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Investigation  
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DATE: October 25, 2016

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair Value Investigation of Ferrovanadium from the  
Republic of Korea

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## SUMMARY

The U.S. Department of Commerce (“the Department”) preliminarily determines that ferrovanadium from the Republic of Korea (“Korea”) is being, or is likely to be, sold in the United States at less than fair value (“LTFV”) as provided in section 733(b) 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.

## BACKGROUND

On March 28, 2016, the Department received an antidumping duty (“AD”) petition concerning imports of ferrovanadium from Korea,<sup>1</sup> which was filed in proper form by the Vanadium Producers and Reclaimers Association (“VPRA”) and VPRA members AMG Vanadium LLC, Bear Metallurgical Company, Gulf Chemical & Metallurgical Corporation, and Evraz Stratcor, Inc. (“Petitioners”). On March 31, 2016 and April 6, 2016, the Department requested information and clarification of certain areas of the petition. Petitioner filed timely responses to these requests. On April 18, 2016, the Department published the notice of the initiation of the AD investigation of ferrovanadium from Korea in the *Federal Register*.<sup>2</sup>

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, the scope of the investigation), and instructed all parties to submit scope comments by May 9, 2016, and to submit scope rebuttal comments by May 19, 2016. In

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<sup>1</sup> See Petition for the Imposition of Antidumping Duties: Ferrovanadium from the Republic of Korea, dated March 28, 2016 (“Petition”).

<sup>2</sup> See *Ferrovanadium from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 24059 (April 18, 2016) (“Initiation Notice”).



addition, we set aside time for parties to submit comments regarding product characteristics, and instructed all parties to submit comments by May 9, 2016, and to submit rebuttal comments by May 16, 2016.

On April 27, 2016, the Department released U.S. Customs and Border Protection (“CBP”) import data to interested parties which it intended to use for purposes of selecting mandatory respondents.<sup>3</sup> On May 24, 2016, the Department selected Korvan Ind., Co., Ltd. (“Korvan”) and Woojin Ind. Co., Ltd. (“Woojin”) as mandatory respondents for this investigation and issued Korvan and Woojin AD questionnaires. On June 15, 2016, counsel for Woojin notified the Department that Woojin would not participate in the investigation.<sup>4</sup> On June 23, 2016, the Department selected Fortune Metallurgical Group Co., Ltd. (“Fortune”) as a mandatory respondent and issued Fortune an AD questionnaire.<sup>5</sup> Fortune did not respond to the Department’s AD questionnaire. Korvan submitted timely responses to the Department’s AD questionnaire (sections A, B, C, and D) and corresponding supplemental questionnaires between June 14, 2016, and October 11, 2016. Petitioners submitted comments on Korvan’s questionnaire responses between June 28, 2016, and October 5, 2016.

On May 12, 2016, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ferrovanadium from Korea.<sup>6</sup> On August 5, 2016, Petitioners requested a postponement of the preliminary determination.<sup>7</sup>

## PERIOD OF INVESTIGATION

The period of investigation (“POI”) is January 1, 2015, through December 31, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2016.<sup>8</sup>

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<sup>3</sup> See Memorandum from Aleksandras Nakutis, International Trade Analyst, Office IV, AD/CVD Operations, Through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, to the File, regarding “Ferrovanadium from the Republic of Korea: Customs Data for Respondent Selection,” dated April 27, 2016.

<sup>4</sup> See Memorandum from Karine Gziryan, International Trade Analyst, Office IV, AD/CVD Operations, Through Howard Smith, Program Manager, AD/CVD Operations, Office IV, to the File, regarding “Telephone conversation with Counsel for Woojin Industry Co., Ltd., a Korean producer and exporter to the United States of ferrovanadium,” dated June 15, 2016.

<sup>5</sup> See Memorandum from Andrew Martinez, International Trade Compliance Analyst, Office IV, Through Abdelali Elouaradia, Director, Office IV, Enforcement and Compliance to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Antidumping Duty Investigation of Ferrovanadium from the Republic of Korea: Revised Respondent Selection Memorandum,” dated June 23, 2016.

<sup>6</sup> See *Ferrovanadium from Korea*, 81 FR 31254 (May 18, 2016).

<sup>7</sup> See Letter from Petitioners “Ferrovanadium from the Republic of Korea: Request for Postponement of the Preliminary Determination,” dated August 5, 2016.

<sup>8</sup> See 19 CFR 351.204(b)(1).

## **POSTPONEMENT OF PRELIMINARY DETERMINATION**

On August 19, 2016, pursuant to section 733(c)(1)(A) of the Act and Petitioners' request, the Department postponed the preliminary determination by 50 days.<sup>9</sup>

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

In accordance with section 735(a)(2) of the Act, on September 23, 2016, Korvan requested that the Department postpone the final determination and requested that the Department extend the application of provisional measures from four months to six months.<sup>10</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporter, Korvan, accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the accompanying preliminary determination notice in the *Federal Register*. Also, we are extending the provisional measures from four months to a period not to exceed six months pursuant to section 773(d) of the Act and 19 CFR 351.210(e)(2). Suspension of liquidation described in the accompanying preliminary determination notice will be extended accordingly.

## **SCOPE OF THE INVESTIGATION**

The product covered by this investigation is all ferrovanadium regardless of grade (*i.e.*, percentage of contained vanadium), chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium. Ferrovanadium is classified under Harmonized Tariff Schedule of the United States ("HTSUS") item number 7202.92.0000. Although this HTSUS item number is provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

## **SCOPE COMMENTS**

In accordance with the preamble to the Department's regulations, we set aside a period of time for interested parties to raise issues regarding product coverage.<sup>11</sup> The Department specified that any such comments were due May 9, 2016, which was 21 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by May 19, 2016.<sup>12</sup> However, no interested party submitted scope comments.

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<sup>9</sup> See *Ferrovanadium from the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 55435 (August 19, 2016).

<sup>10</sup> See Letter from Korvan, "Ferrovanadium from the Republic of Korea: Korvan's Request to Extend the Final Determination," dated September 23, 2016.

<sup>11</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>12</sup> See *Initiation Notice*, 81 FR at 24060.

## SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. In the *Initiation Notice*, we stated that the Department intends to select respondents for individual examination based on CBP data for U.S. imports of ferrovanadium.<sup>13</sup> The Department initially selected Korvan and Woojin as mandatory respondents for this investigation and issued Korvan and Woojin AD questionnaires. On June 15, 2016, Woojin notified the Department that it would not participate in the investigation.<sup>14</sup> The Department then selected Fortune as a mandatory respondent and issued Fortune an AD questionnaire.<sup>15</sup> Fortune did not respond to the Department's AD questionnaire.

## DISCUSSION OF METHODOLOGY

### Application of Adverse Facts Available

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

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 antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the

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<sup>13</sup> *Id.*, at 24063.

<sup>14</sup> See Memorandum from Karine Gziryan, International Trade Analyst, Office IV, AD/CVD Operations, Through Howard Smith, Program Manager, AD/CVD Operations, Office IV, to the File, regarding “Telephone conversation with Counsel for Woojin Industry Co., Ltd., a Korean producer and exporter to the United States of ferrovanadium,” dated June 15, 2016.

<sup>15</sup> See Memorandum from Andrew Martinez, International Trade Compliance Analyst, Office IV, Through Abdelali Elouaradia, Director, Office IV, Enforcement and Compliance to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Antidumping Duty Investigation of Ferrovanadium from the Republic of Korea: Revised Respondent Selection Memorandum,” dated June 23, 2016.

addition of section 776(d) of the Act.<sup>16</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.<sup>17</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>18</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.<sup>19</sup> The SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>20</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>21</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>22</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>23</sup> Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.<sup>24</sup> The TPEA also makes clear that,

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<sup>16</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). 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 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 International Trade Commission. 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*). The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

<sup>17</sup> See *Applicability Notice*, 80 FR at 46794-95.

<sup>18</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>19</sup> See also 19 CFR 351.308(c).

<sup>20</sup> See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

<sup>21</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

<sup>22</sup> See also 19 CFR 351.308(d).

<sup>23</sup> See SAA at 870.

<sup>24</sup> See section 776(d)(1)(B) and 776(d)(2) of the Act; TPEA, section 502(3).

when selecting facts available with an adverse inference, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>25</sup>

In this case, Fortune and Woojin received our questionnaires but did not respond or otherwise participate in the proceeding. As a consequence, we preliminarily find that necessary information is not available on the record and that Fortune and Woojin withheld information requested by the Department, failed to provide information by the specified deadlines, and significantly impeded the proceeding.<sup>26</sup> Moreover, because Fortune and Woojin failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available for the preliminary dumping margins of both Fortune and Woojin.

Next we considered whether it was appropriate to use an adverse inference in applying the facts otherwise available based on a failure of Fortune and Woojin to act to the best of their abilities to comply with a request for information. The Court of Appeals for the Federal Circuit (“Federal Circuit”), in *Nippon Steel*, provided an explanation of the meaning of failure to act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”<sup>27</sup> Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.<sup>28</sup> The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.<sup>29</sup> Hence, compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.<sup>30</sup>

The failure of Fortune and Woojin to respond to the Department’s questionnaire or otherwise participate in the proceeding indicates that these companies have not put forth their maximum effort to provide the Department with full and complete answers to the inquiries made in this investigation. Accordingly, the Department concludes that Fortune and Woojin failed to cooperate to the best of their ability to comply with a request for information by the Department, in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.<sup>31</sup>

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<sup>25</sup> See section 776(d)(3)(B) of the Act; TPEA, section 502(3).

<sup>26</sup> See sections 776(a)(2)(A), (B), and (C) of the Act.

<sup>27</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, at 1380.

<sup>30</sup> *Id.*, at 1382.

<sup>31</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

As noted above, section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.<sup>32</sup> In selecting a rate based on adverse facts available (“AFA”), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>33</sup> In this investigation, we have selected the petition dumping margin of 54.69 percent as the AFA rate applicable to Fortune and Woojin.

### Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.<sup>34</sup> Secondary information is defined as “information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”<sup>35</sup> Thus, because the 54.69 percent AFA rate applied to Fortune and Woojin is derived from the Petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>36</sup> The SAA and the Department’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>37</sup> To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.<sup>38</sup>

We determine that the Petition dumping margin of 54.69 percent is reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary

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<sup>32</sup> See also 19 CFR 351.308(c).

<sup>33</sup> See SAA at 870.

<sup>34</sup> See also 19 CFR 351.308(d).

<sup>35</sup> See SAA at 870; see also 19 CFR 351.308(c)(1).

<sup>36</sup> See SAA at 870; see also 19 CFR 351.308(d).

<sup>37</sup> See SAA at 870; see also 19 CFR 351.308(d).

<sup>38</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

determination.<sup>39</sup> During our pre-initiation analysis, we also examined the key elements of the export price (“EP”) and normal value (“NV”) calculations used in the Petition to derive an estimated dumping margin. Specifically, we examined information (to the extent that such information was reasonably available) from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates elements of the EP and NV calculations used in the Petition to derive estimated dumping margins.

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the Petition to be reliable.<sup>40</sup> Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in the Petition, we preliminarily consider the EP and NV calculations from the Petition, and thus the dumping margins in the Petition, to be reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.<sup>41</sup>

To corroborate the 54.69 percent AFA rate that we selected, we compared the 54.69 percent margin to the dumping margins that we calculated for Korvan. We found that the dumping margin of 54.69 percent is relevant and has probative value based on the range of the transaction-specific dumping margins calculated for Korvan.<sup>42</sup> Accordingly, we find that the rate of 54.69 percent is corroborated within the meaning of section 776(c) of the Act.

#### All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding all zero or *de minimis* dumping margins, and all dumping margins determined entirely under section 776 of the Act. As noted above, Fortune and Woojin did not respond to the questionnaire. Therefore, Korvan is the only respondent in this investigation for which the Department calculated a company-specific dumping margin which is not zero, *de minimis*, or based entirely on facts available. Accordingly, for purposes of determining the “all-others” rate and pursuant to section 735(c)(5)(A) of the Act, we are assigning the weighted-average dumping margin calculated for Korvan to all other producers and exporters of subject merchandise.

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<sup>39</sup> See AD Investigation Initiation Checklist regarding, “Ferrovanadium from the Republic of Korea,” dated April 18, 2016 (“Initiation Checklist”).

<sup>40</sup> See Initiation Checklist.

<sup>41</sup> See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

<sup>42</sup> See Memorandum to the File, Through Howard Smith, Program Manager, AD/CVD Operations, Office IV, from Karine Gziryan, AD/CVD Operations, Office IV, regarding “Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Ferrovanadium from the Republic of Korea: Korvan, Ind., Co.” (“Analysis Memorandum”), dated concurrently with this memorandum.



## **Fair Value Comparisons**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Korvan's sales of ferrovanadium from Korea to the United States were made at LTFV, we compared EPs to NV, as described in the "U.S. Price" and "Normal Value" sections of this memorandum.

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

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices ("CEP") (*i.e.*, the average-to-average comparison method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs to EPs or CEPs of individual transactions (the average-to-transaction comparison 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.<sup>43</sup> 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 comparison method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by 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. We based purchasers on the customer codes reported by respondents. Regions were defined using the reported destination code (*i.e.*, zip code) and grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods were defined by the quarters within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using

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<sup>43</sup> See, *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair*, 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).

the product control number and all characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for purposes of calculating the individual dumping margins.

In the first stage of the differential pricing analysis used here we applied, the “Cohen’s  $d$  test”. The Cohen’s  $d$  test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, we applied the Cohen’s  $d$  test when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least 5 percent of the total sales quantity of the comparable merchandise. Then, we calculated the Cohen’s  $d$  coefficient to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s  $d$  test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s  $d$  test, if the calculated Cohen’s  $d$  coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, we applied the “ratio test” to assess the extent of the significant price differences for all sales as measured by the Cohen’s  $d$  test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s  $d$  test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction comparison method to all sales as an alternative to the average-to-average comparison 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 result supports consideration of the application of an average-to-transaction comparison method to those sales identified as passing the Cohen’s  $d$  test as an alternative to the average-to-average comparison method and application of the average-to-average comparison 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 result of the Cohen’s  $d$  test does not support consideration of an alternative to the average-to-average comparison method.

If both tests in the first stage of the differential pricing analysis (*i.e.*, the Cohen’s  $d$  test and the ratio test) demonstrate the existence of a pattern of EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examined whether using only the average-to-average comparison 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 comparison method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average comparison method cannot account for differences such as those observed in this analysis and, therefore, an alternative comparison method would be appropriate. A

difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average comparison method and the appropriate alternative comparison method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

## 2) Results of the Differential Pricing Analysis

For Korvan, based on the results of the differential pricing analysis, the Department finds that 100 percent of the value of U.S. sales passed the Cohen's *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.<sup>44</sup> Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the average-to-average method and an alternative comparison method based on the average-to-transaction method applied to all U.S. sales. Accordingly, the Department has preliminarily determined to use the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Korvan.

## **Date of Sale**

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the United States Court of International Trade ("CIT") held that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'"<sup>45</sup> Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>46</sup> The material terms of sale normally include the price, quantity, delivery terms, and payment terms.<sup>47</sup> Korvan reported the sales invoice date as the date of sale for its U.S. and home market sales because this date reflects the date on which all material terms of sale are set.<sup>48</sup> Accordingly, we preliminarily determine that

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<sup>44</sup> See Analysis Memorandum.

<sup>45</sup> See *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*").

<sup>46</sup> See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

<sup>47</sup> See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Issue 2 "Date of Sale," Comment 1.

<sup>48</sup> See Korvan's Section B, C, and D Response dated July 7, 2016, Section B Response at 12 and Section C Response at 10.

the invoice date is the appropriate date of sale for Korvan for both U.S. and home market sales because the material terms of sale are set at this time and do not subsequently change.

### **U.S. Price**

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the EP methodology for Korvan’s sales because Korvan sold the merchandise under consideration directly to the first unaffiliated purchaser in the United States before the date of importation.<sup>49</sup>

We based the starting EP on packed prices to unaffiliated purchasers in, or for exportation to, the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for movement expenses, which include, where appropriate, the following expenses: foreign inland insurance, foreign inland freight, foreign brokerage and handling, international freight, marine insurance and U.S. brokerage and handling. Also, where appropriate, we made deductions from the starting price for selling expenses and, in accordance with 19 CFR 351.401(c), for price adjustments (*i.e.*, billing adjustments).

Korvan requested that the Department adjust its U.S. prices for duty drawback adjustment.<sup>50</sup> Section 772(c)(1)(B) of the Act states that the price used to establish EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to U.S. prices.<sup>51</sup> The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); the second prong of the test is that the company must demonstrate that there were sufficient imports of materials to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>52</sup>

In this investigation, we requested that Korvan provide additional supporting documents regarding its duty drawback claim.<sup>53</sup> Korvan provided timely responses and supporting documentation to these supplemental questionnaires regarding its duty drawback claims,

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<sup>49</sup> See Section A response of Korvan dated June 6, 2016 (“AQR”) at 9-16.

<sup>50</sup> See Section C Response, at 25-26.

<sup>51</sup> See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (“*Saha Thai*”).

<sup>52</sup> *Id.*; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>53</sup> See the Department’s three supplemental questionnaires for sections A-C dated July 29, 2016, August 26, 2016, and September 30, 2016, respectively.

including the regulation governing duty drawback in Korea, a detailed list of the duty drawback refunds received by Korvan for all of its U.S. sales of ferrovanadium during the POI, and a table showing fixed refund rates of duty drawback.<sup>54</sup> Also Korvan identified the raw materials on which it paid an import duty and provided worksheets (1) detailing how it calculated the duty drawback on a transaction-specific basis, (2) linking the raw materials to production of merchandise under consideration, and (3) demonstrating that it imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales.<sup>55</sup> Based on these additional supporting documents, we preliminarily determine that Korvan's duty drawback claims meet the two prong test. Because Korvan demonstrated that it meets the two-prong test, we preliminarily determine to make a duty drawback adjustment to U.S. price pursuant to section 772(c)(1)(B) of the Act.

Consistent with recent practice, we have considered the import duty cost, embedded in the material costs of producing the merchandise under consideration, in determining the appropriate duty drawback adjustment so as not to introduce distortion into our calculation and to ensure a balanced comparison between U.S. price and NV.<sup>56</sup> Specifically, we limited the amount of the duty drawback adjustment based on import duty costs. Because, as explained in the "Cost of Production" section of this notice, we have preliminarily determined that a quarterly cost methodology is warranted in those instances in which the duty drawback claimed on U.S. sales exceeds the corresponding quarterly-averaged import duty costs, we have limited the amount of the duty drawback adjustment granted to the amount of the corresponding quarterly-averaged import duty costs. *See* the "Calculation of COP" section of this notice for information regarding the duty drawback adjustment.<sup>57</sup>

## **Normal Value**

### **1. 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.*, a sufficient volume is where 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

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<sup>54</sup> *See* Section C Response at 25-26, Exhibit C-12 and Exhibit C-13; *See* Letter from Korvan, Re: "Response to Section A, B, & C Supplemental Questionnaire," dated August 12, 2016 at 23-24, Exhibit SC-5, and Exhibit SC-8; *See* Letter from Korvan, Re: "Response to Section A, B, and C Supplemental Questionnaire," dated September 16, 2016 at Exhibit SC-15; *See* Letter from Korvan, Re: "Response to Section D Supplemental Questionnaire," dated September 7, 2016 at Exhibit SD-12.

<sup>55</sup> *Id.*

<sup>56</sup> *See Certain Cold-Rolled Steel Flat Products from India: Final Determination of Sales at Less Than Fair Value*, 81 FR 49938 (July 29, 2016) and accompanying Issues and Decision memorandum at Comment 1 ("applying a duty drawback adjustment based solely on respondent's claimed adjustment, without consideration of import duties included in respondent's cost of materials, may result in an imbalance in the comparison of EP with NV.")

<sup>57</sup> *See* Korvan Cost Calculation Memorandum at page 4.

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 Korvan was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Korvan, in accordance with section 773(a)(1)(B) of the Act.

## 2. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (“LOT”) as the EP or CEP.<sup>58</sup> The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on constructed value (“CV”), those of the sales from which we derived selling, general, and administrative expenses and profit.<sup>59</sup> For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.<sup>60</sup>

To determine if Korvan’s home-market sales are made at a different LOT than EP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between Korvan and the unaffiliated customers.<sup>61</sup> If home-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, then we make a LOT adjustment to NV. Namely, 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. sales to sales at a different LOT in the comparison market and where available data make it possible, will make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412.<sup>62</sup>

Korvan reported the following two channels of distribution in the home market: (1) shipments by Korvan directly to its unaffiliated end-user customers and (2) sales to wholesale customers with customer’s picking up from Korvan’s factories.<sup>63</sup> In determining whether separate LOTs exist in the home market, we compared the selling functions performed by Korvan in each of the home market channels of distribution. For purposes of examining the different selling activities reported by Korvan for sales made through each home market channel of distribution, we grouped the selling activities 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.

We compared the selling activities Korvan performed in each channel, and found that there is no

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<sup>58</sup> See also section 773(a)(7)(A) of the Act.

<sup>59</sup> See 19 CFR 351.412(c)(1)(iii).

<sup>60</sup> See 19 CFR 351.412(c)(1)(i).

<sup>61</sup> See 19 CFR 351.412(c)(2).

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

<sup>63</sup> See AQR at 9 and Exhibits A-5, A-6 and A-7.

significant difference between the selling functions performed between the channels.<sup>64</sup> As a result, we found that Korvan performed the same selling functions for both home market distribution channels. Accordingly, we determined that all home market sales constitute one LOT.

Regarding Korvan's U.S. sales, Korvan reported that all customers in the U.S. market are wholesalers. As Korvan only had one channel of distribution in the U.S. market we preliminarily determined that all EP sales constitute one LOT.<sup>65</sup>

Next, we compared the selling activities in the one LOT in the home market to the selling activities in the one LOT in the U.S. The selling function chart submitted by Korvan in Exhibit A-7 of its June 14, 2016, section A response, shows that for each of the following items, Korvan performed corresponding selling activities at the same or a similar level of intensity in both the U.S. and comparison markets: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

Although in certain instances the level of intensity for sales and marketing services differed between the U.S. and comparison markets, that difference alone does not mean these different levels of intensity constitute different marketing stages given that (1) all of the listed selling activities were performed in the U.S. and comparison markets, and (2) in most cases, the respondent performed corresponding selling activities at the same or a similar level of intensity in the U.S. and comparison markets. Thus, while there appears to be a greater focus in the home market on "sales and marketing services," based on the totality of the information reported with respect to selling activities and the intensity levels at which these activities were performed, we do not find that Korvan sold foreign like product and the merchandise under consideration at significantly different marketing stages. Therefore, we preliminarily find that, during the POI, Korvan sold the merchandise under consideration and foreign like product at the same LOT. Accordingly, all comparisons of EP to NV are at the same LOT, and thus a LOT adjustment pursuant to section 773(a)(7)(A) of the Act,<sup>66</sup> is not warranted.

### 3. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the cost of production ("COP"), we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in Korea. We made deductions, where appropriate, from the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight and inland insurance 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 for circumstances of sale (imputed credit expenses and other selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and

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<sup>64</sup> *Id.*

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

<sup>66</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27372 (May 19, 1997) ("the Department will not make a CEP offset where the Department bases normal value on home market sales at the same LOT as the CEP").

19 CFR 351.410. When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we 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.<sup>67</sup>

#### 4. Calculation of NV Based on CV

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Korvan's material and fabrication costs, SG&A expenses, profit and U.S. packing costs, as adjusted. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Korvan in connection with the production and sale of the foreign like product at the most similar LOT as the U.S. sale, as discussed above, in the ordinary course of trade, for consumption in the comparison market.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

#### **Cost of Production**

The TPEA, which made numerous amendments to the AD and countervailing duty ("CVD") law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than the COP.<sup>68</sup> 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.<sup>69</sup> 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 CV and COP information from respondent companies in all AD proceedings. Accordingly, the Department requested this information from Korvan.<sup>70</sup>

#### 1. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the POI. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POI must be deemed significant; (2) the record

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<sup>67</sup> See 19 CFR 351.411(b).

<sup>68</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

<sup>69</sup> 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").

<sup>70</sup> See AD Questionnaire dated May 24, 2016.



evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.<sup>71</sup>

a. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.<sup>72</sup> In the instant case, record evidence shows that Korvan experienced significant cost changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR.<sup>73</sup> This change in COM is attributable primarily to the price volatility for vanadium pentoxide used in the production of ferrovanadium.<sup>74</sup>

b. Linkage Between Sales and Cost Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POI.<sup>75</sup> Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a pattern that changes in selling prices reasonably correlate to changes in unit costs.<sup>76</sup> To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POI, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market and in the United States. Our comparison revealed that sales and costs for Korvan showed reasonable correlation.<sup>77</sup> After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between Korvan's changing sales prices and costs during the POI.<sup>78</sup> We preliminarily determine that a shorter cost period approach, based on a quarterly-average COP, is appropriate for Korvan because we found significant cost changes in COM as well as reasonable linkage between costs and sales prices.

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<sup>71</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSSC from Mexico*) and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC from Belgium*) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>72</sup> See *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

<sup>73</sup> See Memorandum from Ji Young Oh, Senior Accountant to Neal M. Halper, Director of Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Korvan Ind. Co., Ltd." (Korvan Cost Calculation Memorandum), October 25, 2016.

<sup>74</sup> *Id.*

<sup>75</sup> See *SSSSC from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

<sup>76</sup> See *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

<sup>77</sup> See Korvan Cost Calculation Memo at pages 1-3.

<sup>78</sup> *Id.*; see also *SSSSC from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

## 2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.<sup>79</sup> For Korvan, we examined the cost data and preliminarily determine that our quarterly cost methodology is warranted.<sup>80</sup> Therefore, the COP is based on a quarterly average COP rather than an annual average COP. *See* the “Cost Averaging Methodology” section, above, for further discussion.

We relied on the COP data submitted by Korvan, except as follows:

- We disallowed the reduction of COM by the net change in work-in-process (WIP) inventory.<sup>81</sup>
- We excluded the reversal of retirement benefits and the impairment loss on securities and included the net loss on disposal of tangible assets and the impairment loss on memberships in the G&A expense ratio calculation.<sup>82</sup>
- We included long-term interest expense in the financial expense ratio calculation. In addition, we excluded the gain on retirement pension, which Korvan included in the calculation of short-term interest income.<sup>83</sup>
- In this case, all of the raw material is imported and Korvan paid import duty on the purchase price of raw material during the POI. The duty drawback was based on a flat rate applied to FOB price of finished goods. For the preliminary determination, we have allowed an adjustment for duty drawback as claimed by Korvan in its U.S. sales database.<sup>84</sup> In those instances in which the duty drawback claimed on U.S. sales exceeds the corresponding quarterly duty costs, we have limited the amount of the duty drawback granted to the amount of the corresponding quarterly-averaged duty costs.

## 3. 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 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.

## 4. Results of the COP Test

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<sup>79</sup> *See* “Test of Comparison Market Sales Prices” section, below, for treatment of home market selling expenses.

<sup>80</sup> *See* Korvan Cost Calculation Memo at pages 1-3.

<sup>81</sup> *See* Korvan Cost Calculation Memo at page 3.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *See* Korvan Cost Calculation Memorandum at page 4.

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 Korvan'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.

## **CURRENCY CONVERSION**

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

## **VERIFICATION**

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

## RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

✓

Agree

Disagree

*Ronald K. Lorentzen*

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

*October 25, 2016*

(Date)