

The Department calculated NV based on prices to customers on various sales terms.⁹⁴ We made deductions, where appropriate, from the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight, warehousing, and loading and unloading charges, in accordance with section 773(a)(6)(B)(ii) of the Act. We offset those movement expenses with reported freight revenue, with the latter capped at no higher than the sum of the movement expenses, in accordance with our normal practice. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.⁹⁵

XII. CURRENCY CONVERSION

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

⁹³ See 19 CFR 351.411(b).

⁹⁴ For additional detail, see POSCO/DWI Preliminary Analysis Memorandum.

⁹⁵ In addition to the reported direct selling expenses for the home market and U.S. market sales, we calculated a warranty expense for U.S. sales based on the weighted-average of the per unit expenses incurred in the three most recent fiscal years, because POSCO/DWI did not report any warranty expenses for U.S. sales in the POI. See POSCO/DWI Preliminary Analysis Memorandum.

XIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES IN COMPANION COUNTERVAILING DUTY INVESTIGATION

Pursuant to section 772(c)(1)(C) of the Act, the Department makes adjustments for countervailable export subsidies. However, the preliminary determination in the concurrent countervailing duty investigation was negative.⁹⁶ Therefore, no adjustments for export subsidies will be applied to the estimated weighted-average dumping margins calculated for each respondent, and for the “all-others” rate, which are reflected in the accompanying Federal Register notice.

⁹⁶ Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 80 FR 79567 (December 22, 2015).


XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 FEBRUARY 2016

Date