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Investigation
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February 4, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Utility Scale Wind Towers
from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On July 9, 2019, Commerce received an antidumping duty (AD) petition covering imports of wind towers from Korea, which was filed in proper form by the Wind Tower Trade Coalition (the petitioner).¹ On July 22, 2019, we released U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.²

Commerce initiated this investigation on July 29, 2019.³ In the *Initiation Notice*, we stated that, where appropriate, we intended to select respondents based on CBP data for U.S. imports of

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam,” dated July 9, 2019 (Petition).

² See Memorandum, “Utility Scale Wind Towers from the Republic of Korea: Release of Customs Data from U.S. Customs and Border Protection,” dated July 22, 2019.

³ See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 37992 (August 5, 2019) (*Initiation Notice*).



wind towers from Korea under the appropriate Harmonized Tariff Schedule of the United States subheadings.⁴ On August 19, 2019, Commerce limited the number of respondents selected for individual examination to the two largest producers or exporters of the subject merchandise by volume, Dongkuk S&C Co., Ltd. (Dongkuk) and Vestas Manufacturing A/S (Vestas),⁵ and, on August 23, 2019, we issued the AD questionnaire to these two companies.⁶

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of wind towers to be reported in response to Commerce's AD questionnaire.⁷ In August 2019, Dongkuk; Marmen Inc., Marmen Énergie Inc. and Marmen Energy Co. (collectively, Marmen), a Canadian producer of wind towers; and the petitioner submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes;⁸ these same parties also submitted rebuttal comments.⁹

On August 23, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wind towers from Korea.¹⁰

On August 28, 2019, Vestas Towers America, Inc. (Vestas Towers), Vestas' U.S. affiliate, requested that Commerce withdraw the AD questionnaire issued to Vestas because Vestas is not a producer or exporter of subject merchandise.¹¹ On September 30, 2019, we suspended the questionnaire response deadlines for Vestas.¹²

From September through October 2019, Dongkuk submitted timely responses to sections A through D of Commerce's AD Questionnaire, *i.e.*, the sections relating to general information,

⁴ *Id.* 84 FR at 37996.

⁵ See Memorandum, "Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from the Republic of Korea: Respondent Selection," dated August 19, 2019.

⁶ See Commerce's Letters to Dongkuk and Vestas, "Antidumping Duty Questionnaire," each dated August 23, 2019 (collectively, AD Questionnaire).

⁷ See *Initiation Notice*, 84 FR at 37993-94.

⁸ See Dongkuk's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Comments on Product Characteristics and Model Match Methodology," dated August 19, 2019; Marmen's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Product Characteristic Comments," dated August 19, 2019; and Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Comments on Product Matching Characteristics," dated August 20, 2019.

⁹ See Dongkuk's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Rebuttal Comments on Product Characteristics and Model Match Methodology," dated August 29, 2019; Marmen's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Rebuttal Product Characteristics Comments," dated August 29, 2019; and Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Rebuttal Comments on Product Matching Characteristics," dated August 29, 2019.

¹⁰ See *Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam*, 84 FR 45171 (August 28, 2019).

¹¹ See Vestas Towers' Letter, "Utility Scale Wind Towers from South Korea: Request for Reconsideration of Respondent Selection and Issuance of Antidumping Duty Questionnaire," dated August 28, 2019.

¹² See Commerce's Letter to Vestas Towers, "Antidumping Duty Investigation of Utility Scale Wind Towers from the Republic of Korea," dated September 30, 2019.

comparison market sales, U.S. sales, and cost of production (COP)/constructed value (CV).¹³ From October 2019 through December 2019, we issued supplemental questionnaires to Dongkuk and received responses to these supplemental questionnaires from October 2019 through January 2020.¹⁴

On November 4, 2019, the petitioner submitted an allegation and supporting factual information that a particular market situation (PMS) existed in Korea during the period of investigation (POI).¹⁵ Subsequently, we invited interested parties to submit information to rebut, clarify, or correct the information concerning this allegation.¹⁶

On November 19, 2019, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.¹⁷ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on December 3, 2019, Commerce published in the *Federal Register* a postponement of the preliminary determination until no later than February 4, 2020.¹⁸

On December 12, 2019, Dongkuk and the petitioner submitted rebuttal factual information regarding the PMS allegation.¹⁹ On December 13, 2019, the petitioner submitted information alleging that critical circumstances exist with respect to imports of wind towers from Korea.²⁰ In January 2020, the petitioner and Dongkuk requested that Commerce postpone the final determination, and Dongkuk also requested that provisional measures be extended.²¹

¹³ See Dongkuk's September 23, 2019 Section A Questionnaire Response (Dongkuk's September 23, 2019 AQR); Dongkuk's September 30, 2019 Section A Addendum; and Dongkuk's October 15, 2019 Sections B, C, and D Questionnaire Response.

¹⁴ See Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea: Response to {Commerce's} October 22 Supplemental Questionnaire," dated October 29, 2019; Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea; Responses to {Commerce's} November 14 and 20 Supplemental Questionnaires," dated December 9, 2019; and Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea; Response to {Commerce's} December 19 Supplemental Questionnaire," dated January 6, 2020 (Dongkuk's January 6, 2020 SQR).

¹⁵ See Petitioner's Letter, "Utility Scale Wind Towers from the Republic of Korea: Particular Market Situation Allegation and Supporting Information," dated November 4, 2019 (Petitioner's PMS Allegation).

¹⁶ See Memorandum, "Deadlines for Submission of Factual Information Relating to Particular Market Situation," dated November 21, 2019 (PMS Allegation Memorandum).

¹⁷ See Petitioner's Letter, "Utility Scale Wind Towers from the Republic of Korea: Request to Postpone Preliminary Determination," dated November 19, 2019.

¹⁸ See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 66151 (December 3, 2019).

¹⁹ See Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea; Rebuttal Factual Information and Comments Relating to PMS Allegation," dated December 12, 2019 (Dongkuk's PMS Rebuttal); and Petitioner's Letter, "Utility Scale Wind Towers from the Republic of Korea: Submission of Factual Information to Rebut, Clarify, or Correct Petitioner's Particular Market Situation Allegation," dated December 12, 2019 (Petitioner's PMS Clarification).

²⁰ See Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Critical Circumstances Allegations," dated December 13, 2019 (CC Allegation).

²¹ See Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, Republic of Korea, and Socialist Republic of Vietnam," dated January 17, 2020; and Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea: Request to Extend the Deadline for the Final Determination," dated January 27, 2020.

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

III. PERIOD OF INVESTIGATION

The POI is July 1, 2018 through June 30, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2019.²²

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage *i.e.*, scope.²⁴ During this period, no interested party commented on the scope of this investigation.

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is certain wind towers, whether or not tapered, and sections thereof. For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

VI. AFFIRMATIVE PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales; and (B) there have been "massive imports" of the subject merchandise over a relatively short period. In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, Commerce must issue a preliminary critical circumstances determination no later than the date of the preliminary determination.

On December 13, 2019, the petitioner submitted information alleging that, pursuant to section 733(e)(1) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to imports of wind towers from Korea.²⁵ For the reasons discussed below, we preliminarily find that critical circumstances exist for Dongkuk and the companies covered by the all-others rate.

²² See 19 CFR 351.204(b)(1).

²³ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁴ See *Initiation Notice*, 84 FR at 37993.

²⁵ See CC Allegation.

History of Dumping and Material Injury

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on the subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.²⁶ Although Commerce previously has not imposed an AD order on the subject merchandise from Korea, Korean producers were, until very recently and during the POI, subject to an antidumping duty order covering certain wind towers exported to Australia.²⁷ Therefore, we preliminarily find a history of injurious dumping of the subject merchandise, pursuant to section 733(e)(1)(A)(i) of the Act.

Knowledge that Exporters Were Dumping and that There Was Likely to Be Material Injury by Reason of Such Sales

Because we have found a history of dumping of wind towers under section 733(e)(1)(A)(i) of the Act, as explained above, it is not necessary to determine whether importers knew or should have known that exporters were selling the subject merchandise at less than fair value, pursuant section 733(e)(1)(A)(ii) of the Act.

Massive Imports of the Subject Merchandise over a Relatively Short Period

Pursuant to section 733(e)(1)(B) of the Act, as well as 19 CFR 351.206(h), Commerce will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). Commerce normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later.²⁸ Furthermore, Commerce may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.²⁹ In addition, Commerce expands the periods as more data are available.

In this investigation, the petitioner has made no allegation that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the proceeding began, nor is there any record evidence to support such a finding. Therefore, we have relied on the largest possible periods by comparing the period February 2019 through June 2019 (*i.e.*, the base period), with the period July 2019 through November 2019 (*i.e.*, the comparison period), to

²⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052 (January 14, 2009).

²⁷ *Id.* at 8 and Exhibit 2, citing *Wind Towers ITC Sunset Determination* at IV-8 n. 23 (citing <https://www.industry.gov.au/regulations-andstandards/anti-dumping-and-countervailing-system/anti-dumping-commission-current-cases/487>).

²⁸ See 19 CFR 351.206(i).

²⁹ *Id.*

determine whether imports of subject merchandise were massive. After examining the data provided by Dongkuk,³⁰ we preliminarily find that the volume of U.S. imports increased by at least 15 percent from the base to the comparison period.³¹ Therefore, we preliminarily find Dongkuk's imports to be massive.

With regard to the non-individually investigated companies receiving the all-others rate, we analyzed Global Trade Atlas (GTA) import statistics specific to wind towers to determine whether imports for the subject merchandise were massive. However, because the quantity of imports shown in the GTA data is smaller than that in Dongkuk's data, we find the normal method of subtracting the mandatory respondent's data (*i.e.*, that of Dongkuk) from the GTA data to be an unreliable indicator of the experience of the all-others companies for purposes of the "massive" determination. Therefore, we are basing the "massive" finding for the non-individually investigated companies on the experience of Dongkuk.³² As explained above, we find that Dongkuk's imports increased by at least 15 percent from the base to the comparison period; accordingly, we preliminarily determine the imports of the companies covered by the all-others rate to be massive, as well.

VII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

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

A) Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV 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.

³⁰ See Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea; DKSC's Monthly Quantity and Value Shipment Data," dated December 30, 2019; and Dongkuk's Letter, "Utility Scale Wind Towers from the Republic of Korea; DKSC's Updated Monthly Quantity and Value Shipment Data," dated January 15, 2020.

³¹ See Memorandum, "Utility Scale Wind Towers from Korea: Critical Circumstances Analysis," dated February 4, 2020.

³² See *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Preliminary Affirmative Countervailing Duty Determination, and Preliminary Determination of Critical Circumstances*, 81 FR 39900 (June 20, 2016), and accompanying Preliminary Decision Memorandum (PDM) at "Critical Circumstances" (where we based our analysis for all other producers/exporters on the data of the sole mandatory respondent), unchanged in *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949 (January 10, 2017).

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³³ 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 investigation. 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 this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, 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 POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number (CONNUM) 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 for the individual dumping margins.

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

³³ See, *e.g.*, *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.³⁴

³⁴ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

B) Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 18.50 percent of Dongkuk's U.S. sales, by value, pass the Cohen's *d* test³⁵ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Dongkuk.

VIII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁶

Dongkuk reported the date of sale as the earlier of the commercial invoice date or shipment date for all comparison market and U.S. sales.³⁷ We preliminarily followed Commerce's long-standing practice of basing the date of sale for all comparison market and U.S. sales on the earlier of the invoice date or the shipment date.³⁸

IX. PRODUCT COMPARISONS

We made product comparisons using CV, as discussed in the "Calculation of NV Based on CV" section below.³⁹

X. EXPORT PRICE

For all sales made by Dongkuk, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted.

³⁵ See Memorandum, "Antidumping Duty Investigation of Utility Scale Wind Towers from the Republic of Korea: Calculations for the Preliminary Results," dated February 4, 2020 (Dongkuk Preliminary Calculation Memo), at 2.

³⁶ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

³⁷ See Dongkuk's January 6, 2020 SQR at S5-1 and S5-6.

³⁸ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

³⁹ See section 773(a)(4) of the Act.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, and marine insurance expenses, in accordance with section 772(c)(2)(A) of the Act. We capped Dongkuk's reported freight revenue by the amount of the associated freight expenses incurred on U.S. sales, in accordance with our practice.⁴⁰ In addition, Dongkuk reported certain additional revenue fields in its U.S. sales database; however, because Dongkuk did not describe fully the nature of these revenues or to which expenses they relate, we have not included these fields in our calculations for purposes of this preliminary determination. We intend to request additional information from Dongkuk regarding these additional revenues prior to verification.

XI. NORMAL VALUE

A) Particular Market Situation

1. Background

As noted above, in November 2019, the petitioner submitted factual information in support of an allegation that a PMS exists in Korea during the POI.⁴¹ Subsequently, in November 2019, Commerce invited interested parties to submit factual information and comments regarding the alleged PMS in this investigation.⁴² In that memorandum, we recommended finding that "petitioner's allegation indicates that a PMS may exist in the above-referenced investigation with respect to the costs of production of utility scale wind towers."⁴³ In December 2019, Dongkuk and the petitioner submitted factual information and comments concerning the PMS allegation.⁴⁴

2. Interested Parties' Arguments

The petitioner asserts that a PMS exists in Korea such that the prices of domestically-sourced and imported cut-to-length (CTL) plate were distorted during the POI due to: (1) the distortive price of unfairly traded CTL plate resulting from the global steel overcapacity crisis; (2) the government of Korea's (GOK's) subsidization of Korean shipbuilding and hot-rolled steel (HRS) products; (3) anticompetitive strategic alliances between HRS producers and downstream customers; and (4) the GOK's involvement in the energy market.⁴⁵ The petitioner argues that CTL plate is the primary input in wind towers and represents a significant portion of the COP. The petitioner urges Commerce to adjust Dongkuk's COP to account for the PMS created by the distorted price of CTL plate in Korea.⁴⁶

⁴⁰ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 6.

⁴¹ See Petitioner's PMS Allegation.

⁴² See PMS Allegation Memorandum.

⁴³ *Id.*

⁴⁴ See Dongkuk's PMS Rebuttal and Petitioner's PMS Clarification.

⁴⁵ See Petitioner's PMS Allegation at 6-7.

⁴⁶ *Id.* at 43-66.

According to the petitioner, Commerce should find that global steel overcapacity, combined with other factors, creates distorted pricing of CTL plate inputs that causes a PMS to exist in this investigation, as we have in prior cases where we examined the effects of global overcapacity of hot-rolled coil (HRC).⁴⁷ The petitioner argues that global steel overcapacity has a similar effect on CTL plate as it does on HRC because both are “hot-end” steel products with similar production processes that utilize the same inputs.⁴⁸ The petitioner also notes that, while Commerce has not found a PMS based on distorted CTL plate prices in prior cases, Commerce noted that HRC and CTL plate are closely-linked products in *LDWP from Turkey*.⁴⁹

The petitioner argues that the effects of the overcapacity crisis are particular to Korea because Chinese steel has surged into Korea, which distorts the market and displaces domestic production and Korea is the primary export market for steel from China and Japan, two of the world’s largest steel producers.⁵⁰ The petitioner states that although China has been a primary driver in the global excess capacity crisis, numerous other countries contribute to it.⁵¹ The petitioner also claims that the GOK has subsidized the Korean steel industry, which furthers the global overcapacity crisis.⁵²

The petitioner further alleges that, in response to global steel overcapacity, the GOK has provided subsidies to its shipbuilding industry, which, in turn, allowed CTL plate producers to maintain and expand capacity during the POI.⁵³ According to the petitioner, these capacity expansions, in addition to declining demand and large amounts of Chinese imports, distorted CTL plate pricing during the POI.⁵⁴ The petitioner notes that the GOK is also a known

⁴⁷ *Id.* at 9-25 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017*, 84 FR 24471 (May 28, 2019) (*HWR from Korea*), and accompanying IDM; *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM; *Large Diameter Welded Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 84 FR 6362 (February 27, 2019) (*LDWP from Turkey*), and accompanying IDM; *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 51927 (October 15, 2018) (*CWP from Thailand*), and accompanying IDM; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 33919 (July 18, 2018) (*WLP from Korea*), and accompanying IDM; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 27541 (June 13, 2018), and accompanying IDM; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 83 FR 17146 (April 18, 2018) (*OCTG from Korea 15-16*), and accompanying IDM; *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM; and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea 14-15*), and accompanying IDM).

⁴⁸ *Id.* at 10-11.

⁴⁹ *Id.* at 11-12 (citing *LDWP from Turkey* IDM at Comment 1).

⁵⁰ *Id.* at 25-26 (citing *WLP from Korea* IDM at Comment 1; and *OCTG from Korea 14-15* IDM at Comment 3).

⁵¹ *Id.* at 18-19 and 24-25 (citing *WLP from Korea* IDM at Comment 1; and *HWR from Korea* IDM at Comment 1).

⁵² *Id.* at 26.

⁵³ *Id.* at 28-35.

⁵⁴ *Id.*

subsidizer of the steel industry, and Commerce has two current countervailing duty (CVD) orders on CTL plate from Korea, as well as orders on other steel products.⁵⁵

The petitioner also asserts that Commerce has found that Korean HRC producers and downstream consumers are part of strategic alliances that result in the sale of steel inputs at anticompetitive prices.⁵⁶ The petitioner states that Commerce previously found that these alliances contributed to the existence of a PMS with respect to the prices of HRC.⁵⁷ The petitioner argues that the same HRC producers also make CTL plate, so the effects of these anticompetitive agreements also distort the Korean CTL plate market.⁵⁸

Finally, the petitioner argues that, in *HWR from Korea*, Commerce found that a PMS may exist where there is government control over prices to such an extent that the prices cannot be considered to be competitively set.⁵⁹ According to the petitioner, the largest electricity supplier in Korea is government-owned and not profitable; thus, Commerce should consider the distortive effects of GOK-supplied electricity on the CTL plate market.⁶⁰

Dongkuk argues that the petitioner failed to provide sufficient evidence to support its PMS allegation; that Commerce should find that the Act does not support a PMS adjustment to the cost of direct material inputs; and that the petitioner's proposed regression methodology is flawed.⁶¹

Dongkuk contends that issues related to steel capacity, production, and capacity utilization in China, Korea, and globally were significantly reduced during the POI and controlled even before the POI.⁶² Dongkuk argues that, contrary to the petitioner's claims, since 2016 there has been a

⁵⁵ *Id.* at 35-37 (citing *Large Diameter Welded Pipe From the Republic of Korea: Countervailing Duty Order*, 84 FR 18773 (May 2, 2019); *Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, and the Republic of Korea: Final Results of Expedited Third Sunset Reviews of Countervailing Duty Orders*, 82 FR 16790 (April 6, 2017); *Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)*, 81 FR 64436 (September 20, 2016); *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016); *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016); *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); *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000); and *Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 64 FR 42923 (August 6, 1999).

⁵⁶ *Id.* at 37-39.

⁵⁷ *Id.* at 38 (citing *HWR from Korea* IDM at Comment 1).

⁵⁸ *Id.*

⁵⁹ *Id.* at 40 (citing *HWR from Korea* IDM at Comment 1).

⁶⁰ *Id.*

⁶¹ See Dongkuk's PMS Rebuttal.

⁶² *Id.* at 14-35.

general recovery in the global steel market, as well as the markets in China and Korea.⁶³ Dongkuk claims that during the POI: (1) there was robust growth in steel demand, consumption, and production; (2) the global and Korean prices for steel increased; and (3) exports from China declined, as did imports of steel into Korea.⁶⁴ Dongkuk further notes that the average unit values (AUVs) of CTL plate imports and the overall prices of steel products in Korea increased in 2017 and 2018.⁶⁵

Dongkuk also argues that the level of subsidization of CTL plate in Korea is small, which demonstrates that there is not extensive government intervention in the steel market.⁶⁶ According to Dongkuk, regarding the alleged strategic alliances, the petitioner failed to provide any evidence of strategic alliances between Dongkuk or any other wind towers producer and any Korean CTL plate producer, let alone any evidence that any such alleged alliances distort CTL plate prices in Korea.⁶⁷ Dongkuk notes that, although Commerce has relied on such alliances in past PMS decisions, those cases involved different inputs and downstream industries, and the Court has found these alliances speculative and unpersuasive.⁶⁸

Finally, Dongkuk argues that the petitioner failed to show that the GOK's involvement in the electricity market has any effect on the price of electricity or that Dongkuk's reported electricity costs are inaccurate or distorted.⁶⁹ Dongkuk states that, in prior CVD proceedings, Commerce determined that electricity in Korea is not provided for less than adequate remuneration.⁷⁰

3. Analysis

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)⁷¹ added the concept of the term "particular market situation" to the definition of "ordinary course of trade," under section

⁶³ *Id.*

⁶⁴ *Id.* at 24-28.

⁶⁵ *Id.* at 33-35.

⁶⁶ *Id.* at 35-36.

⁶⁷ *Id.* at 36-37.

⁶⁸ *Id.* (citing *Husteel v. United States*, 98 F. Supp. 3d 1315, 1359 (CIT 2015)).

⁶⁹ *Id.* at 38-40.

⁷⁰ *Id.* (citing *POSCO v. United States*, Consol Ct. No. 17-00137, Slip Op. 18-169 (CIT 2018); *POSCO v. United States*, 337 F. Supp. 3d 1265 (CIT 2018); *POSCO v. United States*, 296 F. Supp. 3d 1320 (CIT 2018); *Nucor Corp. v. United States*, 286 F. Supp. 3d 1364 (CIT 2018); *Maverick Tube Corp. v. United States*, 273 F. Supp. 3d 1293 (CIT 2017); *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 5142 (October 11, 2018), and accompanying PDM at 22-23, unchanged in *Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 1; *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), and accompanying IDM at Comment 2; *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), and accompanying IDM at Comment 2; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61315 (October 13, 2015); *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017), and accompanying IDM at 28-33; and *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017), and accompanying IDM at 12-15.

⁷¹ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015).

771(15) of the Act, and for purposes of CV under section 773(e) of the Act. Through section 773(e), “particular market situation” also applies to 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 {COP} in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology.”

In this investigation, the petitioner alleged that a PMS exists in Korea during the POI which distorts the COP of wind towers based on the following factors: (1) global steel overcapacity’s impact on CTL plate prices in Korea; (2) the GOK’s intervention in the Korean shipbuilding and CTL plate markets; (3) anticompetitive strategic alliances between HRS producers and downstream consumers; and (4) the GOK’s involvement in the electricity market. Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. In this investigation, we considered the four elements of the petitioner’s allegation as a whole, based on their cumulative effect on the Korean wind tower market through the COP for wind towers and their inputs.

Based on the totality of the conditions in the Korean market, we preliminarily find that the petitioner has not supported its claims that these four elements have distorted CTL plate prices in the Korean market such that a PMS exists with respect to the COP of wind towers. Accordingly, we preliminarily find that the petitioner’s allegation does not support a finding of a PMS with respect to the COP of wind towers in Korea.

The petitioner asserts that a global overcapacity of steel has resulted in depressed prices for CTL plate in the Korean market; however, the data on prices for CTL plate that the petitioner placed on the record do not support this assertion. In the cases the petitioner cited where we found a PMS with respect to HRS or HRC inputs, we cited evidence of declining HRC prices and increased imports into the home market to support that global steel overcapacity was distorting the COP of the merchandise under consideration.⁷² Here, rather than evidence of price depression or increased imports, the data Dongkuk and the petitioner placed on the record indicate that, prior to and during the POI, the price of CTL plate inputs in Korea was rising, steel imports to Korea were decreasing, and the Chinese share of Korean steel imports was decreasing.⁷³

Regarding the GOK’s subsidization of the shipbuilding industry, while the petitioner provides several press articles discussing a decline in the industry and related government assistance, it does not provide evidence of how such assistance has affected the CTL plate market such that it

⁷² See, e.g., *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018), and accompanying IDM at Comment 1 n.36; *LDWP from Turkey* IDM at Comment 1; *CWP from Thailand* IDM at Comment 2; *HWR from Korea* IDM at Comment 1; and *WLP from Korea* IDM at Comment 1.

⁷³ See Dongkuk’s PMS Rebuttal at 33-34 and Appendix 1 at Attachments Reg. 8 and 9; and Petitioner’s PMS Allegation at Exhibit 10 (indicating that the AUVs of Korean CTL plate imports increased in 2017 and 2018); Dongkuk’s PMS Rebuttal at 24-28 and Exhibit CAP-10 (indicating that steel imports to Korea have decreased since 2016); and Dongkuk’s PMS Rebuttal at 28 and Exhibit CAP-12 (indicating that the Chinese share of Korean steel imports has decreased since 2017).

distorts the COP of wind towers in Korea. If anything, government support for the shipbuilding industry would seem to increase domestic prices for CTL plate, rather than lower them, as the petitioner alleges.

Although Commerce maintains CVD orders on CTL plate and other steel products from Korea, the existence of countervailable subsidies is not, in and of itself, sufficient to find a PMS.⁷⁴ We have previously found a PMS to exist due to the subsidization of inputs, but only in combination with the other factors supported by the record that indicated the existence of a PMS that affected the COP in the home market.⁷⁵

With respect to strategic alliances, record evidence only supports the existence of strategic alliances between HRC suppliers and their downstream consumers who produce non-subject merchandise. There is no evidence of strategic alliances between CTL plate suppliers and wind tower producers, nor is there any evidence of such alliances affecting the price of CTL plate in Korea and, in turn, the COP of wind towers in Korea.

Finally, concerning the GOK's involvement in the electricity market, the petitioner does not provide information to show that this involvement affects the cost of electricity in Korea or the COP of wind towers. While we have included the GOK's involvement in the electricity sector as one factor among others that may create a PMS in cases that involve non-subject merchandise produced with HRC inputs,⁷⁶ the petitioner has not supported its claim that the GOK's involvement has distorted electricity prices such that it affects the COP of wind towers or the price of CTL plate.

Thus, based on the totality of the evidence, we preliminarily find that the record of this investigation does not support a finding that a PMS with respect to the COP of wind towers in Korea existed during the POI in this proceeding. Because we preliminarily determine that the petitioner's allegations are insufficient to support a PMS finding, we have used Dongkuk's COP, as reported, for the purposes of Dongkuk's margin calculation for the preliminary determination.

With respect to Dongkuk's characterization of global steel capacity, production, utilization rates by the time of the POI and Dongkuk's interpretation of the data on the record, we emphasize that our preliminary negative finding in no way relies upon Dongkuk's conclusions that there has been a general recovery in the global steel market. In fact, Dongkuk has not demonstrated that there has been a general recovery in the global steel market. To the contrary, while economic indicators of an increasing global capacity crisis may have leveled off in the period prior to the POI, this does not demonstrate that the effects of two decades of price suppression have been ameliorated. Although there was a relatively small decrease in excess capacity from 2016-2018, current estimates of excess capacity are still above 400 million metric tons.⁷⁷

⁷⁴ See *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018), and accompanying IDM at Comment 2.

⁷⁵ See, e.g., *OCTG from Korea 15-16* IDM at Comment 1; *WLP from Korea* IDM at Comment 1; *LDWP from Korea*; and *LDWP from Turkey* IDM at Comment 1.

⁷⁶ See, e.g., *HWR from Korea* IDM at Comment 1; and *OCTG from Korea 14-15* IDM at Comment 3.

⁷⁷ See Memorandum, "Antidumping Duty Investigation of Utility Scale Wind Towers from the Republic of Korea: Statement from OECD Steel Committee," dated concurrently with this memorandum.

B) Home Market Viability

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

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Dongkuk's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), the aggregate volume of Dongkuk's home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used sales to Japan as the basis for comparison market sales, in accordance with section 773(a)(1)(C)(ii) of the Act. We selected Japan as the comparison market because it is Dongkuk's only viable third country market.

C) 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. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁷⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷⁹ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,⁸⁰ we consider the

⁷⁸ See 19 CFR 351.412(c)(2).

⁷⁹ *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.

⁸⁰ 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).

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.⁸¹

When Commerce is unable to match 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, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁸²

Dongkuk had no comparison market sales in the ordinary course of trade during the POI. Therefore, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling expenses and profit.⁸³ In accordance with 19 CFR 351.412(d), Commerce will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Because it is not possible in the instant case to make a LOT determination on the basis of comparison market sales for Dongkuk, Commerce may use sales of different or broader project lines, sales by other companies, or any other reasonable basis. Because we based the CV selling expenses and profit for Dongkuk on the consolidated financial statements of SeAH Steel Corporation (SeAH), as discussed further below, the financial statements do not indicate the LOT of the sales from which we derived CV selling expenses and profit. Therefore, without this knowledge, any adjustment made would be arbitrary. Because the record does not contain the information to determine if a LOT adjustment should be made, we did not make a LOT adjustment or CEP offset to NV.

D) Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act,⁸⁴ Commerce requested COP information from Dongkuk. We examined Dongkuk's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we are applying our standard methodology of using annual costs based on Dongkuk's reported data.

⁸¹ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁸² See, e.g., *OJ from Brazil* IDM at Comment 7.

⁸³ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004).

⁸⁴ The TPEA amended section 773(b)(2)(A) of the Act. See TPEA found at <https://www.congress.gov/bill/114thcongress/>.

1. Calculation of COP

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

We relied on the COP data submitted by Dongguk, except as follows:⁸⁵

- We weight-averaged the steel plate input costs for all CONNUMs to mitigate the unreasonable material cost differences unrelated to the product physical characteristics.
- We revised Dongguk's G&A expense ratio calculation to disallow the method used to allocate the SG&A expenses between selling and G&A expenses and the reversal of a prior period provision. Further, we excluded the bad debt expenses from the G&A expenses and recalculated the cost of goods sold denominator used in the ratio calculation to exclude scrap revenue.
- We revised Dongguk's financial expense ratio by recalculating the cost of goods sold denominator used in the ratio calculation to exclude scrap revenue.

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

⁸⁵ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Dongguk S&C Co., Ltd.," dated February 4, 2020.

For Dongkuk, we found that there were no above-cost comparison market sale prices and that such sale prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded all of Dongkuk's comparison market sale prices as outside the ordinary course of trade and based NV on CV, in accordance with section 773(b)(1) of the Act.

E) Calculation of NV Based on CV

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because there were no above-cost sales of the foreign like product in the comparison market. Therefore, for margin calculation purposes we are comparing EP sales in the United States to CV, as described under section 773(e) of the Act. In accordance with section 773(e) of the Act, we calculated CV based on the sum of Dongkuk's cost of materials and fabrication employed in producing the subject merchandise, plus amounts for SG&A expenses, interest expenses, U.S. packing expenses, and profit. We calculated the cost of materials and fabrication, G&A and interest expenses based on information submitted by Dongkuk in its original and supplemental questionnaire responses, except in instances where we determined that the information was not valued properly.⁸⁶

In the absence of comparison market sales made in the ordinary course of trade serving as the basis for CV profit and selling expenses, we are unable to use our "preferred method" to calculate these amounts and must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap").

The first statutory alternative provided in section 773(e)(2)(B) of the Act is not possible because we do not have information on the record representing the same general category as the subject merchandise sold by Dongkuk. The second alternative for determining CV profit is not available to us in this case because there are no other exporters or producers as mandatory respondents in the investigation. Therefore, we calculated CV profit and CV selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act (*i.e.*, based on "any other reasonable method"), using the financial statements of a Korean producer of comparable merchandise, submitted in the petition for the initiation of this investigation.⁸⁷ The information meets our criteria in that it is contemporaneous, represents a Korean producer of comparable merchandise (and thus similar business operations and products to the respondent), and appears to predominantly reflect sales (and thus profits) in the Korean market.

⁸⁶ *Id.*

⁸⁷ See Petition at Vol. IV Exhibit IV-21.

Further, we are unable to calculate the amount realized by exporters or producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”), in accordance with section 773(e)(2)(B)(iii) of the Act, because the record does not contain any information for making such a calculation. However, the SAA makes clear that Commerce might have to apply alternative (iii) on the basis of facts available.⁸⁸ Therefore, we conclude that the method used to calculate CV profit serves as a reasonable profit cap for the preliminary determination. Commerce intends to solicit additional profit and selling expense information from interested parties, after the preliminary determination, to consider further in the calculation of NV based on CV for the final determination.

Finally, we made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.⁸⁹

XII. CURRENCY CONVERSION

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

XIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

2/4/2020

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁸⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol 1 (1944) (SAA) at 840.

⁸⁹ See Dongkuk Preliminary Calculation Memo.