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MEMORANDUM TO: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the 2014-2016  
Antidumping Duty Administrative Review of Certain Steel Nails  
from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain steel nails (steel nails) from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is December 29, 2014, through June 30, 2016. The administrative review covers three exporters of subject merchandise, of which two are mandatory respondents: Daejin Steel Co. (Daejin) and Korea Wire Co., Ltd. (Kowire). The Department preliminarily determines that Daejin sold subject merchandise at less than normal value during the POR. Additionally, the Department preliminarily finds that Kowire did not sell subject merchandise at less than normal value during the POR.

## II. BACKGROUND

On July 13, 2015, the Department published in the *Federal Register* an AD order on steel nails from Korea.<sup>1</sup> On July 5, 2016, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on steel nails from Korea.<sup>2</sup> On

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<sup>1</sup> See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 43584 (July 5, 2016).

July 22, 2016, the Department received a request from Je-il Wire Production Co., Ltd. (Je-il) to conduct an administrative review of Je-il.<sup>3</sup> On July 28, 2016, the Department received a request from Daejin to conduct an administrative review of Daejin.<sup>4</sup> On July 29, 2016, the Department received a request from Kowire to conduct an administrative review of Kowire.<sup>5</sup> On August 1, 2016, the Department received a request from Mid Continent Steel & Wire, Inc. (the petitioner) to conduct an administrative review of 211 exporters,<sup>6</sup> including Je-il, Daejin, and Kowire.

On August 19, 2016, the Department received a letter from Jinheung Steel Corporation (Jinheung), Jinsco International Corporation (Jinsco) and Duo-Fast Korea Co., Ltd. (DFK) requesting that the Department not conduct an administrative review of their sales, as the three companies are excluded from the order.<sup>7</sup> On August 25, 2016, the petitioner clarified that its request for a review with respect to Jinheung, Jinsco and DFK concerned subject merchandise that was produced by other Korean entities but sold by Jinheung, Jinsco and DFK.<sup>8</sup> From August through October 2016, we received certifications of no shipments from certain companies, other than Daejin, Kowire, and Je-il, for which petitioner requested a review.<sup>9</sup>

On September 12, 2016, based on timely requests for administrative review, the Department initiated an AD administrative review of the 211 companies.<sup>10</sup> In the *Initiation Notice*, the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data.<sup>11</sup> On September 29, 2016, the Department received respondent selection comments from Kowire and the petitioner.<sup>12</sup>

On November 7, 2016, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to the Department, we

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<sup>3</sup> See Letter from Je-il, “Certain Steel Nails from the Republic of Korea: Request for Administrative Review,” dated July 22, 2016.

<sup>4</sup> See Letter from Daejin, “Certain Steel Nails from the Republic of Korea: Request for Administrative Review,” dated July 28, 2016.

<sup>5</sup> See Letter from Kowire, “Steel Nails from the Republic of Korea: Request for Administrative Review,” dated July 29, 2016.

<sup>6</sup> See Letter from the petitioner, “Certain Steel Nails from the Republic of Korea: Request for Administrative Reviews,” dated August 1, 2016.

<sup>7</sup> See Letter from Jinheung, Jinsco and DFK, “Antidumping Investigation of Certain Steel Nails from the Republic of Korea: Response to Request for Reviews,” dated August 19, 2016.

<sup>8</sup> See Letter from the petitioner, “Certain Steel Nails from the Republic of Korea: Clarification of Request for Administrative Reviews of Jinheung, Jinsco, and DFK,” dated August 25, 2016.

<sup>9</sup> Because we are rescinding the review for the companies that submitted certifications of no shipments, *see* below at “Rescission in Part,” we did not request U.S. Customs and Border Protection data to confirm certain parties’ certifications of no shipments, and are not making a preliminary determination with regard to their certifications of no shipments.

<sup>10</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

<sup>11</sup> See *Initiation Notice*, 81 FR at 62720.

<sup>12</sup> See Letter from Kowire, “Steel Nails from the Republic of Korea: Respondent Selection Comments,” dated September 29, 2016 (Kowire’s Respondent Selection Comments); *see also* Letter from the petitioner, “Certain Steel Nails from the Republic of Korea: Comments on Respondent Selection,” dated September 29, 2016 (Petitioner’s Respondent Selection Comments).

determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.<sup>13</sup> As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters of steel nails from Korea by U.S. entry volume during the POR (*i.e.*, Daejin and Kowire).<sup>14</sup> Accordingly, we issued the AD questionnaire to Daejin and Kowire.<sup>15</sup> On December 12, 2016, the petitioner timely withdrew its request for administrative review pursuant to 19 CFR 351.213(d)(1) of all the producers and exporters except for Daejin, Je-il, and Kowire.<sup>16</sup>

On March 9, 2017, the Department extended the preliminary results in this review to no later than July 31, 2017.<sup>17</sup> From February 2016 to June 2017, the Department issued supplemental questionnaires to Daejin and Kowire and received timely responses from the companies from March to June 2017.

### **III. SCOPE OF THE ORDER**

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches.<sup>18</sup> Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of the order are nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

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<sup>13</sup> See Memorandum, “Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Respondent Selection,” dated November 7, 2016 (Respondent Selection Memorandum).

<sup>14</sup> See Respondent Selection Memorandum.

<sup>15</sup> See Department Letter, “Administrative Review of Certain Steel Nails from Korea: Antidumping Duty Questionnaire,” dated November 8, 2016.

<sup>16</sup> See Letter from the petitioner, “Certain Steel Nails from the Republic of Korea: Withdrawal of Request for Administrative Review,” dated December 12, 2016.

<sup>17</sup> See Memorandum, “Antidumping Duty Administrative Review of Certain Steel Nails from Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated March 9, 2017.

<sup>18</sup> The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

Also excluded from the scope are nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: 1) builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; 2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; 3) swivel seats with variable height adjustment; 4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); 5) seats of cane, osier, bamboo or similar materials; 6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); 7) furniture (other than seats) of wood (with the exception of i) medical, surgical, dental or veterinary furniture; and ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or 8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.*, furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of the order are nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision). Also excluded from the scope of the order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of the order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of the order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of the order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Nails subject to the order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to the order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### **IV. RESCISSION IN PART**

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department initiated the instant review on September 12, 2016. The petitioner withdrew its request of an administrative review of all the producers and exporters except for Daejin, Je-il, and Kowire on December 12, 2016, which is within the 90-day period and is thus timely. Because the petitioner's withdrawal of its request for review is timely and because no other party requested a review of the remaining 208 companies, we are rescinding this review, in part, with respect to the remaining 208 companies.

#### **V. NON-SELECTED RESPONDENT RATE**

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all others rate is normally "an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

Je-il remains subject to this administrative review because neither it nor the petitioner withdrew a request for review of it and it was not selected as a mandatory respondent. As such, we have preliminarily calculated a weighted-average dumping margin for the company using the calculated rates of Daejin, the mandatory respondent without a weighted-average dumping margin of zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, we have preliminarily applied a rate of 2.14 percent to Je-il, the non-selected respondent.

#### **VI. AFFILIATION**

Based on evidence available on the record, we find that Kowire and its Korean toller are not affiliated persons within the meaning of section 771(33) of the Act. Because this preliminary results relies heavily on business proprietary information, for a complete discussion, *see* the Preliminary Affiliation Memorandum dated concurrently with this memorandum.<sup>19</sup>

#### **VII. DISCUSSION OF THE METHODOLOGY**

##### Normal Value Comparisons

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

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<sup>19</sup> "Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Korea Wire Co. Ltd. Preliminary Affiliation Memorandum," dated July 31, 2017.

were made at less than normal value (NV), the Department compared the export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

#### *A. Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>20</sup>

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>21</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 administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

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<sup>20</sup> See section 735(c)(5)(A) of the Act.

<sup>21</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); *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting

weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.<sup>22</sup>

### B. *Results of the Differential Pricing Analysis*

For Daejin, based on the results of the differential pricing analysis, the Department preliminarily finds that 84.71 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>23</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences, because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Daejin.

For Kowire, based on the results of the differential pricing analysis, the Department preliminarily finds that 71.84 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>24</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department finds that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method when both methods are applied to all sales. Thus, for these preliminary results, the Department is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Kowire.

### C. *Product Comparisons*

In accordance with section 771(16) of the Act, we considered all products produced and sold by Daejin and Kowire in Korea during the POR that fit the description in the "Scope of the Order" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining NV for the subject merchandise sold in the United States. Pursuant to 19 CFR

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<sup>22</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) recently affirmed much of the Department's differential pricing methodology. We ask interested parties present only arguments on issues which have not already been decided by the CAFC.

<sup>23</sup> See Memorandum, "2014-2016 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea, Preliminary Results Analysis for Daejin Steel Co." dated concurrently with this memorandum (Daejin's Preliminary Results Analysis Memorandum).

<sup>24</sup> See Memorandum, "2014-2016 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea, Preliminary Results Analysis for Korea Wire Co., Ltd." dated concurrently with this memorandum (Kowire's Preliminary Results Analysis Memorandum) at 2.



351.414(f)(3), we compared Daejin's and Kowire's U.S. sales to foreign like product sales made in the home market, where appropriate.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we compared U.S. sales to sales of the most similar foreign-like product made in the ordinary course of trade. In making the product comparisons, we matched foreign-like products based on the physical characteristics reported by the respondents to the product sold in the United States. In the order of importance, these physical characteristics are as follows: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment.<sup>25</sup>

#### D. Date of Sale

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. However, the regulations permit the Department to 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>26</sup> The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>27</sup>

For their home market and U.S. sales, Daejin and Kowire reported the date when the material terms are firmly established, which is the earlier of the shipment date or the invoice date in accordance with the Department's practice.<sup>28</sup> Based on this information, and consistent with the Department's practice,<sup>29</sup> we preliminarily determine that the earliest date, either the invoice date or the shipment date, is the most appropriate selection for the date of sale for sales in both the home and U.S. markets.

#### E. Export 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

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<sup>25</sup> See Kowire's January 6, 2017 Section B Questionnaire Response at B-6, C-8; see also Daejin's January 5, 2017 Section B and C Questionnaire Response at 4-9.

<sup>26</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>27</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>28</sup> See Kowire's December 6, 2016 Section A Questionnaire Response at A-17; Daejin's June 19, 2017 Supplemental Questionnaire Response at page 2-3.

<sup>29</sup> See *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627 (October 7, 2015) and accompanying Preliminary Decision Memorandum at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

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 Daejin’s and Kowire’s sales because both companies sold the merchandise under consideration directly to the first unaffiliated purchaser in the United States before the date of importation.<sup>30</sup>

For purposes of these preliminary results, we calculated the U.S. price for Daejin and Kowire, in accordance with section 772(a) of the Act, because the merchandise was first sold, prior to importation by the producer, outside of the United States to the unaffiliated purchaser in the United States. There were no constructed export price (CEP) sales for Daejin and Kowire during the POR. We calculated EP based on the packed price that was charged to the first unaffiliated U.S. customer. We made deductions for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act, including deductions for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and other U.S. transportation expenses. Also, where appropriate, we made deductions from the starting price for selling expenses (commissions, warranties, credit expense, and bank charges).

Additionally, the Department has not treated Kowire’s reported freight revenue as an addition to Kowire’s prices pursuant to 19 CFR 351.401(c). Instead, the Department followed its normal practice by treating freight revenue as an offset to freight costs rather than an addition to U.S. price where freight revenue exceeds freight expenses.<sup>31</sup>

Under section 772(a) of the Act, the basis for EP is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be investigated.<sup>32</sup> In evaluating the knowledge test, the Department considers both a seller’s actual knowledge (knew) and imputed knowledge (should have known) of the final destination of the subject merchandise *at the time* of sale.<sup>33</sup> Kowire reported that, during the POR, Kowire predominantly exported to the United States steel nails that it manufactured in its own production facilities and that in a few instances, Kowire sold purchased steel nails from unaffiliated suppliers that knew at the time of the sale that Kowire would ship the merchandise to the United States. Kowire provided evidence that demonstrates that, at the time of those sales, its unaffiliated suppliers were the first party in the chain of distribution that knew or

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<sup>30</sup> See Daejin’s December 6, 2016 Section A Questionnaire Response (Daejin December 6, 2016 AQR) at 3; see also Kowire’s April 13, 2017 Second Supplemental Sections B and C Questionnaire Response at Exhibit SC-1.

<sup>31</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying IDM at Comment 3; see also *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less-Than-Fair-Value*, 76 FR 64318 (October 18, 2011) and accompanying IDM at Comment 39 (explaining that where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services).

<sup>32</sup> *Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>33</sup> *Id.*

should have known of the U.S. destination of the steel nails and thus should be considered the “exporter” for reporting purposes.<sup>34</sup> After reviewing sales invoices and sales documentation on the record for those specific sales, we preliminarily find that Kowire’s claim is supported by record evidence, and we have preliminarily exempted Kowire from reporting those sales.

The Department has not increased U.S. price to account for the duty drawback program (*i.e.*, “Simplified Fixed Drawback” scheme) used by Daejin and Kowire,<sup>35</sup> in accordance with section 772(c)(1)(B) of the Act. Section 772(c)(1)(B) of the Act states that the price used to establish EP 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>36</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>37</sup>

Under the Simplified Fixed Drawback system, the amount of the duty drawback a company receives is based on a percentage of the free on board (FOB) value of exports, not on the amount of import duties paid by the company for raw material inputs.<sup>38</sup> Therefore, the amount of the duty drawback that a company receives, and the amount of import duties that a company pays, are not directly linked to, and dependent upon, one another. Consequently, the import duties and any applicable exemption are not linked, and are not dependent upon each other, as required by prong one of the Department’s two-prong duty drawback test. Accordingly, based on record evidence and consistent with its recent determinations with regard to this program, the Department has not granted Daejin and Kowire the duty drawback offset.

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<sup>34</sup> Letter from Kowire, “Steel Nails from the Republic of Korea – Request for Confirmation of U.S. Sales Reporting Exemption,” dated November 21, 2016.

<sup>35</sup> See also Daejin’s January 5, 2017 Section B and C Questionnaire Response at 71; see also Kowire’s March 20, 2017 Supplemental Section C Questionnaire Response at SC-14.

<sup>36</sup> See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

<sup>37</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>38</sup> See *e.g. Ferrovanadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 FR 14874 (March 23, 2017) and accompanying Issues and Decision Memorandum at Comment 2 (determining that the amount of the duty drawback that the respondent received under the fixed rate drawback system, and the amount of import duties that it pays, are not directly linked to, and dependent upon, one another, as required by prong one of the Department’s two-prong duty drawback test).

## F. *Normal Value*

### 1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign-like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign-like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign-like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

For each respondent, we determined that the aggregate volume of home market sales of the foreign-like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise.<sup>39</sup> Therefore, for Daejin's and Kowire's margin analysis, we used home market sales as the basis for NV, 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.<sup>40</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>41</sup> For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.<sup>42</sup>

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-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 comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

#### (i) *Daejin*

For the home market, Daejin reported that it sold steel nails during the POR through one channel of distribution. Daejin explained that it sold only to unaffiliated distributors in Korea.<sup>43</sup> In the U.S. market, Daejin reported that its sales were to unaffiliated U.S. distributor or unaffiliated end-user customers. Sales to both types of customer constituted a single channel of

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<sup>39</sup> See Daejin's December 6, 2016 AQR at 3; see also Kowire's December 6, 2016 Section A Questionnaire Response at A2-A3.

<sup>40</sup> See also section 773(a)(7)(A) of the Act.

<sup>41</sup> See 19 CFR 351.412(c)(1)(iii).

<sup>42</sup> See 19 CFR 351.412(c)(1)(i).

<sup>43</sup> See Daejin's December 6, 2016 Section A Questionnaire Response at A-4.

distribution,<sup>44</sup> as Daejin did not perform different selling function depending on the channels of distribution in the U.S. market.<sup>45</sup>

We preliminarily determine that Daejin performed similar selling functions regardless of the distribution channel, and regardless of whether the sales were to distributors or end-users. As a result, we preliminarily determine that the LOT of U.S. sales was the same as the LOT of home-market sales. Therefore, we matched U.S. sales at the same LOT in the comparison market and made no level-of-trade adjustment.

(ii) *Kowire*

For the home market, Kowire reported that it sold steel nails during the POR through one channel of distribution. Kowire explained that it sold only to unaffiliated distributors and end users. Furthermore, record evidence demonstrates that it did not perform different selling functions depending on whether its customer was a distributor or trading company.<sup>46</sup>

In the U.S. market, Kowire reported that its sales were made through two channels of distribution. Both U.S. channels of distribution constituted EP sales. Kowire explained that the two channels distinguish between the selling functions for Kowire's sales to U.S. distributors (Channel 1) and the unaffiliated Korean trading company, which resold the merchandise to its U.S. customers (Channel 2).<sup>47</sup> According to Kowire, it did not perform different selling functions depending on the channels of distribution in the U.S. market.<sup>48</sup>

Kowire stated there are differences in selling functions which reflect the fact that, for U.S. Channel 2, Kowire made a single sale to the local trading company on a type of delivery term basis that was not part of Kowire's normal sales operations and that required fewer selling activities.<sup>49</sup> Nonetheless, record evidence demonstrates that the selling functions Kowire performed for U.S. sales were very similar to those it performed for comparison-market sales.<sup>50</sup> As a result, we preliminarily determine that the LOT of U.S. sales was the same as the LOT of home-market sales and we matched U.S. sales at the same LOT in the comparison market and made no level-of-trade adjustment.

### 3. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the

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<sup>44</sup> *Id.*

<sup>45</sup> See Daejin's March 6, 2017 Supplemental Questionnaire Response at 5.

<sup>46</sup> See Kowire's December 6, 2016 Section A Questionnaire Response at A-13 and Exhibit A-6; see Kowire's March 2, 2017 Supplemental Section A Questionnaire Response at SA-12.

<sup>47</sup> See Kowire's December 6, 2016 Section A Questionnaire Response at A-13; see Kowire's March 2, 2017 Supplemental Section A Questionnaire Response at SA-12.

<sup>48</sup> See Kowire's December 6, 2016 Section A Questionnaire Response at A10-A13 and Exhibit A-6; see Kowire's March 2, 2017 Supplemental Section A Questionnaire Response at SA-12.

<sup>49</sup> See Kowire's March 2, 2017 Supplemental Section A Questionnaire Response at SA-12.

<sup>50</sup> See Kowire's December 6, 2016 Section A Questionnaire Response at A10-A13 and Exhibit A-6; see Kowire's March 2, 2017 Supplemental Section A Questionnaire Response at SA-12.

Department's requests for information on sales at less than the cost of production (COP).<sup>51</sup> This law does not specify dates of application for those amendments.<sup>52</sup> 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 U.S. International Trade Commission.<sup>53</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 constructed value (CV) and COP information from respondent companies in all AD proceedings.<sup>54</sup>

Accordingly, the Department requested this information from Daejin and Kowire in this administrative review.<sup>55</sup> We examined Daejin's and Kowire's cost data and determined that our quarterly cost methodology is not warranted. We, therefore, applied our standard methodology of using annual costs based on the reported data.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by Daejin and Kowire except that we revised Kowire's G&A expenses to exclude the line-item for duty drawback offset.<sup>56</sup>

#### 4. Cost of Production Test

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. Specifically, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.<sup>57</sup>

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

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<sup>51</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

<sup>52</sup> The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>53</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).

<sup>54</sup> *Id.*, 80 FR at 46794-95.

<sup>55</sup> See Daejin's January 5, 2017 Section D Questionnaire Response; see also Kowire's January 6, 2017 Section D Questionnaire Response.

<sup>56</sup> See Memorandum, "Certain Steel Nails from Korea: Korea Wire Co., Ltd. Preliminary Results Sales and Cost Analysis Memorandum," dated July 31, 2017.

<sup>57</sup> See Daejin's Preliminary Results Analysis Memorandum; see also Kowire's Preliminary Results Analysis Memorandum.

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 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 COPs for the POR, 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 Daejin's and Kowire's home market sales during the POR 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.<sup>58</sup>

#### 5. Calculation of NV Based on Comparison Market Prices

We calculated NV based on the reported packed, delivered or ex-factory prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions, where appropriate, from the starting price for certain movement expenses, *i.e.*, inland freight, and for certain direct selling expenses, *i.e.*, credit expenses, pursuant to section 773(a)(6)(B)(ii) of the Act.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for 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 of the foreign-like product and that of the subject merchandise.<sup>59</sup>

#### 6. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those steel nails products for which we could not determine the NV based on comparison market sales because, as noted in the "Results of the COP Test" section above, all sales of the comparable products failed the COP test, we based NV on CV.

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<sup>58</sup> See Daejin's Preliminary Results Analysis Memorandum; *see also* Kowire's Preliminary Results Analysis Memorandum.

<sup>59</sup> See Daejin's Preliminary Results Analysis Memorandum; *see also* Kowire's Preliminary Results Analysis Memorandum.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to CV.<sup>60</sup>

#### G. *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.

### VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

7/31/2017

X



Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

<sup>60</sup> See 19 CFR 351.410(c).