

### Foreign Market Value

Based on a comparison of the volume of home-market sales and third-country sales, we determined that Dongbu's and Union's home markets were viable. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market, using the date of the invoice as the date of sale.

Based on a review of Dongbu's and Union's submissions, the Department determined that only a small percentage of those companies' home-market sales were made to related parties who, in turn, resold the merchandise ("downstream sales"). The Department determined that Dongbu and Union need not report their home-market downstream sales because of their low volume.

On December 15, 1994, petitioners alleged that Dongbu and Union sold cold-rolled carbon steel flat products in the home market at prices below their cost of production ("COP"). Based on this allegation, the Department determined, on January 17, 1995 (for Dongbu), and on January 18, 1995 (for Union), that it had reasonable grounds to believe or suspect that Dongbu and Union had sold the subject merchandise in the home market at prices below the COP. We therefore initiated cost investigations, in accordance with section 773(b) of the Act. As a result, we investigated whether Dongbu and Union sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR § 353.51(c) we calculated COP for Dongbu and Union as the sum of reported materials, labor, factory overhead, and general expenses, and compared COP to home-market prices, net of price adjustments, discounts and movement expenses.

In accordance with section 773(b) of the Act, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home-market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model

for which 10 percent or more, but less than 90 percent, of the home-market sales during the POR were priced below the COP of the merchandise, we excluded from the calculation of FMV those home-market sales which were priced below the COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home-market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Act, we used the constructed value ("CV") of those models, as described below. See, e.g., *Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review*, 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home-market sales were made at prices above COP. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews*, 58 FR 64720, 64729 (December 8, 1993).

Because Dongbu and Union provided no indication that their below-cost sales of models within the "greater than 90 percent" and the "between 10 and 90 percent" categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales within the "10 to 90 percent" category which were made below cost over an extended period of time. In addition, as a result of our COP test for home-market sales of models within the "greater than 90 percent" category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home-market model at or above COP.

Finally, where we found, for certain of Dongbu's and Union's models, home-market sales for which less than 10 percent were made below COP, we used all home-market sales of those models in our comparisons.

We also used CV as FMV for those U.S. sales for which there was no contemporaneous sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture ("COM"), we calculated general expenses as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus general expenses, we calculated profit as 8 percent of the sum of COM plus general expenses. Based on our verification of Dongbu's and Union's cost response, we adjusted Dongbu's, Union's, and DKI's reported COP and CV to reflect certain adjustments to general and administrative expenses and interest expenses. See the Department's separate cost calculation memoranda for Dongbu (dated August 10, 1995) and Union/DKI (dated September 21, 1995).

In light of the Federal Circuit's decision in *Federal Mogul v. United States*, CAFC No. 94-1097, the Department has changed its treatment of home-market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith v. United States*, 988 F.2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade ("CIT") overturned this methodology in *Federal Mogul v. United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the