Comments of the Government of the Republic of Korea
On the Differential Pricing Analysis

June 23, 2014

I. INTRODUCTION

1. In response to the request from the Department of Commerce("Department"), the Government of the Republic of Korea ("GOK"), hereunder, submits comments regarding the Differential Pricing Analysis ("DPA") which is described under 79 FR26720 (May 9, 2014) of the Federal Register.

2. The comments of the GOK hereunder shall not affect its position on the zeroing practice of the United States in calculating the dumping margin in the antidumping investigations.

3. Assuming the Department to conduct the antidumping investigation and its review process in a fair and objective manner, the GOK kindly requests the Department to consider the following comments that the GOK provides here below.

II. BACKGROUND

4. The Department conducts a three stage test when determining export price for the product under consideration as described in the Anti-Dumping Agreement (hereinafter referred to as "ADA") Article 2.4.2. In this regards, in the means of distinguishing less-then-fair-value, the Department seeks public comments regarding its current methodologies applied while conducting investigation and review, in order to determine the appropriateness of using an alternative comparison method when comparing weighted-average normal value with export price (or constructed export price) of a single transaction.

   The Department establishes the existence of margins of dumping during the investigation phase in accordance with the Article 2.4.2 of the ADA which provides three different comparison methodologies. Having that said, our understanding is that the Department currently is seeking to revise its method in calculating the dumping margins.

5. First, the GOK would like to recall the Article 2.4.2 of the ADA which states as follows:
   Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase **shall normally be**[1] established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value

[1] Emphasis added

established on a weighted average basis **may be**[2] compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

6. The GOK's understanding of the DPA measure, which the Department intends to adopt, could be divided into two stages. In the first stage, the Department applies two tests - the *Cohen's d test* and the *ratio test* - to determine whether there exists a pattern of export prices which differ significantly. The Department first applies the *Cohen's d test* and recognizes the existence of a pattern of export prices (or constructed export prices) which differ significantly among different purchasers, regions or time periods, if the calculated *Cohen's d coefficient* equals to or exceeds the 0.8 threshold. Thereafter, the Department applies the *ratio test* to assess the extent of the significance of the price differences for all sales as measured by the *Cohen's d test*. If the value of the sales of purchasers, regions, and time periods that passes the *Cohen's d test* accounts for 66 percent or more of the value of the total sales, then the pattern of export prices recognized is deemed to differ significantly which provides the basis to apply the average-to-transaction comparison method as an alternative to the average-to-average method to all the transactions made during the period of investigation. If the value of the transactions of purchasers, regions, and time periods that passes the *Cohen's d test* accounts for more than 33 percent but less than 66 percent of the value of the total transactions, then the average-to-transaction comparison method is to be applied to those transactions that have passed the *Cohen's d test*, and the average-to-average method to those transactions that haven't passed the *Cohen's d test* ("Mixed Alternative"). If 33 percent or less of the value of the total transactions passes the *Cohen's d test*, then the Department will stick to the average-to-average comparison method and will not apply the average-to-transaction comparison method. In the second stage, the Department examines whether calculating the dumping margin through the average-to-average method can appropriately reflect the significant differences of the export prices pattern that has been found among different purchasers, regions or time periods in the first stage. In doing so, the Department determines whether calculating the dumping margin by using the average-to-transaction comparison method yields a meaningful difference compared to the result by using the average-to-average comparison method. If the difference between the results using the two comparison methods is determined to be a meaningful one, then the Department takes this result as an evidence that demonstrates the fact that the average-to-average comparison method cannot appropriately take into account the recognized pattern of the significant differences of export prices, and consequently, the average-to-transaction comparison method, applicable. In determining whether the difference in the results is meaningful, the Department considers whether (1) the resulting weighted-average dumping margin moves across the *de minimis* threshold, or (2) there is a 25 percent or greater relative change in the weighted-average dumping margins between the average-to-average method and an appropriate alternative comparison method where both rates are not zero or *de minimis.*

[2] Emphasis added

III. THE PROBLEM OF THE NEW METHODOLOGY : THE RISK OF THE CONTINUATION OF THE PROHIBITED ZEROING PRACTICE

7. If the *ratio test* results in between 33 percent and 66 percent, the "Mixed Alternative" method is applied. That is, in calculating the dumping margins, the average-to-average comparison method is applied to export transactions that do not pass the *Cohen's d test*, while the average-to-transaction comparison method subject to the zeroing practice is applied to all other transactions. Thereafter, the two dumping margins will be combined together to come up with a single dumping margin. Hence, if the dumping margin for export transactions that does not pass the *Cohen's d test* is less than zero, the Department deems such margin to be zero resulting in a prevention of the offset of the positive dumping margins.

8. The following SAS code explains the negative dumping margins of the export transactions identified as not passing the *Cohen's d*:

** 16-E-1. If the sum of the positive comparison margin is greater than the absolute value of the sum of the negative comparison margin, offset the positive results with the negative to calculate total dumping, otherwise the total dumping equals to zero.
%IF &METHOD = ALTERNATIVE %THEN %DO; TOTDUMPING = POSDUMPING; %END; %ELSE %DO; IF POSDUMPING GT ABS(NEGDUMPING) THEN TOTDUMPING = POSDUMPING + NEGDUMPING; ELSE TOTDUMPING = 0; %END;

According to the SAS Code described above, when applying the average-to-transaction comparison method, zeroing is applied to export sales identified as passing the *Cohen's d test*. This means that only positive dumping margins are considered in calculating the dumping margin. And, for export transactions that did not pass the *Cohen's d test*, the sum of the positive and the negative dumping margins equals to the total dumping margin only when the positive dumping margins are always greater than the negative dumping margins. In other words, when the total dumping margin of the export transactions that did not pass the *Cohen's d test* equals to a value of less than zero, zeroing practice is applied. This method prevents negative dumping margin for export transactions that did not pass the *Cohen's d test* from offsetting positive dumping margin for export transactions that did pass the *Cohen's d test.*

9. In this regard, zeroing practice of the negative dumping margin calculated through the average-to-average comparison method disregards some of the export transactions and such practice contradicts to the notion described in the Article 2.4.2 of the ADA, which states that any comparable export transactions shall not be excluded.

10. The following is the interpretation of the WTO Appellate Body with regard to the Article 2.4.2 of the ADA

WT/DS264/AB/R (11 August 2004), paragraph 86
86. Article 2.4.2 requires that the existence of margins of dumping "shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions". (emphasis added) It is clear from the language of Article 2.4.2 that a weighted average normal value is to be compared with a weighted average of the prices of "comparable" export transactions, and not with prices of "non-comparable" export transactions. At the same time, the word "all" in "all comparable export transactions" makes it clear that Members cannot exclude from a comparison any transaction that is "comparable". Thus, we agree with the Panel that the term "all comparable export transactions" means that a Member "may only compare those export transactions which are comparable, but it must compare all such transactions."

11. The GOK respectfully requests that the Department fully consider the above decision set forth by the WTO Appellate Body in modifying its current method of calculating the dumping margin, and consider the negative dumping margin based on A-to-A comparison to offset the positive dumping margin based on A-to-T comparison.

IV. THE MEANING OF THE TERM 'SIGNIFICANT' – 'IMPORTANT'

12. The second sentence of Article 2.4.2.of the ADA describes the following requirements in order to establish the dumping margin through the average-to-transaction comparison method:
    - the authorities should find a pattern of export prices which **differ significantly** among different purchasers, regions or time periods; and
    - an explanation should be provided as to why such differences cannot be taken into account appropriately by the use of a weighted average to weighted average

13. The Department only considers *Cohen's d coefficient* figure in evaluating the 'significance' of the differences in the pattern of export prices disregarding other substantive factors that may affect the export price including purchasers, regions, and the time period. However, although the *Cohen's d coefficient* can be an indicator of the magnitude of the differences; it is not a sufficient data to determine the importance of the differences of the pattern of the export prices. In addition, the Department's approach to apply average-to-transaction comparison method subject to the zeroing practice, if the *Cohen's d test* falls beyond 0.8 may serve to recognize the existence of the differences but not of its reasons.

Issues and Decision Memorandum for the Less Than Fair Value Investigation of Certain Steel Nails from the United Arab Emirates (March 19, 2012) - Comment 1. p.6
(omitted) The Department interprets comparability in the context of a targeted dumping analysis without determining "why" an exporter's pricing behavior may differ significantly as between different customers, regions or time periods. Indeed, inserting this kind of standard into a targeted dumping analysis is nowhere found in the Act and it would likely create an unmanageable standard for the Department. Instead, the Act requires the Department to determine whether a pattern of export price differences exists without regard to "why." When such a pattern exists, the Act

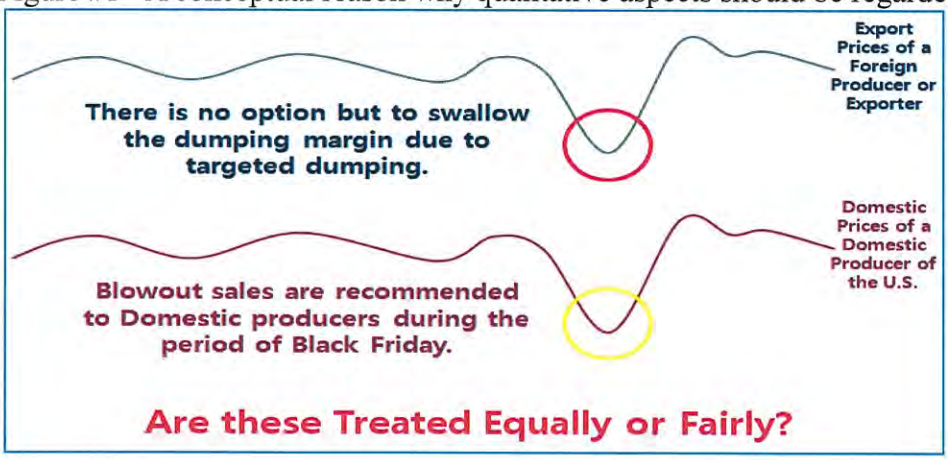
indicates that export prices may not be appropriate for application of the A-A comparison methodology. (omitted)

14. The meaning of the word 'significant' in terms of the difference is not just a matter of the volume, but also a matter of the importance. As a matter of a fact, interested parties are demanding a more clear meaning of this terminology.

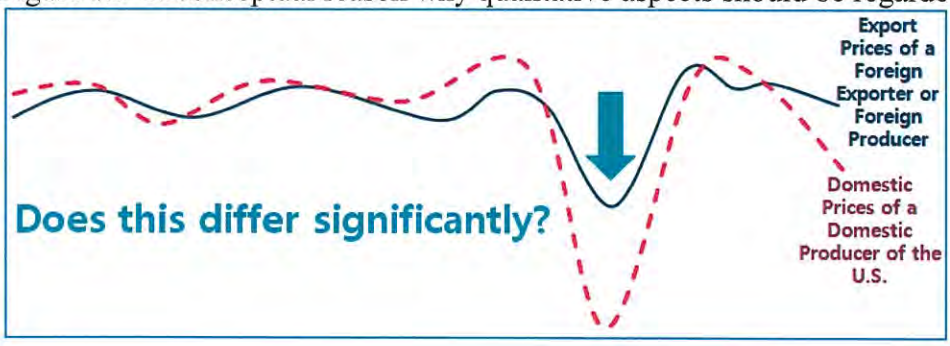
Significant – Oxford Dictionary[3]
1. Sufficiently great or important to be worthy of attention; noteworthy 2. Having a particular meaning; indicative of something 2.1. Suggesting a meaning or message that is not explicitly stated 3. Statistics Relating to or having significance.

15. More to the point, if the price differences are to be found not only with the exporters but also with the US domestic producers as well, applying the average-to-transaction comparison method subject to the zeroing practice only to the exporters seems to be unjust. That is, even though the word significant in the Article 2.4.2 of the ADA leaves some room for the interpretation, it is much more reasonable to say that if there only exists a minimum difference between the average export price and the average domestic price, the DPA may be an improper measure to apply in order to determine the significance of the pattern of the export prices.

<Figure #1> A conceptual reason why qualitative aspects should be regarded (1)



<Figure #2> A conceptual reason why qualitative aspects should be regarded (2)



[3] http://www.oxforddictionaries.com/definition/english/significant?q=significant

16. In evaluating the *significance* of the difference of the pattern of export prices not only the quantitative but also the qualitative aspects of the facts should be considered.
    ① The Department's newly adopted method fails to consider the fact that the exporters and the U.S. domestic producers may be experiencing similar pricing pattern.
    ② The Department's newly adopted method fails to acknowledge seasonal pricing pattern in the U.S. Market.
    ③ The Department's method fails to acknowledge price differences in regards to different levels of trade.
    ④ The Department's newly adopted method fails to acknowledge the pricing patterns due to the scale of economies.
    ⑤ The Department's method does not take into account the inevitable price differences that may exist because of the uncertainties in the relevant industry.

V. CONCLUSION

17. In circumstances where the price differences fall within the range of 33% to 66% as the result of the *ratio* test, if the Department deems the negative dumping margins of the export transactions calculated by using the average-to-average comparison method to be zero, this calculation contradicts to the Article 2.4.2. of the ADA.

18. In order to determine whether there exists any significant differences of the pattern of the export prices required under the Article 2.4.2 of the ADA, not only quantitative but also qualitative evaluation of the facts must be conducted.

/END/