

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.

If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: July 26, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-847]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Korea

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

**ACTION:** Notice of preliminary determination of sales at less than fair value.

**SUMMARY:** We preliminarily determine that stainless steel bar from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

**EFFECTIVE DATE:** August 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Barbara Wojcik-Betancourt or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202)

482-0629 or (202) 482-0588, respectively.

#### SUPPLEMENTARY INFORMATION:

##### 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 of Commerce ("Department's") regulations are to the regulations at 19 CFR part 351 (April 2000).

##### Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan and the United Kingdom*, 66 FR 7620 (January 24, 2001) (*Initiation Notice*), as amended by *Corrections, Notice of Initiation of Antidumping Investigations: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan and the United Kingdom*, 66 FR 14986 (March 14, 2001), the following events have occurred:

On January 26, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on February 8, 2001.

On February 12, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of stainless steel bar ("SSB") from Korea are materially injuring the United States industry (*see* ITC Investigation No. 701-TA-913-918 (Publication No. 3395)).

On February 12, 2001, we selected the four largest producers/exporters of SSB from Korea as the mandatory respondents in this proceeding. For further discussion, *see* Memorandum from The Team to Richard W. Moreland, Deputy Assistant Secretary for Import Administration, entitled "Respondent Selection", dated February 12, 2001. We subsequently issued the antidumping questionnaires to Dongbang Industrial Co., Ltd. ("Dongbang"), Changwon Specialty Steel ("Changwon"), Dufenco Steel SA ("Dufenco"), and Posco Steel Service and Sales ("POSTEEL") on February 20, 2001.

On February 15, 2001, SeAH Steel Corp. ("SeAH") appeared on the record of this investigation as a voluntary respondent. On April 23, 2001, SeAH was advised that the Department could

not change its status from a voluntary to a mandatory respondent. (See Memoranda to the File dated February 27, 2001, and April 30, 2001, for further discussion.)

In February and March, 2001, the petitioners<sup>1</sup> in this case made submissions requesting that the Department require the respondents to report the actual content of the primary chemical components of SSB for each sale of SSB made during the period of investigation ("POI"). The respondents in this and other concurrent SSB investigations requested that the Department deny the petitioners' request. The Department, upon consideration of the comments from all parties on this matter, issued a memorandum on April 3, 2001, indicating its decision not to require the respondents to report such information on a transaction-specific basis. However, the Department did require that respondents report certain additional information concerning SSB grades sold to the U.S. and home markets during the POI. (For details, *see* Memorandum from The Stainless Steel Bar Teams to Louis Apple and Susan Kuhbach, Office Directors, dated April 3, 2001).

On March 13, 2001, Dufenco, a trading company in Switzerland, requested that it be relieved from its requirement to respond to Sections B, C, and D of the antidumping questionnaire because the producer of the subject merchandise that Dufenco sold to the United States during the POI, indicated that it intended to report all the relevant sales and cost data in its response to the antidumping questionnaire because it knew at the time of sale to Dufenco that the subject merchandise would be exported to the United States. On April 12, 2001, the Department informed Dufenco that it was not required to respond to Sections B, C, and D of the antidumping questionnaire. The Department also advised Dufenco that pursuant to section 776(a) of the Tariff Act of 1930, as amended, if the information provided by Dufenco or Dufenco's supplier is not complete or cannot be verified as provided in section 782(i) of the Act, the Department may have to resort to the use of facts available. (*See* Memorandum from Barbara Wojcik-Betancourt to The File, dated April 12, 2001, for further details.)

During the period March through June 2001, the Department received responses to Sections A, B, C, and D of

<sup>1</sup> The petitioners in this case (*i.e.*, Carpenter Technology Corp., Crucible Speciality Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America)

its original and supplemental questionnaires from Changwon<sup>2</sup> and Dongbang. Within the same time period Dunferco submitted its responses to Section A of the Department's original and supplemental questionnaires.

On April 27, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on May 7, 2001, and postponed the preliminary determination until no later than July 26, 2001. (See *Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan and the United Kingdom*, 66 FR 24114 (May 11, 2001)).

On July 10 and 11, 2001, the petitioners submitted comments with respect to Dongbang's and Changwon's Sections A-D original and supplemental questionnaire responses.

#### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on May 23, 2001, Changwon and Dongbang requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and 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) Changwon and Dongbang account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

#### Scope of Investigation

For purposes of this investigation, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles,

hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

In accordance with our regulations, we 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 publication of the *Initiation Notice* (see 66 FR 7620-7621). The respondents in the companion SSB investigations filed comments seeking to exclude certain products from the scope of these investigations. The specific products identified in their exclusion requests are:

- Stainless steel tool steel
- Welding wire
- Special-quality oil field equipment steel (SQOFES)
- Special profile wire

We have addressed these requests in a Memorandum to Susan Kuhbach and Louis Apple from The Stainless Steel Bar Team, dated July 26, 2001, entitled "Scope Exclusion Requests," and a Memorandum to Louis Apple from The Stainless Steel Bar Team, dated July 26, 2001, entitled "Whether Special Profile Wire Product is Included in the Scope of the Investigation." Our conclusions are summarized below.

Regarding stainless steel tool steel, welding wire, and SQOFES, after considering the respondents' comments and the petitioners' objections to the exclusion requests, we preliminarily determine that the scope is not overly broad. Therefore, stainless steel tool steel, welding wire, and SQOFES are within the scope of these SSB investigations. In addition, we preliminarily determine that SQOFES does not constitute a separate class or kind of merchandise from SSB.

Regarding special profile wire, we have preliminarily determined that this product does not fall within the scope as it is written because its cross section is in the shape of a concave polygon. Therefore, we have not included special profile wire in these investigations.

Finally, we note that in the concurrent countervailing duty investigation of stainless steel bar from Italy, the Department preliminarily determined that hot-rolled stainless steel bar is within the scope of these investigations. (See *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 (June 6, 2001)).

#### Period of Investigation

The POI is October 1, 1999, through September 30, 2000.

#### Fair Value Comparisons

To determine whether sales of SSB from Korea to the United States were made at less than fair value ("LTFV"), 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 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to NVs.

#### Product Comparisons

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

<sup>2</sup>Due to Changwon's affiliation with POSTEEL, a trading company in Korea, Changwon provided consolidated responses, including the sales of subject merchandise made by POSTEEL during the POI.

sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: general type of finish; grade; remelting process; type of final finishing operation; shape; and size.

With respect to general type of finish, the Department's questionnaire recognizes two types: hot-finished and cold-finished. Changwon reported a third type of finishing category (*i.e.*, forged) that was not listed in the Department's questionnaire. According to the respondent, because one of the inputs used for the production of SSB (*i.e.*, ingots), undergoes an extra processing procedure, specifically, the ingots are re-heated and then forged to a target size using forging-press machines, the general finish classification of the SSB products that are produced using the forged processing should be separated from the hot and cold categories specified in the questionnaire. We reviewed the information on the record and have preliminarily decided not to distinguish between hot-rolling and hot-forging because there is no evidence that these processes yield different properties that result in different physical characteristics of the subject merchandise.

With respect to grade, we matched products sold in the U.S. and home markets on the basis of the three most similar matches proposed by the respondents, where possible.

With respect to "Round-Class II" products sold by Dongbang during the POI, in its original questionnaire response, Dongbang classified these products separately from round products in its reported shape code. In its June 11, 2001 supplemental questionnaire response, Dongbang reported Round-Class II products as a different grade rather than a separate shape, without providing the Department with a sufficient explanation as to why Class II products should be recognized as a different grade. Although Dongbang explained that Class II products undergo a more lengthy and more costly production process than non-Class II products, and provided the mechanical requirements of a Class II product as detailed in the ASTM specifications, the respondent did not show how a Class II product would constitute a separate grade with respect to chemical composition. Therefore, we have not taken into account the additional coding for Class II products in our preliminary

determination and will review this issue further for the final determination.

On July 10 and 13, 2001, the petitioners submitted general comments on product matching issues for the Department's consideration in the preliminary determination. These comments were not received in time to be fully analyzed for the preliminary determination but will be considered for the final determination.

With respect to home market sales of non-prime SSB made by Changwon and Dongbang during the POI, in accordance with our past practice, we excluded these sales from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POI. (*See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37180 (July 9, 1993)).

#### **Export Price and Constructed Export Price**

##### **Changwon**

Changwon reported all U.S. sales as EP sales. During the POI, Changwon sold subject merchandise to unaffiliated U.S. customers prior to importation through affiliated (*i.e.*, POSTEEL) and unaffiliated trading companies in Korea.

With respect to sales made through Changwon's affiliated Korean trading company POSTEEL and through POSTEEL's affiliated U.S. trading company, POSAM, prior to importation, Changwon claims that these sales are properly classified as EP sales because Changwon is not directly affiliated with the U.S. trading company, POSAM. Furthermore, Changwon claims that the U.S. trading company acts only as a sales-document processor and communication link to facilitate Changwon's U.S. sales to unaffiliated customers.

We preliminarily determine that sales made through POSTEEL's U.S. affiliate and reported by Changwon as EP sales are properly classified as CEP sales. Having reviewed the evidence on the record of this investigation regarding respondent's reported EP sales, we conclude that sales between the foreign producer (*i.e.*, Changwon) and the U.S. customer were made "in the United States" by POSTEEL's U.S. affiliate on behalf of Changwon within the meaning of section 772(b) of the Act, and, thus, should be treated as CEP transactions (*see AK Steel Corp., et al. v. United*

*States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) ("*AK Steel*"). Specifically, although Changwon initially reaches the agreement with the U.S. customer on the estimated overall volume and pricing of merchandise through POSTEEL and its U.S. affiliate, the final documents are executed by POSTEEL's U.S. affiliate. *See* respondent's March 20, 2001 section A response at A14-18. The description provided by Changwon regarding the sales process for its alleged EP sales indicates that, for these sales, the merchandise was sold (or agreed to be sold) in the United States. Therefore, we have preliminarily decided to treat Changwon's reported EP sales through POSTEEL and POSAM as CEP sales. *See Polyvinyl Alcohol from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 11140 (February 22, 2001), (where the Department preliminarily determined that, pursuant to *AK Steel*, sales through a U.S. affiliate were made "in the United States" and were therefore classifiable as CEP transactions).

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place in the United States prior to importation by a seller affiliated with the producer or exporter as discussed above. We based CEP on the packed FOB or delivered prices to unaffiliated purchasers in the United States. We added duty drawback in accordance with section 772(c)(1)(B) of the Act. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer). 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 warranty expenses), inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. (*See Calculation Memorandum* dated July 26, 2001.)

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser in the home market for exportation to

the United States market. We based EP on the packed delivered price to unaffiliated purchasers in the home market for exportation to the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer). We added duty drawback in accordance with section 772(c)(1)(B) of the Act. (See Calculation Memorandum dated July 26, 2001.)

### Dongbang

For all of Dongbang's reported sales, we calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser in the home market for exportation to the United States market, based on the facts of record. We based EP on the packed delivered price to unaffiliated purchasers in the United States and home market. We added duty drawback in accordance with section 772(c)(1)(B) of the Act. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, domestic inland freight, Korean brokerage and handling charges (including wharfage charges, terminal handling charges, inspection fees, document fees, CFS charges, container taxes and customs clearance fees), ocean freight and marine insurance. (See Calculation Memorandum dated July 26, 2001.)

### Normal Value

#### A. 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.*, whether 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 each 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. Because each respondent'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 market was viable for each respondent.

#### B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of SSB in the home market were made at prices below their cost of production ("COP"). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice*, 66 FR at 7620-7621).

##### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses). We relied on the COP data submitted by Changwon and Dongbang, except where noted below:

*Changwon.* Changwon submitted a cost database reflecting its production costs based on six size ranges. The Department's questionnaire recognizes three size categories (*see* antidumping questionnaire on page B-9). However, Changwon reported additional size categories (*i.e.*, six in total) that take into account general finish (*i.e.*, hot-working by either rolling or forging) and final finish (*i.e.*, smooth-turning, rough-turning or lathing). In its questionnaire response, Changwon stated that the reason it submitted six categories is because it differentiates costs in its normal books based on size at a level of detail greater than the three size categories as identified by the Department's antidumping questionnaire. Based on the respondent's representation, we have accepted the reported production costs based on the size ranges identified by the respondent.

We revised Changwon's fiscal year 2000 G&A expense rate calculation to exclude foreign exchange gains which were already reflected in the interest expense rate calculation. We used the revised interest expense rate which was submitted based on Changwon's consolidated parent company's 2000 financial statements. The COP file reflected the rate based on the 1999 financial statements. *See* Memorandum from Heidi Norris to Neal Halper,

Director Office of Accounting, dated July 26, 2001, Re: Cost Adjustments.

*Dongbang.* Dongbang submitted two different cost databases reflecting its production costs based on five or three size ranges. Given that Dongbang does not recognize size groupings in its books and records, we have used the COP database that reports costs based on the three size groups defined in the Department's questionnaire.

We revised Dongbang's reported direct materials costs to reflect market prices in accordance with section 773(f)(3) of the Act. The record evidence shows that market price exceeds both the transfer price of the direct materials purchased from the affiliated supplier and the affiliated supplier's COP. Accordingly, we have increased Dongbang's reported direct material costs to reflect the difference between the market price and the transfer price or COP. *See* Memorandum from LaVonne Jackson to Neal Halper, Director Office of Accounting, dated July 26, 2001, Re: Cost Adjustments.

##### 2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time, (2) in substantial quantities, and (3) at prices which did not permit the recovery of all costs within a reasonable period of time.

##### 3. Results of the COP Test

Pursuant to section 773(b)(1) 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 do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which

would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

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

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

#### E. 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 in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *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). In order to determine whether the comparison 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"),<sup>3</sup> including selling functions,<sup>4</sup> class of customer ("customer

category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices<sup>5</sup>), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

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. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and we are unable to make a LOT adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Company-specific LOT findings are summarized below.

*Changwon.* Changwon made home market sales to two types of customer categories: direct sales to unaffiliated distributors and end-users (see Changwon's March 20, 2001 section A questionnaire response at 12). We examined the chain of distribution and the selling activities associated with home market sales to each customer category, and determined that there was little difference in the relevant selling functions provided by Changwon. Specifically, Changwon does not provide technical advice, after-sale warehousing, advertising, or quality assurance for any of its home market

customers. Furthermore, Changwon's home market sales of SSB were made through direct shipments from its factory to its customers. Changwon typically sells on a freight paid basis to its home market customers so Changwon does incur a high degree of sales activity related to arranging for transportation directly to the customer. Changwon did not indicate that there are any differences with respect to freight and delivery or inventory maintenance between these customer categories (see Changwon's May 4, 2001 Section A Supplemental Questionnaire Response at 21). Similarly, the sales support activity and marketing support provided by Changwon are limited to activities associated with the basic sales process and do not seem to vary by customer category. Based on our overall analysis, we found that the two home market categories constituted one LOT.

In the U.S. market, Changwon made both EP and CEP sales. See "Export Price and Constructed Export Price" section above regarding the Department's re-classification of Changwon's sales made through U.S. affiliate. Changwon's EP sales were made through one channel of distribution and to one category of customer, *i.e.*, they were made directly from Changwon to unaffiliated Korean trading companies, which, in turn, resold the merchandise to end-users in the United States (see Changwon's March 20, 2001 section A questionnaire response at 12). Therefore, we found that Changwon's EP sales constitute one LOT.

Changwon's CEP sales were also made through one channel of distribution and to one category of customer, *i.e.*, they were made from Changwon's U.S. affiliated trading company POSTEEL, and its affiliated U.S. importer POSAM. Therefore, we found that Changwon's CEP sales constitute one LOT. We compared the chain of distribution and selling activities associated with the CEP and EP sales and found that they were the same. Specifically, Changwon provides primarily freight services. It does not provide technical advice, after-sale warehousing, advertising, or quality assurance for any of its U.S. sales. Further, all Changwon's U.S. sales of SSB were made through direct shipments from its factory to its customers. Thus, Changwon's CEP LOT is the same as the EP LOT.

We then compared the chain of distribution and selling activities associated with the home market LOT with that of the EP/CEP LOT and found that the chain of distribution and selling activities associated with EP/CEP LOT were the same as those associated with

<sup>3</sup> The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale occurs.

<sup>4</sup> Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common SSB selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing,

and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

<sup>5</sup> Where NV is based on constructed value ("CV"), we determined the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

the home market LOT. Specifically, we observed that Changwon, does not provide technical advice, after-sale warehousing, advertising, or quality assurance in selling to its U.S. or home market customers. Furthermore, for both levels of trade there is a high degree of selling activity related to freight and delivery and inventory maintenance, while there is a low (or non-existent) level of selling activity associated with sales support, advertising, technical services, post-sale warehousing, and quality assurance. Consequently, we are matching EP and CEP sales to sales at the same LOT in the home market. In as much as we consider Changwon's EP and CEP sales to be at the same LOT as that of the home market, Changwon does not qualify for a LOT adjustment or CEP offset adjustment pursuant to section 773(a)(7)(A) or (B) of the Act, respectively.

*Dongbang.* In its questionnaire responses, Dongbang reported that it performs similar selling activities and provides identical selling services for both home market and U.S. sales, regardless of whether the sale is to an end-user, distributor or unaffiliated trading company (see Dongbang's May 4, 2001 section A supplemental questionnaire response at 22).

In the home market, Dongbang reported two customer categories (*i.e.*, end-users and distributors) and one channel of distribution (*i.e.*, direct shipment from its factory to unaffiliated customers). In determining whether separate levels of trade actually exist in the home market, we examined whether the sales made by Dongbang involved different marketing stages based on the channel of distribution, customer categories and selling functions. Based on Dongbang's submitted data, the selling activities and services associated with home market sales reported by Dongbang to its two types of customer categories are identical (see March 20, 2000 section A questionnaire response at 12 and Exhibit A-4). Therefore, we found that Dongbang's home market sales constitute one LOT.

In the U.S. market, Dongbang reported it sold to one category of customer (*i.e.*, trading companies) through two channels of distribution (*i.e.*, Dongbang's sales were made directly from Dongbang to unaffiliated Korean and U.S. trading companies, which, in turn, re-sold the merchandise to end-users in the United States) (see Dongbang's March 20, 2001 section A questionnaire response at 11). Based on Dongbang's submitted data, the selling activities and services associated with U.S. market sales reported by Dongbang through its two channels of distribution

are identical. Therefore, we found that Dongbang's U.S. market sales constitute one LOT.

We also examined Dongbang's submitted data to determine whether the U.S. sales were made at the same LOT as that found in the home market. Specifically, Dongbang primarily provides freight services. It does not provide technical advice, after-sale warehousing, advertising, or quality assurance for any of its U.S. or home market sales. Further, all Dongbang's U.S. and home market sales of SSB were made through direct shipments from its factory to its customers. Therefore, no LOT adjustment is warranted.

#### *F. Calculation of Normal Value Based on Comparison Market Prices*

Changwon. We calculated NV based on delivered prices, where applicable, to unaffiliated customers in the home market. We made deductions for inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments to normal value, for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and warranty expenses. We also deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

*Dongbang.* We calculated NV based on delivered prices, where applicable, to unaffiliated customers in the home market. We made deductions for inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments, for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses.

Dongbang paid commissions to unaffiliated sales intermediaries on some U.S. sales of subject merchandise but did not pay commissions on its home market sales. Therefore, in accordance with 19 CFR 351.410(e), we offset the commission incurred in the U.S. market, with indirect selling expenses incurred in the home market to the extent of the lesser of the commission or the indirect selling expenses. As indirect selling expenses, we used both Dongbang's reported home

market inventory carrying costs and indirect selling expenses. We also deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### **Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the 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, we will verify all information relied upon in making our final determination.

#### **Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, we are directing the 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 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 EP or CEP, 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
Dongbang Industrial Co., Ltd ...	7.30
Changwon Specialty Steel Co ..	10.05
All Others .....	9.40

#### **ITC Notification**

In accordance with section 733(f) of the Act, we have notified 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.

#### **Disclosure**

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### **Public Comment**

Case briefs for this investigation must be submitted to the Department no later

than November 7, 2001. Rebuttal briefs must be filed by November 15, 2001. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held on November 19, 2001, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 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.

If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: July 26, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01-19352 Filed 8-1-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-122-839]

#### **Amendment to the Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products From Canada**

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

**ACTION:** Notice of amendment to initiation of countervailing duty investigation.

**SUMMARY:** The Department of Commerce (the Department) is amending its notice of initiation of a countervailing duty investigation of certain softwood lumber products from Canada to exempt the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland (the Maritime Provinces) from the investigation. This exemption does not apply to certain softwood lumber products produced in the Maritime Provinces from Crown timber harvested in any other Province.

**EFFECTIVE DATE:** August 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Eric B. Greynolds at (202) 482-6071 or Maria MacKay at (202) 482-1775, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

#### **Background**

##### *The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

**ACTIONS SINCE INITIATION:** On April 30, 2001, the Department published in the **Federal Register** the "Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada" (66 FR 21332) (Notice of Initiation). In the Notice of Initiation, the Department did not exempt the Maritime Provinces from this investigation. However, the Department noted the possibility of addressing the unique circumstances associated with the Maritime Provinces through an exclusion process. The Department invited comments from interested parties concerning exclusions and how to address the unique circumstances of the Maritime Provinces. Initial comments were due by May 15, 2001, and several rounds of rebuttal comments were submitted in subsequent weeks.

In the comments submitted to the Department, parties argued that, consistent with the petition, the Department should have exempted certain lumber produced in the

Maritime Provinces from the scope of the investigation. Specifically, petitioners asserted that the Department should have exempted the Maritime Provinces from the investigation. In a subsequent submission, petitioners requested that the Department amend the Notice of Initiation to exempt the Maritime Provinces from the investigation. The Maritime Provinces, the Maritime Lumber Bureau of Canada, and at least one company located in the Maritime Provinces also requested that the Department reconsider its decision to include the Maritime Provinces in the investigation. Additionally, the Government of Canada, in pre-initiation consultations with the Department, supported exempting the Maritime Provinces from the investigation.

**ANALYSIS:** We have reconsidered the status of the Maritime Provinces in this investigation. Based on all of the comments submitted, we agree with the views expressed by the interested parties that, given the unique circumstances associated with the investigation of softwood lumber from Canada, as described below, the Department should exempt certain lumber produced in the Maritime Provinces from the scope of the investigation. In reaching this decision, we were guided by the long history of trade cases and trade agreements regarding softwood lumber.

The courts have long recognized that, generally, the statute accords the Department broad discretion in the enforcement of the antidumping and countervailing duty laws. *Daewoo Elecs. Co. v. International Union*, 6 F.3d 1511, 1516 (Fed. Cir. 1993), *cert denied*, 512 U.S. 1204 (1994). More specifically, the courts have acknowledged that the Department has the inherent authority to define the parameters of an investigation. *Duferco Steel, Inc. v. U.S.*, 2110 CIT LEXIS 64 (May 29, 2001); *Mitsubishi Heavy Industries, Ltd. v. U.S.*, 986 F. Supp. 1428, 1432 (CIT 1997). Nevertheless, the purpose of the antidumping and countervailing duty laws is to provide the relief sought in the petition, if the allegations in the petition are borne out through investigation. Thus, while the Department has broad discretion to define an investigation, that discretion must be exercised reasonably and with ample deference to the intent of the petition.

Upon reconsideration, we have concluded that, even though the exact circumstances surrounding the exemption of the Maritimes from the 1991 investigation are not present in this case, there are still unique