



A-580-892
Investigation
Public Document
E&C/V: AC

DATE: November 15, 2017

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 the Preliminary Determination and
Affirmative Determination of Critical Circumstances, in Part, in the
Less-Than-Fair-Value Investigation of Certain Cold-Drawn
Mechanical Tubing of Carbon and Alloy Steel from the Republic
of Korea

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The Department also preliminarily determines that critical circumstances exist for Sang Shin Ind. Co., Ltd. (Sang Shin). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On April 19, 2017, the Department received an antidumping duty (AD) petition covering imports of cold-drawn mechanical tubing from Korea,¹ which were filed in proper form by ArcelorMittal Tubular Products; Michigan Seamless Tube, LLC; Plymouth Tube Co. USA, PTC Alliance Corp.; Webco Industries, Inc.; and Zekelman Industries, Inc. (collectively, the petitioners). The Department initiated this investigation on May 9, 2017.²

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on May 19, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On May 30, 2017, we received comments on behalf of the petitioners regarding the respondent selection process.⁵ On June 15, 2017, the Department limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the merchandise under consideration by volume, Sang Shin and Yulchon Co., Ltd. (Yulchon).⁶

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of cold-drawn mechanical tubing to be reported in response to the Department's AD questionnaire.⁷ The Department received a number of timely scope comments on the record of this investigation, as well as on the records of the companion cold-drawn mechanical tubing investigations involving Germany, India, Italy, the People's Republic of China, and Switzerland.⁸ On June 9, 2017, the petitioners and various other interested parties in this and/or the companion AD investigations submitted comments to the Department regarding the physical characteristics of the merchandise

¹ See Petitioners' Letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland – Petitions for the Imposition of Antidumping and Countervailing Duties," dated April 19, 2017 (the Petition). Plymouth Tube Co. USA, a domestic producer of subject merchandise, joined these investigations as a domestic interested party after the filing of the Petition.

² See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

³ See *Initiation Notice* at 22495.

⁴ See Memorandum to The File, entitled "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: CBP Data for Respondent Selection," dated May 19, 2017 (CBP Data).

⁵ See Letter to the Secretary of Commerce from the petitioners, entitled, "Certain Cold-Drawn Mechanical Tubing from the Republic of Korea - Petitioners' Comments on Respondent Selection," dated May 26, 2017.

⁶ See Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: Respondent Selection," dated June 15, 2017.

⁷ See *Initiation Notice*, 82 FR at 22491.

⁸ For further discussion of these comments, see Memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Germany, India, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with this Memorandum (Preliminary Scope Memorandum).

under consideration to be used for reporting purposes.⁹ On June 19, 2017, the petitioners and various other interested parties filed rebuttal comments.¹⁰ Based on the comments received, the Department issued a letter to interested parties which contained the initial product characteristics for this and the companion AD investigations.¹¹ On July 12, 2017, the petitioners submitted comments on the product characteristics released by the Department.¹²

On June 9, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cold-drawn mechanical tubing from Italy.¹³

The Department issued its AD questionnaire to Sang Shin and Yulchon on June 15, 2017. Between July 2017 and October 2017, Yulchon timely responded to the Department's original and supplemental questionnaires.¹⁴ Sang Shin did not respond to the Department's original questionnaire. Between September and November, 2017, the Department issued supplemental questionnaires for Sections A through D. Between July and November, 2017, the petitioners provided comments on Yulchon's original and supplemental questionnaire responses. No other parties provided comments.

On June 9, 2017, the petitioners and various other interested parties in this, and the companion AD investigations for People's Republic of China, Republic of Germany, India, Italy, and Switzerland, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.¹⁵ On June 19, 2017, the petitioners and various other interested parties filed rebuttal comments. On July 6, 2017, the Department issued a letter to interested parties which contained the product characteristics for

⁹ See, e.g., Petitioners' Letter, "Petitioners' Comments on Physical Characteristics and Model Matching Criteria," dated June 9, 2017; Dalmine's Letter, "Product Characteristic Comments," dated June 9, 2017; Tube Investments of India Ltd.'s Letter, "Comments on Product Characteristics," dated June 9, 2017.

¹⁰ See, e.g., Petitioners' Letter, "Petitioners' Rebuttal to Respondents' Product Matching Comments," dated June 19, 2017; Mubea Inc.'s Letter, "Rebuttal Comments on Product Characteristics," dated June 19, 2017.

¹¹ See Department Letter, re: Certain Cold-drawn Mechanical Tubing of Carbon and Alloy Steel from Italy, dated July 3, 2017.

¹² See Petitioners' Letter, "Petitioners' Comments on the Department's Release of Product Matching Criteria and Request for Expansion of Certain Criteria Fields," dated July 12, 2017.

¹³ See *Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea, and Switzerland; Determinations*, 82 FR 26812 (June 9, 2017).

¹⁴ See Department Letter to Yulchon Co., Ltd., dated September 7, 2017; see also Department Letter to Yulchon Co., Ltd., entitled, "Re: Antidumping Duty Less Than Fair Value Investigation of Cold Drawn Mechanical Tubing from South Korea," dated September 21, 2017; see also Department Letter to Yulchon Co., Ltd., dated October 6, 2017; see also Department Letter to Yulchon Co., Ltd., entitled, "Re: Antidumping Duty Less Than Fair Value Investigation of Cold Drawn Mechanical Tubing from South Korea," dated October 20, 2017; see also Department Letter to Yulchon Co., Ltd., entitled, "Re: Antidumping Duty Less Than Fair Value Investigation of Cold Drawn Mechanical Tubing from South Korea," dated November 7, 2017.

¹⁵ See Letter to the Secretary of Commerce from the petitioners, entitled, "Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea, and Switzerland - Petitioners' Comments on Physical Characteristics and Model Matching Criteria," dated June 9, 2017; See Letter to the Secretary of Commerce from Tube Investments of India Ltd. and Tube Products of India Ltd (a unit of Tube Investments of India), entitled, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Comments on Product Characteristics," dated June 9, 2017; See Letter to the Secretary of Commerce from Dalmine S.p.A., entitled, "Cold-Drawn Mechanical Tubing from Italy: Product Characteristic Comments," dated June 9, 2017.

this and the companion AD investigations.¹⁶ On June 9, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cold-drawn mechanical tubing from Korea.¹⁷

On September 1, 2017, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).¹⁸ Thereafter, pursuant to section 733(c)(1)(A) of the Act, the Department published in the *Federal Register* a postponement of the preliminary determination until no later than November 15, 2017.¹⁹

On October 20, 2017, the Department received a particular market situation (PMS) allegation from the petitioners.²⁰ On October 20, 2017, the petitioners filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.²¹ In this same month, the Department requested shipment data from Yulchon with respect to the critical circumstances allegation. On October 30, 2017, Yulchon responded to the Department's request for shipment data.²²

On November 13, 2017, the petitioners requested that the date for the issuance of the final determination in this investigation be extended by no more than 135 days after the date of publication in the Federal Registrar of the preliminary determinations pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.210(b).

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

¹⁶ See Letter from the Department to Interested Parties regarding, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea," dated July 6, 2017.

¹⁷ See *Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea, and Switzerland; Determinations*, 82 FR 26812 (June 9, 2017) (ITC Preliminary Determination).

¹⁸ See Petitioners' Letter, "Cold Drawn Mechanical Tubing from China, Germany, India, Italy, Korea and Switzerland – Petitioners' Request to Postpone the Antidumping Duty Preliminary Determination," dated September 1, 2017.

¹⁹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 42788 (September 12, 2017).

²⁰ See Letter to the Secretary of Commerce from the petitioners, entitled, "Certain Cold-Drawn Mechanical Tubing from South Korea - Petitioners' Particular Market Situation Allegation," dated October 20, 2017 (Particular Market Situation Allegation).

²¹ See Letter to the Secretary of Commerce from the petitioners, entitled, "Certain Cold-Drawn Mechanical Tubing from the People's Republic of China, Italy, and the Republic of Korea - Critical Circumstances Allegation," dated October 23, 2017 (Critical Circumstances Allegation).

²² See Yulchons's Letter entitled, "Cold Drawn Mechanical Tubing from Korea," dated October 30, 2017.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2017.²³

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,²⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²⁵ Certain interested parties from the companion cold-drawn mechanical tubing investigations commented on the scope of this investigation, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.²⁶ We have evaluated the scope comments filed by the interested parties, and we are preliminarily modifying the scope language as it appeared in the *Initiation Notice*.²⁷ In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties. We will issue a final scope decision on the records of the cold-drawn mechanical tubing investigations after considering the comments submitted in the scope case and rebuttal briefs.

V. PARTICULAR MARKET SITUATION

Section 504 of the Trade Preferences Extension Act of 2015²⁸ added the concept of "particular market situation" in the definition of the term "ordinary course of trade," for purposes of constructed value (CV) under section 773(e), and through these provisions for purposes of the cost of production (COP) under section 773(b)(3). Section 773(e) states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."

Prior to the TPEA, in a limited number of cases, the Department found that particular market situations existed and, as a result, declined to use an entire market for purposes of calculating NV, as provided for in section 351.404(c)(2) of the Department's regulations.²⁹ The

²³ See 19 CFR 351.204(b)(1).

²⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

²⁵ See *Initiation Notice*, 82 FR at 22491-92.

²⁶ See Preliminary Scope Decision Memorandum.

²⁷ *Id.*

²⁸ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

²⁹ Examples of prior cases where we have found a particular market situation include *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411 (June 9, 1998) (*Salmon from Chile LTFV*); *Mechanical Transfer Presses From Japan; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part*, 63 FR 37331 (July 10, 1998) (*Printing Presses from Japan LTFV*); and *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007) (*Pasta from Italy 9th AR*).

Department's practice in finding PMS starts with a substantiated allegation from an interested party that reasonably demonstrates that such situations exist. Neither the statute, the Department's regulations nor the SAA define the term particular market situation.³⁰ The Department is continuing to develop the concepts and types of analysis that are necessary to address future allegations of particular market situations under section 773(e) of the Act.

As noted above, on October 20, 2017, we received an allegation from the petitioners that, because a particular market situation exists in Korea, the Department must use an alternative calculation methodology in place of the respondents' reported production costs.³¹ The petitioners' allegations are one of several to be recently filed with the Department under section 504 of the TPEA. The TPEA amended the Act expressly to permit the Department to use an alternative calculation methodology where a "particular market situation" distorts costs such that they do not "accurately reflect the cost of production in the ordinary course of trade."

We have accepted the factual information in support of these allegations and have further established a deadline for the submission of factual information to rebut, clarify or correct that allegation in a memo to the file dated concurrently with this preliminary determination.³² Because these allegations were filed several weeks before the preliminary determination, we have not made a determination whether a particular market situation exists at this time, but intend to further consider these allegations after soliciting comments from interested parties.

VI. DISCUSSION OF THE METHODOLOGY

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

A. *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

³⁰ The SAA provides an example of what could be considered a particular market situation, such as price changes correlated to holidays in both markets, but does not define the term.

³¹ See Particular Market Situation Allegation at 2, 10 and 14.

³² See the Department's Memorandum to the File, "Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: Comment Schedule for the Particular Market Situation Allegation," dated concurrently with this memorandum.

In recent investigations, the Department has 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.³³ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip 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 POI 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

³³ See, *e.g.*, *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); 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 accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

B. *Results of the Differential Pricing Analysis*

For Yulchon, based on the results of the differential pricing analysis, the Department preliminarily finds that 44.09 percent of the value of U.S. sales pass the Cohen's *d* test,³⁴ and

³⁴ See the Memorandum to the File from Javier Barrientos, Senior International Trade Compliance Analyst, Office V, entitled, "Analysis for the Preliminary Determination of the Less Than Fair Value Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Korea," dated concurrently with this memorandum (Yulchon Preliminary Analysis Memorandum).

confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Yulchon.

VII. 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 or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁵

Yulchon reported the date of shipment as the date of sale for its home market sales, and that the material terms of sale did not change after this date.³⁶ For U.S. sales, Yulchon stated that the commercial invoice is issued at the time of shipment, and therefore reported the date of shipment as the date of sale.³⁷ Additionally, Yulchon stated that the material terms of sale did not change.³⁸ Therefore, we preliminarily used the shipment date as the date of sale in both markets, in accordance with our practice.³⁹

VIII. PRODUCT COMPARISONS

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

³⁵ 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)).

³⁶ See Yulchon's Supplemental Section B&C Questionnaire Response, dated August 14, 2017 at 21.

³⁷ *Id.* at 64-65.

³⁸ See Yulchon's Supplemental Section B&C Supplemental Questionnaire Response, dated October 23, 2017 at 24.

³⁹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; 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 IDM at Comment 2.

In making product comparisons, we matched foreign like products based on prime *versus* non-prime merchandise and overrun *versus* non-over run and the physical characteristics reported by Yulchon: tube form, type of cold finishing process, steel grade, outside diameter, wall thickness, heat treatment, plating, painting, and surface finish. For Yulchon's sales of cold-drawn mechanical tubing in the United States, the reported product control number (CONNUM) identifies the characteristics of cold-drawn mechanical tubing, as exported by Yulchon.

IX. EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for Yulchon's U.S. sales because the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted based on the facts of the record.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for movement expenses, *e.g.*, rebates, inland freight to the port of exportation, foreign inland insurance, international freight, marine insurance, U.S. inland freight, and brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

X. NORMAL VALUE

A. *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.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for Yulchon was greater than five percent of the aggregate volume of its U.S. sales of merchandise under consideration. Therefore, we used home market sales as the basis for NV for Yulchon, in accordance with section 773(a)(1)(B) of the Act.

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

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁴⁰ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the

⁴⁰ See 19 CFR 351.403(c).

ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, “the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm’s-length.”⁴¹

During the POI, Yulchon made sales of cold-drawn mechanical tubing in the home market to affiliated parties, as defined in section 771(33) of the Act.⁴² Consequently, the Department tested these sales to ensure that they were made at arm’s-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm’s-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling and packing expenses. Pursuant to 19 CFR 351.403(c) and, in accordance with the Department’s practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm’s length. Sales to affiliated customers in the home market that were not made at arm’s-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.⁴³

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁵ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁴⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁷

⁴¹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff’d*, 306 F. Supp. 2d 1291 (CIT 2004) (*China Steel*) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

⁴² See Yulchon Preliminary Analysis Memorandum for a detailed discussion of the Arm’s-Length Test.

⁴³ See section 771(15) of the Act and 19 CFR 351.102(b); see also *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (explaining the Department’s practice).

⁴⁴ See 19 CFR 351.412(c)(2).

⁴⁵ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

⁴⁶ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴⁷ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

When the Department is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁸

In this investigation, we obtained information from Yulchon regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Our LOT findings are summarized below.

Yulchon initially reported that it made its U.S. and home market sales through two channels -of -distribution (*i.e.*, direct shipment and direct shipment through outsourcing cutting processors).⁴⁹ After the Department issued a supplemental questionnaire regarding this issue, Yulchon revised its reporting to reflect a single channel of trade for all U.S. and home market sales.⁵⁰

Accordingly, Yulchon reported that it made its home market sales through one channel-of-distribution where Yulchon sells directly to customers.⁵¹ Yulchon reported that it performed the following selling functions for the home market customers in this channel: sales forecasting; strategic/economic planning; advertising; sales promotion; packing; inventory maintenance; order input/processing; market research; technical assistance; warranty service; and both domestic and international freight and delivery.⁵² Yulchon stated that it did not have CEP sales to the United States during the POI, and thus, claimed no level of trade adjustment.⁵³ The Department finds that many sales and marketing activities were performed at the same level or similar level. Because we find that there were no significant differences in selling activities performed by Yulchon to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Yulchon.

With respect to the U.S. market, Yulchon reported that it performed sales and marketing, freight and delivery services, and warranty and technical support for all its reported U.S. sales. According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Because we determine that substantial differences in Yulchon's selling activities do not exist, we determine that sales to the U.S. market during the POI were made at the same LOT.

⁴⁸ See, e.g., *OJ from Brazil* at Comment 7.

⁴⁹ See Yulchon's Section A Response at 15 and Appendix A-6.

⁵⁰ See Yulchon's Section A Supplemental Response at 20.

⁵¹ See Yulchon's Section B&C Response at 10.

⁵² See Yulchon's Section A Response at 17 and Appendix A-7.

⁵³ *Id.* at 18.

Finally, we compared the U.S. LOT to the home market LOT, and we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly. Therefore, the Department preliminarily finds that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, an LOT adjustment is not warranted.

D. *Cost of Production Analysis*

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁵⁴ Accordingly, the Department requested this information from Yulchon. We examined Yulchon's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses (SG&A), and interest expenses.⁵⁵

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

1. We analyzed affiliated cutting services in accordance with section 773(f)(2) of the Act (the transactions disregarded rule) to determine whether the prices paid to the affiliated supplier reflected arm's-length prices. We found that Yulchon's transfer prices with its affiliate did not reflect arm's-length prices. Thus, we adjusted Yulchon's reported cost of cutting.
2. We adjusted Yulchon's total reported cost of manufacturing for an unreconciled difference between the total cost of manufacturing according to Yulchon's normal books and records and the total cost of manufacturing in the cost database.
3. We adjusted the reported general and administrative expenses for certain miscellaneous gains and revenues.⁵⁶

⁵⁴ 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, 46794-95 (August 6, 2015) (*Applicability Notice*).

⁵⁵ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

⁵⁶ See the Memorandum from Tam Mai to Neal Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Yulchon Co. Ltd.," dated concurrently with this memorandum (Yulchon Preliminary Cost Memorandum).

Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales 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 POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We found that, for certain products, more than 20 percent of Yulchon's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for Yulchon, we based NV on comparison market prices. We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for rebates in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. We did not make deductions from the starting price for billing adjustments, as it is not clear from Yulchon's latest submission that billing adjustment's were properly calculated.⁵⁷

We deducted comparison market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We based Yulchon's packing costs on the amounts

⁵⁷ See Yulchon's October 23, 2017 submission at Exhibit SBCQ-34.

shown on Yulchon's original packing calculation worksheets because these costs were product-type and market-specific.⁵⁸

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses and commission expenses. In instances where U.S. sales remained unpaid as of the date of Yulchon's latest response, we used the signature date of the preliminary determination, *i.e.*, November 15, 2017, as the payment date, and we recalculated U.S. imputed credit expenses, in accordance with our practice.⁵⁹

XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

As noted above, Sang Shin was selected as a mandatory respondent. Although this company received the Department's questionnaire, it did not respond.⁶⁰ For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Sang Shin.

A. *Application of Facts Available*

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Department; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Sang Shin did not respond to our original questionnaire or otherwise participate in this investigation. As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that Sang Shin withheld information the Department requested, that it failed to provide information by the specified deadlines, and that it significantly

⁵⁸ See Yulchon's Section A Supplemental Response at 20.

⁵⁹ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

⁶⁰ See Sang Shin's AD Questionnaire.

impeded the proceeding. Moreover, because Sang Shin failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Sang Shin's preliminary dumping margin.

On June 23, 2017 the Department placed on the record delivery confirmation of the antidumping questionnaire to Sang Shin.⁶¹ On July 4, 2017, Sang Shin requested an extension of time to respond to the questionnaire.⁶² The Department subsequently rejected the extension request because it was improperly filed (*i.e.*, it was not served simultaneously to all parties on the service list, nor did it contain a certificate of service which is required by 19 CFR 351.303(f)).⁶³ Furthermore, Sang Shin had not yet filled an entry of appearance, as is required by 19 CFR 351.103(d)(1).⁶⁴

As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that Sang Shin withheld information the Department requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding. Moreover, because Sang Shin failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Sang Shin's preliminary dumping margin.

B. *Use of Adverse Inference*

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.⁶⁵ In so doing, and under the TPEA,⁶⁶ the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁶⁷ In addition, the Statement of Administrative

⁶¹ See the Memorandum to the File from Annathea Cook, International Trade Compliance Analyst, Office V, entitled, "Tracking of Questionnaire to Sang Shin Industrial Co., Ltd.," dated June 23, 2017.

⁶² See Letter from Sang Shin Industrial Co., Ltd. to the Secretary, regarding "Cold Drawn Mechanical Tubing from Korea," dated July 4, 2017.

⁶³ See Letter from the Department to Sang Shin, regarding "Antidumping and Countervailing Duty Investigations of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: Rejection of Improperly Filed Section A Questionnaire Extension Request Letter," dated July 7, 2017.

⁶⁴ *Id.*

⁶⁵ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁶⁶ On June 29, 2015, the TPEA was signed into law, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

⁶⁷ See section 776(b)(1)(B) of the Act.

Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁶⁸ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁶⁹ It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁷⁰

We preliminarily find that Sang Shin has not acted to the best of its ability to comply with the Department’s request for information as it failed to respond to the Department’s questionnaire.⁷¹ The failure of Sang Shin to participate in this investigation and respond to the Department’s questionnaire has precluded the Department from performing the necessary analysis to calculate a weighted-average dumping margin for it based on its own data. Accordingly, the Department concludes that Sang Shin failed to cooperate to the best of its ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.⁷²

C. *Selection of the AFA Rate*

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁷³ In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable

⁶⁸ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁶⁹ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

⁷⁰ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁷¹ See Sang Shin’s AD Questionnaire.

⁷² See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying IDM at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the AD questionnaire); and *Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil, South Africa, and the Republic of Turkey: Affirmative Preliminary Determinations of Sales at Less Than Fair Value*, 81 FR 65337, and accompanying IDM at 3, unchanged in *Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil, South Africa, and the Republic of Turkey: Affirmative Final Determinations of Sales at Less Than Fair Value and Affirmative Final Determinations of Critical Circumstances for Brazil and the Republic of Turkey*, 81 FR 87544.

⁷³ See also 19 CFR 351.308(c).

result by failing to cooperate than if it had fully cooperated.⁷⁴ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.⁷⁵

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁷⁶ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.⁷⁷ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.⁷⁸ Further, under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.⁷⁹

With respect to the investigation covering cold-drawn mechanical tubing from Korea, the highest dumping margin in the petition is 48.00 percent.⁸⁰ In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margin of 48.00 percent to the transaction-specific dumping margins for the mandatory respondent, Yulchon, we found product-specific margins at or above the petition rate and, as a consequence, we find that the rate alleged in the petition, as noted in the *Initiation Notice*, is within the range of transaction-specific margins computed for this preliminary determination.⁸¹

In sum, the Department corroborated the AFA rate of 48.00 percent to the extent practicable within the meaning of section 776(c) of the Act, because the rate is relevant to the uncooperative respondent. As the 48.00 percent rate is both reliable and relevant, we determine that it has probative value, and thus, it has been corroborated to the extent practicable, pursuant to section

⁷⁴ See SAA at 870.

⁷⁵ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

⁷⁶ See SAA at 870.

⁷⁷ *Id.*; see also 19 CFR 351.308(d).

⁷⁸ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁷⁹ See sections 776(d)(3)(A) and (B) of the Act.

⁸⁰ See *Initiation Notice*.

⁸¹ See Yulchon Preliminary Analysis Memorandum.

776(c) of the Act. Thus, we preliminarily assigned this AFA rate to the subject merchandise from Sang Shin.

XII. CRITICAL CIRCUMSTANCES

On October 23, 2017, the petitioners alleged that critical circumstances exist with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).⁸² In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A. Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

In addition, 19 CFR 351.206(h)(2) provides that, “[i]n general, unless the imports during the ‘relatively short period’ have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” Under 19 CFR 351.206(i), the Department defines “relatively short period” generally as the period starting on the date the proceeding begins *i.e.*, the date the petition is filed and ending at least three months later.⁸³ This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.⁸⁴

⁸² See Critical Circumstances Allegation.

⁸³ See 19 CFR 351.206(i); see also *Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, Policy Bulletin 98.4, 63 FR 55364 (Oct. 15, 1998) (“Commerce has traditionally compared the three-month period immediately after initiation with the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of the subject merchandise”).

⁸⁴ See 19 CFR 351.206(i).

B. *Critical Circumstances Allegation*

The petitioners allege that section 733(e)(1)(A) of the Act is met by virtue of the dumping margins alleged in the Petition, which could be as high as 48.00 percent on a transaction-specific basis.⁸⁵ Thus, the petitioners assert that certain dumping margins alleged in the Petition, which were up to 48.00 percent, exceed the 15 percent threshold used by the Department to impute knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.⁸⁶ The petitioner further argues that importers of cold-drawn mechanical tubing from Korea have been on notice that dumped imports are likely to cause injury since the ITC's June 9, 2017, preliminary affirmative injury finding.⁸⁷

The petitioner argues that, in accordance with section 733(e)(1)(B) of the Act, when examining whether there have been "massive imports of the subject merchandise over a relatively short period," the Department normally uses a three-month base and comparison period for shipment data.⁸⁸ However, the petitioner maintains that the Department's practice is to treat the month in which the petition is filed as part of the base period if the petition is filed in the second half of the month.⁸⁹ Given that the petition in this investigation was filed on April 19, 2017, the petitioner argues that the Department should compare imports of subject merchandise using a four-month base period of January 2017 through April 2017 and a four-month comparison period of May 2017 through August 2017.⁹⁰ The petitioner alleges that U.S. import statistics released by the Department of Commerce and the USITC indicate shipments of merchandise under consideration during the comparison period increased significantly in terms of volume (19.8 percent) between the base period and the comparison period, and as a result, exceeded the threshold for "massive" imports of cold-drawn mechanical tubing from Korea, as provided under 19 CFR 351.206(h) and (i).⁹¹

Yulchon did not submit any rebuttal comments to the petitioners' critical circumstances allegation.

C. *Analysis*

The Department's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioner's critical circumstances

⁸⁵ See Critical Circumstances Allegation at 6.

⁸⁶ *Id.*

⁸⁷ *Id.* at 8 (citing *ITC Preliminary Determination*).

⁸⁸ See 19 CFR 351.206(i).

⁸⁹ See *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19022 (April 25, 2017), and accompanying IDM at 1, 10; *Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part*, 82 FR 41929 (September 5, 2017), and accompanying IDM at 6.

⁹⁰ See Critical Circumstances Allegation at 13.

⁹¹ *Id.* at 14 and Attachment 2.

allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.⁹²

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.⁹³ The petitioners identify four proceedings with respect to tubing from the PRC and Korea. These include the current AD orders in effect on steel tubular products from the PRC in Brazil, India, and Turkey, and provisional duties on steel tubular products from the PRC and Korea in Thailand, all of which were imposed in 2016 or early 2017, prior to the date the Petition was filed in this case. Given the existence of these AD orders on steel tubular products from China and Korea in other third-country markets, the petitioners assert that there is ample record evidence to demonstrate that there is a history of dumping and material injury by reason of dumped cold-drawn mechanical tubing from the PRC and Korea.⁹⁴ However, we find that these prior orders do not demonstrate that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, because those prior orders do not encompass the subject merchandise at issue, *i.e.*, cold-drawn mechanical tubing. Thus, pursuant to section 733(e)(1)(A)(i) of the Act, we preliminarily find that there is not a history of injurious dumping of mechanical tubing from Korea.

Because there is no prior history of injurious dumping, we next examine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, the Department normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.⁹⁵ For purposes of this investigation, the Department preliminarily determines that the knowledge standard is not met for Yulchon and the companies subject to the “all others” rate because preliminary margins are less than 25 percent for EP sales.⁹⁶

Because there is no history of dumping subject merchandise in the U.S. and because the preliminary margin for Yulchon does not exceed the threshold sufficient to impute knowledge of dumping, we preliminarily find, with respect to Yulchon, there is not a reasonable basis to believe or suspect that importers knew or should have known that Yulchon was selling subject merchandise at LTFV. Accordingly, for Yulchon, because the statutory criteria of section

⁹² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (Carbon Steel Pipe Final Determination); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009) (SDGE Final Determination).

⁹³ *Id.*

⁹⁴ See Critical Circumstances Allegation at 8-9.

⁹⁵ See, e.g., *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

⁹⁶ See “Preliminary Determination” section of the accompanying *Federal Register* notice.

733(e)(1)(A) has not been satisfied, we did not examine whether imports from Yulchon were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act.

For the companies subject to the “all others” rate, it is the Department’s normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies.⁹⁷ Accordingly, we find that the critical circumstances determination for Yulchon should also be applied to all others, given that Yulchon is the only mandatory respondent for this investigation not subject to an AFA rate. Because we have preliminarily determined that there are no critical circumstances for Yulchon, we are also preliminarily determining that there are no critical circumstances for the companies subject to the “all others” rate.

Because the other mandatory respondent in this investigation, Sang Shin, was uncooperative, we are assigning, as AFA, a rate of 48.00 percent, the highest margin in the Petition and corroborated to the extent practicable, as noted above.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.⁹⁸ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. Here, the ITC found that there is a “reasonable indication” of material injury to the domestic industry by reason of the imported merchandise under consideration.⁹⁹ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge.

It is the Department’s practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison periods.¹⁰⁰ However, as noted above, Sang Shin did not respond to any of our requests for information.¹⁰¹ Therefore, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted. Accordingly, we preliminarily find that there were massive imports of merchandise from Sang Shin, pursuant to our practice. As such, we have determined that critical circumstances exist for Sang Shin. We will make a final

⁹⁷ See, e.g., *Sodium Metal from France: Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances*, 73 FR 62252, 62254 (October 20, 2008); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413, 17415-416 (March 26, 2012).

⁹⁸ See, e.g., *Carbon and Alloy Steel Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790; *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 5606, 5607 (February 3, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 9037.

⁹⁹ See ITC Preliminary Determination, 82 FR at 26812.

¹⁰⁰ See, e.g., *Carbon Steel Pipe Final Determination*, 73 FR at 31972-73; *SDGE Final Determination*, 74 FR at 2052-53.

¹⁰¹ See the “Application of Facts Available and Adverse Facts Available” section of this memorandum.

determination concerning critical circumstances when we issue our final determination of sales at LTFV for this investigation.

XIII. CURRENCY CONVERSION

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

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

11/15/2017

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