

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(e).

Dated: November 25, 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-809]

#### **Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results and Rescission in Part of the Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe ("CWP") from the Republic of Korea ("Korea"). The period of review ("POR") is November 1, 2007, through October 31, 2008. This review covers multiple exporters/producers, one of which is being individually reviewed as a mandatory respondent. We preliminarily determine the mandatory respondent made sales of the subject merchandise at prices below normal value ("NV"). We have assigned the remaining respondents the margin calculated for the mandatory respondent. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* December 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Alexander Montoro or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-0238 or (202) 482-0196, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 2, 1992, the Department published an antidumping duty order on CWP from Korea. *See Notice of Antidumping Duty Orders: Certain*

*Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992) ("CWP Order"). On November 28, 2008, Nexteel Co., Ltd. ("Nexteel") and A-JU-Besteel Co., Ltd. ("A-JU-Besteel") timely requested an administrative review of the antidumping duty order on CWP from Korea for the period November 1, 2007, through October 31, 2008. On December 1, 2008, Wheatland Tube Company ("Wheatland") and United States Steel Corporation ("U.S. Steel"), manufacturers of the domestic like product, also timely requested a review. Wheatland requested the Department conduct an administrative review of the following producers and/or exporters of the subject merchandise: SeAH Steel Corporation ("SeAH"); Hyundai HYSCO; Husteel Co., Ltd. ("Husteel"); Daewoo International Corporation ("Daewoo"); Miju Steel Making Co. ("Miju"); Samsun Steel Co., Ltd. ("Samsun"); Kukje Steel Co., Ltd. ("Kukje"); Nexteel; MSteel Co., Ltd.; Kumkang Industrial Co., Ltd. ("Kumkang"); Histeel Co., Ltd.; Hyundai Corporation; Dongbu Steel Co., Ltd.; Dong-A-Steel Co., Ltd. ("Dong-A"); Korea Iron & Steel Co., Ltd.; Union Pipe Manufacturing Co., Ltd. ("Union Pipe"); Union Steel Co., Ltd.; Tianjin Huanbohai Import & Export Co. ("Huanbohai"); Huludao Steel Pipe Industrial Co., Ltd.; Huludao City Steel Pipe; Benxi Northern Steel Pipes Co. ("Benxi Northern"); and Tianjin Shuangjie Steel Pipe Co. ("Shuangjie"). U.S. Steel requested the Department conduct an administrative review of the following producers of subject merchandise: Husteel; Hyundai HYSCO; Nexteel; Samsun; and SeAH. On December 24, 2008, the Department published a notice of initiation of an administrative review of the antidumping duty order on CWP from Korea. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008) ("Initiation Notice").

On January 13, 2009, Wheatland and U.S. Steel withdrew their requests for a review of Husteel. On March 23, 2009, Wheatland withdrew its request for the following companies: Daewoo; Miju; Samsun; Kukje; MSteel Co., Ltd.; Histeel Co., Ltd.; Hyundai Corporation; Dong-A; Union Pipe; Huanbohai; Huludao Steel Pipe Industrial Co., Ltd.; Huludao City Steel Pipe; Benxi Northern; and Shuangjie. On March 24, 2009, U.S.

Steel withdrew its request for a review of Samsun. The Department published a notice of partial rescission for the companies mentioned above on April 14, 2009. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 17158 (April 14, 2009).

In our initiation notice, we indicated that we would select mandatory respondents for review based upon CBP data, and that we would limit the respondents selected for individual review in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation Notice*, 73 FR at 79055. In January 2009, we received comments on the issue of respondent selection from Nexteel and Wheatland.

On February 11, 2009, after considering the resources available to the Department, we determined that it was not practicable to examine all producers/exporters of subject merchandise for which a review was requested. As a result, we selected the two largest producers/exporters of CWP from Korea during the POR for individual review in this segment of this proceeding, pursuant to section 777A(c)(2)(B) of the Act. These mandatory respondents were SeAH and Kumkang. *See Memorandum from Joseph Shuler, International Trade Compliance Analyst, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Selection of Respondents for the Antidumping Duty Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,"* dated February 11, 2009.

On January 23, 2009, Wheatland submitted a request for a duty absorption determination for a number of producers or exporters subject to this review, including SeAH. The Court of Appeals for the Federal Circuit found that the Department lacks authority to conduct two- and four-year duty absorption inquiries for transitional orders (orders in effect before January 1, 1995). *See FAG Italia S.p.A. v. United States*, 291 F.3d 806, 819 (Fed. Cir. 2002). Since the order for this case is from 1992, we have not conducted a duty absorption inquiry in this proceeding.

On February 12, 2009, we issued the antidumping questionnaire to SeAH and Kumkang. We received section A responses from SeAH and Kumkang on March 5, 2009, and March 20, 2009, respectively. We received the sections B, C and D response from SeAH on April 7, 2009, and we received the

sections B and C response from Kumkang on April 14, 2009.

On April 29, 2009, Wheatland and U.S. Steel separately alleged that Kumkang made comparison home market sales of CWP at prices below the cost of production (“COP”) during the POR. We requested additional information from Wheatland, which we received on May 21, 2009. On June 11, 2009, the Department initiated an investigation to determine whether Kumkang’s sales of CWP were made at prices below the COP during the POR. See Memorandum from The Team to Susan Kuhbach, Director, Office 1, AD/CVD Enforcement, “The Petitioner’s Allegation of Sales Below the Cost of Production for Kumkang Industrial Co., Ltd.,” dated June 11, 2009. As a result, on June 12, 2009, the Department requested Kumkang respond to section D of the questionnaire. We received a response from Kumkang on July 24, 2009.

On July 31, 2009, Wheatland withdrew its request for a review of Kumkang. Wheatland is the only party to have requested a review of Kumkang. Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Although Wheatland withdrew its request for Kumkang after the 90-day period, the Department did not dedicate extensive time and resources to this review, only having issued a supplemental questionnaire to Kumkang. The Department published a notice of partial rescission for Kumkang on August 24, 2009. See *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 42649 (August 24, 2009).

On September 21, 2009, we issued a supplemental questionnaire for sections A, B and C to SeAH and received a response to our supplemental for section A on October 15, 2009 (“Supplemental A Response”), and a response to our supplemental on sections B and C on October 20, 2009. We sent supplemental questionnaires for section D to SeAH on May 27, July 30, and September 14, 2009, and received responses on June 24, August 26, and October 9, 2009.

On July 22, 2009, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than November 30, 2009, in accordance with section 751(a)(3)(A) of the Act, and 19

CFR 351.213(h)(2). See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 36164 (July 22, 2009).

#### Partial Rescission

On January 23, 2009, Hyundai HYSCO submitted a letter to the Department certifying that the company made no shipments or entries for consumption in the United States of the subject merchandise during the POR.

In response to the Department’s query to CBP, CBP data showed POR entries for consumption of subject merchandise from Hyundai HYSCO may have entered U.S. customs territory during the POR. See Memorandum to the File from Joseph Shuler, “Customs Documentation in the Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,” dated September 8, 2009.

On September 8, 2009, the Department asked Hyundai HYSCO to explain the apparent discrepancy between Hyundai HYSCO’s claim that it did not export or sell any subject merchandise to the United States during the POR and the CBP information. Hyundai HYSCO responded on September 22, 2009, re-affirming that it did not export or sell subject merchandise to the United States during the POR, and that it did not know or have reason to know that such merchandise would be exported to the United States during the POR.

The Department has concluded that there is no evidence on the record that, at the time of sale, Hyundai HYSCO had knowledge that these entries were destined for the United States, nor is there evidence that Hyundai HYSCO had knowledge that any of these entries of subject merchandise entered the United States during the POR. See Memorandum to the File, from Joseph Shuler, International Trade Compliance Analyst, through Nancy Decker, Program Manager, AD/CVD Operations Office 1, “Intent to Rescind the Antidumping Duty Administrative Review on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea with respect to Hyundai HYSCO,” dated November 12, 2009 (“Intent to Rescind Memo”). On November 12, 2009, the Department notified interested parties of its intent to rescind this administrative review and provided interested parties until November 23, 2009, to submit comments on the Intent to Rescind Memo. No interested party submitted any comments. Accordingly, we are

rescinding this review with respect to Hyundai HYSCO.

#### Scope of the Order

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this review.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department’s *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (“HTS”) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### Application of Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall

apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 782(c)(1) of the Act provides that if an interested party, promptly after receiving a request from the Department for information, notifies the Department that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information, the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In section D, part IV of the February 12, 2009, questionnaire, the Department requested that SeAH provide one computer data file reporting the costs incurred to produce the merchandise sold in the U.S. market or the comparison market. On October 27, 2009, SeAH submitted its response to the Department’s section D supplemental questionnaire, in which the Department requested SeAH report costs on a quarterly basis. The Department subsequently has discovered that there are 23 control numbers (“CONNUMs”) for which no costs has been reported in the latest COP database submitted by SeAH. Costs for these CONNUMs had previously been reported (on a POR basis) in the original COP database SeAH submitted on April 7, 2009.

Because SeAH failed to report the quarterly cost data for certain CONNUMs, the Department has preliminarily determined to apply facts available for these COPs, pursuant to section 776(a)(2)(A) and (B) of the Act. As partial facts available, the Department will use the cost of the next most similar CONNUM as a surrogate

for the missing COP information. The Department will issue a supplemental questionnaire to SeAH seeking the COP data for these CONNUMs after the issuance of the preliminary results.

#### Date of Sale

The Department normally will use the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if the Department is satisfied that a different date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i).

For its home market sales, SeAH has reported the date the billing document is created in its accounting system as the date of sale. This is the date when the final price and quantity are set and is, in most cases, the same as the date of the shipping invoice.

For its U.S. sales, SeAH reported the date of shipment from Korea as the date of sale because all U.S. sales are produced to order and the quantity ordered is subject to change between order and shipment. In addition, the shipment date from Korea always precedes the date of the invoice to the unaffiliated U.S. customer because SeAH’s U.S. affiliate, Pusan Pipe America Inc. (“PPA”), does not invoice the unaffiliated U.S. customer until shortly after the subject merchandise enters into the United States. Because quantity is not finalized until shipment and the shipment date always precedes the invoice date to the U.S. customer, we are relying on the date of shipment from Korea as the U.S. date of sale.

#### Comparisons to Normal Value

To determine whether SeAH’s sales of CWP from Korea to the United States were made at less than normal value (“NV”), we compared constructed export price (“CEP”) to NV, as described in the “Constructed Export Price” and “Normal Value” sections of this notice below.

Pursuant to section 777A(d)(2) of the Act, we compared the CEP of individual U.S. transactions to monthly weighted-average NVs of the foreign-like product, where there were sales made in the ordinary course of trade, as discussed in the “Cost of Production Analysis” section below.

We are using a quarterly costing approach, as described in the “Normal Value” section below and, therefore, we have not made price-to-price comparisons outside of a quarter to lessen the distortive effect of comparing non-contemporaneous sales prices

during a period of significantly changing costs.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by SeAH that are covered by the description contained in the “Scope of the Order” section above and were sold in the home market during the POR to be the foreign like product for purposes of determining appropriate product comparisons to U.S. sales.

We have relied on five criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: 1) grade; 2) actual pipe size in millimeters; 3) wall thickness; 4) surface finish; and 5) end-finish. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade 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 listed above.

#### Level of Trade/Constructed Export Price Offset

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 LOT in the comparison market is the LOT of the starting-price sales or, when NV is based on CV, the LOT of the sales from which we derive selling, general and administrative (“SG&A”) expenses and profit. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(ii). *See also* *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

Where it is not possible to make comparisons at the same LOT, the statute permits the Department to account for the different levels. *See* Section 773(a)(7)(A) of the Act. Specifically, if the comparison market sales are made at multiple LOTs, and the difference in LOTs 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, the Department makes an upward or downward LOT adjustment in accordance with section 773(a)(7)(A) of the Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico*, 73 FR 5515, 5522 (January 30, 2008) (“*LWR Pipe from Mexico*”). Alternatively, for

CEP sales, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. See section 773(a)(7)(B) of the Act (the CEP offset provision) and *LWR Pipe from Mexico*, 73 FR at 5522.

To determine whether sales are made at different LOTs, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See, e.g., *Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand*, 73 FR 24565 (May 5, 2008); and *LWR Pipe from Mexico*, unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008). In particular, we analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

SeAH reported two channels of distribution in the comparison market, Korea: 1) direct sales to unaffiliated end-users and distributors; and 2) sales to affiliated companies. In the U.S. market, SeAH reported one LOT and one channel of distribution for the CEP sales made through its affiliated company in the United States, PPA. SeAH stated that its U.S. sales were made at a different, less advanced LOT than its comparison market sales. SeAH is not seeking a LOT adjustment, however, because it had no comparison

market sales that were at the same LOT as the U.S. CEP sales. Instead, it claims that a CEP offset is warranted. See SeAH's section B questionnaire response at 18.

In evaluating SeAH's claim, we examined its activities in each channel of distribution relating to four different types of selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. Based on our analysis, we preliminarily determine that SeAH's selling activities in the comparison market did not vary significantly by channel of distribution. See SeAH's Supplemental A Response at Exhibit A-42. Therefore, we preliminarily determine that SeAH sold at one LOT in the comparison market. We further determine preliminarily that SeAH sold at one LOT in the U.S. market.

We then compared the selling functions performed by SeAH for its U.S. sales to the selling functions performed for the single LOT in the comparison market. Record evidence indicates that SeAH undertakes significant activities in the comparison market related to the sales process and marketing support, as well as warehousing, that it does not undertake for its U.S. CEP sales. See Memorandum from Alexander Montoro, International Trade Compliance Analyst, to The File, Re: Preliminary Results Calculation Memorandum, dated November 30, 2009 ("Analysis Memo") and SeAH's Supplemental A Response at Exhibit A-42. These differences in selling functions performed for comparison market and CEP transactions indicate that SeAH's comparison market sales are made at a more advanced stage of distribution than its CEP sales. Consequently, we preliminarily determine that SeAH's comparison market and CEP sales are at different LOTs.

As discussed above, the Department will make a LOT adjustment in these circumstances when the information exists to do so. In this case, because SeAH sold at one LOT in the comparison market, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Further, we do not have the information that would allow us to examine the price patterns of SeAH's sales of other similar products, and there is no other record evidence upon which a LOT adjustment could be based. Therefore, we have not made a LOT adjustment.

Instead, in accordance with section 773(a)(7)(B) of the Act, we preliminarily

determine that a CEP offset is appropriate to reflect that SeAH's comparison market sales are at a more advanced stage than the LOT of SeAH's CEP sales. We based the amount of the CEP offset on comparison market indirect selling expenses and limited the deduction to the amount of the indirect selling expenses deducted from CEP under section 772(d)(1)(D) of the Act. We applied the CEP offset to the NV-CEP comparisons. For a detailed discussion, see Analysis Memo.

#### Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, SeAH classified all of its export sales of CWP to the United States as CEP sales. During the POR, SeAH made sales in the United States through its U.S. affiliate, PPA, which then resold the merchandise to unaffiliated customers in the United States. The Department calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States, net of early payment discounts and other discounts. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including imputed credit expenses, 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. We used the expenses reported by SeAH in connection with its U.S. sales. See Analysis Memo.

#### Normal Value

##### A. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR. See, e.g., *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18,

and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, the Department recognizes that possible distortions may result if our normal annual average cost method is used during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates the case-specific record evidence based on two primary considerations: (1) the change in the cost of manufacturing ("COM") recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the COP or CV during the same shorter averaging periods. See *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) ("*SSPC from Belgium Final Results*") and accompanying Issues and Decision Memorandum at Comment 4; see also *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) ("*SSSC from Mexico Final Results*") and accompanying Issues and Decision Memorandum at Comment 5.

### 1. Significance of Cost Changes

In prior cases, the Department established 25 percent as the threshold (the difference between the high and low quarterly COM divided by the low quarterly COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual costing approach. See *SSPC from Belgium Final Results* and accompanying Issues and Decision Memorandum at Comment 4; see also *Stainless Steel Sheet and Strip in Coils From Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45708, 45709–45710 (August 6, 2008) ("*SSSC from Mexico Preliminary Results*"), unchanged in *SSSC from Mexico Final Results* and accompanying Issues and Decision Memorandum at Comment 5. In the instant case, record evidence shows that SeAH experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR and that the

change in COM is primarily attributable to the price volatility for carbon steel hot-rolled coils. See "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – SeAH Steel Corporation," from Ji Young Oh, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, dated November 30, 2009 ("*Cost Calculation Memorandum*"). As a result, we have determined for the preliminary results that the changes in COM for SeAH are significant enough to warrant a departure from our standard annual costing approach.

### 2. Linkage Between Cost and Sales Information

As explained above, the Department preliminarily found cost changes to be significant in this administrative review; thus the Department has evaluated whether there is evidence of linkage between the cost changes and the sales prices during the POR. The Department's definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements that would indicate a reasonable correlation between the underlying costs and the final sales prices charged by the company. See *SSSC from Mexico Final Results* and accompanying Issues and Decision Memorandum at Comment 5; see also *SSPC from Belgium Final Results* and accompanying Issues and Decision Memorandum at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes.

Unlike the situation in *SSPC from Belgium Final Results* where the respondents employed an alloy surcharge mechanism, SeAH has no alloy surcharge mechanism in place. Therefore, in the instant case, we requested that SeAH submit sales and cost summary information for the five most frequently sold CONNUMs in the home and U.S. markets during the POR so that we could evaluate the correlation between changing direct material costs and final sale prices. See SeAH's October 27, 2009 submission at Attachment 56. For purposes of this broad analysis, we computed for these sample CONNUMs weight-averaged sale prices, by quarter, based on the reported sales for both U.S. and the home markets, and compared them to the COM by quarter. See Cost Calculation Memorandum. As can be seen from the Cost Calculation Memorandum, the quarterly average

price and cost changes appear to be reasonably correlated. We performed the same linkage analysis in *Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

In summary, the facts of this case show a significant change in COM during the POR and that there is a reasonable linkage between costs and sales during the shorter cost periods. Accordingly, we have preliminarily determined that a quarterly costing approach would lead to more appropriate comparisons in our antidumping duty calculations for CWP. Therefore, for the preliminary results, we used indexed annual average direct material costs and annual weighted-average conversion costs to each quarter in the POR for inclusion in the COP and CV calculations for CWP.

### B. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the comparison market, Korea, to serve as a viable basis for calculating NV, we compared SeAH's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the aggregate volume of SeAH's home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determine that the home market was viable for comparison purposes.

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

SeAH reported sales of the foreign like product to affiliated and unaffiliated customers in the comparison market. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at "arm's length." See 19 CFR 351.403(c). To test whether the sales to affiliates 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. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise

identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices and included such sales in the calculation of NV. See 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party were excluded from the NV calculation. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

#### D. Cost of Production Analysis

We found that SeAH made sales below the COP in the most recently completed segment of this proceeding in which SeAH was examined, and such sales were disregarded. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that SeAH made sales of the subject merchandise in its comparison market at prices below the COP in the current review period. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by SeAH.

##### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated SeAH's COP based on the sum of its costs of materials and conversion for the foreign like product, plus an amount for home market SG&A expenses, interest expenses, and packing costs. See the "Test of Comparison Market Sales Prices" section below for the treatment of comparison market selling expenses. We relied on home market sales and COP information provided by SeAH in its questionnaire responses, except where noted below:

a. During the POR, SeAH purchased carbon steel hot-rolled coil inputs from a home market affiliated company, Pohang Iron and Steel Company ("POSCO"). Carbon steel hot-rolled coil is considered a major input to the production of CWP. Section 773(f)(3) of the Act (the major input rule) states:

If in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input

under paragraph (2).

Paragraph 2 of section 773(f) of the Act (transactions disregarded) states:

A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

In accordance with the major input rule, and as stated in the *SSCC from Mexico Preliminary Results*, 73 FR at 45714, unchanged in *SSCC from Mexico Final Results*, it is the Department's normal practice to use all three elements of the major input rule (*i.e.*, transfer price, COP and market price) where available. In accordance with section 773(f)(3) of the Act (the major input rule), we evaluated transactions between SeAH and its affiliate using the transfer price, COP and market price of carbon steel hot-rolled coil. For the preliminary results, we adjusted SeAH's reported costs to reflect the highest of these three values for SeAH's purchases of hot-rolled coil from POSCO. Because we have determined that shorter cost periods are appropriate for the COP analysis, we have applied the major input rule analysis and calculated the related adjustments on a quarterly basis.

b. We revised SeAH's general and administrative ("G&A") expenses to include inventory valuation losses.

c. We excluded the long-term interest income generated from retirement and severance deposits from the calculation of interest expense ratio.

d. We adjusted the cost of goods sold denominator used in the G&A expense ratio to reflect our major input and inventory valuation loss adjustments. We also adjusted the cost of goods sold denominator used in the financial expense ratio to reflect our major input adjustment.

See Cost Calculation Memorandum.

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

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the

Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review.

As discussed above, we have relied on a quarterly costing approach in this review. Similar to that used by the Department in cases of high-inflation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164 (December 29, 1999) and accompanying Issues and Decision Memorandum at Comment 1, this methodology restates the quarterly costs on a year-end equivalent basis, calculates an annual weighted-average cost for the POR and then restates it to each respective quarter. We find that this alternative cost calculation method meets the requirements of section 773(b)(2)(D) of the Act.

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

Where less than 20 percent of the respondent's home market sales of a given model were made at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were made at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for SeAH revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. Therefore, we retained all such sales in our analysis and included them in determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a

reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

**E. Constructed Value**

In accordance with section 773(e) of the Act, we calculated CV based on the sum of SeAH's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

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

We calculated NV based on packed prices to unaffiliated customers in Korea. We adjusted the starting price by deducting for foreign inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (for imputed credit expenses), under section 773(a)(6)(c)(iii) of the Act and 19 CFR 315.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. See 19 CFR 351.411(b).

**G. Price-to CV Comparison**

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

**Currency Conversion**

Pursuant to 19 CFR 351.415 and section 773A of the Act, we made currency conversions based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. See Import Administration website at: <http://ia.ita.doc.gov/exchange/index.html>.

**Preliminary Results of the Review**

We preliminarily determine that a weighted-average dumping margin exists for the respondent for the period November 1, 2007, through October 31, 2008. Respondents other than mandatory respondents normally receive the weighted-average of the margins calculated for those companies selected for individual review (*i.e.*, mandatory respondents), excluding *de minimis* margins or margins based entirely on adverse facts available. In this case, respondents other than SeAH received SeAH's calculated margin as SeAH is the only remaining mandatory respondent.

Manufacturer/exporter	Weighted-average margin percent
SeAH Steel Corporation .....	4.42
Dongbu Steel Co., Ltd. ....	4.42
Korea Iron & Steel Co., Ltd .....	4.42
Union Steel Co., Ltd .....	4.42
Nexteel Co., Ltd .....	4.42
A-JU Besteel Co., Ltd .....	4.42

**Public Comment**

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). We plan on conducting verification of sales and cost data after these preliminary results. As a result, case briefs for this review will be due no later than one week after the issuance of the last verification report. Rebuttal briefs will be due five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). Any requests for a hearing must be filed at the time case briefs are due. A hearing, if requested, will be held two days after the rebuttal briefs are due. Issues raised in the hearing will be limited to those raised in the case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such

comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. See section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

**Assessment Rates**

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For SeAH, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales, as reported by SeAH. See 19 CFR 351.212(b)(1).

For the companies which were not selected for individual review, we will use SeAH's cash deposit rate as the assessment rate.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) ("*Assessment Policy Notice*"). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

For Hyundai HYSCO, for which this administrative review is rescinded, the Department will issue appropriate assessment instructions to CBP 15 days after the publication of this notice. We will instruct CBP to liquidate as entered any entries of subject merchandise produced by Hyundai HYSCO.

## Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CWP from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (“LTFV”) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.80 percent, the “all others” rate established in the LTFV investigation. See *CWP Order*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E9–29237 Filed 12–7–09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–831]

#### **Fresh Garlic From the People’s Republic of China: Preliminary Results of, and Intent To Rescind, in Part, the Antidumping Duty Administrative Review**

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

**SUMMARY:** The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People’s Republic of China (PRC) covering the period of review (POR), November 1, 2007 through October 31, 2008. This review covers the 19 producers/exporters of the subject merchandise listed in Attachment 1 to this notice. As discussed below, the Department has preliminarily applied total adverse facts available (AFA) to the six mandatory respondents who each failed to cooperate to the best of its ability in this proceeding. The Department also preliminarily finds that eight companies subject to this review failed to demonstrate their eligibility for separate rate status. In addition, the Department preliminarily grants a separate rate to the four companies, which demonstrated their eligibility for separate rate status. For the rates assigned to each of these companies, see the “Preliminary Results of Review” section of this notice.

The Department also intends to preliminarily rescind the review with respect to a certain exporter which timely submitted a “no shipment” certification. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which assessment rates are above *de minimis*.

**DATES:** *Effective Date:* December 8, 2009.

#### **FOR FURTHER INFORMATION CONTACT:**

Scott Lindsay, Nicholas Czajkowski, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0780, (202) 482–1395, and (202) 482–4052, respectively.

#### **SUPPLEMENTARY INFORMATION:**

## Background

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC. See *Antidumping Duty Order: Fresh Garlic From the People’s Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*). On November 3, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC for the period November 1, 2007 through October 31, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Request for Revocation in Part*, 73 FR 65288 (November 3, 2008).

On December 24, 2008, the Department initiated administrative reviews for 63 producers/exporters of subject merchandise from the PRC. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008) (*Initiation Notice*). On October 21, 2009, in accordance with 19 CFR 351.213(d)(1), we rescinded the administrative review with respect to 44 companies for whom all relevant requests for review had been withdrawn. See *Fresh Garlic from the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 54029 (October 21, 2009) (*Rescission Notice*).

On November 26, 2008, Anqiu Haoshun Trade Co., Ltd. (Anqiu Haoshun), Hebei Golden Bird Trading Co., Ltd. (Hebei Golden Bird), Jinan Farmlady Trading Co., Ltd. (Jinan Farmlady), Jining Yongjia Trade Co., Ltd. (Jining Yongjia), Jinxiang Tianheng Trade Co., Ltd., Qingdao Tiantaixing Foods Co., Ltd. (Qingdao Tiantaixing), Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Weifang Chenglong Import & Export Co., Ltd. each timely certified that it had no shipments during the POR.<sup>1</sup> On January 12, 2009, and February 11, 2009, the Department released CBP data to interested parties. Comments on the CBP data and respondent selection were

<sup>1</sup> Petitioners subsequently withdrew their request to review Anqiu Haoshun Trade Co., Ltd., Jinxiang Tianheng Trade Co., Ltd., Qingdao Tiantaixing Foods Co., Ltd., Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Weifang Chenglong Import & Export Co., Ltd. Thus, the Department rescinded its review of these companies. See *Rescission Notice*. Moreover, we note that there were no requests for review for either Jinan Farmlady or Hebei Golden Bird. Thus, as Jinan Farmlady and Hebei Golden Bird were not named in the *Initiation Notice*, neither company was subject to this review.