



A-412-825  
Investigation  
Public Document  
E&C/I: CC

DATE: 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 United Kingdom

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## I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from the United Kingdom 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 August 11, 2015, the Department received an antidumping duty (AD) petition covering imports of hot-rolled steel from the United Kingdom,<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 United Kingdom during the period of investigation (POI) under 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*).



Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the 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 BV (Tata Netherlands) and Tata Steel UK Ltd. (TSUK).<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 Tata Netherlands, 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, Tata Netherlands, TSUK, 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 U.S. International Trade Commission 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 United Kingdom.<sup>9</sup>

On October 1, 2015, we selected Tata Netherlands and TSUK as mandatory respondents because, based on CBP data, they account for the largest volume of exports of subject merchandise during the POI.<sup>10</sup> On October 1, 2015, we issued the AD questionnaire to TSUK

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<sup>3</sup> *Id.* at 54265.

<sup>4</sup> See Memorandum to the File regarding, "Customs and Border Protection (CBP) Data" dated September 1, 2015 (CBP Entry Data Memorandum).

<sup>5</sup> See letter from Tata, "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) (Tata Comments).

<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 to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Minoo Hatten, Program Manager, for Antidumping and Countervailing Duty Operations, Office I, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: Respondent Selection" dated October 1, 2015 (Respondent Selection Memo) at page 4.

and Tata Netherlands.<sup>11</sup> On October 16, 2015, Tata Netherlands submitted a certification that it had no shipments of subject merchandise during the POI.<sup>12</sup>

In October 2015, TSUK submitted timely responses to section A of the Department's AD questionnaire (*i.e.*, the section relating to general information), and in November 2015, TSUK responded to sections B, C, and D of the Department's AD questionnaire (*i.e.*, the sections relating to home market and U.S. sales and cost of production). From December 2015 through February 2016, we issued supplemental questionnaires to TSUK, and we received responses to these supplemental questionnaires from January 2016 through February 2016.

On November 25, 2015, 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>13</sup> As a result of the 50-day postponement, the revised deadline for the preliminary determination of this investigation moved to March 8, 2016.<sup>14</sup> 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 25, 2016, the petitioners submitted comments with respect to TSUK for consideration in the preliminary determination. On March 3, 2016, TSUK replied to the petitioners' comments. On March 7, 2016, the petitioners replied to TSUK's comments.

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

### **III. PERIOD OF INVESTIGATION**

The 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, which was August 2015.<sup>16</sup>

### **IV. SCOPE OF THE INVESTIGATION**

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

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<sup>11</sup> *See* Letters from Department to TSUK and Tata Netherlands dated October 1, 2015.

<sup>12</sup> *See* Letter from Tata Netherlands, "Certain Hot-Rolled Steel Flat Products from the United Kingdom: Tata Steel IJmuiden BV and Tata Steel U.K. on Respondent Selection" (October 29, 2015).

<sup>13</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>14</sup> *Id.*

<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* 19 CFR 351.204(b)(1).

## V. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,<sup>17</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>18</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>19</sup> The Department is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

## VI. DISCUSSION OF THE METHODOLOGY

### Comparisons to Fair Value

To determine whether TSUK's sales of the subject merchandise from the United Kingdom to the United States were made at less than normal value (NV), the Department compared the export price (EP) and constructed export price (CEP) to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

#### A) *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. The Department's regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).<sup>20</sup>

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>21</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes

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<sup>17</sup> *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>18</sup> *See Initiation Notice*, 80 FR at 54261.

<sup>19</sup> *See* Scope Memorandum.

<sup>20</sup> *See* 19 CFR 351.414(b)(1) and (2).

<sup>21</sup> *See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351, 33352 (June 4, 2013), and accompanying Issues and Decision Memorandum; *Steel Concrete Reinforcing Bar From Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), and accompanying Preliminary Decision Memorandum at "Determination of Comparison Method," unchanged in *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); *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at "Margin Calculations."

of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by TSUK.<sup>22</sup> 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 and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

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<sup>22</sup> See Letter to the Secretary of Commerce from TSUK, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: TSUK's Sections B through D Questionnaire Response" at C-13, dated November 23, 2015 (TSUK BCQR).

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 TSUK, based on the results of the differential pricing analysis, the Department preliminarily finds that 80.04 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>23</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 there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales because both rates are above the *de minimis* threshold and there is less than a relative 25 percent change in the rates.<sup>24</sup>

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<sup>23</sup> See Memorandum to the File from Catherine Cartsos, "Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: Preliminary Determination Analysis Memorandum for Tata Steel UK Ltd." dated March 14, 2016 (TSUK Preliminary Analysis Memorandum).

<sup>24</sup> *Id.*

Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for TSUK.

## VII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>25</sup>

TSUK reported the date of invoice as the date of sale for all home market and U.S. sales.<sup>26</sup> TSUK also reported that for home market and U.S. sales, material terms of sale can change up to the point of invoice date.<sup>27</sup> However, some of TSUK's U.S. sales had shipment dates that precede the date of invoice. 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>28</sup> Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale, in accordance with our regulation and practice.<sup>29</sup>

## VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the United Kingdom 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 reported by the respondents in the following order of importance: painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, pickled, and patterns in relief. For TSUK's respective sales of

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<sup>25</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) ("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.").

<sup>26</sup> See TSUK BCQR at B-15 and C-15.

<sup>27</sup> See Letter to the Secretary of Commerce from TSUK, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: TSUK's Section A Questionnaire Response" at 29, dated October 29, 2015 (TSUK AQR).

<sup>28</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*).

<sup>29</sup> *Id.*

hot-rolled steel in the United States, the reported control number (CONNUM) identifies the characteristics of hot-rolled steel, as exported by TSUK.

TSUK reported sales of non-prime hot-rolled steel in the home-market and to the United States.<sup>30</sup> For the preliminary determination we are including sales of non-prime material in our margin calculations that were reported by TSUK.

## **IX. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**

In accordance with section 772(a) of the Act, we calculated EP for certain of TSUK'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 the remainder of TSUK's U.S. sales we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with TSUK, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

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, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties.

TSUK classified some of its sales of merchandise under consideration to the United States as CEP sales because such sales were invoiced and sold by TSUK's U.S. affiliate, Tata Steel International Americas, as direct mill sales.<sup>31</sup> We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.

## **X. 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)

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<sup>30</sup> See TSUK BCQR at B-3 and TSUK's supplemental questionnaire response dated February 24, 2016.

<sup>31</sup> See TSUK AQR at 15.

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 TSUK 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 TSUK, in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included TSUK's sales to affiliated parties for purposes of determining home market viability.<sup>32</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>33</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. Therefore, consistent with 19 CFR 351.403(c) and (d) and our practice, the Department "*may* calculate normal value based on sales to affiliates if the agency is satisfied that the transactions were made at arm's length."<sup>34</sup>

TSUK reported that it had a small volume of sales of merchandise under consideration to affiliated parties in the home market during the POI.<sup>35</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 affiliated party were at arm's length.<sup>36</sup> Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>37</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>38</sup> Substantial

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<sup>32</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>33</sup> See 19 CFR 351.403(c).

<sup>34</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003) (emphasis in original).

<sup>35</sup> See TSUK BCQR at B-13.

<sup>36</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 NV calculation).

<sup>37</sup> See 19 CFR 351.102(b)(35).

<sup>38</sup> See 19 CFR 351.412(c)(2).

differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>39</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>40</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>41</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>42</sup>

TSUK reported that it sold hot-rolled steel in the comparison market through two channels of distribution: 1) sales from TSUK directly to distributors or end-users/processors (Channel 1), and 2) sales from TSUK through wholly incorporated TSUK Distribution Centers to distributors or end-users/processors (Channel 2). We found that the two home-market channels of distribution differed with respect to selling activities. Specifically, market research and engineering/research & development/product development services were performed for Channel 1 sales but not for Channel 2 sales. By contrast, inventory maintenance, warehousing, and procurement/sourcing services were performed for Channel 2 sales but not for Channel 1 sales. Based on these differences, we preliminarily determine that the two home-market channels of distribution constituted two LOTs.

TSUK reported that its U.S. sales were made through two channels of distribution: 1) EP sales from TSUK directly to distributors/service centers and original equipment manufacturers (OEMs) and 2) CEP sales from TSUK through its U.S. affiliate to distributors/service centers and OEMs. After adjusting the selling functions of CEP sales to remove functions adjusted for under section 772(d) of the Act, we found that the two U.S. channels of distribution do not differ significantly with respect to selling activities. The only differences in selling functions between EP and CEP sales that TSUK reported were in strategic/economic planning, market research, and

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<sup>39</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, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum (*Orange Juice from Brazil*) at Comment 7.

<sup>40</sup> 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 expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>41</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>42</sup> See, *e.g.*, *Orange Juice from Brazil*, at Comment 7.

engineering/research & development/product development services.<sup>43</sup> TSUK reported that it performed strategic/economic planning, and market research for both EP and CEP sales, albeit at somewhat different levels of activity; only engineering/research & development/product development services is performed for one channel (EP) and not the other. Based on these circumstances, we preliminarily determine that the two U.S. channels of distribution constituted a single LOT.

We found that the selling functions TSUK performed for U.S. sales were very similar as those it performed for comparison-market sales to Channel 1. As a result, we preliminarily determine the LOT of U.S. sales was the same as the LOT of home-market sales to Channel 1. Thus, where possible, we matched U.S. sales at the same level of trade in the home market and made no LOT adjustment. When the only appropriate home-market match was at a different LOT, we made a LOT adjustment based on the following analysis.

In order to determine whether a pattern of consistent price differences between the LOTs in the home market existed, we calculated the weighted-average price of each model at each home-market LOT based on sales made in the ordinary course of trade. For sales remaining after the arm's-length test and the cost test, we took all models sold at both LOTs and compared the weighted-average prices. We calculated the percentage of all models sold for which the weighted-average price was greater at each LOT. We also calculated the percentage of total quantity of sales of all models for which the weighted-average price was greater at each LOT. Based on this analysis, we determined that there was a pattern of consistent price differences between the two LOTs in the home market.<sup>44</sup>

Therefore, when we matched a U.S. sale to home market sales at a different LOT, we made an adjustment for these price differences in LOTs. In situations where we made a LOT adjustment, we adjusted normal value by the weighted-average difference in prices between the LOTs in the home market. We calculated this adjustment based on sales in the ordinary course of trade and used prices net of billing adjustments, movement expenses, discounts, rebates, commissions, imputed credit, and packing expenses. We calculated the weighted-average difference on a model-specific basis for models sold at both LOTs in the home market and then weight-averaged the model-specific differences. We calculated the amount of the LOT adjustment by applying this weighted-average percentage price difference to the NV determined at the different LOT.

#### 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 CVD law,

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<sup>43</sup> TSUK reported a slight difference in its selling-functions chart with respect to advertising. However, in its narrative response, TSUK reported that advertising “is not performed in either channel of distribution in the U.S. market” and that it marked CEP sales as “very low” in its selling-functions chart on the grounds that, “{t}o the extent that catalogs and brochures and other institutional materials are included in this category of expenses, it would be reflected in the indirect selling expenses reported by TSUK in Field DINDIRSU.” See Letter from TSUK, “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: TSUK’s Section A Questionnaire Response,” (October 29, 2015) at 24.

<sup>44</sup> Because of the proprietary nature of this analysis, see TSUK Preliminary Analysis Memorandum for further details of this analysis.

including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.<sup>45</sup> The 2015 law does not 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>46</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 cost of production (COP) information from respondent companies in all AD proceedings.<sup>47</sup> Accordingly, the Department requested this information from TSUK. We examined TSUK'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>48</sup>

We relied on the COP data submitted by TSUK, except as follows:<sup>49</sup>

- We adjusted TSUK's reported total cost of manufacturing for raw material and energy inputs in accordance with the transactions disregarded rule of section 773(f)(2) of the Act. Because certain information is missing from the record, we based this adjustment on neutral facts available in accordance with section 776(a)(1) of the Act.<sup>50</sup>
- We revised TSUK's reported G&A expense to include restructuring and impairment costs.<sup>51</sup>

We are in the process of collecting additional information regarding these adjustments and certain other items and we intend to verify this information for purposes of the final determination.

## 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

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<sup>45</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>46</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>47</sup> *Id.* at 46794-95.

<sup>48</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

<sup>49</sup> See Memorandum to Neal M. Halper, Director, Office of Accounting, from Angie Sepúlveda, Senior Accountant "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – TSUK" dated concurrently with this memorandum (Cost Memorandum).

<sup>50</sup> For a detailed discussion regarding this cost adjustment, see Cost Memorandum at pages 1-3.

<sup>51</sup> For a detailed discussion regarding this cost adjustment, see Cost Memorandum at page 3.

determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

### 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 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 TSUK'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 United Kingdom.

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>52</sup>

The Department calculated NV for TSUK based on delivered or ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and discounts 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

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<sup>52</sup> See 19 CFR 351.411(b).

credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

**XI. 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.

**XII. 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