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Administrative Review
1/4/2016 - 6/30/2017
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MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Edward Yang
Senior Director, Office VII
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Certain Corrosion-
Resistant Steel Products from the Republic of Korea, 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) for the period of review (POR) January 4, 2016 through June 30, 2017. This review covers five producers/exporters of the subject merchandise. Commerce selected two respondents for individual examination, Dongkuk Steel Mill Co., Ltd. (Dongkuk) and Hyundai Steel Company (Hyundai). We preliminarily determine that sales of the subject merchandise were made below normal value (NV) during the POR.

II. BACKGROUND

On July 25, 2016, Commerce published in the *Federal Register* the AD order on CORE from Korea.¹ On July 3, 2017, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² On July 31, 2017, the petitioners³ requested an

¹ See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (*Order*), and *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to the Antidumping Duty Orders*, 81 FR 58475 (August 25, 2016).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 30833 (July 3, 2017).

³ The petitioners are AK Steel Corporation, California Steel Industries, Inc., Steel Dynamics Inc., ArcelorMittal



administrative review of Dongkuk and Union Steel Manufacturing Co., Ltd. (Union), meanwhile, Dongkuk, Hyundai, POSCO and Dongbu Steel Co., Ltd. (Dongbu) each requested a review.⁴ Based on those timely requests, on September 13, 2017, we initiated an administrative review on five companies.⁵ Among those five companies, in the underlying investigation, Commerce found Dongkuk to be the successor-in-interest to Union.⁶

In the *Initiation Notice*, we stated that, in the event we limited the number of respondents selected for individual examination, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR.⁷ On October 3, 2017, Commerce released U.S. import data from CBP for the purpose of respondent selection, and provided an opportunity for interested parties to comment on these data.⁸ On October 10, 2017, we received comments on respondent selection from one of the petitioners (*i.e.*, United States Steel Corporation), Dongkuk, Hyundai, and Dongbu.⁹ On December 4, 2017, we selected the two producers or exporters accounting for the largest volume of subject merchandise during the POR, in alphabetical order, Dongkuk and Hyundai as mandatory respondents.¹⁰ On December 5, 2017, we issued AD questionnaires to Dongkuk and Hyundai.¹¹ Dongkuk and Hyundai submitted timely responses to Section A of the Initial Questionnaire on January 3, 2018 and December 26, 2017,¹² respectively, and to the remaining sections of the Initial Questionnaire on January 29, 2018 and February 1, 2018, respectively.¹³

In December 2017, Dongkuk requested Commerce to provide reporting requirements for merchandise entered into a bonded warehouse in a Foreign Trade Zone in the United States; one

USA LLC, Nucor Corporation, and United States Steel Corporation (collectively, the petitioners).

⁴ See Dongkuk's July 31, 2017 Letter re: Request for Administrative Review for the Period January 4, 2016 to June 30, 2017; Hyundai's July 31, 2017 Letter re: Administrative Review Request; POSCO's July 31, 2017 Letter re: Administrative Review Request; and Dongbu's July 31, 2017 Letter re: Request for Administrative Review.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

⁶ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 78 (January 4, 2016) (*CORE Korea AD Inv. Prelim*), and accompanying Decision Memorandum (PDM) at 7, unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016) (*CORE Korea AD Inv. Final*), and accompanying Issues and Decision Memorandum (IDM) at 6.

⁷ See *Initiation Notice*, 82 FR at 42974.

⁸ See October 3, 2017 Memorandum re: Release of U.S. Customs Entry Data for Respondent Selection.

⁹ See United States Steel Corporation's October 10, 2017 letter re: Petitioner's Comments on Respondent Selection, Dongkuk's October 10, 2017 letter re: Respondent Selection Comments, Hyundai's October 10, 2017 letter re: Respondent Selection Comments, and Dongbu's October 10, 2017 Letter re: Comments on CBP Data and Respondent Selection.

¹⁰ See December 4, 2017 Memorandum re: Respondent Selection for the Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea

¹¹ See Commerce's December 5, 2017 Letters to Dongkuk and Hyundai (Initial Questionnaire).

¹² See Dongkuk's January 4, 2018 Section A Questionnaire Response (Dongkuk AQR) and Hyundai's December 26, 2017 Section A Questionnaire Response (Hyundai AQR).

¹³ See Dongkuk's January 29, 2018 Section B-D Questionnaire Response (Dongkuk BQR, CQR, DQR), and Hyundai's February 1, 2018 Section B-E Questionnaire Response (Hyundai BQR, CQR, DQR, EQR).

of the petitioners (*i.e.*, ArcelorMittal USA LLC (AMUSA)) commented on the request and Commerce provided guidance in response to the request.¹⁴ AMUSA commented on Dongkuk's questionnaire responses and submitted new factual information regarding Dongkuk's DQR;¹⁵ and Dongkuk responded to the AMUSA's comments.¹⁶ From May 2018 through June 2018, we issued a supplemental questionnaire to and received responses from Dongkuk.¹⁷

On December 11, 2017, Hyundai filed its request with Commerce for an alternate calculation methodology for certain U.S. sales that were further manufactured into after-service automobile parts (AS Parts) and finished automobiles prior to sale to the first unaffiliated U.S. customer.¹⁸ On March 9, 2018, Commerce informed Hyundai that the inclusion of AS Parts in the overall quantity of CORE examined for this administrative review would allow Commerce to fulfill its statutory obligation to calculate an antidumping margin for Hyundai as accurately as possible. Accordingly, Commerce requested that Hyundai revise its U.S. sales database to include the aforementioned AS Parts,¹⁹ and Hyundai timely filed its response on April 6, 2018.²⁰

On May 25, 2018, Commerce issued a supplemental questionnaire to Hyundai regarding its responses to sections A through E of the Initial Questionnaire, including AS Parts, and Commerce received responses to this supplemental questionnaire between June 18, 2018, and June 26, 2018.²¹ Hyundai failed to submit a timely response to portions of Commerce's supplemental section D questionnaire, as discussed in the "Application of Facts Available to Hyundai" section of this memorandum. AMUSA submitted comments regarding Hyundai's questionnaire responses throughout the proceeding.²²

¹⁴ See Dongkuk's December 21, 2017 Letter re: Reporting Requirements for FTZ Sales; AMUSA's January 8, 2018 Letter re: Petitioner's response to Dongkuk's Letter Regarding Reporting Requirements of FTZ Shipments; Commerce's January 16, 2018 Letter to Dongkuk re: Reporting Requirements for FTZ Sales.

¹⁵ See AMUSA's January 23, 2018 Letter re: AMUSA's Comments on the Section A Response of Dongkuk Steel Mill Co., Ltd.; the AMUSA's February 16, 2018 Letter re: AMUSA's Submission of New Factual Information in Response to the Section D Response of Dongkuk Steel Mill Co., Ltd.; and AMUSA's February 22, 2018 Letter re: AMUSA's Comments on the Sections B, C, and D Responses of Dongkuk Steel Mill Co., Ltd.

¹⁶ See Dongkuk's March 22, 2018 Letter re: Response to Petitioner's Comments.

¹⁷ See Commerce's May 24, 2018 Letter to Dongkuk re: Supplemental Questionnaire; Dongkuk's June 8, 2018 Letter re: Supplemental Questionnaire Response - Questions 1-2, 6, 11a, 13-14, 17a-b, 17d, 19, 23a, 34, 36, 37b, and 42-43 (Dongkuk SQR1); Dongkuk's June 15, 2018 Letter re: Supplemental Questionnaire Response - Questions 3-4, 7, 10, 11b, 12a, 12d, 15-16, 17c, 18, 20-22, 23b, 24-27, 28a-b, 28d-f, 29-31, 33, 35, 38, 39a-b, 40, 41a-c, and 41g-h (Dongkuk SQR2); and Dongkuk's June 20, 2018 Letter re: Supplemental Questionnaire Response - Questions 5, 8, 9, 12b, 12c, 28c, 28g, 32, 37a, 39c, 41d, 41e, and 41f (Dongkuk SQR3).

¹⁸ See Hyundai's December 11, 2017 Letter re: Request for Alternate Calculation Methodology for Certain Value-Added U.S. Sales.

¹⁹ See Commerce's March 9, 2018 Letter re: Hyundai's Exclusion Request.

²⁰ See Hyundai's April 6, 2018 Letter re: Hyundai Steel Company's Submission of AS Parts Reporting (Hyundai CQR-AS).

²¹ See Hyundai's June 18, 2018 Letter re: Part 1 of the First Supplemental Questionnaire Response (Hyundai SQR1); Hyundai's June 25, 2018 Letter re: Part 2 of the First Supplemental Questionnaire Response (Hyundai SQR2); Hyundai's June 26, 2018 Letter re: Financial Statements in Response to the Department's Supplemental Questionnaire (Hyundai SQR Financial Statements); Hyundai's June 27, 2018 Letter re: Part 3 of the First Supplemental Questionnaire Response (Hyundai SQR3).

²² Commerce's initial questionnaire and supplemental questionnaires to respondents Dongkuk and Hyundai, and

On July 3, 2018, AMUSA submitted factual information demonstrating that Commerce should find that a particular market situation existed in Korea with respect to Dongkuk during the POR.²³ On July 10, 2018, Dongkuk responded to AMUSA's allegation.²⁴ On July 25, 2018, AMUSA amended its particular market situation allegation.²⁵ On July 27, 2018, Dongkuk responded to AMUSA's amendment.²⁶

On July 18 and 19, 2018, AMUSA submitted pre-preliminary comments for Hyundai and Dongkuk, respectively.²⁷ On July 25 and 26, 2018, Hyundai and Dongkuk each responded to AMUSA's comments.²⁸

On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 30 through 22, 2018.²⁹ On March 23, and July 3, 2018, Commerce extended the deadline for the preliminary results of this review to no later than August 3, 2018.³⁰

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. PERIOD OF REVIEW

The POR is January 4, 2016, through March 31, 2017.

IV. SCOPE OF THE ORDER

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or

respondents' respective responses, as well as AMUSA's comments are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building.

²³ See AMUSA's July 3, 2018 Letter re: Petitioner's Particular Market Situation Allegation Regarding Dongkuk (Particular Market Situation Allegation).

²⁴ See Dongkuk's July 10, 2018 Letter re: Response to Petitioner's Particular Market Situation Allegation.

²⁵ See AMUSA's July 25, 2018 Letter re: Petitioner's Amendment to its Particular Market Situation Allegation.

²⁶ See Dongkuk's July 27, 2018 Letter re: Strategic Partnership Agreement Factual Information.

²⁷ See AMUSA's July 18, 2018 Letter re: Significant Deficiencies in Hyundai Steel's June 2018 Supplemental Questionnaire Response to Address in the Preliminary Results of this Review; and AMUSA's July 19, 2018 Letter re: AMUSA's Pre-Preliminary Comments for Dongkuk Steel Mill Co., Ltd.

²⁸ See Hyundai's July 25, 2018 Letter re: Response to Petitioner's July 18, 2018 Comments in Advance of the Upcoming Preliminary Results; and Dongkuk's July 26, 2018 Letter re: Response to Petitioner's Pre-Preliminary Comments.

²⁹ See January 23, 2018 Memorandum re: Deadlines Affected by the Shutdown of the Federal Government. All deadlines in this segment of the proceeding affected by the closure of the Federal Government have been extended by three days.

³⁰ See March 23, 2018 Memorandum re: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review - 2016-2017; and July 3, 2018 Memorandum re: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review - 2016-2017.

iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180,

7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

V. PARTICULAR MARKET SITUATION

Section 504 of the Trade Preferences Extension Act of 2015³¹ 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) of the Act, and through these provisions for purposes of the cost of production (COP) under section 773(b)(3) of the Act. Section 773(e) of the Act 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, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.” The TPEA amended the Act expressly to permit Commerce 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.”

Prior to the TPEA, in a limited number of cases, Commerce 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 sections 773(a)(1)(B)(ii)(III) and 773(a)(1)(C)(iii) of the Act and 19 CFR 351.404(c)(2).³² Commerce’s practice in finding a particular market situation starts with a substantiated allegation from an interested party that reasonably demonstrates that such a situation exists. Neither the statute, Commerce’s regulations, nor the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) define the term particular market situation.³³ Commerce 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 July 3, 2018, we received an allegation from AMUSA that, because a particular market situation exists in Korea with respect to Dongkuk, Commerce must use an alternative calculation methodology in place of Dongkuk’s reported production costs.³⁴ AMUSA’s allegation is one of several recently filed with Commerce. Because this allegation was filed only weeks before these preliminary results, we have not made a determination

³¹ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

³² 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*).

³³ While the SAA provides an example of what could be considered a particular market situation, such as price changes correlated to holidays in both markets, it does not define the term. See H.R. Rep. No. 103-316, vol. 1 (1994), at 822.

³⁴ See Particular Market Situation Allegation.

regarding whether a particular market situation with respect to Dongkuk exists at this time. We intend to further consider this allegation after the preliminary results.

VI. USE OF FACTS AVAILABLE AND ADVERSE FACTS AVAILABLE

A. Legal Authority

Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act.

Section 782(c)(1) of the Act provides that, if an interested party “promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner,” Commerce shall consider the ability of the interested party to provide the requested information, and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (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.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce 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.³⁵ Section 776(b)(2) of the Act states that

³⁵ See Section 776(b)(1)(B) of the Act.

an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce 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.”³⁶ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁷ The Court of Appeals for the Federal Circuit, in *Nippon Steel*, explained that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.³⁸ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁹

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that 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.⁴⁰

B. Application of Facts Available to Hyundai

On May 25, 2018, we issued a supplemental questionnaire to Hyundai.⁴¹ In response to Hyundai’s request for an extension of time, we extended the deadline for Hyundai’s response until June 18, 2018.⁴² Hyundai requested an additional extension on June 13, 2018.⁴³ We then further extended the deadline for portions of Hyundai’s response until June 22, 2018 and June 26, 2018.⁴⁴ In particular, we extended the deadline for portions of Hyundai’s supplemental section D questionnaire until June 26, 2018.⁴⁵

³⁶ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA) at 870.

³⁷ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

³⁸ See *Nippon Steel*, 337 F.3d at 1382.

³⁹ *Id.* at 1382-83; see also *Preamble*, 62 FR at 27340.

⁴⁰ See 19 CFR 351.308(c)(1).

⁴¹ See Commerce’s May 25, 2018 Letter re: First Supplemental Questionnaire to Sections A through E of Initial Questionnaire.

⁴² See Commerce’s June 6, 2018 Letter re: Clarification of Extension Request.

⁴³ See Hyundai’s June 13, 2018 Letter re: Extension Request for Certain Questions in the First Supplemental Questionnaire Response.

⁴⁴ See Commerce’s June 15, 2018 Letter re: Second Request for Extension to Respond to the First Supplemental Questionnaire to Sections A through E.

⁴⁵ *Id.*, The deadline for Hyundai’s responses to supplemental section D questions 127-130, 139-140, 142-143, 153, 155-156, 161-162 were extended until June 26, 2018.

On June 26, 2018, Hyundai submitted the bracketing not final version of its supplemental section D questionnaire response. On June 27, 2018, pursuant to the one-day lag rule under 19 CFR 351.303(c), Hyundai submitted the final business proprietary and public versions of its supplemental section D questionnaire response. On the same date, Hyundai requested permission to correct an “inadvertent filing error” with respect to the narrative in the bracketing not final version of its supplemental questionnaire response due on June 26, 2018.⁴⁶ The narrative to the supplemental section D response was included in the final versions submitted under the one-day lag rule on June 27, 2018, but was not included in the submission due on the June 26, 2018 deadline. The missing narrative covered 13 questions which focused on: 1) differences in material costs for CONNUMS which were nearly identical (*i.e.*, differences in thickness, width or type); 2) explanations of revisions made to databases or worksheets; and 3) inputs/services provided by affiliated parties. Some of the CONNUMs at issue were sold in the United States.

On July 3, 2018, Commerce officials discussed the filing error which occurred on June 26, 2018, with Hyundai’s counsel, and requested that they submit a letter on the record of this administrative review explaining in detail what steps counsel for Hyundai would implement to prevent any such filing errors in the future.⁴⁷ Hyundai submitted the letter on July 9, 2018.⁴⁸ We accepted Hyundai’s final version of its supplemental section D response, which included the missing narrative.⁴⁹ The petitioner requested that we reconsider our decision to accept Hyundai’s missing narrative on July 17, 2018.⁵⁰ Hyundai responded to the petitioner’s request for reconsideration on July 19, 2018.⁵¹ After reconsidering our decision, we rejected and removed Hyundai’s untimely filed narrative within its partial supplemental section D questionnaire response from the record of this segment of the proceeding.⁵²

According to 19 CFR 351.303(c)(1), if a submission contains information for which the submitter claims business proprietary treatment, the submitter may elect to file the submission under the one-day lag rule. A complete submission must be filed within the applicable deadline, but the one-day lag rule allows an additional day to finalize bracketing of business proprietary information. A person must file the complete final business proprietary version and public version of the document with Commerce by the close of the business day after the date on which

⁴⁶ See Hyundai’s June 27, 2018 Letter re: Errata Letter and Request to Amend Final BPI Submission of Supplemental Questionnaire Response. Hyundai notified Commerce that it had not submitted 18 pages of narrative in its bracketing not final response.

⁴⁷ See July 6, 2018 Memorandum re: Ex-Parte Teleconference with Arnold & Porter Kaye Scholer LLP, Counsel for Hyundai Steel Company.

⁴⁸ See Hyundai’s July 9, 2018 Letter re: June 26 Supplemental Questionnaire Response.

⁴⁹ See Commerce’s July 12, 2018 Letter to Hyundai.

⁵⁰ See AMUSA’s July 17, 2018 Letter re: Petitioner’s Request for Reconsideration of the Department’s July 12, 2018 Memorandum Accepting Hyundai Steel’s Untimely Filed Extension Request and Supplemental Questionnaire Response.

⁵¹ See Hyundai’s July 19, 2018 Letter re: Response to Petitioner’s Request to Reconsider.

⁵² See Commerce’s August 3, 2018 Letter to Hyundai explaining that Commerce rejected and removed the untimely narrative from the record of this proceeding.

the one-day lag document was filed.⁵³ The final business proprietary document must be identical in all respects to the document filed on the previous day, except for any bracketing corrections.⁵⁴

Hyundai's narrative to its supplemental section D questionnaire response was included in the final business proprietary and public versions submitted on June 27, 2018, but was not included in the document submitted on the June 26, 2018, deadline. Because the versions differ in respects other than bracketing, Hyundai's filing was not made in accordance with 19 CFR 351.303(c)(2) and was not timely submitted by June 26, 2018. Hyundai's failure to include the narrative portion of its response within the established deadline may have been inadvertent, but the result was nevertheless that Hyundai failed to submit the narrative portion of its response by the deadline. Thus, Commerce's regulations require rejecting Hyundai's narrative within its partial supplemental section D questionnaire response as untimely.

Commerce has previously rejected similar submissions that do not conform to the filing requirements of the one-day lag rule as untimely. In *Diamond Sawblades from China*, we rejected a supplemental questionnaire response that was not filed in accordance with 19 CFR 351.301(c) as untimely because the respondent did not timely file the final public version of a questionnaire response, notwithstanding the fact that the original submission was complete and timely submitted within the set deadline.⁵⁵ Here, Hyundai's submission was not filed in accordance with 19 CFR 351.301(c) because the document submitted within the deadline and the final version submitted the following day differ in respects other than bracketing. Thus, as in *Diamond Sawblades from China*, we rejected Hyundai's untimely filed narrative within its partial supplemental section D questionnaire response.

Thus, Hyundai failed to timely provide the requested information necessary for Commerce to calculate a dumping margin for it in this administrative review. Consequently, we preliminarily find that Hyundai failed to provide information by the specified deadlines, within the meaning of section 776(a)(2)(B) of the Act. Further, Hyundai significantly impeded this proceeding within the meaning of section 776(a)(2)(C) of the Act. Because Hyundai failed to submit the narrative response to a portion of its supplemental section D questionnaire within the established deadlines for its submission, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(2)(B) and (C) of the Act, we have relied upon the facts otherwise available in determining the preliminary dumping margin for Hyundai.

C. Application of Facts Available with an Adverse Inference

We preliminarily find that Hyundai did not act to the best of its ability to comply with our request for information. Hyundai requested this administrative review,⁵⁶ participated in the

⁵³ See 19 CFR 351.303(c)(2)(ii).

⁵⁴ See 19 CFR 351.303(c)(2).

⁵⁵ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 17527 (April 20, 2018), and accompanying IDM at Comment 1.

⁵⁶ See Hyundai's July 31, 2017 Letter re: Administrative Review Request.

underlying investigation,⁵⁷ and was aware of the consequences of its failure to respond within the established deadline.⁵⁸ Nonetheless, Hyundai failed to timely file its complete response to our section D supplemental questionnaire or timely file a request for an extension of the deadline. Therefore, we preliminarily determine that Hyundai failed to cooperate to the best of its ability in providing the necessary information for Commerce to conduct this administrative review.⁵⁹ Accordingly, we preliminarily find that the application of partial facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.⁶⁰

D. Selection and Corroboration of Adverse Facts Available Rate

Where Commerce uses adverse facts available (AFA) because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes Commerce to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁶¹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁶² Consistent with our practice, as AFA, we have preliminarily applied the highest transaction-specific dumping margin calculated for Hyundai to the U.S. sales of the CONNUMs covered in the missing narrative.⁶³

Further, because the AFA rate applied to Hyundai is a rate calculated in the course of this administrative review, it is not secondary information. Therefore, it is unnecessary for Commerce to corroborate the AFA rate applied to Hyundai.⁶⁴ In sum, Commerce has preliminarily assigned Hyundai's highest-transaction specific margin to certain U.S. sales made by Hyundai as AFA.⁶⁵

⁵⁷ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016).

⁵⁸ See, e.g., the AD questionnaire cover letter, at 3 ("If the Department does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding . . . {which} may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.").

⁵⁹ See *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2011, 78 FR 58283 (September 23, 2013), and accompanying IDM at 5-6 (applying AFA to the China-wide entity because several respondents that were a part of the China-wide entity did not respond to Commerce's quantity and value questionnaire).

⁶⁰ See, e.g., *Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15222 (March 22, 2016), and accompanying Preliminary Decision Memorandum at 13.

⁶¹ See also 19 CFR 351.308(c)(1) & (2).

⁶² See SAA at 870.

⁶³ See, e.g., *Fresh Garlic from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results*, 82 FR 57714 (December 7, 2017).

⁶⁴ See section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information). see also *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁵ See August 3, 2018 Memorandum re: Preliminary Results Margin Calculation for Hyundai Steel Company

VII. REVIEW-SPECIFIC AVERAGE RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce 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 examination 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}.”

In this review, we have preliminarily calculated weighted-average dumping margins for Dongkuk and Hyundai that are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to companies not individually examined a margin of 5.55 percent, which is the weighted-average of Dongkuk’s and Hyundai’s calculated weighted-average dumping margins.⁶⁶

VIII. DISCUSSION OF THE METHODOLOGY

A. 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 Dongkuk’s and Hyundai’s sales of subject merchandise were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP), as appropriate, to the NV as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of administrative reviews,

(Hyundai Preliminary Calculation Memorandum).

⁶⁶ See August 3, 2018 Memorandum re: Review-Specific Average Rate for Non-Examined Companies.

Commerce 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.⁶⁷

In recent investigations, Commerce 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.⁶⁸ Commerce 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. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce 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 prices 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, state) 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 period of review 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 Commerce uses in making comparisons between EP (or CEPs) 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

⁶⁷ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff’d*, 862 F.3d 1337 (Fed. Cir. 2017); see also *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363–65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

⁶⁸ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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.

2. Results of the Differential Pricing Analysis

Dongkuk

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 79.81 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce 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 the average-to-average method and 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, Commerce is applying the average-to-transaction comparison method to all U.S. sales to calculate the weighted-average dumping margin for Dongkuk.⁶⁹

Hyundai

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 56.26 percent of the value of U.S. sales pass the Cohen's *d* test,⁷⁰ and 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 these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hyundai.

B. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, normally, we will use invoice date as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. Furthermore, if the shipment date precedes the invoice date, then Commerce will use the shipment date as the date of sale. The regulation provides that we may use a date other than the invoice date if Commerce is satisfied that a different date better reflects the data on

⁶⁹ See August 3, 2018 Memorandum, re: Preliminary Results Margin Calculation for Dongkuk Steel Mill Co., Ltd. (Dongkuk Preliminary Calculation Memorandum).

⁷⁰ See Hyundai Preliminary Calculation Memorandum.

which the material terms of sale are established.⁷¹ Furthermore, if the shipment date precedes the invoice date, then Commerce will use the shipment date as the date of sale.⁷²

Dongkuk

Dongkuk reported the shipment date in Korea as the date of sale for both U.S. and home market sales, unchanged from the underlying investigation. Our analysis of information on the record shows that the shipment date is the same as invoice date in its accounting record in the home market.⁷³ Therefore, pursuant to 19 CFR 351.401(i), we are preliminarily using invoice/shipment date as the date of sale in the home market. Our analysis of information on the record shows that shipment date precedes the invoice date in the U.S. market.⁷⁴ Therefore, pursuant to 19 CFR 351.401(i), we are preliminarily using shipment date as the date of sale in the U.S. market.

Hyundai

For home market sales, Hyundai reported the date of sale as the earlier of the date of shipment from Hyundai's factory or warehouse to the customer, or the date on which Hyundai issued its commercial invoice as quantities can change in the home market until shipment from the factory. For accounting purposes, Hyundai recognizes a sale at the time of shipment, but sometimes when a customer asks to delay the shipment until later, Hyundai issues the invoice at the time of sale and the ownership of the merchandise is transferred to that customer. Hyundai reported those pending shipment sales in the home market sales database. Our review of information on the record shows that Hyundai reported the earlier of shipment date or invoice date. Therefore, pursuant to 19 CFR 351.401(i) we are preliminarily using the earlier of shipment date or invoice date, as reported by Hyundai, as the date of sale in the home market.

For sales to the United States through its affiliate, Hyundai Steel America Inc. (HSA), to an unaffiliated processor, Hyundai reported the earlier of shipment date or invoice date, as issued by HAS, as the date of sale.⁷⁵ For its U.S. sales through another affiliated processor in the United States to unaffiliated parties, Hyundai likewise reported the earlier of shipment date or the date of invoice issued by that affiliated processor as the date of sale.⁷⁶ Our review of information on the records shows that in the U.S. market, HSA sometimes issues the invoice after it ships the merchandise to its unaffiliated customer. Therefore, pursuant to 19 CFR 351.401(i) we are

⁷¹ See 19 CFR 351.401(i); see also *Yieh Phui Enterprise Co. v. United States*, 791 F. Supp. 2d 1319 (CIT 2011) (affirming that Commerce may use invoice date unless a party demonstrates that the material terms of its sale were established on another date); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001).

⁷² See *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; *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.

⁷³ See Dongkuk AQR at A-25, BQR at B-22, and CQR at C-20, see also *CORE Korea AD Inv.* PDM at 14.

⁷⁴ *Id.*

⁷⁵ See Hyundai AQR at A-25 and Hyundai BQR & CQR at B-21-22 and C-23.

⁷⁶ *Id.*

preliminarily using the earlier of shipment date or invoice date as the date of sale in the U.S. market.

C. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Korea during the POR that fit the description in the “Scope of the Order” section, above, 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.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristics reported by the respondents in the following order of importance: type, reduction process, clad material/coating metal, metallic coating weight, metallic coating process, quality, yield strength, nominal thickness, nominal width, and form. For Dongkuk’s and Hyundai’s sales of CORE in the United States, the reported control number (*i.e.* CONNUM) identifies the characteristics of the CORE as exported by Dongkuk and Hyundai.⁷⁷

Neither Dongkuk nor Hyundai reported sales of non-prime CORE to the United States, but both sold non-prime CORE in the home market.⁷⁸ In addition, Dongkuk had sales of overruns in the home market.⁷⁹ Hyundai reported that in cases where the production exceeded the original order, and this overproduction did not sell to the original or another customer, the product gets downgraded to Grade “2” with other products that do not meet the original order’s specification, but can be sold for other usages.⁸⁰

D. EXPORT PRICE AND CONSTRUCTED 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 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).” Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and

⁷⁷ See Dongkuk BQR at B-11 and CQR at C-9; and Hyundai February 1, 2018 BQR & CQR at B-9-B-18 and C-12-C-20.

⁷⁸ See Dongkuk BQR at B-10 and CQR at C-8; and Hyundai February 1, 2018 BQR & CQR at B-10-11 and C-13.

⁷⁹ See Dongkuk BQR at B-10.

⁸⁰ See Hyundai February 1, 2018 BQR at B-10.

(d).” As explained below, we based the U.S. price on EP and CEP for Dongkuk and on CEP for Hyundai.

Dongkuk

For the U.S. market, Dongkuk made sales through five channels of distribution: channels 1, 2 and 3 are EP sales; channel 4 and 5 are CEP sales.⁸¹

For Dongkuk’s U.S. sales made through channels 1 and 2, Commerce calculated EP in accordance with section 772(a) of the Act because the subject merchandise was sold prior to importation by the exporter or producer outside the United States to unaffiliated purchasers in the United States and its unincorporated territory.⁸² In accordance with section 772(c) of the Act, we made adjustments, where appropriate, for price adjustment, discount, Korean movement expenses (*e.g.*, Korean warehousing expenses, Korean inland freight, Korean brokerage and handling), international and U.S. movement expenses (*e.g.*, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. warehousing, and U.S. duties).⁸³

For Dongkuk’s U.S. sales made through channel 3, Commerce calculated EP in accordance with section 772(a) of the Act because the subject merchandise was sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States.⁸⁴ In accordance with section 772(c) of the Act, we made adjustments, where appropriate, for price adjustment, discount, Korean movement expenses (*e.g.*, Korean warehousing expenses, Korean inland freight, Korean brokerage and handling), international and U.S. movement expenses (*e.g.*, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. warehousing, and U.S. duties).⁸⁵

For Dongkuk’s U.S. sales made through channels 4 and 5, Commerce calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold in the United States by its affiliates (*e.g.*, Dongkuk International Inc. (DKA)), to unaffiliated purchasers in the United States.⁸⁶ In accordance with section 772(c) and (d) of the Act, we made adjustments, where appropriate, for price adjustment, discount, Korean movement expenses (*e.g.*, Korean warehousing expenses, Korean inland freight, Korean brokerage and handling), international and U.S. movement expenses (*e.g.*, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. warehousing, and U.S. duties), and direct and indirect selling expenses associated with economic activities occurring in the United States (*e.g.* imputed credit expenses, bank charges, and other direct selling expenses), and profits allocated to

⁸¹ See Dongkuk AQR at A-17 and Appendix A-16, CQR at C-19.

⁸² See Dongkuk AQR at A-18 and CQR at C-19.

⁸³ See Dongkuk Preliminary Calculation Memorandum.

⁸⁴ See Dongkuk AQR at A-18 and CQR at C-19.

⁸⁵ See Dongkuk Preliminary Calculation Memorandum.

⁸⁶ See Dongkuk AQR at A-18 and CQR at C-19.

expenses deducted under section 772(d)(1) of the Act. We calculated the CEP profit ratio in accordance with section 772(f) of the Act.⁸⁷

Hyundai

Hyundai reported that it made CEP sales to the United States through two channels of distribution.⁸⁸ In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Hyundai reported that it sold all of its subject merchandise directly through its affiliated reseller/processor HSA, and that HSA sold the subject merchandise both in coil form and as further manufactured product.⁸⁹ In addition, HSA sold further manufactured product to affiliated processors/manufacturers that further manufactured and sold the product to the first unaffiliated customer in the United States.⁹⁰

We calculated the CEP based on a packed price to customers in the United States. We made deductions from the starting price (adjusted for billing adjustments) for any movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses and foreign and U.S. inventory carrying costs) and indirect selling expenses.⁹¹ We also made an adjustment for profit allocated to these selling expenses, in accordance with section 772(d)(3) of the Act. In addition, we made an adjustment to price for the cost of any further manufacturing or assembly for sales used in the calculations, in accordance with section 772(d)(2) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Hyundai and its U.S. affiliate(s) on their sales of the subject merchandise in the United States and the profit associated with those sales.⁹²

E. 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

⁸⁷ See Dongkuk Preliminary Calculation Memorandum.

⁸⁸ See Hyundai AQR at A-26-28 and Exhibits A-11 and A-13 and Hyundai ASQR at SA-6-8 and Exhibit SA-9.

⁸⁹ *Id.* at 18-19.

⁹⁰ See Hyundai AQR at A-26-32 and Exhibit A-11.

⁹¹ See Hyundai BQR & CQR at B-26-43 and C-31-56, and Hyundai CQR-AS at C3-26-45.

⁹² *Id.*

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 review, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for both respondents, in accordance with section 773(a)(1)(B) of the Act.

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

Pursuant to 19 CFR 351.403(c) and (d), and consistent with Commerce's practice,⁹³ if an exporter or producer sold foreign like product to an affiliated party as defined in section 771(33) of the Act, Commerce may calculate NV based on that sale only if it is made at arm's-length, where the price is, on average, within a range of 98 to 102 percent of the price at which the same exporter or producer sold the same or comparable merchandise at same level of trade to unaffiliated parties.

In this review, each respondent sold foreign like product to affiliated customers in the home market as defined in section 771(33) of the Act.⁹⁴ Consequently, we conducted the arm's-length test on these sales, and excluded sales that failed the test from normal value calculation because we considered the failed-test sales to be outside the ordinary course of trade.⁹⁵

3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. According to 19 CFR 351.412(c)(2), sales are made at different LOTs if they are made at different marketing stages (or their equivalent), and substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁹⁶ In order to determine whether the home market sales are at different marketing stages than the U.S.

⁹³ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

⁹⁴ See Dongkuk BQR at B-2 and B-20, Hyundai February 1, 2018 BQR & CQR at B-20 and Exhibit B-5.

⁹⁵ See section 771(15) of the Act and 19 CFR 351.102(b).

⁹⁶ See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administration Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010) (OJ Brazil), and accompanying Issues and Decision Memorandum (IDM) at Comment 7.

sales, we examine the distribution chain in each market, including selling functions and customer categories, and the level of selling activities for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs, we consider the starting price before adjustments for EP and home market sales,⁹⁷ and the starting price as adjusted under section 772(d) of the Act for CEP sales.⁹⁸

When Commerce is unable to match U.S. sale to sales in the home market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the home market. In comparing EP or CEP sales at a different LOT in the home 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 CEP but the data available do not provide a basis to determine whether the difference in LOTs is demonstrated to affect price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁹⁹

In this administrative review, we obtained information from each respondent 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.¹⁰⁰ Our LOT findings are summarized below.

Dongkuk

For the home market, Dongkuk made sales through two channels of distribution.¹⁰¹ In connection with those sales, the selling activities Dongkuk performed can be generally grouped into four selling function categories: (1) sales and marketing (sales forecasting, strategic/economic planning, market research, personnel training/exchange and manpower assistance, computer/legal/accounting/audit/business-systems development, sales promotion/advertising, custom negotiation/contract, order input/processing, production management, invoicing unaffiliated customer, receipt of payment from customer, and credit extension); (2) inventory maintenance (inventory maintenance); (3) delivery arrangement (freight and delivery); (4) technical support (warranty service, research/development/technical programs, engineering service or quality control).¹⁰² Based on these selling function categories, we found that Dongkuk performed sales and marketing, inventory maintenance, delivery arrangement, warranty, and technical support for its reported home market sales. As Dongkuk

⁹⁷ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁹⁸ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁹⁹ See *OJ Brazil* IDM at Comment 7.

¹⁰⁰ See Dongkuk AQR at A-16 and Hyundai AQR at A-18-31 and Exhibit A-13, and Hyundai's June 25, 2018 Supplemental Questionnaire Response (Hyundai ASQR) at SA-6-12 and Exhibit SA-9.

¹⁰¹ See Dongkuk AQR at A-17 and Appendix A-16.

¹⁰² See Dongkuk AQR at A-20 and Appendix A-17, SQR1 at 6 and Appendix S-4.

performed the same selling functions at the same relative level of intensity for all of its home market sales, we determine that all home market sales are at the same LOT.¹⁰³

For the U.S. market, Dongkuk made sales through five channels of distribution: channels 1, 2 and 3 are EP sales; channel 4 and 5 are CEP sales.¹⁰⁴

In connection with EP sales made through channels 1, 2 and 3, Dongkuk performed the same selling activities in all selling function categories at the same relative level of intensity as it did for all home market sales, in addition to two selling activities (serving as importer on the record, paying U.S. Customs duties, wharfage and marine insurance) it did not perform for home market sales.¹⁰⁵ We found that the difference of two additional selling activities are insignificant to distinguish EP sales as a distinguishable LOT. Consequently, we found that Dongkuk's EP sales are made at the same LOT as its home market sales.¹⁰⁶

For CEP sales made through channels 4 and 5, Dongkuk contends that it performed fewer activities in each of four selling function categories than it did for its home market sales, and therefore Commerce should grant a CEP offset.¹⁰⁷ We found that the selling activities Dongkuk performed for its home market sales are virtually the same as those performed for its CEP sales. We also found that the selling activities performed for its home market sales and for its CEP sales are at the same or comparable intensity levels. The differences are that Dongkuk provided inventory maintenance and warranty to its home market sales but not to its CEP sales, and Dongkuk provided paying U.S. Customs duties, wharfage and marine insurance to its CEP sales but not to its home market sales. Such differences are insignificant to distinguish CEP sales as a distinguishable LOT. Consequently, we found no basis for considering a CEP offset pursuant to section 773(a)(7)(B) of the Act.

Hyundai

In the home market, Hyundai reported that it made sales through one channel of distribution (*i.e.*, direct shipments to end-users or distributors).¹⁰⁸ Hyundai reported that it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services, advertising; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; warranty service; freight and delivery arrangements, and post-sale warehousing.¹⁰⁹

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing;

¹⁰³ *Id.*

¹⁰⁴ See Dongkuk AQR at A-17 and Appendix A-16, CQR at C-19.

¹⁰⁵ See Dongkuk AQR at A-20 and Appendix A-17.

¹⁰⁶ *Id.*, and SQR1 at 6 and Appendix S-4.

¹⁰⁷ See Dongkuk AQR at A-23.

¹⁰⁸ See Hyundai AQR at A-19 and Exhibit A-12.

¹⁰⁹ *Id.* at A-18-31, A-25-25, and Exhibit A-13.

and 4) warranty and technical support. Based on these selling function categories, we find that Hyundai performed sales and marketing, freight and delivery services, and warranty and technical support for its reported sales to affiliated and unaffiliated customers in the home market. Because Hyundai performed the same selling functions at the same relative level of intensity for all of its home market sales, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, Hyundai reported that it made sales through two channels of distribution: CEP sales through HSA to unaffiliated processors (U.S. Channel 1); and CEP sales through its other affiliated processor¹¹⁰ (U.S. Channel 2).¹¹¹ Within U.S. Channel 1, Hyundai reported that HSA sells to unaffiliated end-users and to affiliated processors that sell to unaffiliated end-users (U.S. Channel 2).

Hyundai reported that it performed the following selling functions for its sales to the United States in both U.S. Channel 1 and U.S. Channel 2.: sales forecasting; strategic/economic planning; personnel training/exchange; advertising; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; warranty service; and freight and delivery arrangements.¹¹²

Based on the selling function categories noted above, we find that Hyundai performed the same selling function categories for both U.S. channels of distribution: sales and marketing, freight and delivery services, and inventory management for U.S. sales; while Hyundai provided the same selling functions categories in both U.S. Channel 1 and U.S. Channel 2, the intensity at which the individual selling functions were performed were identical in eight out of thirteen.¹¹³ Because Hyundai performed the identical selling functions at similar levels of intensity in both U.S. channels of distribution, we determine that Hyundai sells at one LOT in the United States.

We also compared the CEP LOT (U.S. Channels 1 and 2) to the home market LOT and found that Hyundai performed thirteen out of fifteen of the same selling functions for its U.S. sales as it provides for its home market sales. The two selling functions Hyundai performs in the home market only are engineering services and post-sale warehousing. However, of the selling functions Hyundai performs in both the home market and the United States, three are performed at the same level of intensity for U.S. Channel 1 and five at the same level of intensity for U.S. Channel 2. The remainder of the selling functions performed by Hyundai in both markets and both U.S. Channels vary in intensity, however, the overall difference in intensity of the selling functions performed is not significant enough to determine that the selling functions performed by Hyundai in the home market are at a more advanced stage of distribution than those performed for its U.S. customers in that channel of trade. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that a CEP offset is not warranted pursuant to section 773(a)(7)(B) of the Act.

¹¹⁰ See Hyundai AQR at A-14.

¹¹¹ *Id.* at A-26-28 and Exhibits A-11 and A-13 and Hyundai's June 25, 2018 ASQR at SA-6-8 and Exhibit SA-9.

¹¹² See Hyundai AQR at A-18-31, A-25-25, and Exhibit A-13, and Hyundai ASQR at SA-6-8 and Exhibit SA-9.

¹¹³ *Id.*

4. Overrun Sales

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

Dongkuk Steel reported home market sales of “overrun” merchandise, which is left over from production of export orders..¹¹⁴ In the past, we examined various factors to determine whether “overrun” sales are in the ordinary course of trade.¹¹⁵ We have the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.¹¹⁶ These factors include, but are not limited to, the following: (1) whether the merchandise is “off-quality” or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.¹¹⁷

Based on our analysis of these factors and the terms of sale, we preliminarily determine that Dongkuk’s overrun sales are not within the ordinary course of trade. Because our analysis includes business proprietary information, the analysis is available in the Dongkuk Home Market Overruns Memorandum.¹¹⁸

5. Cost of Production Analysis

In accordance with section 773(b)(2)(A) of the Act, we requested cost information from all respondents in this review to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices less than the COP of the product.¹¹⁹

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated cost of production (COP) based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by Dongkuk.

¹¹⁴ See Dongkuk BQR at B-10.

¹¹⁵ See *China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003).

¹¹⁶ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

¹¹⁷ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, in Part; 2014-2015*, 81 FR 12870 (March 11, 2016), and accompanying Preliminary Decision Memorandum at 10, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016).

¹¹⁸ See Memorandum re: Dongkuk’s Home Market Overruns, dated concurrently with this memorandum.

¹¹⁹ See Dongkuk DQR and Hyundai DQR.

The physical characteristics identified in this case are finish type, reduction process, coating metal, coating weight, coating process, quality, yield strength, nominal thickness, nominal weight, and form. Commerce found that Hyundai's reported per-unit costs exhibited significant variations that were unrelated to the physical characteristics of the products under review. To mitigate these distortive cost fluctuations, Commerce revised Hyundai's reported per-unit costs by weight-averaging direct material costs among products of the same finish type, reduction process, coating metal, coating weight, coating process, quality, and yield strength. This ensures that the product-specific costs we use for the sales-below-cost test, CV, and the DIFMER adjustment accurately reflect the physical characteristics of the products whose sales prices are used in Commerce's dumping calculations.¹²⁰

b. COP 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 prices of the foreign like product 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 net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.¹²¹

c. 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 a respondent's home 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 each respondent, more than 20 percent of sales of certain home market products during the POR were at prices less than the COP and, in addition, such sales did not permit for the recovery of costs within a reasonable period of time. We therefore excluded these

¹²⁰ See Hyundai Preliminary Calculation Memorandum.

¹²¹ See Dongkuk Preliminary Calculation Memorandum; Hyundai Preliminary Calculation Memorandum.

sales and used the remaining sales, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.¹²²

6. Calculation of NV Based on Home Market Prices

We calculated NV based on packed, delivered or ex-factory prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for certain movement expenses, *e.g.*, inland freight, and for certain direct selling expenses, *e.g.*, credit expenses, pursuant to section 773(a)(6)(B)(ii) of the Act.¹²³

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also adjusted 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 the subject merchandise.¹²⁴

7. Calculation of NV based on CV

Section 773(a)(4) of the Act provides that where NV cannot be based on home market sales, NV may be based on constructed value (CV). 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 SG&A expenses, profit, and U.S. packing costs. For each mandatory respondent, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section. 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 home 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.

IX. 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 date of the U.S. sales as certified by the Federal Reserve Bank.

¹²² See Dongkuk Preliminary Calculation Memorandum and Hyundai Preliminary Calculation Memorandum.

¹²³ See Dongkuk Preliminary Calculation Memorandum and Hyundai Preliminary Calculation Memorandum.

¹²⁴ See Dongkuk Preliminary Calculation Memorandum and Hyundai Preliminary Calculation Memorandum.

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

8/3/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations