

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-834]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT:

Maria Dybczak (Pohang Iron and Steel Company, Ltd. ("POSCO")), Brandon Farlander (Inchon Iron & Steel Co., Ltd. ("Inchon")), or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1398 (Dybczak), (202) 482-0182 (Farlander), or (202) 482-3818 (Johnson).

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel sheet and strip in coils ("SSSS") from South Korea is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On June 30, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. See *Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South*

Korea, Taiwan, and the United Kingdom, 63 FR 37521 (July 13, 1998) ("Initiation"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On July 29, 1998, petitioners, Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL-CIO/CLC, the Butler Armco Independent Union, and the Zanesville Armco Independent Organization, Inc., filed comments proposing clarifications to the scope of these investigations. Also, from July through October, 1998, the Department received numerous responses from respondents aimed at clarifying the scope of the investigations. See *Memorandum For Joseph A. Spetrini, Re: Scope Issues*, dated December 14, 1998.

In July 1998, the Department requested information from the U.S. Embassy in South Korea to identify producers/exporters of the subject merchandise. On July 21, 1998 the U.S. Embassy in South Korea responded to the Department's request for this information. Also, on July 21, 1998, the Department requested comments from petitioners and other interested parties regarding the criteria to be used for model matching purposes. On July 27, 1998, petitioners submitted comments on our proposed model matching criteria.

On July 24, 1998, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case. On August 3, 1998, the Department subsequently issued its antidumping questionnaire to the following respondents: Pohang Iron and Steel Co., Ltd. ("POSCO"); Inchon Iron and Steel Co., Ltd. ("Inchon"); Taihan Electric Wire Co., Ltd. ("Taihan"); Sammi Steel Co., Ltd. ("Sammi"); and Dai Yang Metal Co., Ltd. ("Dai Yang"). On August 7, 1998, Sammi submitted a letter to the Department stating that it did not export the subject merchandise to the United States during the period of investigation ("POI"), with a request that it be excluded from further participation in the investigation.

POSCO, Inchon, Sammi, and Dai Yang submitted responses to section A of the questionnaire on September 8, 1998. Taihan did not respond to section A of the Department's questionnaire. On September 21, the Department issued a decision with regard to selection of

respondents in the above-mentioned investigations (see *Memorandum to Joseph A. Spetrini*, dated September 21, 1998). On the basis of the analysis detailed in the memorandum, the Department chose three mandatory Korean respondents for the investigation: POSCO, Inchon, and Taihan. POSCO submitted responses to sections B through D on September 23, 1998. Taihan did not respond to sections B through D of the Department's questionnaire. Inchon submitted responses to sections B and C on September 23, 1998, and to section D on September 25, 1998. Petitioners filed comments on POSCO's section A through D responses on October 13, 1998, and October 21, 1998. Petitioners filed comments on Inchon's section A on September 21, 1998; to sections B and C on October 14, 1998; and to section D on October 16, 1998. We issued supplemental questionnaires for sections A, B and C to POSCO on October 23, 1998, and October 27, 1998. In addition, we issued a supplemental questionnaire to POSCO for section D on October 20, 1998. We issued supplemental questionnaires for sections A, B, C, and D to Inchon on October 26, 1998. POSCO responded to our supplemental questionnaires for sections A, B and C on November 23, 1998, and to our supplemental questionnaires for section D on November 17, 1998. Inchon responded to our supplemental questionnaires for sections A, B, C, and D on November 19, 1998.

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. The Department determined that these concurrent investigations are extraordinarily complicated and warranted the thirty-day postponement requested by petitioners. On October 23, 1998, we postponed the preliminary determination until no later than December 17, 1998. See *Stainless Steel Sheet and Strip in Coils From Italy, France, Germany, Mexico, Japan, the Republic of Korea, Taiwan, the United Kingdom, and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 63 FR 56909 (October 23, 1998). On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from South Korea. The critical circumstances analysis for the preliminary determination is discussed

in the "Critical Circumstances" section of the notice below.

On December 3, 1998, petitioners submitted comments regarding product concordance. See *Memorandum to File: Analysis for the Preliminary Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Korea—Pohang Iron and Steel Co., Ltd.* ("POSCO") ("Analysis Memo: POSCO") (December 17, 1998) and *Memorandum to File: Analysis for the Preliminary Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Korea—Inchon Iron and Steel Co., Ltd.* ("Inchon") ("Analysis Memo: Inchon") (December 17, 1998) for the Department's discussion and treatment regarding product concordance.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 15, 1998, POSCO informed the Department that, in the event of an affirmative preliminary determination in this investigation, it would request a full extension of the final determination, until not later than 135 days after the date of publication of the preliminary determination. On December 16, 1998, POSCO amended its request to include a request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) POSCO accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the date of publication in the **Federal Register** of the preliminary determination. Suspension of liquidation will be extended accordingly.

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains

the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the

scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent

cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."¹

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."²

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."³

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used

in the production of textile cutting tools (e.g., carpet knives).⁴ This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".⁵

Period of Investigation

The period of investigation is April 1, 1997 through March 31, 1998.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the

subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the Korean producers/exporters with the greatest export volume, as identified above. In total, these companies (POSCO, Incheon and Taihan) accounted for more than 85 percent of all known exports of the subject merchandise during the POI. For a more detailed discussion of respondent selection in this investigation, see *Memorandum to Joseph A. Spetrini: Selection of Respondents*, September 21, 1998.

Inflation

Generally, when the annual inflation rate in the country under investigation exceeds 25 percent, the Department considers that inflation to be significant and uses a modified methodology. See, e.g., *Import Administration Antidumping Manual, Chapter 8, Section 15*, (January 1998).

Petitioners allege that the Korean economy should be classified as hyperinflationary, basing their argument on an "annualized" monthly rate for three months of producer prices (see Petitioners' submissions of September 4, 1998 and December 2, 1998). However, in accordance with the Department's practice, we considered the Korean inflation rate for the POI, which was 17.06 percent. Although the inflation rate in Korea for December 1997 was 8.19 percent, the annual inflation rate during the POI was well below 25 percent. See *International Monetary Fund's International Financial Statistics: Producer Prices* (July 1998; March 1998; December 1997; July 1997). Therefore, we preliminarily determine that it is not appropriate to use the Department's high inflation methodology in this case. For a further discussion of this issue, see *Analysis Memo: POSCO*.

Fair Value Comparisons

To determine whether sales of SSSS from Korea to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "export price and constructed export price" and "normal value" sections of this notice, below. In accordance with section

¹ "Arnokrome III" is a trademark of the Arnold Engineering Company.

² "Gilphy 36" is a trademark of Imphy, S.A.

³ "Durphynox 17" is a trademark of Imphy, S.A.

⁴ This list of uses is illustrative and provided for descriptive purposes only.

⁵ "GIN4 Mo", "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX v. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value ("CV") as the basis for foreign market value when the Department finds home market sales to be outside the "ordinary course of trade." The URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison.

Transactions Investigated

POSCO

POSCO reported that it made sales of subject merchandise to affiliated resellers during the POI, but claimed that less than five percent of these resales were sales of subject merchandise. In its response to the Department's October 23, 1998 supplemental questionnaire, POSCO provided detailed information regarding the sales of subject merchandise made to its affiliates. The Department preliminarily finds that the sales of subject merchandise made to affiliated resellers constitutes less than five percent of POSCO's total sales in the home market (subject to verification), and thus, the Department considered POSCO's sales to the affiliated service centers.

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct

selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 Fed. Reg. 59509 (Nov. 8, 1998), citing to *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 Fed. Reg. 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

For its home market and U.S. sales, POSCO reported the date of invoice as the date of sale, because POSCO stated that the invoice date represented the date when the essential terms of sales, i.e., price and quantity, are definitively set, and that up to the invoice date, these terms were subject to change. Petitioners have alleged that the sales documentation provided by POSCO does not appear to support POSCO's claim that price and quantity may change at any time between the order acceptance date (confirmation date) and the final invoice date. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners' claims have merit. Consequently, the Department requested further information concerning date of sale. On November 23, 1998, in its supplemental questionnaire response, POSCO provided additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. This information appears to support POSCO's contention that terms of the contract are not finalized until the invoice date. We will conduct an in-depth examination of information concerning the designation of date of sale (i.e., order date versus invoice date) at verification. However, based on POSCO's record submissions to date, we preliminarily determine that the date of invoice is the appropriate indicator of

the actual date of sale because price and quantity are subject to negotiation until the date of invoice. For a further discussion of this issue, see *Analysis Memo: POSCO*.

In calculating EP, the Department determined that those U.S. sales for which POSCO was not paid should be excluded from the U.S. database. We preliminarily determine that the U.S. sales for which POSCO did not receive payment because the customer went bankrupt are atypical and not part of POSCO's normal business practice. Therefore, for this preliminary determination, the Department has excluded these sales from our margin analysis. Nevertheless, record evidence indicates that POSCO's U.S. sales affiliate, Pohang Steel America Corp. ("POSAM"), recognized the cost of these sales. Petitioners suggest that the Department treat the cost of these sales as a direct expense. However, direct expenses are typically expenses that are incurred as a direct and unavoidable consequence of the sale (i.e., in the absence of the sale these expenses would not be incurred), whereas indirect expenses are fixed expenses that are incurred whether or not a sale is made. In this case, the cost of these sales would have occurred whether or not other sales had been made, and therefore, the Department preliminarily determines that the costs associated with these sales are more appropriately treated as indirect selling expenses incurred on U.S. sales.

Inchon

For both home market and U.S. transactions, Inchon reported the invoice date as the date of sale, i.e., the date when price and quantity are finalized, because Inchon states that the price and quantity may change until the time of shipment and invoicing. However, petitioners have requested that the Department examine whether the material terms of sale (i.e., price and quantity) change and, if the material terms do change, how frequently are the material terms of sale changed. Also, petitioners have requested that the Department determine whether Inchon charges a fee for changes to the terms of sale and how much time, on average, exists between the purchase order date and the shipment/invoice date. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, petitioners' claims have merit. Consequently, on October 26, 1998, the Department issued a supplemental questionnaire, requesting that Inchon answer several questions regarding changes, if any, in Inchon's material terms of sale between

the order confirmation date and the invoice date. In Inchon's November 19, 1998 supplemental questionnaire, Inchon stated that for approximately 17 percent of U.S. sales, based on sales volume, there was a change in the material terms of sale (*i.e.*, price or quantity) between the order date and the invoice date. Based on this information, the Department has determined that the invoice date is the most appropriate date to use for the date of sale for U.S. sales, because the frequency of changes in price and quantity between order confirmation and invoice date indicate that the essential terms of sale are not fixed until the invoice date.

Inchon claimed that it could not report the frequency of changes made in the material terms of sale for home market sales. In Inchon's November 19, 1998 supplemental questionnaire response, Inchon stated that most of its home market sales are from inventory. Inchon stated that when a sale is made from inventory, the terms of sale rarely change because the order is filled within one or two days. However, if Inchon receives an order that it does not have in inventory, Inchon will usually produce the requested product. Inchon claims that if a product is produced to fill the order, there can be significant changes in the terms of sale between the order date and the invoice date.

Because, as Inchon states, the majority of its sales in the home market are made from inventory, and thus the terms are set, and because Inchon has not been able to substantiate its claim of frequent changes in the terms of its non-inventory sales, the Department preliminarily determines that the order date is the most appropriate date to use for the date of sale for home market sales. For a further discussion of this issue, see *Analysis Memo: Inchon*.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Investigation" section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 3, 1998 questionnaire.

Export Price and Constructed Export Price

The Department considers several factors in making its determination concerning whether sales made prior to importation through a U.S. affiliate to an unaffiliated customer in the United States are EP sales. These factors are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the functions of the U.S. sales affiliates are limited to those of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. sales affiliate are ancillary to the sale, we treat the transactions as EP sales. Where the U.S. sales affiliate has a significant role in the sales process, we treat the transactions as CEP sales. See *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries v. United States*, Slip Op. 98-82 at 6 (CIT, June 23, 1998).

POSCO

POSCO reported three channels of distribution for U.S. sales. In channel 1, POSCO Steel Sales and Service Co., Ltd. ("POSTEEL"), which is POSCO's affiliated trading company, sold directly to a U.S. customer. In channel 3, POSTEEL sold directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. We classified sales made through these two channels as EP sales, since the U.S. affiliate, POSAM, had no involvement in the selling process. In channel 2, however, POSAM was involved in all the sales made to unaffiliated U.S. customers, and reported that although the majority of sales were EP sales, there were some sales classified as CEP.

For U.S. sales channels one and three, we based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channel two, for those sales for which POSCO categorized as EP sales, we based our calculations on EP, in accordance with section 772(a) of the

Act. For sales for which POSCO categorized as CEP, we based our calculations on CEP, in accordance with 772(b) of the Act.

The record indicates that those of POSCO's channel 2 sales reported as EP sales were shipped directly from the manufacturer to the unaffiliated U.S. customer and that the reported U.S. sales, with the exception of "bankrupt" sales not included in our analysis (see "Transactions Investigated", above), were made in the customary commercial channel, thereby satisfying the first two criteria mentioned above. In determining whether the U.S. affiliate acted solely as a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. customer, we reviewed the selling functions performed by POSAM and the sales process for these sales.

POSAM performed a variety of selling functions on behalf of POSCO in connection with POSCO's SSSS sales in the United States. These functions include forwarding inquiries and confirmations to and from the customer and POSTEEL, invoicing customers, arranging for freight to the customer from the U.S. port, extending credit and collecting payment, and serving as importer of record. POSCO has stated that POSTEEL determined price and terms of sale and performed "all other" sales related activities, including meeting with U.S. customers on standard marketing trips, warranty-related functions, market research and technical assistance.

In addition, according to POSCO's response, POSTEEL "communicates a variety of general price information to and from POSAM," including "quarterly FOB price guidelines" (see November 23, 1998 response at 11). Record evidence indicates that although POSTEEL presents POSAM with quarterly guidelines, each sale must be approved by POSTEEL. In some instances, POSTEEL has rejected terms of particular inquiries submitted by POSAM.

We will conduct an in-depth examination of the information concerning classification of POSCO's U.S. sales through POSAM (*i.e.*, CEP versus EP) at verification. However, based on POSCO's record statements, we preliminarily determine that POSCO's U.S. sales of SSSS through POSAM reported as EP sales qualify as EP sales. For further discussion of this issue, see *Analysis Memo: POSCO*.

As discussed in "Transactions Investigated", above, one of POSCO's customers declared bankruptcy during the POI. During this time, shipments to

this customer were canceled en route to the United States, and POSCO had to place the merchandise into an unaffiliated warehouse. POSCO then resold the merchandise with POSTEEL as the facilitator. As these sales to the first unaffiliated purchaser took place after importation into the United States, they have been correctly classified by POSCO as CEP sales.

We based EP on the packed prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, brokerage and handling, ocean freight, marine insurance, U.S. inland freight (where applicable), U.S. brokerage and wharfage charges (where applicable) and U.S. Customs duties in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Analysis Memo: POSCO*.

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and bank charges) and indirect selling expenses (e.g., inventory carrying costs). For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Analysis Memo: POSCO*.

Inchon

For U.S. sales channels two and three, which are defined in the Level of Trade section below, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channel one,

which is defined in the Level of Trade section below, we based our calculation on CEP, in accordance with section 772(b) of the Act, because the merchandise was sold 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, and based on our analysis of the facts as discussed in this section.

We have preliminarily determined that the affiliated purchaser in the United States, Hyundai U.S.A., did more than merely act as a "processor of sales-related documentation and a communication link with the unrelated U.S. buyer." Inchon claimed that all of its U.S. sales of subject merchandise are EP sales, including those sales made prior to importation through Hyundai U.S.A., Hyundai Corporation's wholly-owned U.S. subsidiary (i.e., channel 1 sales). Inchon claims that Hyundai U.S.A., did not act in a significant role in the sales negotiation process. We preliminarily disagree with this characterization.

To ensure proper application of statutory definitions, where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record demonstrates that Hyundai U.S.A.'s role exceeds that of an incidental or ancillary role.

Hyundai U.S.A. participates in several significant pre- and post-sale selling activities. At the initial stages, Inchon and Hyundai U.S.A. jointly call on U.S. customers to discuss sales and prices. Hyundai U.S.A. quotes prices to prospective customers and if the price is acceptable, the customer submits a purchase order to Hyundai U.S.A. When the merchandise arrives in the United States, Hyundai U.S.A. acts as the importer of record and arranges for U.S. inland freight. For a significant number of channel 1 transactions, Hyundai U.S.A. also arranged and paid for post-sale warehousing and freight to the warehouse. Hyundai U.S.A. invoices and collects payment from the U.S. customer, including any late payments and/or outstanding accounts receivable. Additionally, there is one other selling function which supports our determination that these sales are CEP. However, because this information is business proprietary, please see our discussion in the analysis memorandum. See *Analysis Memo: Inchon*, page 4. Based on the record as stated above, we have determined that these sales are CEP transactions. For a

further discussion of this issue, see *Analysis Memo: Inchon*.

We based EP on the packed, delivered, tax and duty unpaid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, and U.S. brokerage and wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Analysis Memo: Inchon*.

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and bank charges), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, see *Analysis Memo: Inchon*.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In the present review, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses for each respondent.

POSCO

POSCO did not claim a LOT adjustment. POSCO identified two channels of distribution in the home market: (1) sales made by POSCO directly to its customers; and (2) sales made by POSCO through its selling arm, POSTEEL, to customers. Both POSCO and POSTEEL made sales to domestic trading companies, service centers, and unaffiliated and affiliated end-users. For both channels, POSCO and POSTEEL report that they perform similar selling functions. Either POSCO or POSTEEL contacted customers, managed inventory, arranged for shipment and freight, and invoiced the customer. In addition, POSCO claims that either POSCO or POSTEEL offered, as needed, technical services and warranty processing. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we preliminarily determine that there exists one LOT for POSCO's home market sales.

POSCO reports three channels of distribution in the U.S. market: (1) sales made by POSTEEL directly to a U.S.

end-user; (2) sales to U.S. end-users made by POSTEEL through its wholly-owned U.S. subsidiary, POSAM; and (3) sales made by POSTEEL to unaffiliated Korean trading companies for shipment to the United States. POSCO claimed two LOTs in the U.S. market, but requested no LOT adjustment for the U.S. LOT purported to be different from the home market LOT. The Department examined the claimed selling functions performed by POSCO and its subsidiaries, POSTEEL and POSAM (although we did not consider POSAM's selling functions in determining CEP LOT), for all U.S. sales. These selling functions included freight and delivery arrangements, invoicing customers, and extending credit.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a more advanced stage of distribution than the CEP level of trade.

Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and CEP and EP sales in the U.S. market, we preliminarily find that CEP and EP sales to all three channels of distribution are made at the same stage in the marketing process and involve identical selling functions. Therefore, we preliminarily determine that POSCO and its subsidiaries POSTEEL and POSAM (for EP sales) provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we preliminarily determine that there is not a significant difference in the selling functions performed in both markets, and thus, a LOT adjustment is not appropriate. For a further discussion, see *Analysis Memo: POSCO*.

Inchon

In the home market, Inchon reported two sales channels: (1) to unaffiliated distributors; and (2) to affiliated and unaffiliated end-users. We examined the selling functions performed for both channels. These selling functions included inventory maintenance, freight

and delivery arrangements, and credit services. Because there are no differences between the selling functions on sales made to either unaffiliated distributors or affiliated and unaffiliated end-users in the home market, sales to both of these customer categories represent a similar stage of marketing. Therefore, we preliminarily conclude that sales to unaffiliated distributors and affiliated and unaffiliated end-users constitute one LOT in the home market.

For its EP and CEP sales in the U.S. market, Inchon reported three sales channels: (1) Inchon sales through Hyundai Corporation, Inchon's affiliated trading company, to Hyundai U.S.A., a wholly owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer; (2) Inchon sales through Hyundai Corporation, to an unaffiliated customer; and (3) Inchon sales to an unaffiliated trading customer. Inchon's U.S. customers for all three sales channels are to trading companies and distributors. We examined the selling functions performed for each of the three U.S. sales channels. These selling functions included freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of post-sale warehousing for one sale in channel one, selling functions performed in the three sales channels were identical. Thus, sales to these customer categories represent a similar stage of marketing. Therefore, we preliminarily determine that Inchon provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Further, because we preliminarily conclude that the U.S. LOT and the home market LOT included similar selling functions, we conclude that these sales are made at the same LOT. Therefore, a LOT adjustment for Inchon is not appropriate. For a further discussion, see *Analysis Memo: Inchon*.

Normal Value

After testing home market viability and whether home market sales were made at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or

greater than five percent of the aggregate volume of U.S. sales), we compared 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 section 773(a)(1)(B) of the Act. Since both POSCO's and Incheon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home markets for both companies were viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production ("COP") Analysis

Based on the cost allegations submitted by the petitioners in their June 10, 1998 petition, the Department found reasonable grounds to believe or suspect that POSCO and Incheon had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result the Department initiated an investigation to determine whether POSCO and Incheon made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. See *Initiation*.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each respondent we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), interest expenses, and packing costs, respectively. We used the information from POSCO's and Incheon's section D supplemental questionnaire responses to calculate each company's COP.

In a letter dated August 12, 1998, POSCO asked that the Department examine fiscal year 1997 (January–December 1997) cost data rather than cost data for the full POI, April 1, 1997 to March 31, 1998. On September 4, 1998, petitioners responded to respondent's request, noting that the cost data submitted would not coincide with the sales data, particularly in light of the won's devaluation during the POI. On September 28, 1998, the Department requested that POSCO report its costs using costs incurred during the POI.

B. Test of Home Market Prices

We compared the weighted-average COP for POSCO and Incheon to each company's respective home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined 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. On a product-specific basis, we compared POSCO's and Incheon's COP to their respective home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with sections 773(b)(2)(B) and 773(b)(2)(C)(i) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such 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. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product in determining NV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated each respondent's CV based on the sum of the respondent's cost of materials, fabrication, SG&A, interest expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in South Korea.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to

home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

POSCO

We calculated NV for EP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight. We made circumstance-of-sale ("COS") adjustments based on differences in direct selling expenses (*i.e.*, credit, warranty expense and interest revenue) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV for CEP sales based on prices to unaffiliated home market customers, as sales to affiliated customers failed the arm's length test. We made a deduction for inland freight. We made COS adjustments based on differences in direct selling expenses (*i.e.*, credit, warranty expense and interest revenue) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Incheon

We calculated NV for EP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight. We made billing adjustments, where appropriate. We made COS adjustments based on differences in direct selling expenses (*i.e.*, credit) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV for CEP sales based on prices to unaffiliated home market customers. We made a deduction for inland freight. We made billing adjustments, where appropriate. We made COS adjustments based on differences in direct selling expenses (*i.e.*, credit) incurred on U.S. and home market sales, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S.

direct selling expenses. Where we compared CV to CEP, we deducted the weighted-average home market direct selling expenses from CV.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40 percent of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound.

We have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997 and December 31, 1997.

For sales occurring after December 31, but before March 1, 1998, the Department relied on the standard exchange rate model, but used a modified benchmark. In calculating a benchmark rate, the Department's standard practice is to incorporate rates extending back 40 days from the date of sale. However, using such a benchmark rate would incorporate rates during November and December of 1997, when the dollar-won exchange rate dropped, and hence would result in apparent significant fluctuations in the dollar-won exchange rates used in the Department's margin calculation.

In order to ensure that rates used are more indicative of the exchange rate climate during January and February 1998, the benchmark was modified to include rates extending back only to January 1, 1998. Therefore, we have applied an up-to-date (post-precipitous drop) benchmark, while at the same time we have avoided making sales comparisons using exchange rates with excessive day-to-day fluctuations. By March 1, 1998, the dollar-won exchange rate had stabilized sufficiently so that

the Department's standard model could be employed. For sales occurring after March 1, the standard model and benchmark rate were used.

Petitioners have suggested that the Department segregate the current POI into multiple periods to account for the effect of the devaluation of the Korean won during the last portion of the POI. See petitioners' submission of December 2, 1998. Petitioners state that the Department has examined this question in a recent preliminary determination involving the same POI and Korea, namely, *Emulsion Styrene-Butadiene Rubber from the Republic of Korea*. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from the Republic of Korea*, 63 FR 59514 (November 4, 1998). However, the Department used the same currency conversion methodology described above in that case, and for the preliminary determination, did not average margins based on multiple periods within the POI. In the one case cited by petitioners in support of averaging multiple periods, *PVA from Taiwan*, the Department used multiple periods when there was a significant change in pricing. However, in that case, the decline in pricing was due to a company-specific change in selling practices made at a particular point in the POI (*i.e.*, the use of long term contracts versus purchase orders), rather than a devaluation of the local currency. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064 (March 29, 1996). The Department preliminarily determines that the modification of currency conversion reasonably accounts for the devaluation of the won, and that the use of multiple periods for averaging purposes is unwarranted.

The Department makes this determination without the benefit of extensive case precedent dealing with this area of our currency conversion policy. The Department therefore welcomes comments from interested parties on all aspects of our analysis and the time period-specific exchange rates used. For the purposes of the final determination, the Department will continue to analyze the implications, if any, of the decline in the won during 1997 for price averaging and whether multiple averages are warranted. The Department is examining this issue in *Mushrooms from Indonesia* and *Emulsion Styrene-Butadiene Rubber from the Republic of Korea*. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement*

of Final Determination: Certain Preserved Mushrooms from Indonesia, 63 FR 41783 (August 5, 1998); also, see *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from the Republic of Korea*, 63 FR 59514 (November 4, 1998).

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Korea. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed at least 20 days prior to the Department's preliminary determination, we must issue our preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at 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.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with Section 733(e)(1)(A)(i), the Department considers evidence of an existing antidumping order on SSSS from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping order in any country on SSSS from any of the countries subject to this investigation.

In determining whether an importer knew or should have known that the exporter was selling SSSS at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent for CEP sales and 25 percent for EP sales or more sufficient to impute knowledge of dumping and of resultant material injury. See *Notice of Final Determination of Sales Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 63 FR 61964, 61967 (November 20, 1997); see also *Notice of Final*

Determination of Sales Less Than Fair Value: Manganese Sulphate from People's of Republic of China 60 FR 52155, 52161 (October 5, 1995).

In this investigation, respondents POSCO and Inchon, which the Department has preliminarily determined have both EP and CEP sales, do not have margins over 15 percent. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from respondents POSCO or Inchon. We have not analyzed the respondent's shipment data to examine whether imports of SSSS have been massive over a relatively short period. See e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from Korea*, 63 FR 25895, 25898 (May 12, 1997).

However, because respondent Taihan has not responded to the Department's questionnaires, and has been assigned a margin based on facts otherwise available (see "Facts Available" section, below), its margin exceeds 25 percent, thus meeting the first criterion. Also, as facts available, we consider Taihan to have had massive imports over a relatively short period. Therefore, having met both criteria, critical circumstances exist for imports of subject merchandise from Taihan.

Regarding all other exporters, an "All Others" rate has been determined (see "The All Others Rate", below); because this rate does not exceed 15 percent, we determine that critical circumstances do not exist for companies covered by the "All Others" rate. We will make a final determination concerning critical circumstances when we make our final determination in this investigation, if that final determination is affirmative.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding

under the antidumping statute; or (D) provides such information, but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. As discussed above, Taihan failed to respond to the Department's questionnaire.

Accordingly, we have preliminarily determined, under section 776(a)(2)(A), that we must base our determination for that company on facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (see also the Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Rp. No. 316, 103rd Cong., 2d Sess. 870). Given the company's refusal to comply with the Department's request for information, Taihan has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to Taihan.

In this proceeding, we used the information from the petition, as adjusted by the Department for the purposes of initiation, to form the basis for a dumping margin for this respondent. Thus, consistent with the Department's practice (see *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 10847 (March 5, 1998) ("Stainless Steel Wire Rod from Germany")), the Department is assigning to Taihan the highest margin alleged in the petition, as adjusted, for Korean producers, which is 58.79 percent (see June 30, 1998, "Import Administration Antidumping Investigation Initiation Checklist ("Initiation Checklist") and the Notice of Initiation for a discussion of the margin calculations in the petition).

Section 776(c) of the Act provides that when the Department relies on "secondary information" (e.g., the petition) as the facts available, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The SAA accompanying the URAA clarifies that the petition is "secondary information." See SAA at 870. The SAA also clarifies that "corroborate" means to determine whether the information used has probative value. *Id.*

We reviewed the accuracy and adequacy of the information in the petition during our pre-initiation

analysis of the petition, to the extent appropriate information was available for this purpose (e.g., import statistics, foreign market research reports, and data from U.S. producers). See *Initiation Checklist*. Specifically, in the petition, the petitioners based both EP and NV on foreign market research, affidavits concerning prices and freight costs, official U.S. import statistics, U.S. government sources and International Financial Statistics.

As certain information included in the petition's margin calculation is from public sources (e.g., international freight and insurance, U.S. harbor maintenance and U.S. merchandise processing fees, SG&A, and profit), we find for the purpose of the preliminary determination, that the information has probative value and is therefore corroborated. In addition, with respect to certain data included in the margin calculations included in the petition (e.g., gross U.S. and home market unit prices), the Department was provided information by other respondents that corroborates the remaining portions of the margin calculation in the petition. We have examined the reliability of this information. See *Memorandum to the File*, dated June 20, 1998. Finally, we note that the Department has, in other cases, for facts available purposes, used margins developed in a petition that are based in part on foreign market research. However, with respect to certain data included in the margin calculations in the petition (e.g., gross U.S. and home market unit prices), the Department was provided no information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation to section 776 of the Act, at 19 CFR 351.308(c), states "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance", the Department may nevertheless apply an adverse inference. We note further that the Department has used as the facts available margins developed in the petition that are based in part on foreign market research in other cases. See e.g., *Stainless Steel Wire Rod from Germany*, and *Notice of Preliminary Determination of Sales at Less Than*

Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia, 61 FR 43333 (August 22, 1996).

The All Others Rate

Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. For this preliminary determination, since Inchon has a zero margin, the all other's rate is simply the calculated rate for POSCO.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
POSCO	12.35
Inchon	0.0
Taihan	58.79
All Others	12.35

In addition, in accordance with section 733(e)(2) of the Act, on the date of publication of affirmative preliminary determinations in these investigations, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of SSSS from Korea for exporter Taihan, for which we found critical circumstances, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the **Federal Register**. This

suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 55 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held 57 days after the publication of the preliminary determination, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than 135 days after the date of publication in the **Federal Register** of our preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 17, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98-34467 Filed 12-31-98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 1997 through September 30, 1998. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 1997 through September 30, 1998.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice