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Investigation  
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AD/CVD I: DV

March 14, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel  
Flat Products from the Netherlands

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## I. SUMMARY

The U.S. Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are listed in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On August 11, 2015, the Department received an antidumping duty (AD) petition covering imports of hot-rolled steel from the Netherlands,<sup>1</sup> which was filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners). The Department initiated this investigation on August 31, 2015.<sup>2</sup>

In the *Initiation Notice*, the Department notified the public that the Department intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of hot-rolled steel from the Netherlands during the period of investigation (POI) under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the

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<sup>1</sup> See Petitions for the Imposition of Antidumping Duties on Imports of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, dated August 11, 2015 (Petitions).

<sup>2</sup> See *Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, The Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 54261 (September 9, 2015) (*Initiation Notice*).



investigation.<sup>3</sup> On September 1, 2015, the Department released CBP import data to interested parties.<sup>4</sup> On September 16, 2015, the Department received comments on the CBP data from Tata Steel IJmuiden B.V. (TSIJ).<sup>5</sup>

Additionally, in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of hot-rolled steel to be reported in response to the Department's AD questionnaire.<sup>6</sup> From September to October 2015, the following interested parties submitted comments on the scope of the investigation: POSCO, Nippon Steel & Sumitomo Metal Corporation (NSSMC), JFE Steel Corporation, BlueScope Steel Ltd. (BlueScope), and TSIJ, producers/exporters of hot-rolled steel from the various countries. On October 5, 2015, October 21, 2015, and November 5, 2015, the petitioners submitted rebuttal scope comments in response to the scope comments of each of the interested parties that submitted scope comments.

On September 16, 2015, in addition to the petitioners, BlueScope, Companhia Siderúrgica Nacional, Ereğli Demir ve Çelik Fabrikaları T.A.Ş., Hyundai Steel Company (Hyundai Steel), NSSMC, POSCO, TSIJ, Tata Steel UK Ltd., and Usinas Siderurgicas de Minas Gerais - Usiminas S.A. submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.<sup>7</sup> On September 21, 2016, BlueScope filed rebuttal comments. On September 22, 2015, the petitioners, Colakoglu Metalurji A.S., Colakoglu Dis Ticaret A.S., and Hyundai Steel filed rebuttal comments.<sup>8</sup>

On September 25, 2015, the 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 hot-rolled steel from the Netherlands.<sup>9</sup>

On September 29, 2015, we selected TSIJ as a mandatory respondent in this investigation.<sup>10</sup> On September 30, 2015, we issued an antidumping questionnaire to TSIJ.<sup>11</sup> We received a questionnaire response from TSIJ.<sup>12</sup>

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<sup>3</sup> *Id.*, 80 FR at 54265.

<sup>4</sup> See Memorandum to the File from Dmitry Vladimirov, Case Analyst for AD/CVD Operations, Office I, entitled "Customs and Border Protection Data for Respondent Selection," dated September 1, 2015.

<sup>5</sup> See Letter from TSIJ, "Certain Hot-Rolled Steel Flat Products from the Netherlands and the United Kingdom: Comments of Tata Steel IJmuiden BV and Tata Steel UK Ltd. on Respondent Selection" (September 16, 2015).

<sup>6</sup> See *Initiation Notice*, 80 FR at 54262.

<sup>7</sup> These companies are interested parties in the hot-rolled steel investigations, *i.e.*, Australia, Brazil, Japan, the Netherlands, Turkey, the Republic of Korea and the United Kingdom.

<sup>8</sup> *Id.*

<sup>9</sup> See *Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom: Determinations*, Investigation Nos. 701-TA-545-547 and 731-TA-1291-1297 (Preliminary), 80 FR 58787 (September 30, 2015).

<sup>10</sup> See Memorandum from James Maeder, Senior Director for AD/CVD Operations, Office I to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands: Respondent Selection," dated September 29, 2015.

<sup>11</sup> See Letter from the Department to TSIJ, dated September 30, 2015.

<sup>12</sup> See Section A response from TSIJ dated October 28, 2015 (AQR), and Section B, C, and D responses from TSIJ, dated November 20, 2015 (BCQR).

On October 23, 2015, the Department received a timely allegation, pursuant to section 703(e)(1) of the Act, and 19 CFR 351.206, that critical circumstances exist with respect to imports of hot-rolled steel from the Netherlands.<sup>13</sup> TSIJ responded to the petitioners' critical circumstances allegation on November 13, 2015.

On November 25, 2014, the Department published the notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).<sup>14</sup> As a result of the 50-day postponement, the revised deadline for the preliminary determination of this investigation moved to March 8, 2016.

From December 2015 through February 2016, we issued supplemental questionnaires to TSIJ, and we received responses to them from January through February 2016.

Due to a closure of the Federal Government, the Department tolled all of its administrative deadlines by four business days.<sup>15</sup> The revised deadline for this preliminary determination is now March 14, 2016.

On February 22, 2016, TSIJ requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from four months to a period not to exceed six months.<sup>16</sup>

On February 25, 2016, the petitioners submitted comments with respect to TSIJ for consideration in the preliminary determination. On March 1, 2016, TSIJ replied to the petitioners' comments. On March 4, 2016, the petitioners replied to TSIJ's comments. On March 8, 2016, TSIJ replied to the petitioners' comments.

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<sup>13</sup> See Letters from the Petitioners, "Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan and the Netherlands - Critical Circumstances Allegations," dated October 23, 2015, and "Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan and the Netherlands - Critical Circumstances Allegations," dated November 2, 2015 (making public information in Attachment 2 of original submission).

<sup>14</sup> See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 80 FR 73702 (November 25, 2015).

<sup>15</sup> See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016. Because the revised deadline falls on a weekend day, it is the Department's practice to extend the deadline to the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>16</sup> See Letter to the Secretary of Commerce from TSIJ, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands: Request for Postponement of Final Determination" (February 22, 2016). As explained in the *Federal Register* notice issued concurrently with this memorandum, in accordance with 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), we are postponing the final determination in this investigation and extending the provisional measures period from a four-month period to a period not greater than six months.

### III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, August 2015.<sup>17</sup>

### IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are hot-rolled steel from the Netherlands. For a full description of the scope of this investigation, *see* this investigation's accompanying preliminary determination notice at Appendix I.

### V. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,<sup>18</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>19</sup> Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.<sup>20</sup> The Department is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

### VI. CRITICAL CIRCUMSTANCES

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A) 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 the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. On December 2, 2015, we preliminarily determined that critical circumstances do not exist with respect to imports of hot-rolled steel exported from the Netherlands.<sup>21</sup>

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<sup>17</sup> See 19 CFR 351.204(b)(1).

<sup>18</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>19</sup> See *Initiation Notice*, 80 FR at 54261.

<sup>20</sup> See Scope Memorandum.

<sup>21</sup> See *Antidumping Duty Investigations of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, and the Netherlands and Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Preliminary Determinations of Critical Circumstances*, 80 FR 76444 (December 9, 2015).

## VII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES

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

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

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

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 29, 2015, the President of the United States signed into law the *Trade Preferences Extension Act (TPEA)*,<sup>22</sup> which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>23</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>24</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability

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<sup>22</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) and *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

<sup>23</sup> See *TPEA* and *Applicability Notice*.

<sup>24</sup> *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at: <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

to comply with a request for information. In doing so, and under the *TPEA*, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>25</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>26</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Further, and under the *TPEA*, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The *TPEA* also makes clear that when selecting an adverse facts available (AFA) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

#### *Application of Partial AFA for TSIJ*

In section A of the Department’s questionnaire (*i.e.*, the section relating to general information), the Department instructed TSIJ to identify all suppliers “involved in the development, production, sale and/or distribution of the merchandise under investigation which the Department may also consider affiliated with your company” under section 771(33) of the Act.<sup>27</sup> Additionally, in section D of the questionnaire (*i.e.*, the section relating to cost of production (COP)), we requested that TSIJ identify, *inter alia*, all inputs received from affiliated parties and state whether the transfer price of the input reflects market prices.<sup>28</sup> In response, TSIJ indicated

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<sup>25</sup> See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

<sup>26</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

<sup>27</sup> See Initial Section A Questionnaire, dated September 30, 2015, at A-6.

<sup>28</sup> See Initial Section D Questionnaire, dated September 30, 2015, at D-3 to D-4.

that it purchased coal from one affiliated party, but TSIJ did not explain whether the transfer prices for those purchases reflected market prices.<sup>29</sup>

Notwithstanding TSIJ's response, we observed that TSIJ's financial statement included a line item for "Purchases of raw materials from other Tata Steel companies, acting as an agent,"<sup>30</sup> inconsistent with TSIJ's reporting of limited coal purchases from only one affiliated party. In a supplemental section D questionnaire, we sought additional information regarding these affiliated purchases, which were not reported by TSIJ in its initial questionnaire response. In particular, we asked TSIJ to "state whether any of TSIJ's purchases of raw materials used in the production of the merchandise under investigation were made through, or arranged by Tata Steel Global Procurement (TSGP) or any other Tata affiliate."<sup>31</sup> We further instructed TSIJ to report additional information "if so," including detailed information that was needed to conduct a transactions disregarded analysis.

Based upon TSIJ's own assessment of the information needed for our analysis, TSIJ chose not to report additional information in response to our questionnaire. Instead, TSIJ provided only limited information regarding its purchases and did not provide requested affiliated supplier information for either its TSGP purchases or purchases from the other Tata affiliated suppliers that TSIJ identified in its initial questionnaire response. When analyzing affiliated transactions in accordance with the transactions disregarded rule, section 773(f)(2) of the Act, we normally compare the transfer prices paid to an affiliate to market prices or the affiliate's COP if market prices are unavailable. In this instance, TSIJ did not provide market prices for these purchases or the affiliates' cost (*i.e.*, acquisition cost plus an amount for selling, general, and administrative expenses), despite our request for this information and providing an opportunity for TSIJ to cure the deficiency. TSIJ's failure precluded the Department from conducting the necessary analysis of all of TSIJ's affiliated supplier purchases and determining whether or not the transactions were made at arm's-length prices.

Based on the foregoing, we find that necessary information is not available on the record and that by failing to provide the information requested of it, TSIJ significantly impeded the proceeding and withheld information. We further find that TSIJ failed to provide the information requested of it, notwithstanding being afforded an opportunity to remedy the deficiency in its original questionnaire response, consistent with section 782(d) of the Act. Accordingly, in accordance with section 776(a)(1), (a)(2)(A), and (a)(2)(C), we are making a determination on the basis of the facts otherwise available. Additionally, because we find that TSIJ's responses indicate a failure to act to the best of its ability in complying with the Department's requests, we are relying upon an adverse inference in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act.<sup>32</sup>

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<sup>29</sup> See TSIJ's Response to Initial Section D Questionnaire, dated November 20, 2015, at 5-6.

<sup>30</sup> See TSIJ's Response to Initial Section A Questionnaire, dated October 28, 2015, at Exhibit A-12 at page 36.

<sup>31</sup> See Supplemental Section D Questionnaire, dated January 14, 2016, at 5.

<sup>32</sup> In *Nippon Steel*, 337 F.3d 1373, 1382-83 (CAFC 2003), the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort." Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability.

In sum, the Department preliminarily determines that application of partial AFA is warranted with respect to TSIJ's purchases of certain raw materials. Because this analysis relies on business proprietary information, for further discussion of TSIJ's affiliated purchases, *see* Memorandum to Neal M. Halper, Director, Office of Accounting, from Milton Koch, Staff Accountant, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Tata Steel IJmuiden B.V." dated concurrently with this memorandum (Cost Memorandum).

## VIII. 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 TSIJ's sales of subject merchandise from the Netherlands to the United States were made at LTFV, we compared the export price (EP) and constructed export price (CEP) (for non-prime U.S. sales) to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

#### A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average EPs (or constructed export prices (CEP)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values 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.

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>33</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists.

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

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should

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

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

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

For TSIJ, based on the results of the differential pricing analysis, the Department preliminarily finds that 79.69 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>34</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for TSIJ.

### IX. DATE OF SALE

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” The Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>35</sup> In *Allied Tube*, the U.S. Court of International Trade found that a “party seeking to establish a date of sale other than

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<sup>34</sup> See the Memorandum to the File from Dmitry Vladimirov, “Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands: Preliminary Determination Analysis Memorandum for Tata Steel IJmuiden B.V.,” dated March 14, 2016 (Preliminary Analysis Memorandum) at 3.

<sup>35</sup> See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092 (“As elaborated by Department practice, a date other than invoice date ‘better reflects’ the date when ‘material terms of sale’ are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.”).

invoice date bears the burden of producing sufficient evidence to ‘satisfy’ the Department that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’<sup>36</sup> The material terms of sale normally include the price, quantity, delivery terms and payment terms.<sup>37</sup> Furthermore, consistent with its regulation and practice, the Department uses the shipment date as the date of sale where the shipment date occurs before the invoice date because the quantity is fixed at the time of shipment.<sup>38</sup>

TSIJ reported that the date of invoice should be used as the date of sale for its home market and U.S. sales and stated that the invoice is normally issued on the day of shipment.<sup>39</sup> TSIJ asserted that the date of invoice reasonably reflects the date on which the material terms of sale have been firmly established or finalized because the precise product, price, and quantity are not firmly established until the time of issuance of invoice.<sup>40</sup>

Consistent with our regulatory presumption for invoice date and TSIJ’s reported date of sale, we preliminarily used the invoice date as the date of sale for U.S. sales. For certain comparison market sales, the record evidence indicates that the shipment date preceded the invoice date.<sup>41</sup> The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>42</sup> Therefore, we preliminarily used the earlier of the invoice date or the shipment

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

<sup>37</sup> See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>38</sup> See, e.g., *Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73422 (December 10, 2012), and accompanying Preliminary Issues and Decision Memorandum, unchanged in *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35244 (June 12, 2013); *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, at Comment 11; and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007), and the accompanying Issues and Decision Memorandum at Comments 4 and 5.

<sup>39</sup> See AQR at A-31, A-36, and BCQR at B-17, B-18, and C-15, C-16; see also Letter to the Secretary of Commerce from TSIJ, “Certain Hot-Rolled Steel Flat Products from the Netherlands: Sections A-C Supplemental Questionnaire Response,” dated January 8, 2016, at 12-13, and Exhibits SA-14 through SA-17; Letter to the Secretary of Commerce from TSIJ, “Certain Hot-Rolled Steel Flat Products from the Netherlands: Reply to Petitioner’s Comments on TSIJ’s Supplemental Questionnaire Response,” dated January 27, 2016, at 2-8, and Attachment 1; and Letter to the Secretary of Commerce from TSIJ, “Certain Hot-Rolled Steel Flat Products from the Netherlands: Sections A-C Second Supplemental Questionnaire Response,” dated February 12, 2016, at 8-10, 15-17, and Exhibits 2S-13 and 2S-15.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009) (*Staple Fiber from Korea*).

date as the date of sale for comparison market sales, in accordance with our regulation and practice.<sup>43</sup>

## **X. PRODUCT COMPARISONS**

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

In making product comparisons, we matched foreign like products based on the physical characteristics that TSIJ reported in the following order of importance: whether or not painted and/or laminated, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, whether or not pickled, and patterns in relief. For TSIJ’s respective sales of hot-rolled steel in the United States, the reported control number (CONNUM) identifies the characteristics of hot-rolled steel, as exported by TSIJ.

TSIJ sold non-prime hot-rolled steel in the home market and, per our request, it reported certain sales of non-prime hot-rolled steel in the United States. For the preliminary determination we are including sales of non-prime material in our margin calculations for TSIJ.

## **XI. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).”

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

In accordance with section 772(a) of the Act, we calculated EP for certain of TSIJ’s U.S. sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(b) of the Act, for TSIJ’S U.S. sales of non-prime product, we used CEP because the merchandise under consideration was sold in the United States after importation and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

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<sup>43</sup> *Id.*

We based EP on a packed price to the first unaffiliated purchaser in the United States. We made adjustments for billing adjustments, as appropriate. 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 inland insurance, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling charges, and U.S. customs duties.

For TSIJ's U.S. sales of non-prime product, in accordance with Section 772(b) of the Act, we calculated CEP based on the packed prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, foreign inland insurance, international freight, marine insurance, 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 CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.

For certain of TSIJ's U.S. sales, TSIJ imported subject merchandise and further processed it in the United States before selling it to an unaffiliated purchaser.<sup>44</sup> Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold by the exporter or producer to an unaffiliated customer if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by TSIJ's affiliated further-manufacturing firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States.<sup>45</sup> Therefore, we preliminarily determine that the value added in the United States is likely to exceed substantially the value of imported subject merchandise. Also, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate.<sup>46</sup>

Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margin calculated on sales of identical and other subject merchandise sold to unaffiliated persons.

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<sup>44</sup> See AQR at 44-45 and Exhibit A-25.

<sup>45</sup> See 19 CFR 351.402(c) for further explanation.

<sup>46</sup> For the analysis of the decision not to require further-manufactured data, see the Preliminary Analysis Memorandum.

## **XII. NORMAL VALUE**

### **A. Comparison Market Viability**

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

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for TSIJ was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for TSIJ, in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included TSIJ's sales to affiliated parties for purposes of determining home market viability.<sup>47</sup>

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

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>48</sup> The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."<sup>49</sup>

TSIJ reported that it made sales of merchandise under consideration for consumption to affiliated parties as defined in section 771(33) of the Act in the home market during the POI.<sup>50</sup> Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the

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<sup>47</sup> See *Certain Oil Country Tubular Goods From Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).

<sup>48</sup> See 19 CFR 351.403(c).

<sup>49</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

<sup>50</sup> See AQR at 8-9 and 37-39.

affiliated party were at arm's length.<sup>51</sup> Sales to affiliated customers of merchandise under consideration for consumption in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>52</sup>

### C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same 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).<sup>53</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>54</sup> 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),<sup>55</sup> 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.<sup>56</sup>

When the Department 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, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>57</sup>

TSIJ reported that it sold hot-rolled steel in the comparison market through two channels of distribution: 1) sales from TSIJ directly to large unaffiliated distributors/service centers, trading companies, and large end-users (Channel 1), and 2) sales from TSIJ through affiliated

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<sup>51</sup> See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value calculation).

<sup>52</sup> See 19 CFR 351.102(b).

<sup>53</sup> See 19 CFR 351.412(c)(2).

<sup>54</sup> *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*Orange Juice from Brazil*).

<sup>55</sup> Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for constructed value, where possible. See 19 CFR 351.412(c)(1).

<sup>56</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>57</sup> See, *e.g.*, *Orange Juice from Brazil*, at Comment 7.

distribution centers to small unaffiliated distributors/service centers, trading companies, and small end-users (Channel 2).<sup>58</sup> TSIJ reported that the selling functions for sales to all customer categories in each channel of distribution were functionally the same. We found that the two home-market channels of distribution did not differ with respect to selling activities. Specifically, TSIJ reported identical or similar levels of intensity for the following selling functions: strategic and economic planning, market research, institutional advertising, computer/legal/accounting/audit/personnel assistance programs, technical warranty services, engineering/research and product development services, sales logistics support, and provision of rebates. In addition, TSIJ reported that only three selling functions (inventory maintenance, warehousing, and freight/delivery arrangements) exhibit greater levels of intensities with respect to Channel 2. Concerning warehousing, we did not consider this activity to be a selling function relevant to our LOT analysis, because TSIJ reported, and we are making an adjustment for, affiliated distribution centers' warehousing costs in our margin calculations, in accordance with section 773(a)(6)(B)(ii) of the Act. Further, we find that the two remaining selling functions, inventory maintenance and freight/delivery arrangements, for which the intensity varied among the two distribution channels, are more passive in nature, insofar as they are in response to sales that have already been made or in anticipation of sales to be made in the near future, and are not integral or intensive selling activities.<sup>59</sup> Therefore, based on a lack of significant differences in the selling functions, we preliminarily determine that the two home-market channels of distribution constituted a single LOT.

TSIJ reported that its U.S. EP sales were made through one channel of distribution, sales from TSIJ directly to large distributors/service centers and large end-users.<sup>60</sup> TSIJ reported that the selling functions for sales to these customer categories were functionally the same. We found that the selling functions TSIJ performed for EP sales were identical or very similar to those it performed for home-market sales. As a result, we preliminarily determined that the level of trade for EP sales is the same as the level of trade for home-market sales. Thus, we matched EP sales at the same LOT in the home market and made no LOT adjustment. TSIJ did not provide any information concerning the selling activities undertaken for a limited number of CEP sales of non-prime product. As a result, there is no evidentiary basis on which to grant a LOT adjustment or a CEP offset and we have not made either.

#### D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than COP.<sup>61</sup> The 2015 law does not

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<sup>58</sup> See AQR at 16-30.

<sup>59</sup> We attributed less emphasis to these functions in our LOT analysis because the typical involvement of the sales personnel in the provision of these functions is more rudimentary, as opposed to functions such as strategic and economic planning, personnel training, engineering services, sales promotion, market research, technical assistance. See *Non-Oriented Electrical Steel from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 61612 (October 14, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>60</sup> See AQR at 16-30.

<sup>61</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.<sup>62</sup> Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and COP information from respondent companies in all AD proceedings.<sup>63</sup> Accordingly, the Department requested this information from TSIJ.<sup>64</sup> We examined TSIJ's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

### 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 expenses (G&A) and interest expenses.<sup>65</sup>

We relied on the COP data submitted by TSIJ, except as described above, and in the Cost Memorandum.

### 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 home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were inclusive of freight revenue, exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

### 3. Results of the COP Test

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

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<sup>62</sup> See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (Applicability Notice).

<sup>63</sup> *Id.*, 80 FR at 46794-95.

<sup>64</sup> The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

<sup>65</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

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.

We found that, for certain products, more than 20 percent of TSIJ’s home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. *Calculation of NV Based on Comparison-Market Prices*

We based NV on comparison market prices. We calculated NV based on packed, ex-factory or delivered prices to unaffiliated customers in the Netherlands.

We made deductions, where appropriate, from the starting price for billing adjustments, discounts, and rebates in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses, warranty expenses, and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>66</sup>

### **XIII. 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.

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<sup>66</sup> See 19 CFR 351.411(b).

**XIV. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

14 MARCH 2016  
\_\_\_\_\_  
Date