




A-580-883
Investigation
Public Document
E&C/V: JB, MR

DATE: March 14, 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 Hot-Rolled Steel
Flat Products from the Republic of Korea

I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that certain hot-rolled steel flat products (“hot-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 August 11, 2015, the Department received antidumping duty (“AD”) petitions covering imports of hot-rolled steel from Korea, which were filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA, LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation collectively (“Petitioners”).¹ The Department initiated this investigation on August 31, 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 hot-

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, Turkey and the United Kingdom, dated August 11, 2015 (“Petitions”).

² See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, Turkey and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 FR 54261 (September 9, 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 September 9, 2015, the Department released CBP import data to interested parties.⁴ On September 16 and 19, 2015, the Department received comments on the CBP data from Hyundai Steel Company (“Hyundai Steel”), and ArcelorMittal USA LLC (“AMUSA”), one of the petitioners, respectively.⁵

Also 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 hot-rolled steel to be reported in response to the Department’s AD questionnaire.⁶ From September through October 2015, the following interested parties submitted comments on the scope of the investigation: POSCO; Tata Steel IJmuiden BV; BlueScope Steel Ltd.; Nippon Steel & Sumitomo Metal Corporation; and JFE Steel Corporation.⁷ On October 5, October 21, and November 5, 2016, Petitioners submitted rebuttal scope comments in response to the scope comments of each of the interested parties that submitted scope comments.⁸

On September 16, 2015, in addition to the petitioners, BlueScope, Companhia Siderúrgica Nacional, Ereğli Demir ve Çelik Fabrikaları T.A.Ş., Hyundai Steel Company (“Hyundai Steel”), Nippon Steel & Sumitomo Metal Corporation, POSCO, Tata Steel IJmuiden BV, Tata Steel UK Ltd., and Usinas Siderurgicas de Minas Gerais - Usiminas S.A. submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁹ On September 21, 2016, BlueScope filed rebuttal comments. On September 22, 2015, the petitioners, Colakoglu Metalurji A.S., Colakoglu Dis Ticaret A.S., and Hyundai Steel filed rebuttal comments.¹⁰

The Department selected Hyundai Steel and POSCO as mandatory respondents for this investigation.¹¹ On October 5, 2015, we issued AD questionnaires to Hyundai Steel and POSCO.¹² Hyundai Steel and POSCO submitted timely responses to section A of the

³ Id., 80 FR at 54266.

⁴ See Memorandum to All Interested Parties, “Releasing CBP import data to interested parties for respondent selection comments,” dated September 9, 2015.

⁵ See Letter from ArcelorMittal USA, LLC, “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea Re: Comments on Selection of Mandatory Respondents” (ArcelorMittal Respondent Selection Comments), dated September 18, 2015; and Letter from Hyundai Steel, “Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Respondent Selection Comments” (Hyundai Steel Respondent Selection Comments), dated September 16, 2015.

⁶ See Initiation Notice, 80 FR at 54262.

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations” dated concurrently with this preliminary determination (“Scope Memorandum”).

⁸ Id.

⁹ These companies are interested parties in the hot-rolled steel investigations, i.e., Australia, Brazil, Japan, the Netherlands, Turkey, the Republic of Korea and the United Kingdom.

¹⁰ Id.

¹¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Respondent Selection for the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea,” dated October 1, 2015.

¹² See Letter to Hyundai Steel and POSCO, dated October 5, 2015. POSCO and an affiliated producer Daewoo

Department's AD questionnaire (*i.e.*, the section relating to general information), and both companies timely responded to sections B and C of the Department's AD questionnaire (*i.e.*, the sections relating to home market and U.S. sales). The respondents also 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 December 2015 through February 2016, we issued supplemental questionnaires to Hyundai Steel and POSCO, and we received timely responses to these supplemental questionnaires from January through March 2016.

On September 30, 2015, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled steel from Korea.¹³

In November 2015, the Department extended the date for the issuance of the preliminary determination in this investigation until 190 days after the date of initiation and published a postponement of the preliminary determination until no later than March 8, 2015.¹⁴ As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.¹⁵ All deadlines in this investigation have been extended by four business days.¹⁶ The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

On February 26, 2016, Petitioners submitted pre-preliminary comments for Hyundai Steel and on March 4, 2016, for POSCO.¹⁷ On March 7, 2016, Hyundai Steel submitted pre-preliminary comments to the Department.¹⁸ Petitioners raised concerns regarding Hyundai Steel'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.

International Corporation (DWI), submitted joint responses to this and the subsequent questionnaires issued to POSCO. The Department is preliminarily collapsing POSCO and DWI (henceforward referenced as POSCO). See Affiliation and Collapsing section, below.

¹³ See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom: Determinations, Investigation Nos. 701-TA-545-547 and 731-TA-1291-1297 (Preliminary), 80 FR 58787 (September 30, 2015).

¹⁴ See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 73702 (November 25, 2015).

¹⁵ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

¹⁶ Id.

¹⁷ See Letter from Petitioners, "Hot-Rolled Steel Flat Products from Korea -- Petitioner's Pre-Preliminary Comments Concerning Hyundai Steel," (Petitioner's Pre-Prelim Comments on Hyundai Steel) dated February 26, 2016, and "Hot-Rolled Steel Flat Products from Korea -- Petitioner's Pre-Preliminary Comments Concerning POSCO," dated March 4, 2016 (Petitioner's Pre-Prelim Comments on POSCO).

¹⁸ See Letter from Hyundai Steel, "Certain Hot-Rolled Steel Products from Korea: Pre-Preliminary Comments," dated March 7, 2016.

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

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 August 2015.¹⁹

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On March 2 and 3, 2016, pursuant to 19 CFR 351.210(b) and (e), POSCO and Hyundai Steel respectively requested that, contingent upon an affirmative preliminary determination of sales at LTFV for the companies, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.²⁰ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporters accounts for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE OF THE INVESTIGATION

The products covered by this investigation are hot-rolled steel from Australia. For a full description of the scope of this investigation, see this investigation's accompanying preliminary determination notice at Appendix I.

VI. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,²¹ the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage (i.e., "scope").²² Certain interested parties commented on the scope of the investigation as it appeared in the Initiation Notice, as well as additional language proposed by the Department. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.²³ The Department is preliminarily not modifying the scope language as it appeared in the Initiation Notice.

¹⁹ See 19 CFR 351.204(b)(1).

²⁰ See Letter from POSCO, "Request for Postponement of the Final Determination," dated March 2, 2016; see also Letter from Hyundai Steel, "Request for Postponement of the Final Determination," dated March 3, 2016.

²¹ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997).

²² See Initiation Notice, 80 FR at 54261.

²³ See Scope Memorandum.

VII. 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, 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 that are above de minimis and which are not based on total facts available. Accordingly, for the preliminary determination, consistent with the Act and the Department’s practice, the Department preliminarily determines that the margin for the all-others rate is the simple average of the calculated margins of the mandatory respondents.²⁴

VIII. AFFILIATION AND COLLAPSING

A. Affiliation

Section 771(33) of the Act states, in part, that the following persons shall be considered to be “affiliated” or “affiliated persons”:

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

“Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”²⁵ In order to find control, a party must be legally or operationally in a

²⁴ See Memorandum to the File, “Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea, All-Others Rate Calculation,” dated March 14, 2016. We note that it is the Department’s practice to 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).

²⁵ See 19 CFR 351.102(b)(37).

position to exercise restraint or direction over another party.²⁶ “Actual control... is not required by the statute... Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person.”²⁷

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”), H.R. Doc. 103-316 (1994), indicates 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, or (4) close supplier relationships in which either party becomes reliant upon the other.²⁸ With respect to close supplier relationships, the Department has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.²⁹ Only if such reliance exists does the Department then determine whether one of the parties is in a position to exercise restraint or direction over the other.³⁰

Additionally, 19 CFR 351.102(b)(3) states that to determine whether control exists within the meaning of section 771(33) of the Act, the Department will consider the same four SAA factors listed above, among other factors. However, the Department does not find the existence of control based on these factors “unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.”³¹ Also, the Department “will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.”³²

Analysis

The record evidence supports a finding that POSCO is affiliated with DWI, pursuant to section 771(33)(E) of the Act, because DWI is a subsidiary of POSCO, where POSCO had a majority equity interest in DWI during the POI.³³ Further, by way of its majority ownership in DWI, pursuant to section 771(33)(G) of the Act, POSCO is legally and/or operationally in a position to exercise restraint or direction over DWI. We find that the relationship between POSCO and DWI has the potential to impact decisions concerning the production, pricing, or cost of the

²⁶ See section 771(33) of the Act.

²⁷ See TIJID, Inc. v. U.S., 366 F. Supp. 2d 1286, 1293 (TIJID).

²⁸ See SAA at 838; see also Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 59739, 59739-59740 (October 11, 2006), unchanged in Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 72 FR 6528 (February 12, 2007).

²⁹ Id.; see also TIJID, 366 F. Supp. 2d 1286, 1293-1300.

³⁰ See Catfish Farmers of Am. v. United States, 641 F. Supp. 2d 1362, 1373-74 (CIT 2009); see also TIJID, 366 F. Supp. 2d 1286 at 1293-1300; Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18414-17 (April 15, 1997).

³¹ See 19 CFR 351.102(b)(3).

³² Id.

³³ See POSCO’s Section A Response at Exhibit A-5 (October 27, 2015). We also note that POSCO stated that it was also affiliated with the following companies involved with the sale or further manufacture subject merchandise: POSCO Processing & Service (POSCO P&S), Daewoo International (America) Corp. (DWA), POSCO America (POSAM), and USS-POSCO Industries (UPI).

subject merchandise³⁴ because POSCO's majority ownership of DWI allows it to control a company that sells the subject merchandise to the United States.

B. Collapsing

Section 351.401(f) of the Department's regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.³⁵

The Department has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.³⁶ While section 19 CFR 351.401(f) explicitly applies to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, the Department has treated exporting companies as a single entity,³⁷ as well as producers and exporters as a single entity.³⁸

Furthermore, the CIT has upheld the Department's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities

³⁴ See TIJID, 366 F. Supp. 2d 1286, 1293 (citing Mitsubishi Heavy Indus. v. United States, 54 F. Supp. 2d 1183, 1192 (CIT 1999)).

³⁵ See 19 CFR 351.401(f).

³⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5.

³⁷ Id.

³⁸ See Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review, 75 FR 69626 (November 15, 2010).

were not both producers.³⁹ For example, in Hontex II,⁴⁰ the CIT held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.⁴¹

Analysis

The Department preliminarily determines that the criteria of section 19 CFR 351.401(f) are met with respect to treating POSCO and DWI as a single entity. POSCO reported that it produced hot-rolled steel products that were sold by DWI to the United States during the POI.⁴² Although DWI does not have a production facility, we find that POSCO and DWI can switch the role of producer and seller between the two companies without substantial retooling of POSCO's facilities.⁴³ Specifically, we find that the production facilities available to either company are the same, and that it would not require substantial retooling of the manufacturing facility in order to restructure manufacturing priorities.⁴⁴ For example, POSCO can transfer its manufacturing facility to DWI or otherwise reorganize the corporate structure of DWI to include the production facility into DWI's scope of operations. Therefore, we find that the requirements of 19 CFR 351.401(f)(1) for treating affiliated parties as a single entity are met.

Further, the Department finds that in accordance with criteria of section 19 CFR 351.401(f)(2), significant potential for manipulation of price or production, are met for the following reasons. As described above, POSCO owns a majority interest in DWI. 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.⁴⁵ Each of the above factors, including ownership, interlocking directors and managements, and intertwined operations constitute a significant potential for the manipulation of price or production within the meaning of 19 CFR 351.401(f)(2).

Therefore, based on the forgoing discussion, the Department preliminarily finds that POSCO and DWI should be treated as a single entity pursuant to 19 CFR 351.401(f).

³⁹ See Queen's Flowers de Colon v. United States, 981 F. Supp. 617, 628 (CIT 1997).

⁴⁰ See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) ("Hontex II").

⁴¹ Id.

⁴² See POSCO's Section A Response at A-2 (October 27, 2015).

⁴³ See Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination, 76 FR 79651, 79652 (December 22, 2011) (finding that "the ownership, management, and operations of a producer and an affiliated exporter were so intertwined that management could switch the role of producer and seller between the two companies without substantial retooling of either company"), unchanged in Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 24459 (April 24, 2012).

⁴⁴ See Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan, 77 FR 46704, (August 6, 2012) (the Department found that "because SMTC has a fully functioning facility for producing the subject merchandise, which is located on the same premises and is controlled by SSFC, the role of producer and seller could easily switch from SMTC to SSFC without substantial retooling at either company"), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review: 2010-2011, 78 FR 9668 (February 11, 2013).

⁴⁵ See POSCO's Section A Response at A-11 to A-16, and Exhibits A-4 to A-7, and Exhibits A-21, A-22, and A-25.

IX. 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), in order to determine whether Hyundai Steel and POSCO's sales of the subject merchandise from Korea to the United States were made at less than fair 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 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.⁴⁶ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists 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,⁴⁷ and POSCO.⁴⁸ 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

⁴⁶ 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).

⁴⁷ See Hyundai Steel's section C response, dated November 23, 2015 ("Hyundai Steel's section C response").

⁴⁸ See POSCO's section C response, dated November 19, 2015 ("POSCO's section C response").

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 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 80.20 percent of the value of U.S. sales pass the Cohen's *d* test,⁴⁹ 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 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

For POSCO, based on the results of the differential pricing analysis, the Department preliminarily finds that 68.79 percent of the value of U.S. sales pass the Cohen's *d* test,⁵⁰ 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.

⁴⁹ See Memorandum to the File, "Preliminary Determination Calculation for Hyundai Steel Company in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Republic of Korea," dated March 14, 2016 ("Hyundai Steel Preliminary Analysis Memorandum").

⁵⁰ See Memorandum to the File, "Preliminary Determination Calculation for POSCO in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea," dated March 14, 2016 (POSCO Preliminary Analysis Memorandum).

X. 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.⁵¹ We note for both Hyundai Steel and POSCO 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, so as a result the order/order confirmation date does not set the material terms of sales for either company. 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 these sales, and ownership of the merchandise was transferred to the customer when the tax invoices were issued, Hyundai Steel reported these sales in its sales database.⁵²

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.⁵³

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.⁵⁴ 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.⁵⁵ For the purposes of

⁵¹ 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.").

⁵² See Hyundai Steel's November 23, 2015, section B response (Hyundai Steel's section B response) at B-20-21.

⁵³ See Hyundai Steel's November 2, 2015, section A response (Hyundai Steel's section A response) at A-22-23.

⁵⁴ See Hyundai Steel's Section A response at A-27.

⁵⁵ See Hyundai Steel's January 19, 2016, supplemental sections A-C response ("Hyundai Steel's Supplemental A-C Response") at 1-2.

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.⁵⁶

POSCO

For its home market sales, whether made by POSCO or POSCO P&S, POSCO reported the earlier of shipping or invoice date as the date of sale.⁵⁷ For the purposes of this preliminary determination, we used the reported 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 reported the following date of sale, indicating that price and/or quantity is subject to change until then: for sales identified in Channel 1 (EP- sales through unaffiliated trading companies), the date of sale is the earlier of the shipment date from POSCO's factory (reported in field SHIPDATU) or POSCO's invoice date to its customer; for sales in Channel 2 (EP- sales through DWI), the date of sale is the earlier of the shipment date from POSCO's factory or DWI's invoice date; for the CEP back-to-back sales in channels 3 (CEP Back-to-Back Transactions through POSAM) and 4 (CEP Back-to-Back Transactions through DWI and DWA), the date of sale is reported as the earlier of the date of shipment from Korea or the invoice date issued by POSAM or DWA to the unaffiliated customer; and for Channel 5 (CEP Further Manufactured through UPI), the date of sale is the earlier of the date of shipment from UPI's facility or UPI's invoice date.⁵⁸ For the preliminary determination, the Department is using the POSCO's reported date of sale for its 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., price quantity) are still subject to change when orders are confirmed. This is in accordance with 19 CFR 351.401(i), as noted above.⁵⁹

XI. 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

⁵⁶ See 19 CFR 351.401(i) and Allied Tube & Conduit Corp. v. United States.

⁵⁷ See POSCO's November 20, 2015, section B response at B-20.

⁵⁸ See POSCO's November 20, 2015, section C response at C-18 to C-19.

⁵⁹ 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.").

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 respondents⁶⁰ in the following order of importance: whether the products is painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, pickled, and patterns in relief. For Hyundai Steel's and POSCO's respective sales of hot-rolled steel in the United States, the reported control number ("CONNUM") identifies the characteristics of hot-rolled steel as it entered the United States.

XII. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated certain Hyundai Steel and POSCO 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.

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 Steel reported expenses associated with loading subject merchandise onto trucks for shipment in "other direct selling expenses."⁶¹ We have included those expenses in Hyundai Steel'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 CEP sales of the subject merchandise through its affiliated reseller/processor HSA and also by its affiliate Hyundai Corporation USA ("HCUSA") during the POI.⁶²

⁶⁰ See, e.g., POSCO's November 19, 2015 section B and C responses and Hyundai Steel's November 23, 2015 section B and C responses.

⁶¹ See Hyundai Steel's section C response at C-39 and exhibit C-22.

⁶² See Hyundai Steel's section A response at A-17-18 and section C response at C-1.

We calculated the CEP based on a packed price to customers in the United States. We made deductions from the starting price 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.

POSCO

POSCO reported EP sales by POSCO to unaffiliated Korean trading companies and by DWI to unaffiliated U.S. customers during the POI.⁶³ Accordingly, we based EP on a packed price to the first unaffiliated purchaser, whether located in Korea or the United States.⁶⁴ 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.⁶⁵

POSCO 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.⁶⁶ 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 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. 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.⁶⁷

XIII. 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

⁶³ See POSCO's section A response at A-20.

⁶⁴ POSCO indicated it was aware of the destination of the merchandise sold to the Korean trading companies. *Id.*

⁶⁵ For additional reference to these certain additional U.S. movement expenses, about which some information on the record is proprietary, see POSCO Preliminary Analysis Memorandum.

⁶⁶ See POSCO's section A response at A-21.

⁶⁷ For additional details, see POSCO Preliminary Analysis Memorandum.

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 were greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.⁶⁸ Therefore, we used home market sales as the basis for NV for Hyundai Steel and POSCO, in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included Hyundai Steel's and POSCO's home market sales to affiliated parties for purposes of determining home market viability.⁶⁹

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

Pursuant to the Act and the Department's regulations, the Department examines whether inputs purchased from or sales made to an affiliate were made at arm's-length before relying on reported costs and sales prices in its margin calculation. Hyundai Steel and POSCO reported they had sales of merchandise under consideration to affiliated parties in the home market during the POI.⁷⁰ As such, we have eliminated all intercompany sales between these companies.⁷¹ Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the remaining 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.⁷² 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.⁷³

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

⁶⁸ See, *e.g.*, Hyundai Steel's section A response at A-2 and Exhibit A-1 and POSCO's section A response at Exhibit A-1.

⁶⁹ 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).

⁷⁰ See Hyundai Steel's section A response at A-4, section B's response at B-4-6, and POSCO's section A response at A-1 to A-5.

⁷¹ See, above, at "Affiliation and Collapsing" section.

⁷² 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).

⁷³ See 19 CFR 351.102(b).

at different LOTs if they are made at different marketing stages (or their equivalent).⁷⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷⁵ 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),⁷⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁷⁷

When the Department is unable to match U.S. sales to 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 to 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.⁷⁸

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; advertising; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide cash discounts; provide warranty services; provide guarantees; and freight and delivery arrangement.⁷⁹

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.⁸⁰ Based on these selling function categories, we find that Hyundai performed sales and marketing, freight and delivery services, inventory maintenance,

⁷⁴ See 19 CFR 351.412(c)(2).

⁷⁵ *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”).

⁷⁶ 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).

⁷⁷ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁷⁸ See, e.g., Orange Juice from Brazil, at Comment 7.

⁷⁹ See Hyundai Steel’s section A response at exhibit A-13.

⁸⁰ See Hyundai Steel’s section A response at exhibit A-13.

and warranty and technical support for its reported sales to affiliated and unaffiliated customers in the home market. Because Hyundai Steel 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 Steel reported that it made sales through three main channels of distribution: EP sales through unaffiliated Korean distributors (Channel 1); CEP sales through its affiliates Hyundai Corporation, Hyundai Corporation China and HCUSA to unaffiliated processors (Channel 2); and CEP sales through its affiliate HSA to unaffiliated processors and affiliated processors (Channel 3).⁸¹

With respect to all LOT channels, Hyundai Steel reported these functions: sales forecasting; strategic/economic planning; personnel training/exchange; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide warranty services; and freight and delivery arrangement. For advertising and sales promotion, all LOT channels reported these functions except Hyundai Steel Company-Channel 2. For packing and inventory maintenance, all LOT channels reported these functions except Hyundai Steel U.S. affiliates in Channel 2. For Engineering Services, Procurement/Sourcing Services and Post Sale Warehousing, only HSA Channel 3 provided these services.⁸²

Based on the selling function categories noted above, we find that with respect to all Channels, Hyundai Steel performed sales and marketing, freight and delivery services, inventory maintenance and warehousing for its U.S. sales, and that Channel 3 sales included a few more (three out of 24) more sub-activities. Because Hyundai Steel 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 these channels (with the exception of sales/marketing support, which is provided with different intensity in Channel 1 and Channel 3), we find the differences between these channels are too insignificant to warrant three different LOTs. Thus, we determine that Hyundai Steel's U.S. sales through all its channels are made at the same LOT.

We compared the EP (Channel 1) and the CEP (Channels 2 and 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 Steel provides cash discounts and guarantees for home market customers and does not provide this service for EP/CEP sales.⁸³ This difference is not sufficient to determine that Hyundai Steel's EP/CEP LOT is different from the home market LOT. Therefore, based on 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 Steel's EP/CEP sales through all channels and determined no LOT adjustment was warranted.

⁸¹ See Hyundai Steel's section A response at A17-18 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.

⁸² Id.

⁸³ See Hyundai Steel's section A response at A17-18 and exhibit A-13.

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 EP/CEP sales. Also, Hyundai Steel's home market LOT is not at a more advanced stage of distribution than its EP/CEP LOT through Channels 1, 2, and 3, and thus, no LOT adjustment is necessary. 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

POSCO states there is one level of trade in the home market, and that this level is more advanced than that for the various CEP channels of trade for its U.S. sales.⁸⁴ POSCO 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, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.⁸⁵

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 countervailing law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than the cost of production ("COP").⁸⁶ 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 in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁸⁷ 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 COP information from respondent companies in all AD proceedings.⁸⁸ Accordingly, the Department requested this information from Hyundai Steel and POSCO.⁸⁹ We examined Hyundai Steel's and POSCO's cost data and preliminarily determine that there are reasonable grounds to believe or suspect that sales of the foreign like product were made at less than the cost of production. We further determined that our quarterly cost methodology is not warranted; therefore, we applied our standard methodology of using annual costs based on the reported data.⁹⁰

⁸⁴ See POSCO's Section A Response at A-26.

⁸⁵ For further discussion of this issue, see POSCO Preliminary Analysis Memorandum.

⁸⁶ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

⁸⁷ 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).

⁸⁸ Id., 80 FR at 46794-95.

⁸⁹ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petitions.

⁹⁰ 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.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated cost of production (“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.⁹¹

We relied on the COP data submitted by Hyundai Steel and POSCO, except as follows:⁹²

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.⁹³

POSCO

We adjusted the cost of inputs purchased by POSCO from affiliated suppliers to reflect market price of the inputs in accordance with section 773(f)(2) of the Act. We used the G&A expense ratio that POSCO submitted in the Antidumping Duty Investigation of Cold Rolled Steel Products from Korea which covers the same POI as the instant case.⁹⁴

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 COP to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the weighted average COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses and used sales prices that 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

⁹¹ See “Test of Comparison Market Sales Prices” section, below, for treatment of home market selling expenses.

⁹² 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. Gziryan, 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.

⁹³ 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 March 14, 2016.

⁹⁴ See Memorandum from James J. Balog to Neal M. Halper, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – POSCO and Daewoo International Co., Ltd.,” dated March 14, 2016.

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’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.⁹⁵

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, 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.⁹⁶

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

The Department calculated NV based on prices to customers on various sales terms.⁹⁷ 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

⁹⁵ See Hyundai Steel Preliminary Analysis Memorandum and POSCO Preliminary Analysis Memorandum.

⁹⁶ See 19 CFR 351.411(b).

⁹⁷ For additional detail, see POSCO Preliminary Analysis Memorandum.

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.

XIV. 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.

XV. 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.⁹⁸ 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.


XVI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 MARCH 2016

Date

⁹⁸ See Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 81 FR 2172 (January 15, 2016).