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Investigation
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May 15, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Senior Advisor
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Non-Oriented Electrical Steel from the Republic of Korea

SUMMARY

The U.S. Department of Commerce (the Department) preliminarily determines that non-oriented electrical steel (NOES) from the Republic of Korea (Korea) is being, or is 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. Interested parties are invited to comment on this preliminary determination.

BACKGROUND

On September 30, 2013, AK Steel Corporation, the petitioner, filed a petition with the Department seeking the imposition of antidumping and countervailing duties on NOES from, *inter alia*, Korea.[1] On November 18, 2013, the Department published the notice of initiation of the LTFV investigation on NOES from Korea.[2]

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of signature

[1] *See* Letter from the petitioner entitled "Petitions For The Imposition Of Antidumping And Countervailing Duties Against Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan," (September 30, 2013) (the Petition).
[2] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations*, 78 FR 69041 (November 18, 2013) (*Initiation Notice*).

of the *Initiation Notice*.[3] On November 22, 2013, and November 26, 2013, we received comments from the petitioner proposing certain changes to the scope of this investigation.[4]

The Department also set aside a period of time for parties to comment on product characteristics for use in the antidumping questionnaire.[5] On November 20, 2013, and November 27, 2013, we received comments from the petitioner and the producer/exporter of NOES from Korea.[6] After reviewing all comments, we adopted the physical characteristics and model matching hierarchy as explained in the "Product Comparisons" section of this notice, below.

On December 2, 2013, 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 NOES from Korea, *inter alia*, and the ITC notified the Department of its finding.[7]

On December 18, 2013, we selected Daewoo International Corporation (DWI) and POSCO as mandatory respondents in this investigation.[8] On December 18, 2013, we issued antidumping questionnaires individually to DWI and POSCO.[9] We received a unified questionnaire response submitted on behalf of POSCO and DWI (collectively, POSCO/DWI).[10]

On January 28, 2014, POSCO/DWI 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.[11]

On January 28, 2014, POSCO/DWI submitted scope clarification requests.[12] On February 4, 2014, the petitioner submitted comments in response to POSCO/DWI's clarification requests.[13]

On January 31, 2014, we requested that POSCO/DWI respond to Section E of the antidumping questionnaire.[14] On February 26, 2014, we received POSCO/DWI's response to Section E of the Department's questionnaire.[15]

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[3] *See Initiation Notice*, 78 FR at 69042.
[4] *See* the "Scope Comments" section of this memorandum.
[5] *See Initiation Notice*, 78 FR at 69042.
[6] *See* the "Product Comparisons" section of this memorandum.
[7] *See Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; Determinations, Investigation Nos. 701–TA–506–508 and 731–TA–1238–1243 (Preliminary)*, 78 FR 73562 (December 6, 2013).
[8] *See* the "Selection of Respondents" section of this memorandum.
[9] *See* Letters from the Department to DWI and POSCO, dated December 18, 2013.
[10] *See* Section A response from POSCO/DWI dated January 22, 2014 (AQR), and Section B, C, and D responses from POSCO/DWI dated February 12, 2014 (B-D QR).
[11] *See* letter from POSCO/DWI to the Secretary of Commerce, "Non-Oriented Electrical Steel from Korea: Request to Postpone the Final Determination" dated January 28, 2014.
[12] *See* the "Scope Comments" section of this memorandum.
[13] *Id*.
[14] *See* Letter from Department to POSCO/DWI dated January 31, 2014.
[15] *See* Section E response from POSCO/DWI dated February 26, 2014.

We sent supplemental questionnaires to POSCO/DWI on March 4, 2014, March 14, 2014, April 9, 2014, and April 18, 2014.[16] We received responses from POSCO/DWI to the supplemental questionnaires on April 1, 2014, April 7, 2014, April 17, 2014, and April 25, 2014.[17] On May 7, 2014, we issued a third supplemental section D questionnaire to POSCO/DWI; the response to this supplemental questionnaire is due after the deadline for this preliminary determination and will be considered for the final determination.

On February 24, 2014, the petitioner submitted an allegation that differential pricing existed with respect to the U.S. sales reported by POSCO/DWI, and urged the Department to apply an alternative comparison methodology in calculating POSCO/DWI's estimated weighted-average dumping margin for the preliminary determination.[18]

On February 28, 2014, the petitioner made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent NOES LTFV investigations, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[19] On March 5, 2014, we postponed the preliminary determination by 50 days.[20] As a result of the postponement, the revised deadline for the preliminary determination of this investigation is now May 15, 2014.

On March 6, 2014, the petitioner filed amendments to the Petition, pursuant to section 733(e)(1) of the Act, alleging that critical circumstances exist with respect to imports of NOES from Korea.[21] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, the Department will issue a preliminary finding no later than the preliminary determination. On March 7, 2014, the Department requested that POSCO/DWI report their shipment data for a three-year period ending in March 2014, the month of the scheduled preliminary determination.[22] On March 18, 2014, POSCO submitted their shipment data.

On April 16, 2014, the petitioner submitted comments with respect to POSCO/DWI for consideration in the preliminary determination. On April 29, 2014, POSCO replied to petitioner's comments.

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[16] *See* Letters from Department to POSCO/DWI dated March 4, 2014, March 14, 2014, April 9, 2014, and April 18, 2014.

[17] *See* supplemental questionnaire responses from POSCO/DWI dated April 1, 2014, April 7, 2014, April 17, 2014, and April 25, 2014.

[18] *See* Letter from the petitioner to the Secretary of Commerce, "Non-Oriental Electrical Steel from Korea: Targeted Dumping Allegation" dated February 24, 2014.

[19] *See* Letter from the petitioner to the Secretary of Commerce, "Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Request for Postponement of the Preliminary Determinations" dated February 28, 2014.

[20] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 79 FR 13987 (March 12, 2014).

[21] *See* Letter from the petitioner to the Secretary of Commerce, "Non-Oriented Electrical Steel from Korea: Petitioner's Critical Circumstances Allegation" dated March 6, 2014.

[22] *See* the Department's letter to POSCO/DWI, "Antidumping Duty Investigation of Non-Oriented Electrical Steel from the Republic of Korea: Request for Quantity and Value Shipment Data" dated March 7, 2014.

PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, September 2013.[23]

POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on January 28, 2014, POSCO/DWI requested that the Department postpone the final determination, and requested that the Department extend the provisional measures. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporter, POSCO/DWI, accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*. Further, we are extending the provisional measures from four months to a period not to exceed six months. The suspension of liquidation will be extended accordingly.

SCOPE COMMENTS

In the *Initiation Notice*,[24] the Department invited interested parties to "to raise issues regarding product coverage."

On November 22 and 26, 2013, the petitioner requested that the Department clarify the scope by lowering the minimum silicon content from 1.25 percent to 1.00 percent, removing altogether the maximum silicon content, and including language regarding surface oxide coating.[25] On January 28, 2014, POSCO/DWI filed scope comments with the Department in which it requested that the Department clarify whether laminations and cores, downstream products fabricated from NOES, and certain NOES specifications with silicon content less than the percentage identified in the scope of NOES investigations contained in the *Initiation Notice*, are covered by this and the companion investigations.[26] On February 4, 2014, the petitioner responded to POSCO/DWI's comments, stating (1) that laminations and cores are out of the scope of the investigations to the extent that exclusion only covers products that are suitable for use (without further processing) as a drop-in part of a core; and (2) that the Department should promptly implement the changes to

[23] *See* 19 CFR 351.204(b)(1).
[24] *See Initiation Notice*, 78 FR at 69042.
[25] *See* Letter from the petitioner to the Secretary of Commerce, "Petitions for the Imposition of Antidumping and Countervailing Duties against Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, Taiwan/Petition Amendment to Clarify the Proposed Scope Definition" dated November 22, 2013, and Letter from the petitioner, "Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, Taiwan: Petitioner's Comments on the Scope of Investigations" dated November 26, 2013 (Petitioner's Proposed Scope Changes).
[26] *See* Letter from POSCO/DWI to the Secretary of Commerce, "Scope Clarification Requests," dated January 28, 2014 (POSCO/DWI Scope Comments) at 7-8, and Attachment E.

the scope of the investigations relating to silicon content described in Petitioner's Proposed Scope Changes, and clarify for POSCO the data that it should report to the Department.[27]

After analyzing the scope comments regarding silicon content and surface oxide coatings, the Department decided to lower the minimum silicon content identified in the scope from 1.25 percent to 1.00 percent, and to include language regarding surface oxide coating in the scope. However, the Department decided not to eliminate the maximum silicon content in the scope. For a complete discussion of these decisions *see* the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Robert Bolling, Program Manager for AD/CVD Operations, Office IV, regarding "Scope Modification Requests" dated April 10, 2014, and hereby incorporated by reference into this memorandum. The scope language below reflects these decisions.

With respect to the issue involving laminations and cores, POSCO/DWI described laminations as products that are cut from NOES into their finished shape by a punch and die or, when in smaller quantities, by laser or wire erosion.[28] The laminations are subsequently assembled together to form laminated transformer cores or electric motor stator and rotor parts.[29] POSCO commented that it understands that laminations and cores manufactured from NOES are products not subject to these investigations because NOES is manufactured in sheet or strip form, either in coils or in straight lengths, and any subsequent processing is not simply an extension of the NOES production process but, instead, processing performed by the end user or by a fabricator that sells to the end user.[30] POSCO/DWI commented that NOES is consumed exclusively in the production of laminated cores for transformers as well as stators and rotors for motors and generators. Depending on the design requirements of an end user, the standard lamination products are cut into "E," "I" or "U" shapes, or varying combinations thereof, while highly complex lamination products are customized with numerous sides, curved edges, or numerous punched holes.[31] POSCO/DWI commented that the process of converting NOES coil or strip into laminations or cores constitutes a substantial transformation into products with end uses and customer expectations different from those for NOES.[32]

In its reply to POSCO/DWI's scope clarification request, the petitioner stated that it agrees with POSCO/DWI that laminations and cores are outside the intended scope of the NOES investigations.[33] The petitioner commented that to the extent the term "laminations" is used as a substitute for the term laminated "cores," the petitioner likewise agrees that laminations that are

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[27] *See* Letter from Petitioner to the Secretary of Commerce, "Re: Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden and Taiwan/Petitioner's Response to POSCO's Scope Clarification Requests," dated February 4, 2014 (Petitioner's Reply Comments).
[28] *See* POSCO/DWI Scope Comments at 3.
[29] *Id*., at 3-4.
[30] POSCO/DWI refers to the production process for NOES described in the petitions and in the International Trade Commission's preliminary determination that POSCO/DWI understands to mean that the NOES production process ends with slitting. *Id.*, at 4.
[31] *Id*., at 4-5.
[32] *Id*., at 5.
[33] *See* Petitioner's Reply Comments at 2.

ready for assembly into cores are excluded from the intended scope of NOES investigations.[34] The petitioner commented that it does not agree with POSCO/DWI that the production process for NOES necessarily ends with slitting; because the scope definition covers NOES "whether or not in coils," simply cutting to length or cutting blanks from a coil (whether slit or not) does not take such products out of the scope.[35] The petitioner commented that it agrees nevertheless with POSCO/DWI that laminations cut from NOES to their finished shape and are otherwise suitable for use, without further processing, as a drop-in part of the core, are outside the intended scope of the NOES investigations.[36]

On the basis of the petitioner's statements that it is not seeking relief from laminations and cores made from NOES, we have modified the scope to reflect this exclusion.[37]

We invite interested parties to comment on this proposed addition to the scope language in their briefs so that the finalized scope of the investigation can be adopted in the final determination.

SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term "substantially equal" means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (*i.e.*, fully annealed to develop final magnetic properties) or semi-processed (*i.e.*, finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404-8-4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS, and IEC specifications noted immediately above.

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[34] *Id*. Referring to POSCO/DWI's Scope Comments, the petitioner interprets POSCO/DWI's statement, that POSCO/DWI uses the terms laminations and cores interchangeably in the normal course of business, to mean that laminations are a substitute for cores.
[35] *Id*.
[36] *Id*.
[37] *See* Letter from the petitioner to the Secretary of Commerce, "Non-Oriented Electrical Steel from The People's Republic of China, Germany, Japan, The Republic of Korea, Sweden, and Taiwan: Scope Clarification Language," dated May 12, 2014.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of this investigation are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part *(i.e.*, lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters and producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. In the *Initiation Notice* we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of NOES from Korea.[38] On November 8, 2013, we released the CBP data to all parties with access to information under administrative protective order.[39] The CBP data on the record indicates that there are five potential producers or exporters from Korea which account for the imports of subject merchandise to the United States during the POI.[40] We invited comments on CBP data and selection of respondents for individual examination.[41] We received comments from the petitioner and POSCO.

Based on our review of the CBP data and our consideration of publicly available information we determined that we had the resources to examine two companies. Accordingly, we selected DWI and POSCO[42] for individual examination in this investigation. These companies are the two producers or exporters of subject merchandise that account for the largest volume of the subject merchandise imported during the POI that we can reasonably examine in accordance with section 777A(c)(2)(B) of the Act.[43]

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[38] *See Initiation Notice*, 78 FR 69046.
[39] *See* memorandum to the file from Dmitry Vladimirov, case analyst for AD/CVD Operations, Office I, entitled "Release of Customs and Border Protection (CBP) data," dated November 8, 2013 (CBP Data Memo).
[40] *Id*.
[41] *Id*.
[42] Selected respondents are listed in alphabetical order.
[43] *See* Memorandum from Thomas Gilgunn, Acting Director for AD/CVD Operations, Office I to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, entitled "Antidumping Duty Investigation of Non-Oriented Electrical Steel from the Republic of Korea: Respondent Selection," dated December 17, 2013 (Respondent Selection Memo).

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. For the reasons explained below, we are preliminarily determining that critical circumstances do not exist for imports of NOES from Korea.

A History of Dumping and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.[44] There have been no previous U.S. orders on Korean NOES, nor is the Department aware of the existence of active AD orders on NOES from Korea in other countries. As a result, the Department does not find that there is a history of injurious dumping of NOES from Korea pursuant to section 733(e)(1)(A)(i) of the Act.

Knowledge that Exporters Were Dumping

The Department generally bases its decision with respect to knowledge on the estimated weighted-average dumping margins calculated in the preliminary determination and the ITC's preliminary injury determination.[45] The Department normally considers rate of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.[46] In this investigation POSCO/DWI reported CEP sales. The preliminary estimated weighted-average dumping margin of 6.91 percent that we calculated for POSCO/DWI does not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 15 percent for CEP sales). Therefore, we determine that there is not a sufficient basis to find that importers should have known that the POSCO/DWI was selling the merchandise under consideration at LTFV. Further, we preliminarily applied the rate we calculated for POSCO/DWI to all other producers or exporters. Therefore, the record does not support imputing importer knowledge of sales at LTFV to imports of these other producers or exporters as well.

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[44] *See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

[45] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422, 17425 (March 26, 2012).

[46] *Id.*

Because the statutory criteria of section 733(e)(1)(A) of the Act have not been satisfied, we find that the statutory criteria necessary for determining affirmative critical circumstances have not been met. Therefore, we preliminarily determine that critical circumstances do not exist for imports of NOES from Korea.

AFFILATION AND SINGLE ENTITY

Section 771(33) of the Act, in pertinent parts, identifies persons that shall be considered "affiliated" or "affiliated persons" as: (1) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization (section 771(33)(E) of the Act); or (2) any person who controls any other person and such other person (section 771(33)(G) of the Act). Section 771(33) further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the SAA[47] notes that control may be found to exist within corporate groupings.[48] The Department's regulations at 19 CFR 351.102(b)(3) states that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

POSCO and DWI provided a joint response to the Department's questionnaire and stated that DWI is POSCO's subsidiary and that DWI is a trading company that exported POSCO-manufactured NOES to the United States during POI.[49] Also, POSCO reported that POSCO transferred title of NOES to its affiliated trading company, DWI,[50] which then sold the merchandise under consideration produced by POSCO, to DWI's U.S. subsidiary, Daewoo International (America) Corporation.[51] POSCO and DWI also reported that POSCO sold, through another channel of distribution, the merchandise under consideration produced by POSCO, to POSCO's U.S. subsidiary, POSCO America Corporation (POSAM).[52] POSCO and DWI reported that they are affiliated based on information which is business proprietary.[53]

In accordance with sections 771(33)(E) and (G) of the Act, we preliminarily find that there is evidence on the record that POSCO and DWI are affiliated and there exists legal or operational control or direction that has the potential to impact decisions concerning the production, pricing, and cost of the subject merchandise because POSCO's majority ownership of DWI allows it to

[47] *See* The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316 (1994).
[48] *See* SAA at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).
[49] *See* POSCO/DWI's Section A questionnaire response, dated January 22, 2014 (QRA) at 1-2.
[50] *See* POSCO/DWI's supplemental questionnaire response, dated April 1, 2014 (SQR) at SA-2.
[51] *See* QRA at A-16.
[52] *Id*. at A-13.
[53] *See* QRA at Exhibit A-18-B, note 10 and Exhibit A-4.

control the company that sells and exports the subject merchandise to the United States. For the full analysis of this determination, *see* the Collapsing Memorandum.[54]

We next examined whether any of the affiliated companies should be considered a single entity for purposes of this investigation. 19 CFR 351.401(f)(1) states that the Department will treat affiliated producers as a single entity where they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Department concludes that there is a significant potential for the manipulation of price or production. 19 CFR 351.401(f)(2) further states that in identifying a significant potential for manipulation, the Department may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

While 19 CFR 351.401(f) applies only to producers, the Department finds it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.[55]

When considering whether to collapse affiliates and treat them as a single entity, we first consider their affiliation to one another. As explained above, we preliminarily determine that POSCO and DWI are affiliated; consequently, the first collapsing criterion under 19 CFR 351.401(f)(1) is satisfied. With respect to the second criterion (*i.e.*, similar production), POSCO reported that it produced all of NOES that was sold by DWI to the United States during the POI.[56] Although DWI does not have a production facility, we find that POSCO and DWI can switch the role of producer and seller between the two companies without substantial retooling of either company.[57] Importantly, however, as noted above, the Department's practice with respect to affiliated exporters and producers of subject merchandise examines whether the potential for manipulation of price or production exists using the regulatory criteria. The Department previously collapsed affiliated producers and exporters when the criteria outlined in 19 CFR

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[54] *See* the Memorandum from Dmitry Vladimirov, case analyst for AD/CVD Operations, Office I to Thomas Gilgunn, Acting Office Director for AD/CVD Operations, Office I, entitled, "Non-Oriented Electrical Steel from the Republic of Korea, Less-Than-Fair-Value Investigation: POSCO and DWI - Collapsing and Single Entity Treatment" dated May 15, 2014 (Collapsing Memorandum).

[55] *See, e.g., Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), unchanged in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5. The U.S. Court of International Trade (CIT) found that collapsing exporters is consistent with a "reasonable interpretation of the {antidumping} statute." *See Hontex Enterprises, Inc.* v. *United States*, 248 F. Supp. 2d. 1323, 1338 (CIT 2003) (*Hontex*).

[56] *See* QRA at 1-2.

[57] *See* Collapsing Memorandum for full discussion.

351.401(f)(2) were satisfied.[58] With respect to the first criterion under 19 CFR 351.402(f)(2), the level of common ownership, we find that the level is significant, because DWI is a majority-owned subsidiary of POSCO.[59] With respect to the second criterion under 19 CFR 351.401(f)(2), POSCO reported that there is no overlap in board members, officers, managing directors, and managers between POSCO and DWI.[60] With respect to the third criterion, intertwined operations, record evidence demonstrates that POSCO's and DWI's operations are closely intertwined. POSCO produced all of the merchandise under investigation that was sold and exported by DWI during the POI.[61] DWI was responsible for the arrangement and payment of certain movement expenses for certain (CEP) sales made through DWI.[62] In addition, DWI sold to POSCO certain raw materials used by POSCO in the production of NOES.[63] Lastly, both POSCO and DWI share the ownership of a company that provided NOES coil slitting services in the United States associated with all CEP sales made through POSAM.[64]

In consideration of the above, and in accordance with 19 CFR 351.401(f) and the Department's practice,[65] we are treating POSCO and DWI as a single entity for purposes of this preliminary determination. For the Department's full analysis, *see* the Collapsing Memorandum.

METHODOLOGY

Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), in order to determine whether the sales of NOES from Korea to the United States were made at LTFV, we compared the CEP to the NV, as described in the "U.S. Price" and "Normal Value" sections of this memorandum.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average CEPs or EPs (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In recent AD proceedings, the Department examined whether to compare weighted-average NVs to the CEP or EP of individual U.S. transactions (the average-to-transaction or A-to-T method) as an alternative comparison method using an analysis consistent with section

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[58] *See, e.g.*, *Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 76 FR 79651, 79652 (December 22, 2011) (unchanged in *Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 24459 (April 24, 2012)).
[59] *See* QRA at Exhibit A-18-B, note 10 and Exhibit A-4.
[60] See SQR at SA-1 and SA-2; *see* also Collapsing Memorandum for more detail.
[61] See QRA at 1-2.
[62] *See* Collapsing Memorandum for more detail.
[63] *Id*.
[64] *Id*.
[65] *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833 (August 19, 1996) (*citing Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988)); *see also Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (1997) (in which the Court of International Trade expressly affirmed the Department's authority to collapse affiliated parties for purposes of antidumping analysis).

777A(d)(l)(B) of the Act. In order to determine which comparison method to apply, in recent proceedings, the Department applied a "differential pricing" (DP) analysis for determining whether application of A-to-T comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[66] The Department finds that the DP analysis used in recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation.[67] The Department intends to 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 A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods.[68] If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes as reported. Regions are defined using the reported destination code (*i.e.*, zip codes), which 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 being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and

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[66] *See, e.g., Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan*, 79 FR 19869 (April 10, 2014).

[67] *See, e.g., Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011-2012*, 78 FR 40692 (July 8, 2013) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014)); *Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013) (unchanged in *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013)); *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*Steel Threaded Rod*) (unchanged in *Certain Steel Threaded Rod From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013)); *Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) (*Polyester Staple Fiber*) (unchanged in *Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 38938 (June 28, 2013)).

[68] As noted above, the DP analysis has been utilized in recent AD investigations and several recent AD administrative reviews to determine the appropriate comparison methodology. *See, e.g., Steel Threaded Rod*; *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21105 (April 9, 2013) (unchanged in *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013)); and *Polyester Staple Fiber*.

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 DP analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net 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. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were 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 accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-to-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative 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 margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

Results of the Differential Pricing Analysis

Based on the results of the DP analysis, the Department finds that 50.32 percent of POSCODWI's U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on the A-to-T applied to the U.S. sale that passed the Cohen's *d* test. Accordingly, the Department determines to use the A-to-A method to calculate the preliminary estimated weighted-average dumping margin for POSCO.[69]

Product Comparisons

As noted above, the Department gave parties an opportunity to comment on the appropriate physical characteristics and the model matching hierarchy within a certain deadline.[70] On November 20, 2013, we received comments regarding the physical characteristics and model matching hierarchy from interested parties.[71] On November 27, 2013, we received rebuttal comments from interested parties.[72]

We considered the comments that were submitted and established the appropriate physical characteristics to use as a basis for defining models and for identifying identical or similar models of foreign like product sold in the comparison market which may serve as the basis for normal value (NV) in this LTFV investigation. The Department identified six physical characteristics for such purposes: maximum core loss, nominal thickness, processing level, coating type, form, and nominal width. These physical characteristics and their reporting requirements were included in the questionnaires issued to the respondents on December 18, 2013.[73]

The goal of the physical characteristics and the model matching hierarchy is to identify the identical or most similar merchandise with respect to the physical characteristics of the

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[69] *See* the memorandum to file entitled "Preliminary Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Non-Oriented Electrical Steel from the Republic of Korea - Analysis Memorandum for POSCO and Daewoo International Corporation," dated concurrently with this memorandum (Preliminary Analysis Memorandum). In this preliminary determination, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006). In particular, the Department compared weighted-average CEPs with weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.
[70] *See Initiation Notice*, 78 FR at 69042.
[71] *See* Letters from the petitioner and POSCO/DWI, dated November 20, 2013.
[72] *See* Letters from the petitioner and POSCO/DWI, dated November 27, 2013.
[73] *See* Letters from Department to DWI and POSCO, dated December 18, 2013.

merchandise sold in the United States. While variations in cost may suggest the existence of variation in physical characteristics, such variations in costs in and of themselves do not constitute differences in the products. Furthermore, the magnitude of variations in cost may differ from company to company, and even for a given company over time. Therefore, differences in production costs do not, in and of themselves, provide a reliable basis for identifying the existence of or relative importance of different physical characteristics. The Department noted that for defining the physical characteristics and creating a model match hierarchy, "{t}he physical characteristics are used to distinguish the differences among products across the industry," that "{c}ost is not the primary factor for establishing these characteristics," and, in short, "{c}ost variations are not the determining factor in assigning product characteristics for model-matching purposes."[74]

Therefore, based on the above, the Department is not modifying the physical characteristics and the model matching hierarchy which it proposed after the initiation of this investigation and included in its questionnaires. In accordance with section 771(16) of the Act, all products produced by POSCO/DWI, covered by the description in the "Scope of Investigation" section above, and sold in the comparison market during the POI, are considered to be foreign like product for purposes of determining NVs for comparison with the EPs or CEPs of U.S. sales. We relied on the above mentioned six physical characteristics and the model matching hierarchy to identify comparison market sales of identical or the most similar products for the U.S. sales of subject merchandise. Where there were no sales of identical merchandise in the comparison market to serve as a basis for NV for subject merchandise sold in the United States, we used comparison market sales of the most-similar, foreign like product on the basis of the reported physical characteristics and model matching hierarchy to establish an NV for such U.S. sales.

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." In *Allied Tube*, the CIT noted that a "party seeking to establish a date of sale other than 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.'"[75] Additionally, 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.[76]

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[74] *See Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Also, the Department's "...selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess" and "differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences." *See Notice of Final Determination 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 Model Match Comment 1.

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

[76] *See* 19 CFR 351.401(i); *see also Allied Tube*, 132 F. Supp. 2d at 1090-1092.

This normally includes the price, quantity, delivery terms and payment terms.[77] Furthermore, consistent with the Department's practice, we used the shipment date as the date of sale where the shipment date occurred before the invoice date because the quantity is fixed at the time of shipment.[78]

POSCO/DWI reported the date of shipment as the date of sale for its home market sales and stated that the invoice is normally issued on the same day, or within one day, of the date of shipment.[79] For home market re-sales made by POSCO's affiliates, POSCO/DWI reported the tax invoice date as the date of sale.[80] POSCO/DWI asserted that these dates reasonably reflect the dates on which the material terms of sale have been firmly established because the quantity is not firmly established until the time of shipment or the time of issuance of invoice, respectively.[81]

POSCO/DWI reported the date of shipment from the U.S. affiliate's warehouse as the date of sale for its U.S. sales made through one channel of distribution and the date of invoice as the date of sale for its U.S. sales made through another channel of distribution.[82] POSCO/DWI asserted that these dates reasonably reflect the dates on which the material terms of sale have been firmly established because the delivery and quantity are not firmly established until the time of shipment or the time of issuance of invoice, respectively, depending on the channel of distribution.[83]

As the information on the record indicates that the material terms of sale (*e.g.*, price and quantity) could change until the date of shipment or invoice, where applicable, for both U.S. and comparison market sales, for purposes of this preliminary determination, we used the date of shipment (if earlier than the date of invoice) or the date of invoice as the date of sale for POSCO's reported U.S. and comparison market sales. For those U.S. sales for which POSCO reported the shipment date as the date of sale, the record evidence indicates that the shipment date preceded the invoice date.

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[77] *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.

[78] *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 the 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.

[79] *See* AQR at A-33 and B-D QR at B-22 through B-24.

[80] *Id*.

[81] *Id*.

[82] *Id.*, at A-33 through A-35 and B-D QR at C-14.

[83] *Id*.

U.S. Price

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(b) of the Act, we used CEP for all of POSCO/DWI's U.S. sales, because the subject merchandise was sold to unaffiliated purchasers in the United States after importation by U.S. sellers affiliated with POSCO/DWI.

We calculated CEP based on price to unaffiliated purchasers in the United States.[84] We made deductions for any movement expenses 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. We also deducted an amount for further-manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act, and made an adjustment for profit in accordance with section 772(d)(3) of the Act. To calculate the cost of further manufacturing, we relied on POSCO America Alabama Processing Center Co., Ltd.'s reported cost of further-manufacturing materials, labor, and overhead, plus amounts for further-manufacturing general and administrative (G&A) expenses, and financial expenses.[85] Lastly, because we did not find export subsidies in the companion countervailing duty investigation of NOES from Korea, we did not make an export subsidy adjustment pursuant to section 772(c)(1)(C) of the Act.

Duty Drawback

Section 772(c)(1)(B) of the Act states that CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States…."

In this investigation, POSCO/DWI reported that POSCO/DWI applied to the Korean Customs authorities for duty drawback on its exports to the United States using the Korean individual application duty drawback system. POSCO/DWI submitted on the record the Korean law governing the duty drawback.[86] POSCO/DWI explained that under the individual application system, the Korean Customs authorities require POSCO/DWI to provide a matching table linking the exported NOES products to imports of raw materials suitable for the manufacture of the products exported, as reflected on export permits.[87]

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[84]POSCO/DWI claimed business proprietary treatment for delivery terms associated with its U.S. sales.
[85] *See* Memorandum from LaVonne Clark, senior accountant, Office of Accounting to Neal Halper, Director, Office of Accounting entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – POSCO," dated concurrently with this memorandum (POSCO Prelim Cost Memo).
[86] *See* B-D QR at C-29 and Exhibit C-17.
[87] *Id.*, at C-30.

In determining whether a respondent is entitled to duty drawback, the Department's practice is to use (and the Courts sustained[88]) the following two-prong test:[89] First, that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise). Second, that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.

POSCO/DWI provided documentation demonstrating the link between duties paid on imported materials, the exported products that commonly use the imported materials, and the duty drawback claimed with the Korean Customs authorities.[90] Specifically, POSCO/DWI provided sample drawback application forms (referencing all Customs declaration numbers associated with purchases of raw materials imported during a certain period) that claim, as duty drawback, the value of import duties paid as applied against specific products exported during a certain period (also referenced by export Customs declaration number).[91]

On the basis of the record evidence we examined, we preliminarily determine that POSCO/DWI demonstrated its eligibility for the duty drawback adjustment. Accordingly, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value

1. Overrun Sales – Sales Outside the Ordinary Course of Trade

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

POSCO/DWI reported home market sales of "overrun" merchandise, *i.e.*, sales of merchandise produced to order, where the production unintentionally exceeds the planned schedule. In the past, the Department examined various factors to determine whether "overrun" sales are in the ordinary course of trade.[92] The Department has the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.[93] These factors include, but are not limited to, the following: (1) whether the merchandise

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[88] *See, e.g., Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).
[89] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006).
[90] *See* B-D QR at Exhibit C-18.
[91] *Id*.
[92] *See China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT May 14, 2003); *see also, Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 4385 (January 22, 2013) (*Korean Plate 2011-12 Prelim*), and the accompanying Preliminary Decision Memorandum at 7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 29113 (May 17, 2013) (*Korean Plate 2011-12 Final*).
[93] *See Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

is "off-quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.[94]

Based on our analysis of these factors, among others, and the terms of sale, we preliminarily determine that POSCO/DWI's reported overrun sales are outside the ordinary course of trade. Because our analysis includes business proprietary information, the analysis is available in a separate decision memorandum.[95]

2. Home Market Viability

To determine whether there is a sufficient volume of sales of NOES 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 compared POSCO/DWI's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise during the POI in accordance with section 773(a)(1)(B)(i) of the Act. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), POSCO/DWI had a viable home market during the POI. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities in the ordinary course of trade, as described in detail below.

3. 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 of foreign like products at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[96] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[97] To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether comparison market sales are at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

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[94] *See Korean Plate 2011-12 Prelim*, and accompanying Preliminary Decision Memorandum at 7, unchanged in *Korean Plate 2011-12 Final*.
[95] *See* the memorandum from Dmitry Vladimirov, case analyst for AD/CVD Operations, Office I to Thomas Gilgunn, Acting Office Director for AD/CVD Operations, Office I, entitled " Non-Oriented Electrical Steel from the Republic of Korea, Less-Than-Fair-Value Investigation: POSCO/DWI - Home Market Sales of Overruns" dated concurrently with this memorandum.
[96] *See* 19 CFR 351.412(c)(2).
[97] *See id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

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.[98] When the Department is unable to match U.S. sales to 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. sales to sales at a different LOT in the comparison market. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different LOTs in the market in which NV is determined, we make an 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, the Department grants a CEP offset, as provided in section 773(a)(7)(B) of the Act.[99]

We examined the differences in selling functions reported in POSCO's responses to our requests for information. POSCO reported three channels of distribution in the home market: (1) direct sales to unaffiliated end users or distributors, (2) re-sales through affiliates to unaffiliated end users or distributors, and (3) internet auction sales to unaffiliated end users or distributors.[100] We found that the selling activities associated with selling to each of the three channels of distribution do not differ. Specifically, we found that only the intensity of a single selling activity, inventory maintenance, varied among three distribution channels, and with the exception of inventory maintenance, we found no differences in the intensity of any of the selling functions. Based on a lack of meaningful differences in selling functions, we found that the three channels of distribution constituted a single LOT in the home market.

All of POSCO/DWI's U.S. sales were CEP sales. Though POSCO/DWI made these sales through two channels of distribution, POSCO/DWI reported similar selling activities associated with sales to all U.S. customers.[101] Therefore, we considered the CEP to constitute only one LOT. We identified the LOT based on the price after the deduction of expenses and profit under section 772(d) of the Tariff Act of 1930, as amended (the Act). We found that, for CEP sales, the selling functions performed by POSCO/DWI for the sales to its U.S. affiliates are minimal. Most of the selling activities are performed by the U.S. affiliate, and the expenses associated with the selling activities performed by the U.S. affiliate are deducted under section 772(d) of the Act. After eliminating expenses and an element of profit associated with those selling activities from our analysis of the LOTs, we found that POSCO/DWI performed few selling activities in comparison to the activities performed for the home market LOT. For example, there were no sales forecasting, strategic and economic planning, personnel training, engineering services, advertising, sales promotion, sale/marketing support, market research, technical assistance, and post-sale warehousing.[102] Therefore, we conclude that CEP sales constitute a different LOT from the home market LOT and that the home market LOT was at a more advanced stage of distribution than the CEP LOT.

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[98] *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).
[99] *See Plate from South Africa*, 62 FR at 61732-33.
[100] See POSCO/DWI's AQR at A-22 through A-32 and Exhibits A-7 and A-8.
[101] *Id*.
[102] *Id.*

We were unable to match CEP sales at the same LOT in the home market or to make a LOT adjustment because the differences in price between the CEP LOT and the home market LOT cannot be quantified due to the lack of an equivalent CEP LOT in the home market. Also, there are no other data on the record which would allow us to make a LOT adjustment. Because the data available do not provide an appropriate basis to determine a LOT adjustment and the home market LOT is at a more advanced stage of distribution than the CEP LOT, we made a CEP offset for all such sales. The CEP offset is the sum of indirect selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred on the U.S. sales.

4. Calculation of Normal Value Based on Home Market Prices

We based NV on the starting prices to home market customers. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made circumstance-of-sale adjustments by deducting home market direct selling expenses from NV. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and the subject merchandise.[103]

Transactions Between Affiliated Parties

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.[104] To test whether these sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party were at arm's-length prices.[105] On the basis of this test and our practice, we excluded from our analysis POSCO/DWI's sales to certain affiliated customers in the home market that we determined were not at arm's-length prices; and we included in our analysis home market re-sales of the foreign like product made by these affiliated customers, pursuant to 19 CFR 351.403(d).[106]

[103] *See* 19 CFR 351.411(b).
[104] See 19 CFR 351.403(c).
[105] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).
[106] POSCO's sales of the foreign like product to affiliated parties accounted for more than five percent of POSCO's sales of the foreign like product in the home market. *See* POSCO's AQR at A-44.

Cost of Production

As we stated in the *Initiation Notice*, we initiated a country-wide cost investigation on sales of NOES from Korea.[107]

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the cost of production (COP) based on the sum of the cost of materials and fabrication for the foreign like product plus an amount for G&A and interest expenses (see the "Test of Home Market Sales Prices" section below for treatment of home market selling expenses and packing costs). We relied on the COP data submitted by POSCO/DWI in its April 7, 2014, and April 25, 2014 responses to our supplemental questionnaires, with a certain exception. Specifically, pursuant to section 773(f)(2) and (3) of the Act, we adjusted the transfer prices of inputs obtained from affiliated parties to reflect fair market values.[108] We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, adjusted as described above.[109]

2. Test of Home Market Sale Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the prices of home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether the sales were made at prices below the COP. For those sales of coil which was slit by POSCO/DWI's affiliates, POSCO Transformer & Motor Core Co., Ltd. (TMC) or KOH-A Jung Gong Co., Ltd (KOHA), we added the fabrication costs, G&A expenses, and interest expenses incurred by TMC or KOHA to POSCO/DWI's COP prior to comparing those costs to the home market prices of the slit coil.[110] We compared model-specific COPs to the reported home market prices less any applicable movement charges, direct and indirect selling expenses (excluding imputed-interest expenses), and packing expenses.

3. Results of the Sales-Below-Cost Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we disregard none of the below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determine that such sales have been made in "substantial quantities" and, thus, we disregard these below-cost sales.[111] Further, we determine that these below-cost sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below-cost sales occurring during the entire POI. In such cases, because we compare prices to POI-average costs, we also determine that such

[107] *See Initiation Notice*, 78 FR 69045.
[108] For further discussion, *see* POSCO Prelim Cost Memo.
[109] *See Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2251 (January 10, 2013), and accompanying Decision Memorandum at 9; unchanged in *Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013).
[110] *See* POSCO Prelim Cost Memo.
[111] *See* section 773(b)(2)(C) of the Act.

sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

In this investigation, we found that, for certain specific products, more than 20 percent of POSCO/DWI's home market sales 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. Therefore, we disregarded these sales and used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Act.

CURRENCY CONVERSION

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

VERIFICATION

As provided in section 782(i) of the Act and 19 CFR 351.307, we intend to verify information relied upon in making our final determination.

RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

May 15, 2014

Date