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December 12, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Cut-to-Length Carbon-Quality Steel Plate Products from
the Republic of Korea: Decision Memorandum for Preliminary
Results of Antidumping Duty Administrative Review; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea) covering the period of review (POR) February 1, 2018 through January 31, 2019. The review covers four producers and/or exporters of the subject merchandise. We preliminarily determine that companies subject to this review made sales of the subject merchandise at prices below normal value (NV).

II. BACKGROUND

On February 10, 2000, we published in the *Federal Register* an antidumping duty order on CTL Plate from Korea.¹ On February 8, 2019, we published in the *Federal Register* a notice of opportunity to request an administrative review of the order.² On May 2, 2019, based on timely requests for administrative review, we initiated an administrative review of four companies, BDP International, Dongkuk Steel Mill Co., Ltd. (Dongkuk), Hyundai Steel Company (Hyundai Steel), and Sung Jun Steel Co., Ltd.³

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

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 2816 (February 8, 2019) (*Order*).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 18777, 18782 (May 2, 2019).



On May 30, 2019, we selected Dongkuk and Hyundai Steel as mandatory respondents for individual examination in this review.⁴ On June 4, 2019, we issued the AD questionnaire to Dongkuk and Hyundai Steel.⁵

On October 8, 2019, we extended the due date for the preliminary results of this review from October 31, 2019 to December 13, 2019.⁶

III. SCOPE OF THE ORDER

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

⁴ See Memorandum, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Respondent Selection,” dated May 30, 2019, at 4.

⁵ See Commerce’s Letters to Dongkuk and Hyundai Steel, dated June 4, 2019.

⁶ See Memorandum, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,” dated October 8, 2019.

products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

IV. RATES 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 Tariff Act of 1930, as amended (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 Steel that are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to the companies not individually examined, BDP International and Sung Jin Steel Co., Ltd.,⁷ a margin of 6.98 percent, which is the weighted average of Dongkuk's and Hyundai Steel's calculated weighted-average dumping margins.⁸

V. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Act and 19 CFR 351.213.

⁷ See *Initiation Notice*, 84 FR at 18782.

⁸ For more information regarding the calculation of this margin, see Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019; Calculation of the Margin for Non-Examined Companies," dated concurrently with this memorandum. As the weighting factor, we relied on the publicly ranged sales data reported in Dongkuk's and Hyundai Steel's quantity and value charts at Dongkuk's July 29, 2019 Section A Questionnaire Response (Dongkuk AQR) at Exhibit 1, and Hyundai Steel's July 18, 2019 Section A Questionnaire Response (Hyundai Steel AQR) at Exhibit 1.

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of the subject merchandise to unaffiliated U.S. customers were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP) to 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 (A-A) method) unless Commerce 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 (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, 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.⁹

In recent investigations and the last completed administrative review of this order, Commerce applied a "differential pricing" analysis for determining whether application of the A-A method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1) and 19 CFR 351.414(c)(1).¹⁰ Commerce finds that the differential pricing analysis used in recent investigations and reviews 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 A-A method in calculating a weighted-average dumping margin for each respondent.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of U.S. prices for comparable merchandise that differ significantly among purchasers,

⁹ 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 (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

¹⁰ See, e.g., *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 21-24, unchanged in *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018); and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018) (2016-17 Prelim), and accompanying PDM at 3-6, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018) (2016-17 Final).

regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV to determine 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 difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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

2. Results of the Differential Pricing Analysis

For Dongkuk, based on the results of the differential pricing analysis, we preliminarily find that 97.40 percent of the value of U.S. sales pass the Cohen's *d* test¹¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-A method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-T method to all U.S. sales to calculate the weighted-average dumping margin for Dongkuk.

Similarly, for Hyundai Steel, based on the results of the differential pricing analysis, we preliminarily find that 80.96 percent of the value of U.S. sales pass the Cohen's *d* test¹² and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-A method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for

¹¹ See Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Analysis Memorandum for Dongkuk Steel Mill Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (Dongkuk Preliminary Analysis Memorandum).

¹² See Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Analysis Memorandum for Preliminary Analysis Memorandum for Hyundai Steel Company," dated concurrently with this Preliminary Decision Memorandum (Hyundai Steel Preliminary Analysis Memorandum).

these preliminary results, Commerce is applying the A-T method to all U.S. sales to calculate the weighted-average dumping margin for Hyundai Steel.

B. Product Comparisons

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

C. Date of Sale

We normally will use the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the material terms of sale are established.¹³ Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁴

For home market sales, Dongkuk explained that the sales quantity and price may change between the time of the initial order and the shipment of the merchandise.¹⁵ For U.S. sales, Dongkuk explained that the essential terms of sale are fixed at the time of shipment¹⁶ and that the shipment date precedes the sales invoice date.¹⁷ Accordingly, for Dongkuk’s sales in both the home and U.S. markets, we have defined the dates of sale as Dongkuk’s reported shipment date.

Hyundai Steel’s home market sales were shipped from the factory on SHIPDAT1H, or SHIPDAT2H, the latter indicating sales for which customers requested delayed shipments.¹⁸

Hyundai Steel reported the day it issued its tax invoice in SALINDTH.¹⁹ These invoices are issued by the end of the month containing SHIPDAT1H. Hyundai Steel stated that the material terms of sale do not change after this date, that price is set by the issuance of the invoice, and that quantity did not change after this date either.²⁰ Here, we used the earlier of SALINDTH or SHIPDAT1H as the date of sale for home market sales.

¹³ See 19 CFR 351.401(i).

¹⁴ See, e.g., 2016-17 Prelim PDM at 6-7; unchanged in 2016-17 Final.

¹⁵ See Dongkuk’s August 1, 2019 Section B Questionnaire Response (Dongkuk BQR) at B-25.

¹⁶ See Dongkuk’s August 1, 2019 Section C Questionnaire Response (Dongkuk CQR) at C-21.

¹⁷ See Dongkuk AQR at A-24.

¹⁸ See Hyundai Steel’s October 4, 2019 First Supplemental Questionnaire Response (Hyundai Steel 1SQR) at S-8.

¹⁹ *Id.*

²⁰ *Id.* at S-10.

Hyundai Steel issues commercial invoices for its EP sales to the United States when the goods leave its factory, and issues commercial invoices for its CEP sales around the time the goods enter the United States.²¹ Hyundai Steel explained that the material terms of sale do not change after shipment from the factory.²² For EP sales the shipment either precedes or coincides with the issuance of the commercial invoice, and for CEP sales shipment from the factory precedes the commercial invoice.²³ We have defined the date of sale for Hyundai Steel's U.S. market sales as shipment date (the earlier of SALINDTU or SHIPDATU).

D. Level of Trade/CEP Offset

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. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁵ In order to determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed 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 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison-market sales (*i.e.*, NV based on either home-market or third-country prices), 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.²⁶ 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.²⁷

When Commerce is unable to match U.S. sales of the foreign like product in the comparison 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 comparison market. In comparing EP or CEP sales to 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,

²¹ See Hyundai Steel AQR at A-35.

²² *Id.*

²³ *Id.*

²⁴ See 19 CFR 351.412(c)(2).

²⁵ *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) (*OJ from Brazil*) and accompanying IDM at Comment 7.

²⁶ See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

²⁷ See 19 CFR 351.412(c)(1).

i.e., no LOT adjustment is possible, Commerce shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁸

We examined the differences in selling functions reported in the respondents' responses to our requests for information. Dongkuk reported two types of customers in the home market: end-users and distributors.²⁹ The selling activities associated with the two types of customers did not differ;³⁰ therefore, we consider the two reported channels of distribution to constitute one LOT. In the U.S. market, Dongkuk reported CEP and EP sales to distributors.³¹ With respect to EP sales we compared the selling activities reported at the EP LOT with the selling activities at the home market LOT and found that these levels were substantially dissimilar. Dongkuk's sales at the EP level do not involve certain selling activities while sales at the home market level include those activities.³² Specifically, sales at the EP level include the provision of sales support and training services, as well as substantially more logistical and administrative services than in the home market. Additionally, those selling activities that occur at both the EP level and in the home market, occur at a greater intensity in the home market.³³ Therefore, for Dongkuk, we preliminarily determine the home-market sales to be at a different LOT than the EP LOT.

With respect to CEP sales, we compared the selling activities at the CEP LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by the respondents' U.S. affiliates, that these levels were substantially dissimilar. Dongkuk's sales at the CEP level do not involve certain selling activities while sales at the home market level include those activities.³⁴ Specifically, sales at the CEP level include the provision of sales support and training services, as well as substantially more logistical and administrative services than in the home market. Additionally, those selling activities that occur at both the CEP level and in the home market, occur at a greater intensity in the home market.³⁵ Therefore, for Dongkuk, we preliminarily determine the home-market sales to be at a different LOT and at a more advanced stage of distribution than the CEP LOT.

Because there is only one LOT in the home market, we were unable to calculate a LOT adjustment based on Dongkuk's home market sales of the foreign like product and we have no

²⁸ See, e.g., *OJ from Brazil* IDM at Comment 7.

²⁹ See Dongkuk BQR at B-24.

³⁰ See Dongkuk AQR at Exhibit A-18.

³¹ See Dongkuk CQR at C-19.

³² See Dongkuk ARQ at A-19 (“{t}he selling functions chart demonstrates that Dongkuk provides many more selling functions and selling functions at a higher level of intensity in the home-market sales channels than it does in CEP sales to Dongkuk's US affiliated reseller, DKA”); see also Dongkuk AQR at Exhibit A-18 for business proprietary details describing the level of selling activities; Dongkuk's Supplemental Response, dated September 23, 2019 (Dongkuk SQR), at 6-7 and Exhibits SA-8 and 9.

³³ *Id.*

³⁴ See Dongkuk AQR at A-19 (“{t}he selling functions chart demonstrates that Dongkuk provides many more selling functions and selling functions at a higher level of intensity in the home-market sales channels than it does in CEP sales to Dongkuk's US affiliated reseller, DKA”); see also Dongkuk's Section A Response at Exhibit A-18 for business proprietary details concerning the level of selling activities; Dongkuk SQR at 6-7 and Exhibits SA-8 and 9.

³⁵ *Id.*

other information that provides an appropriate basis for determining a LOT adjustment. Moreover, because the U.S. LOT did not exist in the home market, there is no basis for calculating an adjustment for the LOT in the U.S. market. Accordingly, for Dongkuk's CEP sales, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP offset adjustment to NV is subject to the offset cap, which is calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP. Because we were unable to calculate a LOT adjustment (*i.e.*, there is only one LOT in Dongkuk's home market), we made no LOT adjustment with respect to Dongkuk's EP sales.

Hyundai Steel reported one channel of distribution in the home market which serves both end-users and distributors.³⁶ In the U.S. market, Hyundai Steel reported both EP and CEP sales.³⁷ Hyundai Steel reported no differences in the intensity of selling activities it performed for its sales to the United States compared to its sales to the home market.³⁸ Accordingly, we find that Hyundai Steel's EP sales and CEP sales constitute a single LOT.

We compared Hyundai Steel's selling activities corresponding to the U.S. LOT and at the home-market LOT and found that activity intensities in these LOTs were substantially the same. Specifically, there is no difference in the level of sales support provided, or in the provision of training services provided, and there are immaterial differences in the levels of technical support provided. Differences in the level of activity for logistical services were captured in direct expenses, and differences in the level of activity for sales related administrative activities other than order input/processing were also captured in direct expenses. There was no difference in the level of activity reported for order input/processing between the home market LOT and for sales to the US.³⁹ Therefore, for Hyundai Steel, we preliminarily determine that home market sales were made at the same LOT as U.S. sales. Similarly, Hyundai Steel's home market LOT is not at a more advanced stage of distribution than its CEP LOT; therefore, a CEP offset is not warranted.

E. Affiliated Service Providers

Section 773(f)(2) of the Act provides that “{a} transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.”

Hyundai Steel obtained inland freight from factory to warehouse (INLFTWH), warehousing expenses (WARESH and DWAREHU), domestic marine insurance (INSUREH), inland freight

³⁶ See Hyundai Steel AQR at A-20.

³⁷ *Id.* at A-21.

³⁸ See Hyundai Steel ISQR at Exhibit S-2.

³⁹ *Id.*

from factory/warehouse to customer (INLFTCH), domestic inland freight for U.S. sales (DINLFTWU and DINLFTPU), international freight (INTNFRU), other freight services (USOTHTRU), delivery of material inputs, and material inputs into production from affiliated companies.⁴⁰ We revalued steel scrap expenses pursuant to section 773(f)(2) of the Act; Hyundai Steel reported an adjustment to effectuate this at our request.⁴¹

F. Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, Commerce calculated EP for Dongkuk's and Hyundai Steel's U.S. sales in which subject merchandise was first sold to the unaffiliated purchaser in the United States prior to importation, and the CEP methodology was not otherwise warranted based on the facts on the record. In accordance with section 772(b) of the Act, for the remainder of these respondents' U.S. sales we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with these respondents, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

1. Dongkuk

We based EP on the prices Dongkuk charged to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, where appropriate, for foreign inland freight. Dongkuk ships subject merchandise "stacked and unpacked."⁴²

In accordance with section 772(b) of the Act, CEP is the price at which 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. Dongkuk classified certain of its sales as CEP sales because these transactions were conducted by Dongkuk's U.S. affiliate, Dongkuk International, Inc.⁴³ We calculated CEP based on the delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and U.S. customs duties, 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 includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit for economic activities in the United States to arrive at CEP.

⁴⁰ See Hyundai Steel AQR at A-12; *see also* Hyundai Steel's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from Korea –Sections B, C, and D Questionnaire Responses," dated July 25, 2019 (Hyundai Steel BCDQR), at B-32 through B-36, C-31 through C-35, C-37, C-39, and Exhibit D-4.

⁴¹ See Hyundai Steel ISQR at 23 to 24.

⁴² See Dongkuk CQR at C-52.

⁴³ See Dongkuk AQR at 7 and 17; *see also* Dongkuk CQR at 18.

2. Hyundai Steel

We based EP on the prices to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties. The product is shipped in an unpacked state.⁴⁴

Hyundai Steel classified some of its sales of subject merchandise to the United States as CEP sales because all such sales were invoiced and sold by Hyundai Steel's U.S. affiliate, Hyundai Corporation, USA.⁴⁵ We calculated CEP based on the delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. These products were shipped in an unpacked state.⁴⁶ In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit for economic activities in the United States to arrive at CEP.

G. Normal Value

1. Overrun Sales

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

The respondents reported home market sales of "overrun" merchandise, *i.e.*, sales of products that failed to meet the original customer's order specifications because of differences in size, chemical components, and/or strength. In the past, we examined various factors to determine whether "overrun" sales are in the ordinary course of trade.⁴⁷ 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.⁴⁸ These factors include, but are not limited to, the following: (1)

⁴⁴ See Hyundai Steel BCDQR at C-52.

⁴⁵ See Hyundai Steel AQR at A-18.

⁴⁶ See Hyundai Steel BCDQR at C-52.

⁴⁷ See *China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003); see also, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 12431 (March 3, 2017) (*2015-16 Prelim*), and accompanying PDM at 13, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42075 (September 6, 2017) (*2015-16 Final*).

⁴⁸ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

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.⁴⁹

Based on our analysis of these factors and the terms of sale, we preliminarily determine that the respondents’ overrun sales are outside the ordinary course of trade. Because our analysis includes business proprietary information, the analysis is available in separate decision memoranda.⁵⁰

2. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in Korea to serve as a viable basis for calculating NV, we compared the respondents’ volume of home market sales of the foreign like product to their U.S. sales volume, in accordance with sections 773(a)(1)(B) and (C) of the Act. Because the volume of each of the respondents’ home market sales of the foreign like product exceeded five percent of their aggregate U.S. sales volume of the subject merchandise, we preliminarily determine that each of the respondents’ home markets are viable for comparison purposes.⁵¹

3. Affiliated Parties

Dongkuk made home market sales to a subsidiary of Dongkuk Industries Co., Ltd. (DKI).⁵² DKI owns a certain percentage of DKI’s subsidiary. Dongkuk’s Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang, are brothers. DKI’s Chairperson, Sang Kuhn Chang, is an uncle of Dongkuk’s Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang. Sang Kuhn Chang is also a director of the aforementioned subsidiary to which Dongkuk made home-market sales. Together the Chang family grouping owns the largest number of shares of Dongkuk and DKI.⁵³

Dongkuk’s Chairman Sae Joo Chang and Vice Chairman Sae Wook Chang respectively own 13.83 percent and 9.33 percent of Dongkuk’s shares and collectively own 23.16 percent of Dongkuk’s shares.⁵⁴ DKI’s Chairman Sang Kuhn Chang, Vice Chairman Sae Hee Chang, and Executive Vice President He Won Chang respectively own 7.04 percent, 26.91 percent, and 1.80

⁴⁹ See 2015-16 Prelim PDM at 13, unchanged in 2015-16 Final.

⁵⁰ See Memoranda, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Dongkuk’s Home Market Overruns,” and “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Hyundai Steel’s Home Market Overruns,” dated concurrently with this Preliminary Decision Memorandum.

⁵¹ See Dongkuk AQR at Exhibit A-1; and Hyundai Steel AQR at Exhibit A-1.

⁵² See Dongkuk AQR at A-3.

⁵³ See Memorandum, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Affiliation of Dongkuk Steel Mill Co., Ltd., and Dongkuk Industries Co., Ltd.,” dated concurrently with this Preliminary Decision Memorandum (Dongkuk Affiliation Memo); see also Dongkuk’s section A response dated July 29, 2019, at Exhibits A-10, A-11, A-13, and Attachments A-1, A-10, and A-11; and Dongkuk SQR at Exhibit SA-2.

⁵⁴ See Dongkuk AQR at Exhibits A-10 and A-13, and Attachments A-2 and A-10.

percent of DKI's shares and collectively own 35.75 percent of DKI's shares.⁵⁵ Together the Chang family grouping owns the largest block of the outstanding shares of Dongkuk, DKI, and DSC.⁵⁶

Members of a family are affiliates pursuant to section 771(33)(A) of the Act and 19 CFR 351.102(b)(3). The definition of family includes uncle-nephew relationships under section 771(33)(A) of the Act.⁵⁷ Two or more persons directly or indirectly controlling, controlled by, or under common control with any person are affiliates under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). Further, 19 CFR 351.102(b)(3) states that in considering whether there is control, Commerce will consider family groupings. In prior reviews of this order, we found that Dongkuk and DKI are affiliated.⁵⁸

Therefore, we preliminarily find that DKI's Chairperson, Sang Kuhn Chang, and Dongkuk's Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang, are affiliated under section 771(33)(A) of the Act and 19 CFR 351.102(b)(3) because of their uncle-nephew relationship. We also preliminarily find that Dongkuk, DKI, and the aforementioned subsidiary are affiliated under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3) because Dongkuk, DKI, and the subsidiary are under common control of the Chang family grouping.⁵⁹ Accordingly, we preliminarily treated Dongkuk's home market sales to DKI's subsidiary as sales to an affiliated party and performed the arm's-length test for these sales.

Dongkuk also made home market sales to a company owned by the sister and brother-in-law of Dongkuk's Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang. Together this Chang family grouping owns the largest number of shares of Dongkuk and this company.⁶⁰

Members of a family are affiliates pursuant to section 771(33)(A) of the Act and 19 CFR 351.102(b)(3). Although section 771(33)(A) of the Act does not explicitly identify brother-in-law as a member of a family, section 771(33)(A) of the Act does not limit the definition of family to the members listed in section 771(33)(A) of the Act and "family members not listed in section (A) can still be considered 'family' under the statute."⁶¹ We find it reasonable to interpret section 771(33)(A) of the Act to include a spouse within a family as a member of a

⁵⁵ See Dongkuk AQR at Exhibit A-11; see also Dongkuk SQR at 2, and Exhibits SA-1, SA-2, and SA-12.

⁵⁶ See Dongkuk Affiliation Memo; see also Dongkuk AQR at Exhibits A-10, A-11, A-13, and Attachments A-1, A-10, and A-11; and Dongkuk SQR at Exhibit SA-1, SA-2, and SA-12.

⁵⁷ See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1325-26 (CIT 1999) (*Ferro Union*); see also *Dongkuk Steel Mill Co. v. United States*, 29 CIT 724 (June 22, 2005).

⁵⁸ See 2015-16 Prelim PDM at 10-11, unchanged in 2015-16 Final; see also 2016-17 Prelim PDM at 12-13, unchanged in 2016-17 Final; and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*; 2017-18, 83 FR 65348 (December 20, 2018) and accompanying PDM at 12-13, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 84 FR 25751 (June 4, 2019).

⁵⁹ See Dongkuk Affiliation Memo for more details which contains Dongkuk's business-proprietary information.

⁶⁰ See Dongkuk Affiliation Memo; see also Dongkuk AQR at Exhibits A-10, A-11, A-13, and Attachment A-10 and A-12; and Dongkuk SQR at Exhibit SA-3.

⁶¹ See *Ferro Union*, 44 F. Supp. 2d at 1325-26.

family. Two or more persons directly or indirectly controlling, controlled by, or under common control with any person are affiliates under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). Further, 19 CFR 351.102(b)(3) states that in considering whether there is control, Commerce will consider family groupings.

Therefore, we preliminarily find that Dongkuk's Chairman, Sae Joo Chang, Vice Chairman, Sae Wook Chang, their sister, and brother-in-law are affiliated under section 771(33)(A) of the Act and 19 CFR 351.102(b)(3) as members of the Chang family grouping. We also preliminarily find that Dongkuk and this company are affiliated under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3) because Dongkuk and this company are under common control of the Chang family grouping.⁶² Accordingly, we preliminarily treated Dongkuk's home market sales to this company as sales to an affiliated party and performed the arm's-length test on these transactions.

Hyundai Steel made home-market sales to numerous affiliated entities.⁶³ We performed the arm's-length test on these transactions.

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

We may calculate NV based on a sale to an affiliated party only if we are satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices.⁶⁴ To test whether the respondents' comparison market sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices.⁶⁵ We included in our calculations of NV those sales to affiliated parties that were made at arm's-length prices and excluded those sales that failed the arm's-length test.

5. Cost of Production

In accordance with section 773(b)(2)(A) of the Act, Commerce requested cost information from Dongkuk and Hyundai Steel and received requested information from the respondents.⁶⁶ We examined the respondents' cost data and determined that our quarterly cost methodology is not warranted for either Dongkuk or Hyundai Steel, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

⁶² See Dongkuk Affiliation Memo for an analysis including related business proprietary information.

⁶³ See Hyundai Steel AQR at Exhibit A-22.

⁶⁴ See 19 CFR 351.403(c).

⁶⁵ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

⁶⁶ See Dongkuk's Section D Response dated August 1, 2019, and Hyundai Steel BCDQR at Section D.

a. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative, and financial expenses, in accordance with section 773(b)(3) of the Act. Except as stated below, we relied on the COP data submitted by Dongkuk and Hyundai Steel in their questionnaire responses for the COP calculation.

During the POR, Dongkuk purchased slabs from its affiliates. Slab is a major input of CTL plate. Therefore, we analyzed Dongkuk's affiliated transactions in accordance with section 773(f)(3) of the Act, and adjusted Dongkuk's cost of manufacturing to reflect the higher of the cost of production, market price, or transfer price.⁶⁷

b. Test of Comparison Market Sales Prices

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

c. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

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

⁶⁷ See Dongkuk Preliminary Analysis Memorandum; and 19 CFR 351.407(b).

6. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home market prices. We calculated NV based on prices to unaffiliated customers in Korea and prices to affiliated customers which were determined to be at arm's length.⁶⁸ We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act.

For Hyundai Steel's EP sales, we further made adjustments for differences in circumstances of sale (for U.S. imputed credit expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sale prices with a NV based on comparison market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and the subject merchandise.⁶⁹

VI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

⁶⁸ See the "Affiliated Party Transactions and Arm's-Length Test" section above.

⁶⁹ See 19 CFR 351.411(b).

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

12/12/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance