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March 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Preliminary Decision Memorandum for the Administrative and
New-Shipper Reviews of the Antidumping Duty Order on Certain
Cut-to-Length Carbon-Quality Steel Plate Products from the
Republic of Korea

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review and a concurrent new-shipper review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea) covering the period of review (POR) February 1, 2014, through January 31, 2015. The administrative review covers one producer/exporter of the subject merchandise, Dongkuk Steel Mill Co., Ltd. (DSM), and the new shipper review covers one producer/exporter of the subject merchandise, Hyundai Steel Company (Hyundai Steel). We preliminarily determine that DSM made sales of the subject merchandise at prices below normal value (NV). We preliminarily determine that Hyundai Steel did not make sales of the subject merchandise at prices below NV.

Background

On February 10, 2000, we published in the *Federal Register* an antidumping duty order on CTL plate from Korea.¹ On February 2, 2015, we published in the *Federal Register* a notice of opportunity to request an administrative review of the order.² On April 3, 2015, based on timely

¹ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 5509 (February 2, 2015).



requests for administrative review, we initiated an administrative review of 12 companies.³ On April 22, 2015, we selected DSM for individual examination in this administrative review.⁴

Pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), we received a timely request for a new shipper review of the order from Hyundai Steel.⁵ Based on Hyundai Steel's request, we initiated a new-shipper review on March 24, 2015.⁶

On April 7, 2015, Hyundai Steel consented to align the new-shipper review with the concurrent administrative review.⁷ We aligned the new-shipper review with the concurrent administrative review on April 22, 2015.⁸

On June 8, 2015, Nucor Corporation (the petitioner) submitted an allegation that Hyundai Steel sold the foreign like product in the home market at prices below the cost of production.⁹ On July 6, 2015, we initiated a sales-below-cost investigation with respect to Hyundai Steel.¹⁰

On October 16, 2015, we extended the due date for the preliminary results of these reviews from October 31, 2015, to February 29, 2016.¹¹ From October 25, 2015, through November 4, 2015, we conducted cost and home-market sales verifications of DSM.¹²

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of these reviews is now March 4, 2016.¹³

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202, 18204 (April 3, 2015).

⁴ See the memorandum entitled "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Respondent Selection" dated April 22, 2015.

⁵ See Hyundai Steel's new shipper request dated February 27, 2015.

⁶ See *Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: Initiation of Antidumping Duty New Shipper Review*, 80 FR 16630 (March 30, 2015). We initiated the new-shipper review on Hyundai Steel Co., Ltd., based on its request dated February 27, 2015, which listed the company as Hyundai Steel Co., Ltd. On April 14, 2015, Hyundai Steel clarified that "Previous submissions erroneously referred to Hyundai Steel as Hyundai Steel Co., Ltd." Hyundai Steel clarifies that the proper English name is "Hyundai Steel Company." See letter from Hyundai Steel, "Certain Cut-To-Length Carbon-Quality Steel Plate from Korea: Extension Request for Questionnaire Responses" (April 14, 2015).

⁷ See letter from Hyundai Steel, "Certain Cut-To-Length Carbon-Quality Steel Plate from Korea: Alignment of New Shipper Review with Concurrent Administrative Review" dated April 7, 2015.

⁸ See memorandum to file, "Alignment of New Shipper Review of Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea with the Concurrent Administrative Review of Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea" dated April 22, 2015.

⁹ See letter from the petitioner, "Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Sales Below Cost Allegation for Hyundai Steel" dated June 8, 2015.

¹⁰ See memorandum to James Maeder, Senior Director, "Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Initiation of Cost Investigation for Hyundai Steel Co., Ltd." dated July 6, 2015.

¹¹ See the Memorandum to Deputy Assistant Secretary Christian Marsh entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper and Administrative Reviews" dated October 16, 2015.

¹² See the DSM verification report dated November 24, 2015.

¹³ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding

We are conducting these reviews in accordance with section 751 of the Act.

Scope of the Order

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to length (not in coils) and without patterns in relief), of iron or non-alloy quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000.

“Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas” dated January 27, 2016.

The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

Rescission of Administrative Review in Part

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review in part “if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.” Subsequent to the initiation of the review, we received a timely withdrawal of the request for the review of BDP International, Daewoo International Corp., GS Global Corp., Hyundai Glovis, Hyundai Steel,¹⁴ Iljin Steel, Samsung C&T Corporation, Samsung C&T Engineering & Construction Group, Samsung C&T Trading and Investment Group, Samsung Heavy Industries, and Steel N People Ltd.¹⁵ Because no other party requested an administrative review of these companies,¹⁶ we are rescinding the administrative review with respect to these companies in accordance with 19 CFR 351.213(d)(1).

Bona Fides Analysis

Consistent with the Department’s practice, we examined the *bona fides* of the sales in the new shipper review.¹⁷ In evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, the Department considers, *inter alia*, such factors as: (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm’s-length basis.¹⁸ Accordingly, the Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”¹⁹ In *TTPC*, the Court of International Trade (CIT) also affirmed the Department’s decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer

¹⁴ This partial rescission of administrative review with respect to Hyundai Steel does not affect the ongoing new shipper review of Hyundai Steel. Therefore, we will not issue assessment instructions as a result of the rescission of the administrative review with respect to Hyundai Steel. Instead, we will issue liquidation instructions and assess duties for Hyundai Steel’s entries upon completion of the ongoing new shipper review.

¹⁵ See the petitioner’s withdrawal of review request dated July 2, 2015.

¹⁶ Hyundai Steel requested an administrative review of itself “in the event that the Department does not initiate a new shipper review of the same entries.” See Hyundai Steel’s administrative review request dated March 2, 2015. Because we initiated the new-shipper review of Hyundai Steel prior to the initiation of the administrative review, we did not initiate the administrative review of Hyundai Steel based on its request for an administrative review. Rather, we initiated the administrative review of Hyundai Steel based solely on the petitioner’s request for review, which, as described above, was subsequently withdrawn. Accordingly, the administrative review of Hyundai Steel is rescinded.

¹⁷ See, e.g., *Honey from the People’s Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum (I&D Memo) at comment 1b.

¹⁸ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (*TTPC*).

¹⁹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying I&D Memo at New Shipper Review of Clipper Manufacturing Ltd.).

will make in the future is relevant,²⁰ and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.²¹ Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a sale in a new shipper review so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.²² Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its dumping margin calculations.²³

Based on our analysis of the factors described above, we preliminarily find that Hyundai Steel's U.S. sales are *bona fide* transactions. Moreover, based on this finding and its responses to our questionnaires, we preliminarily determine that Hyundai Steel qualifies as a new shipper during this POR.²⁴

Comparisons to Normal Value

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

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or CEPs (*i.e.*, the average-to-average (A-A) 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 NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative and new-shipper reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative and new-shipper reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²⁵

²⁰ See *TTPC*, 366 F. Supp. 2d at 1250.

²¹ *Id.* at 1263.

²² See *New Donghua*, 374 F. Supp. 2d at 1344.

²³ See *TTPC*, 366 F. Supp. 2d at 1249.

²⁴ See memoranda to the file entitled "New Shipper Review of Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea – Bona Fides Sales Analysis of Hyundai Steel Company" dated concurrently with this decision memorandum for more details including certain business proprietary information.

²⁵ With the rescission of the administrative review in part, the two remaining respondents in these administrative and new shipper reviews are DSM and Hyundai Steel.

²⁶ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and the accompanying I&D Memo at Comment 1. See also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1).²⁷ 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 these administrative and new shipper reviews. 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 A-A method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results 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 purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR 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 NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* 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

²⁷ 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), and *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 A-T method to all sales as an alternative to the A-A 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 A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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 A-A 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 A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A 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 A-A 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 A-A 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 these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

For DSM, based on the results of the differential pricing analysis, we preliminarily find that 84.57 percent of the value of U.S. sales pass the Cohen's *d* test²⁸ and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the A-A method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the

²⁸ See the preliminary analysis memorandum for DSM dated concurrently with this Preliminary Decision Memorandum.

A-T method to all U.S. sales. Thus, for the preliminary results, we are applying the A-T method to all U.S. sales to calculate the weighted average dumping margin for DSM.

For Hyundai Steel, based on the results of the differential pricing analysis, we preliminarily find that 24.13 percent of the value of U.S. sales pass the Cohen's *d* test²⁹ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, we preliminarily determine to apply the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Hyundai Steel.

Product Comparisons

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

Date of Sale

We normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the material terms of sale are established.³⁰ For home market sales, DSM explained that the sales quantity and price may change between the time of the initial order and the shipment of the merchandise and that the date of shipment was the same as the sales invoice date.³¹ For U.S. sales, DSM explained that the essential terms of sale are fixed at the time of shipment and that the date of shipment precedes the sales invoice date.³² For home market sales, Hyundai Steel explained that "quantity can change up until shipment from Hyundai Steel's factory, and price can change up until Hyundai Steel issues its tax invoice." For U.S. sales, Hyundai Steel explained that "prices and quantities can be subject to change up to the time of shipment."³³ We used the respondents' date of shipment as the date of sale for both the home market and U.S. sales because the date of shipment best reflects the date on which the material terms of sale are established.

Level of Trade/CEP Offset

To the extent practicable, we determine NV for sales at the same level of trade (LOT) as CEP sales.³⁴ When there are no sales at the same LOT, we compare CEP sales to comparison market

²⁹ See the preliminary analysis memorandum for Hyundai Steel dated concurrently with this Preliminary Decision Memorandum.

³⁰ See 19 CFR 351.401(i).

³¹ See DSM's section B response dated June 12, 2015 (re-filed on June 23, 2015) at 24.

³² See DSM's section C response dated June 12, 2015 (re-filed on June 23, 2015) at 19-21.

³³ See letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Section A Questionnaire Response" (April 29, 2015) at A-25.

³⁴ See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412.

sales at a different LOT. The NV LOT is that of the starting-price sales in the comparison market.

We examined the differences in selling functions reported in the respondents' responses to our requests for information. The respondents each reported two types of customers in the home market: end-users and distributors. The selling activities associated with the two types of customers did not differ; therefore, we consider the two reported channels of distribution to constitute one LOT. In the U.S. market, the respondents reported CEP sales to distributors. Therefore, we considered the CEP to constitute only one LOT. We compared the selling activities at the CEP LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by the respondents' U.S. affiliates, that these levels were substantially dissimilar. DSM's sales at the CEP level do not involve, *e.g.*, sales promotion/advertising, customer negotiation/contract, or invoicing unaffiliated customers while sales at the home market level include these activities.³⁵ Hyundai Steel's sales at the CEP level involve no or lower levels of, *e.g.*, sales forecasting, strategic/economic planning, advertising, inventory maintenance, direct sales personnel, sales/marketing support, or market research relative to sales at the home market level.³⁶ Therefore, for the respondents, we preliminarily determine the home-market sales to be at a different LOT and at a more advanced stage of distribution than the CEP LOT.

Because there is only one LOT in the home market, we were unable to calculate a LOT adjustment based on the respondents' home market sales of the foreign like product and we have no other information that provides an appropriate basis for determining a LOT adjustment. Moreover, because the CEP LOT did not exist in the home market, there is no basis for a LOT adjustment. For the respondents' CEP sales, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP offset adjustment to NV is subject to the so-called offset cap, which is calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

Constructed Export Price

The Department based the price of the respondents' U.S. sales of subject merchandise on CEP, as defined in section 772(b) of the Act, for the subject merchandise sold, before importation, by a U.S.-based seller affiliated with the producer to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e). In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and those indirect selling expenses associated with economic activities occurring in the United States. We also deducted the profit allocated to expenses deducted under section 772(d)(1) of the Act in accordance with section 772(d)(3) of the Act. Pursuant to section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S.

³⁵ See DSM's section A response dated June 12, 2015 (re-filed on July 23, 2015) at 16-19 and Exhibit A-19.

³⁶ See letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Section A Questionnaire Response" (April 29, 2015) at Exhibit A-13.

economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets.

Normal Value

1. Overrun Sales

Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines “ordinary course of trade” as the “conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.”

The respondents reported home market sales of “overrun” merchandise, *i.e.*, sales of products that failed to meet the original customer’s order specifications because of differences in size, chemical components, and/or strength. In the past, we examined various factors to determine whether “overrun” sales are in the ordinary course of trade.³⁷ We have the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.³⁸ These factors include, but are not limited to, the following: (1) whether the merchandise is “off-quality” or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.³⁹

Based on our analysis of these factors and the terms of sale, we preliminarily determine that the respondents’ overrun sales are outside the ordinary course of trade. Because our analysis includes business proprietary information, the analysis is available in separate decision memoranda.⁴⁰

2. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in Korea to serve as a viable basis for calculating NV, we compared the respondents’ volume of home market sales of the foreign like product to its U.S. sales volume, in accordance with sections 773(a)(1)(B) and (C) of the Act. Because the volume of the respondents’ home market sales of the foreign like product exceeded five percent of its aggregate U.S. sales volume of the subject merchandise, we preliminarily determine that the respondents’ home markets are viable for comparison purposes.

3. Affiliated Parties

³⁷ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1364-65 (CIT 2003); see also, e.g., 2012-13 Prelim and the accompanying Preliminary Decision Memorandum at 8-9, unchanged in 2012-13 Final.

³⁸ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

³⁹ See 2012-13 Prelim, and accompanying Preliminary Decision Memorandum at 8-9, unchanged in 2012-13 Final.

⁴⁰ See the memoranda entitled “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: DSM’s Home Market Overruns” and “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Hyundai Steel’s Home Market Overruns” dated concurrently with this Preliminary Decision Memorandum.

DSM made home market sales to a subsidiary of Dongkuk Industries Co., Ltd. (DKI). DKI owns a certain percentage of this subsidiary. DSM's Chairperson, Sae Joo Chang, and CEO, Sae Wook Chang, are brothers. DKI's Chairperson and DKI's subsidiary's director, Sang Kuhn Chang, is an uncle of DSM's Chairperson, Sae Joo Chang, and CEO, Sae Wook Chang. Together the Chang family grouping owns the largest block of the outstanding shares of DSM and DKI.⁴¹

Members of a family are affiliates pursuant to section 771(33)(A) of the Act and 19 CFR 351.102(b)(3). The definition of family includes uncle-nephew relationships under section 771(33)(A) of the Act.⁴² Two or more persons directly or indirectly controlling, controlled by, or under common control with any person are affiliates under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). Further, 19 CFR 351.102(b)(3) states that in considering whether there is control, the Department will consider family groupings. In past reviews, we found that DSM and DKI are affiliated.⁴³ The U.S. Court of International Trade upheld our decision to find that DSM and DKI are affiliates in a separate review.⁴⁴

Therefore, we preliminarily find that DKI's Chairperson, Sang Kuhn Chang, and DSM's Chairperson, Sae Joo Chang, and CEO, Sae Wook Chang, are affiliated under section 771(33)(A) of the Act and 19 CFR 351.102(b)(3) because of their uncle-nephew relationship. We also preliminarily find that DSM, DKI, and DKI's subsidiary are affiliated under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3) because DSM, DKI, and DKI's subsidiary are under common control of the Chang family grouping.⁴⁵ Accordingly, we preliminarily treated DSM's home market sales to DKI's subsidiary as sales to an affiliated party and performed the arm's-length test for these sales.

4. Affiliated Party Transactions and Arm's-Length Test

We may calculate NV based on a sale to an affiliated party only if we are satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices.⁴⁶ To test whether the respondents' comparison market sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates,

⁴¹ See the Memorandum entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Affiliation of Dongkuk Steel Mill Co., Ltd., and Dongkuk Industries Co., Ltd." and dated concurrently with this Preliminary Decision Memorandum. See also DSM's section A response dated June 12, 2015 (re-filed on June 23, 2015), at Exhibits A-22, A-23, and A-29 and supplemental response dated August 14, 2015, at Exhibit A-35.

⁴² See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1325-26 (CIT 1999).

⁴³ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75791 (December 19, 2014) (2013-14 Prelim) and the accompanying Preliminary Decision Memorandum at 9, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 22971 (April 24, 2015) (2013-14 Final).

⁴⁴ See *Dongkuk Steel Mill Co. v. United States*, 29 CIT 724 (June 22, 2005).

⁴⁵ See the memorandum entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Affiliation of Dongkuk Steel Mill Co., Ltd., and Dongkuk Industries Co., Ltd." dated concurrently with this memorandum which contains DSM's business-proprietary information for more details.

⁴⁶ See 19 CFR 351.403(c).

movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices.⁴⁷ We included in our calculations of NV those sales to affiliated parties that were made at arm's-length prices and excluded those sales that failed the arm's-length test.

5. Cost of Production

We disregarded sales below the COP in the last completed review in which we examined DSM.⁴⁸ Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that DSM made sales of the subject merchandise in its comparison market at prices below the COP in the current POR. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by DSM. As described in the "Background" section above, we initiated a COP investigation of sales by Hyundai Steel in response to an allegation made by the petitioner. We examined the respondents' cost data and determined that our quarterly cost methodology is not warranted⁴⁹ and, therefore, we applied our standard methodology of using annual costs based on the reported data, adjusted and described below.

a. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act.

Except as stated below, we relied on the COP data submitted by DSM and Hyundai Steel in their questionnaire responses for the COP calculation.

At our request, Hyundai Steel provided a revised COP database to eliminate the significant cost differences between control numbers (CONNUMs) which are unrelated to the physical differences between those CONNUMs. Hyundai Steel modified the unit costs for that subset of effected CONNUMs. In addition to this noted subset of CONNUMs, we found other instances where the fluctuation in costs between similar CONNUMs cannot be wholly explained by the differences in the physical characteristics of those CONNUMs. Therefore, to mitigate the impact of the cost fluctuations that are unrelated to the reported products' physical characteristics, we have recalculated Hyundai Steel's conversion costs to average them by quality, specification, and heat treatment.

⁴⁷ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

⁴⁸ See *2013-14 Prelim*, and accompanying Preliminary Decision Memorandum at 10-12, unchanged in *2013-14 Final*.

⁴⁹ See the preliminary analysis memoranda for the respondents dated concurrently with this Preliminary Decision Memorandum.

During the POR, DSM purchased slabs from its affiliates. Slab is a major input to the merchandise. Therefore, we analyzed DSM's affiliated transactions in accordance with section 773(f)(3) of the Act, and adjusted DSM's cost of manufacturing to reflect the higher of market price or transfer price.⁵⁰

b. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (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 of the COPs, 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.

Our cost tests for the respondents indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

6. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home market prices. We calculated NV based on prices to unaffiliated customers in Korea and prices to affiliated customers which were determined to be at arm's length.⁵¹ We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in circumstances of sale (for imputed credit expenses and warranty expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

⁵⁰ See the preliminary analysis memorandum for DSM dated concurrently with this Preliminary Decision Memorandum.

⁵¹ See the "Affiliated Party Transactions and Arm's-Length Test" section above.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.⁵²

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. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 MARCH 2016

(Date)

⁵² See 19 CFR 351.411(b).