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Investigation
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November 8, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for the Preliminary Determination of the
Antidumping Duty Investigation of Diffusion-Annealed, Nickel-
Plated Flat-Rolled Steel Products from Japan

SUMMARY

The Department of Commerce (Department) preliminarily determines that diffusion-annealed, nickel-plated flat-rolled steel products (certain nickel-plated, flat-rolled steel) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

BACKGROUND

On March 27, 2013, the Department received an antidumping duty (AD) petition concerning imports of certain nickel-plated, flat-rolled steel from Japan filed in proper form by Thomas Steel Strip Corporation (Petitioner).¹ The Department initiated an AD investigation of certain nickel-plated, flat-rolled steel from Japan on April 16, 2013.² The Department set aside a period of time for parties to raise issues regarding product coverage and invited all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.³ The Department also

¹ See Antidumping Duty Petition on Diffusion-Annealed, Nickel-Plated Steel Flat-Rolled Products from Japan, dated March 27, 2013 (Petition).

² See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Initiation of Antidumping Duty Investigation*, 78 FR 23905 (April 23, 2013) (*Initiation Notice*).

³ See *Initiation Notice*; see also *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).



set aside a time for parties to comment on product characteristics for use in the AD questionnaire.⁴ On May 20, 2013, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain nickel-plated, flat-rolled steel from Japan.⁵

On June 6, 2013, the Department issued its AD questionnaire to mandatory respondents, Metal One Corporation (Metal One) and Toyo Kohan Co., Ltd. (Toyo Kohan).⁶ Toyo Kohan submitted its response to section A of the Department's AD questionnaire on July 3, 2013 (AQR). On July 19, 2013, Toyo Kohan filed its responses to sections B (*i.e.*, the section covering comparison market sales, BQR) and C (*i.e.*, the section covering U.S. sales, CQR) of the Department's AD questionnaire.

On August 2, 2013, the Department received an allegation from Petitioner that home market sales made by Toyo Kohan were made at prices below the cost of production.⁷ On August 7, 2013, Petitioner submitted additional information related to its allegation. Additionally, on August 7, 2013, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a postponement of the preliminary determination. On August 8, 2013, the Department issued a supplemental questionnaire to Petitioner regarding its cost allegation. On August 12, 2013, Petitioner filed its response to the Department's supplemental questionnaire.

On July 23, 2013, the Department issued its first sales supplemental questionnaire concerning Toyo Kohan's section A response. Toyo Kohan submitted its responses to the Department's first sales supplemental questionnaire (FSQR) on August 12, 2013.

On July 29, 2013, Toyo Kohan's affiliate, Kohan Shoji Co., Ltd. (Kohan Shoji), submitted its section B response.⁸

On August 7, 2013, the Department issued a second sales supplemental questionnaire covering Toyo Kohan's sections B and C responses, to which Toyo Kohan responded on August 28, 2013 (SSQR).

⁴ See *Initiation Notice*, 78 FR at 23905-23906; see also *Preamble*, 62 FR at 27323.

⁵ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan*, Investigation No. 731-TA-1206 (Preliminary), 78 FR 31577 (May 24, 2013).

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Richard O. Weible, Office Director, for Antidumping and Countervailing Duty Operations, Office 7, titled "Antidumping Duty Investigation of Diffusion-Annealed, Nickel-Plated Steel Flat-Rolled Products from Japan: Respondent Selection Memorandum," dated June 4, 2013 (Respondent Selection Memo) and "Antidumping Duty Investigation of Diffusion-Annealed, Nickel Plated Flat-Rolled Steel Products from Japan: Revised Respondent Selection Memorandum (Revised Respondent Selection Memo) dated June 28 2013, in which the Department first selected Metal One and then selected Nippon Steel & Sumitomo Metal Corporation (NSSMC); see also the "Respondent Selection" section for a further discussion and for NSSMC's decision not to respond to the Department's questionnaire.

⁷ See Letter from Thomas Steel Strip Corporation to the Department (Below Cost Allegation Letter), dated August 2, 2013.

⁸ Kohan Shoji provided a revised sales database on August 2, 2013.

On August 19, 2013, the Department postponed the preliminary determination of this investigation by 50 days, to October 23, 2013, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) and (f).⁹ On August 22, 2013, the Department initiated a sales-below-cost of production investigation with respect to Toyo Kohan.¹⁰ Accordingly, the Department requested Toyo Kohan to respond to section D (*i.e.*, the section covering the cost of production (COP) and constructed value (CV)) of the Department's AD questionnaire). On September 10, 2013, Toyo Kohan submitted its section D questionnaire response.

On September 12, 2013, the Department issued its third sales supplemental questionnaire concerning Toyo Kohan's response to the second sales supplemental questionnaire. On September 23, 2013, Toyo Kohan submitted its third sales supplemental questionnaire response (TSQR).

On September 19 and 30, 2013, the Department issued its first and second section D supplemental questionnaires, to which Toyo Kohan responded on October 17 and 23, 2013.

On September 26, 2013, the Department issued its fourth sales supplemental questionnaire, to which Toyo Kohan responded on October 21, 2013.

On October 18, 2013, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, 2013 through October 16, 2013.¹¹ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the preliminary determination of this investigation is now November 8, 2013.

On October 23, 2013, Petitioner submitted pre-preliminary determination comments. Toyo Kohan also submitted pre-preliminary determination comments on October 30, 2013.¹²

PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2012, through December 31, 2012. This period corresponds to the four most recent fiscal quarters prior to the month in which the Petition was filed, March 2013.¹³

⁹ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 78 FR 50378 (August 19, 2013).

¹⁰ See Memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, titled, "Petitioner's Allegation of Home Market Sales at Prices Below the Cost of Production for Toyo Kohan Co., Ltd.," from the Team (Toyo Kohan Cost Initiation Memorandum), dated August 22, 2013.

¹¹ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

¹² See Letter from Thomas Steel Strip Corporation to the Department, dated October 23, 2013, and Letter from Toyo Kohan Co., Ltd. to the Department, dated October 30, 2013.

¹³ See 19 CFR 351.204(b)(1).

SCOPE OF THE INVESTIGATION

The diffusion-annealed, nickel-plated flat-rolled steel products included in this investigation are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.*, “diffusion-annealed”); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this investigation, “nickel-based alloys” include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this investigation are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. The foregoing HTSUS subheadings are provided only for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

SCOPE COMMENTS

In the *Initiation Notice*,¹⁴ the Department invited interested parties to “to raise issues regarding product coverage.”

On May 8, 2013, we received scope comments from Nippon Steel & Sumitomo Metal Corporation (NSSMC), requesting that “the Department amend the scope language for this investigation to clarify that the scope does not encompass steel products that include a thin nickel coating layer, but which are annealed prior to electroplating and which are not passed through any annealing line or furnace after coating to create a ‘diffusion-annealed’ iron-nickel layer.”¹⁵ Referencing two such products produced by NSSMC, NSSMC asks the Department to clarify that the scope language be amended “to include a clear statement that any product annealed prior to plating or coating is not within the scope of the investigation.”¹⁶ Alternatively, NSSMC asks the proposed scope language be amended to make clear “that the annealing must result in the creation of an iron-nickel layer in order for a product to be characterized as “diffusion annealed.”¹⁷

We received rebuttal comments from Petitioner on May 20, 2013, in which Petitioner claims that {neither} specific product identified by {NSSMC} appears to be described by the scope language.”¹⁸ However, Petitioner objects to NSSMC’s proposed scope language and its claim that “any product annealed prior to plating or coating is not within the scope of the

¹⁴ See *Initiation Notice*, 78 FR at 23905

¹⁵ See Letter from SSMC, entitled “Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan (Antidumping Investigation): Request for Scope Clarification,” dated May 8, 2013 at 1.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ See Letter from Petitioner, entitled “Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Response to NSSMC Scope Comments,” at 1.

investigation.”¹⁹ To the extent any clarification is needed, Petitioner suggests the scope could be amended to state “... by a process in which the base metal is plated or coated with nickel or nickel-based alloys and subsequently heat-treated to form an intermediate layer consisting of a nickel and iron based alloy (i.e., diffusion-annealed),”²⁰

After reviewing all comments, we have not made any changes to the existing scope of the investigation because, as Petitioner has already noted, the specific products referenced by NSSMC appear to be outside the scope of the investigation. We invite parties to comment on this in their briefs so that the issue can be addressed in the Final Determination.

RESPONDENT SELECTION

On April 23, 2013, we released a memorandum to interested parties in which we stated that the Department intended to select mandatory respondents based on U.S. import data obtained from U.S. Customs and Border Protection (CBP).²¹ On April 30, 2013, the Department received comments from Toyo Kohan on the CBP Data Release Memorandum. On June 4, 2013, the Department selected Metal One and Toyo Kohan as mandatory respondents²² and issued questionnaires to them on June 6, 2013.

On June 12, 2013, Metal One submitted comments in which it stated that it purchases subject merchandise from Toyo Kohan and sells it to unaffiliated customers, with Toyo Kohan knowing the ultimate destination of the U.S. sales at the time the sales were made to Metal One. On June 19, 2013, Petitioner requested that the Department seek further information, which Metal One provided on June 25, 2013. On June 28, 2013, the Department issued a revised respondent selection memorandum, in which it rescinded its selection of Metal One, based on the information on the record of the proceeding, and selected NSSMC as a mandatory respondent in its place.²³

On July 24, 2013, NSSMC submitted a letter responding to the Department’s issuance of its questionnaire on June 28, 2013. In its letter, NSSMC informed the Department that it did not intend to submit a response to the questionnaire. Accordingly, as discussed in the “Application of Facts Available with Adverse Inferences” section, below, we have preliminarily determined to apply facts available with an adverse inference to NSSMC.

¹⁹ *Id.* at 4 citing NSSMC’s comments at 7.

²⁰ *Id.* at 6.

²¹ See CBP Data Release Memorandum to all interested parties, dated April 23, 2013.

²² See Respondent Selection Memo.

²³ See Memorandum entitled “Antidumping Duty Investigation of Diffusion-Annealed, Nickel Plated Flat-Rolled Steel Products from Japan: Revised Respondent Selection Memorandum,” dated June 28, 2013, and questionnaire to NSSMC issued on the same date.

DISCUSSION OF METHODOLOGY

Fair Value Comparisons

To determine whether Toyo Kohan's sales of certain nickel-plated, flat-rolled steel from Japan to the United States were made at LTFV during the POI, we compared the export price (EP) of these U.S. sales to normal value (NV) or CV, as appropriate, as described in the "Export Price" and "Normal Value" sections of this notice.

Product Comparisons

As noted above, the Department gave parties an opportunity to comment on the appropriate hierarchy of product characteristics for model matching purposes within a certain deadline.²⁴ On May 6, 2013, we received comments regarding physical product characteristics from Toyo Kohan and Petitioner. On May 13, 2013, we received rebuttal comments from both parties. Additionally, we met with Petitioner to review the production process, from the perspective of Petitioner, and discuss the model match comments that were raised in the submissions on the record of this proceeding.²⁵

We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining models and, when necessary, for comparing similar models, for this AD investigation. The Department identified five criteria for matching U.S. sales of subject merchandise to NV (steel type, coating type, nominal thickness, coating weight, and nominal weight), which were included in the questionnaires issued to the respondents on June 6, 2013.

The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. Furthermore, the magnitude of variations in cost may differ from company to company, and even for a given company over time and, therefore, do not, in and of themselves, provide a reliable basis for identifying the relative importance of different product characteristics. The Department has noted that for defining products and creating a model match hierarchy, "{t}he physical characteristics are used to distinguish the differences among products across the industry," that "{c}ost is not the primary factor for establishing these characteristics," and, in short, "{c}ost variations are not the determining factor in assigning product characteristics for model-matching purposes."²⁶

²⁴ See *Initiation Notice*.

²⁵ See Memorandum to The File from David Cordell, International Trade Analyst, AD/CVD Operations, Office 7, through Angelica Mendoza, Program Manager, AD/CVD Operations, Office 7, entitled, "Ex-Parte Meeting with Petitioner; Production Process Presentation," dated May 30, 2013; see also Letter from Petitioner to the Department regarding the Antidumping Duty Petition on Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Production Process Presentation, dated May 31, 2013.

²⁶ See *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Also, the Department's "...selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess" and "differences in price or cost, standing alone, are not sufficient to warrant inclusion

Therefore, based on the above and because interested parties have not provided further comments on the product characteristics, the Department is not modifying the hierarchy it proposed after the initiation of this investigation and included in its questionnaires. In accordance with section 771(16) of the Act, all products produced by Toyo Kohan, covered by the description in the “Scope of Investigation” section in Appendix I, and sold in Japan during the POI, are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We have relied on the above mentioned five criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product. Where there were no sales of identical merchandise in the home market to compare to subject merchandise sold in the United States, we compared these U.S. sales to home-market sales of the most-similar, foreign like product on the basis of the reported product characteristics and instructions provided in the AD questionnaire, which were made in the ordinary course of trade. 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.

Date of Sale

Section 351.401(i) of the Department’s regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁷ The Court of International Trade (CIT) has stated that a “party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisfy’ the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.”²⁸ Alternatively, the Department may exercise its discretion to rely on a date other than invoice date if the Department “provides a rational explanation as to why the alternative date ‘better reflects’ the date when ‘material terms’ are established.”²⁹ The date of sale is generally the date on which the parties establish the material terms of the sale,³⁰ which normally includes the price, quantity, delivery terms and payment terms.³¹

in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.” See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Model Match Comment 1.

²⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

²⁸ See *Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).

²⁹ See *SeAH Steel Corp. v. United States*, 25 CIT 133, 135 (CIT 2001).

³⁰ See 19 CFR 351.401(i).

³¹ See *USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

In this case, Toyo Kohan reported the invoice date as the date of sale for its home market and U.S. sales.³² In its AQR, Toyo Kohan explained that an invoice is generated every time merchandise is shipped from the factory.³³ At page 11 of its FSQR, Toyo Kohan stated that “{it} confirms that the material terms of sale are established upon issuance of the invoice.” Further, at 10 of the SSQR, Toyo Kohan stated that “there may be some post-invoice price adjustments. These have been reported as billing adjustments. But by their nature, these billing adjustments are issued after the transaction has been invoiced and billed initially. Since these adjustments are post-shipment adjustment to the price, we do believe they change the date of the sale.” At page 1 of the TSQR, Toyo Kohan clarified that it meant to say “we do *not* believe they change the date of sale.” (emphasis added) Additionally, at page 2 of the TSQR, Toyo Kohan stated that invoice date is the correct date of sale for both markets because the Department has “a long-standing practice of not allowing any reported date of sale beyond the shipment date.”³⁴ Further, Toyo Kohan stated that to have a date equal to the date of the billing adjustment would result in two different dates of sale because not all of its sales had post-shipment billing adjustments.³⁵

We have preliminarily determined that the appropriate date of sale for Toyo Kohan’s sales in the home market and to the United States is the date of invoice, which coincides with the date of shipment, because the material terms of sale are established upon issuance of the invoice and not upon issuance of any post-shipment billing adjustments.³⁶

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average constructed export prices (CEPs) or EPs (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In recent AD proceedings, the Department examined whether to use the average-to-transaction (A-to-T) method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” (DP) analysis for determining whether application of A-to-T comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.³⁷ The

³² See Toyo Kohan’s AQR at 14, BQR at 14, and CQR at 11.

³³ See Toyo Kohan’s AQR at 19.

³⁴ See, e.g., *Purified Carboxymethylcellulose From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 48310, 48312 (August 10, 2010) (“{it} is the Department’s practice to use shipment date as the date of sale when shipment precedes invoice date.”), unchanged in *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review*, 75 FR 77829 (December 14, 2010).

³⁵ See Toyo Kohan’s TSQR at 2, where it argues that the Department prefers a single date of sale, rather than a separate date of sale for each transaction, citing *Final Rule; Antidumping Duties; Countervailing Duties*; 62 FR 27296, 27348 (May 19, 1997).

³⁶ For a further discussion, see Memorandum to The File, through Angelica Mendoza, Program Manager, Office 6, from Dena Crossland and David Cordell, International Trade Analysts, titled “Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan,” dated November 8, 2013 (Toyo Kohan Preliminary Analysis Memorandum).

³⁷ See Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, entitled “Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum,” “Less than Fair Value Investigation of Xanthan

Department finds the DP analysis used in this preliminary determination and other recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this AD investigation.³⁸ The Department intends to continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods.³⁹ If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes as reported. Regions are defined using the reported destination code (*i.e.*, zip codes of the headquarters of the end customer), which are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the DP analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d*

Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd, (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd) and Shandong Fufeng Fermentation Co., Ltd," and "Less than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd," all dated March 4, 2013.

³⁸ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011-2012*, 78 FR 40692 (July 8, 2013); *Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013); *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*Steel Threaded Rod*); *Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) (*Polyester Staple Fiber*).

³⁹ As noted above, the DP analysis has been utilized in recent AD investigations and several recent AD administrative reviews to determine the appropriate comparison methodology. See, e.g., *Steel Threaded Rod; Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21105 (April 9, 2013); *Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2010-2012*, 78 FR 20890 (April 8, 2013); and *Polyester Staple Fiber*.

coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of CEPs that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-to-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs (or CEPs) that differ significantly such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

Results of the DP Analysis

Based on the results of the DP analysis, the Department finds that 39.11 percent of Toyo Kohan's EPs pass the Cohen's *d* test, and confirm the existence of a pattern of EPs for

comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on the A-to-T method applied to the U.S. sales which pass the Cohen's *d* test. Accordingly, the Department has determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Toyo Kohan.⁴⁰

Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” We calculated EP for purposes of this preliminary determination, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was first sold in the country of manufacture (*i.e.*, Japan) to an unaffiliated purchaser prior to importation and CEP was not otherwise warranted based on the facts of record. Specifically, as explained below, we calculated EP for Toyo Kohan based on the prices to the unaffiliated trading company in Japan.

For all U.S. sales, Toyo Kohan reported sales to Metal One Corporation (Metal One), an unaffiliated trading company in Japan.⁴¹ Toyo Kohan stated that for all U.S. sales, Metal One takes possession of the merchandise in Japan and then arranges for the merchandise to be shipped to the United States and delivered to the ultimate U.S. end-user customer.⁴² Toyo Kohan further stated that “{a}lthough for each of its sales to Metal One, Toyo Kohan knows to which U.S. end-user customer the subject merchandise will be shipped, Toyo Kohan does not know what sales price Metal One will charge the U.S. end-user customer. Toyo Kohan does not participate in the negotiations between Metal One and the U.S. end-user customer. Rather, Toyo Kohan is only aware what price it charges Metal One (in U.S. dollars) for merchandise produced for the U.S. end-user customer.”⁴³

In *Sodium Azide from Japan*, the Department determined that because the respondent producer of the merchandise under investigation knew at the time of sale to the trading company that the merchandise was destined for the United States, EP should be the price between the respondent and the unaffiliated trading company.⁴⁴ Additionally, in *Sodium Azide from Japan*, the producer

⁴⁰ In this preliminary determination, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

⁴¹ See Toyo Kohan's AQR at 14.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sodium Azide from Japan*, 61 FR 42585, 42588 (August 16, 1996) (*Sodium Azide*), unchanged in *Suspension of Antidumping Duty Investigation: Sodium Azide From Japan*, 62 FR 973 (January 7, 1997); see also *Antidumping; Final Determination of Sales at Not Less Than Fair Value; Certain Forged Steel Crankshafts From Japan*, 52 FR 36984 (October 2, 1987), where the Department used U.S. sale price as the sale from the producer

stated that it had reason to know at the time of sale that the ultimate destination was the United States because the manufacture and packing of the subject merchandise was to the exact specifications of the ultimate US market end-users.⁴⁵ Similarly, in this investigation, Toyo Kohan stated that it knows the ultimate end-user customer of the shipment because “{certain nickel-plated, flat-rolled steel} is a specialized product that is produced to explicit customer specifications. Accordingly, every purchase order from the trading company will identify the ultimate end user customer, and therefore Toyo Kohan knows to which market the subject merchandise will be shipped.”⁴⁶

Therefore, for Toyo Kohan, we calculated EP based on the packed price that was charged to Metal One, the unaffiliated trading company in Japan. We made deductions for movement expenses (*i.e.*, foreign inland freight (plant/warehouse to the border)), where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made adjustments, where appropriate, for credit expenses, certain direct selling expenses (*i.e.*, commissions), and billing adjustments.⁴⁷

Normal Value

A. Home Market Viability and Comparison-Market Selection

To determine whether there is a sufficient volume of sales of certain nickel-plated, flat-rolled steel in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondent’s volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise during the POI.⁴⁸ Based on this comparison, we determined that Toyo Kohan had a viable home market during the POI. Consequently, we based NV on Toyo Kohan’s home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP.⁴⁹ The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on CV, those of the sales from which we derived selling, general, and administrative expenses and profit.⁵⁰ For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁵¹ In this investigation, Toyo Kohan reported only EP sales to the United States.⁵²

to the Japanese trading company, because the producer knew the product was destined for the United States, and because the producer and trading company were not related.

⁴⁵ *Id.*

⁴⁶ See Toyo Kohan’s AQR at 15.

⁴⁷ See the Toyo Kohan Preliminary Analysis Memorandum for a detailed discussion of these adjustments.

⁴⁸ See section 773(a)(1)(B) of the Act.

⁴⁹ See also section 773(a)(7) of the Act.

⁵⁰ See 19 CFR 351.412(c)(1)(iii).

⁵¹ See 19 CFR 351.412(c)(1)(i).

⁵² See Toyo Kohan’s AQR at 13 and CQR at 8. As discussed above, we determined EP to be the price paid by Toyo Kohan’s unaffiliated trading company in Japan. Therefore, for purposes of our LOT analysis, we examined the

To determine if the home-market sales are made at a different LOT than EP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer.⁵³ If home-market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, and the difference affects price comparability, then we make a LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.⁵⁴

In this investigation, we obtained information from Toyo Kohan regarding the marketing stages involved in making its reported home market and U.S. market sales, including a description of the selling activities performed by Toyo Kohan for each channel of distribution.⁵⁵ We did not make a LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412(e) because we preliminarily find that there was only one home market LOT and one U.S. LOT, and the two were identical.⁵⁶ For a detailed description of our LOT methodology and a summary of our LOT findings for this preliminary determination, *see* Toyo Kohan Preliminary Analysis Memorandum.

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

We exclude home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.⁵⁷ Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁵⁸ To test if sales to affiliates were made at arm's-length prices, we compare, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing. Where prices to the affiliated party are, on average, within a range of 98-to-102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length.⁵⁹

stages in the marketing process and the selling functions performed by Toyo Kohan in its sales to the unaffiliated trading company in Japan for EP sales.

⁵³ See 19 CFR 351.412(c)(2).

⁵⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733 (November 19, 1997).

⁵⁵ As discussed above, we determined EP to be the price paid by Toyo Kohan's unaffiliated trading company in Japan. Therefore, for purposes of our LOT analysis, we examined the stages in the marketing process and the selling functions performed by Toyo Kohan in its sales to the unaffiliated trading company in Japan for EP sales. See Toyo Kohan's AQR at 13-16 and Exhibits A-8 and A-9; Toyo Kohan's FSQR at 6-7 and Exhibits SA-3 and SA-4; and TSQR at 1; *see also* Toyo Kohan's BQR at 23 and CQR 19-20.

⁵⁶ See 19 CFR 351.412(d).

⁵⁷ See 19 CFR 351.403(c).

⁵⁸ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003).

⁵⁹ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

We preliminarily find that certain of the sales Toyo Kohan made to its affiliated customers during the POI failed the arm's-length test. Accordingly, we have excluded these certain sales from our preliminary margin analysis and have relied on the downstream sales reported by Toyo Kohan's affiliate.⁶⁰

D. Cost of Production

On August 2, 2013, the petitioner alleged that Toyo Kohan made sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales-below-cost investigation. On August 22, 2013, the Department initiated a sales-below-cost investigation of Toyo Kohan.⁶¹

1. *Calculation of Cost of Production*

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, interest expenses, and comparison market packing costs.⁶² We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on the reported data.⁶³

2. *Test of Comparison Market Prices*

With respect to Toyo Kohan, on a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁶⁴

3. *Results of COP Test*

Section 773(b)(1) provides that where sales made at less than the COP "have been made within an extended period of time in substantial quantities" and "were not at prices which permit recovery of all costs within a reasonable period of time" the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in "substantial quantities," *i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP. We disregarded below-cost sales when

⁶⁰ For a more detailed discussion of this analysis, *see* the "Arm's-Length Test" section of the Toyo Kohan Preliminary Analysis Memorandum.

⁶¹ *See* memorandum entitled "Petitioner's Allegation of Sales below the Cost of Production for Toyo Kohan, Co. Ltd.," dated August 22, 2013.

⁶² *See* "Test of Comparison Market Sales Prices" section below for treatment of comparison market selling expenses.

⁶³ *See* Toyo Kohan Preliminary Analysis Memorandum where we used the database tkcostdb04_prop submitted October 23, 2013.

⁶⁴ *See* Toyo Kohan Preliminary Analysis Memorandum.

they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP and where "the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales."⁶⁵ Finally, based on our comparison of prices to the weighted-average COPs for the POI, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁶⁶

Therefore, for Toyo Kohan, we disregarded below-cost sales of a given CONNUM of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁶⁷

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for Toyo Kohan based on the reported packed, ex-factory or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments and inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, commissions). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

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.⁶⁸ For detailed information on the calculation of NV, *see* the Toyo Kohan Preliminary Analysis Memorandum.

F. 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.

G. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Toyo Kohan'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" section of this memorandum. 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 Toyo Kohan in

⁶⁵ See section 773(b)(2)(C)(ii) of the Act.

⁶⁶ See section 773(b)(2)(D) of the Act.

⁶⁷ See Toyo Kohan Preliminary Analysis Memorandum.

⁶⁸ See 19 CFR 351.411(b).

connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Currency Conversion

Where necessary, 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)(1) of the Act, we intend to verify the information relied upon in making our final determination for Toyo Kohan.

APPLICATION OF FACTS AVAILABLE WITH ADVERSE INFERENCES

For the reasons discussed below, we determine that the use of facts available with an adverse inference (AFA) is appropriate for the preliminary determination with respect to NSSMC.

Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds requested information; fails to provide such information by the deadlines for submission of the information or in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding under this title; or provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (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 this case, NSSMC did not provide pertinent information we requested that is necessary to calculate an AD margin for the preliminary determination. Specifically, NSSMC failed to respond to our questionnaire, thereby withholding, among other things, home-market and U.S. sales data that are necessary for preliminarily determining whether NSSMC is selling subject merchandise into the United States at LTFV, pursuant to section 733 of the Act. NSSMC's failure to provide this necessary information has significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act. Furthermore, because NSSMC did not submit any response to our requests for information and did not suggest alternative forms in which it could submit such responses, sections 782(c)(1), (d), and (e) of the Act do not apply. Thus, in reaching our

preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based the dumping margin on facts otherwise available for NSSMC.

Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.⁶⁹ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁷⁰ Further, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.”⁷¹

Although the Department put NSSMC on notice as to the consequences of its failure to respond adequately to the questionnaire in this case, NSSMC did not respond to the questionnaire and stated that it did not intend to do so.⁷² This constitutes a failure on the part of NSSMC to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Based on the above, the Department has preliminarily determined that NSSMC failed to cooperate to the best of its ability and, therefore, an adverse inference is warranted in selecting from among the facts otherwise available.⁷³

Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁷⁴ It is the Department’s practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information.⁷⁵ Therefore, because an adverse

⁶⁹ See section 776(b) of the Act; *see, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (*Steel Hollow Products from Japan*).

⁷⁰ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349, 52352 (September 13, 2007) (*Glycine from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007)); *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316, vol.1 (1994) at 870 (*SAA*).

⁷¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

⁷² See Letter from NSSMC to the Department dated July 24, 2013.

⁷³ See, e.g., *Steel Hollow Products from Japan* (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

⁷⁴ See section 776(b) of the Act; *see also* 19 CFR 351.308(c) and the *SAA* at 829-831.

⁷⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216, 77218 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)).

inference is warranted, we have assigned to NSSMC the highest margin alleged in the Petition, as referenced in the *Initiation Notice* (i.e., 77.70 percent).⁷⁶

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.⁷⁷

“Corroborate” means the Department will satisfy itself that the secondary information to be used has probative value.⁷⁸ As stated in prior proceedings, to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.⁷⁹ The Department’s regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁸⁰

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁸¹ We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the EP and NV calculations used in the Petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive an estimated margin.

Petitioner estimated EPs for certain nickel-plated, flat-rolled steel based on information from two sources: 1) competitive sales information obtained in the market through customer negotiations; and 2) U.S. Bureau of Census (Census Bureau) import statistics for HTSUS subheadings 7210.90.6000 and 7212.50.0000, corresponding to bills of lading as reported in Zepol Corporation (Zepol) import data that specifically identify the imports as certain nickel-plated, flat-rolled steel.⁸² To examine further the reliability of the U.S. price information in the Petition

⁷⁶ See Petition, and April 2, and April 5, 2013, supplements to the Petition filed on behalf of Petitioner, as referenced in the April 16, 2013 Antidumping Investigation Initiation Checklist on Diffusion-Annealed, Nickel-Plated Steel Flat-Rolled Products from Japan (Initiation Checklist) on file in Enforcement and Compliance’s CRU; *see also* *Initiation Notice*.

⁷⁷ See section 776(c) of the Act; 19 CFR 351.308(d).

⁷⁸ See 19 CFR 351.308(d); *SAA* at 870; *see, e.g., Glycine from Japan*.

⁷⁹ 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*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *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 and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)).

⁸⁰ See 19 CFR 351.308(d) and *SAA* at 870.

⁸¹ See Initiation Checklist.

⁸² See Initiation Checklist at 6-7 and Petition at 27.

for purposes of this preliminary determination, we note that Petitioner also obtained the monthly average unit values (AUVs) (Landed, Duty Paid) of imports of certain nickel-plated, flat-rolled steel based on import statistics compiled by the Census Bureau for U.S. imports from Japan during the POI.⁸³ To further corroborate the AUV it calculated, Petitioner compared the AUV with actual market prices and known information concerning the prices of Japanese imports.⁸⁴

Official U.S. import statistics are data that we consider reliable.⁸⁵ Moreover, by comparing the competitive sales information in the Petition to the AUVs for the POI, we confirmed that the value of the U.S. competitive sales information was consistent with average U.S. import values.⁸⁶ Further, we obtained no other information that would make us question the reliability of the pricing information provided in the Petition.

Because we obtained no other information that would make us question the reliability of the adjustments to the U.S. price provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider Petitioner's calculation of net U.S. price to be reliable.⁸⁷

Petitioner based NV on home market prices in Japan for sales to the largest Japanese battery producers.⁸⁸ Petitioner obtained these prices from an independent market research organization in Japan.⁸⁹ Therefore, absent other information on the record disputing the validity of the sources of information or the validity of information supporting the underlying price (and applicable price adjustments) used in the Petition, we consider Petitioner's calculation of NV to be reliable. Accordingly, because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents and affidavits, as well as publically available information, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.⁹⁰

⁸³ *Id.* at 7 citing Second Petition Supplement, at 17-22 and Revised Exhibits 16-17.

⁸⁴ See Petition at Exhibit 10, at paras. 24-25 and Appendix A, and Initiation Checklist at 7.

⁸⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and applicable Memorandum to the File from Dmitry Vladimirov entitled "Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate," dated August 11, 2005 (*Chromium from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)).

⁸⁶ See Petition, at Exhibit 10 at paras. 24-25 and Appendix A; see also Initiation Checklist at 7.

⁸⁷ See, e.g., *Glycine from Japan*, 72 FR at 52353.

⁸⁸ See Petition at 28-29 and *Initiation Checklist* at 8.

⁸⁹ See Petition at 28-29 and Exhibit II.

⁹⁰ See, e.g., *Glycine from Japan*, 72 FR at 52353.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico*, the Department disregarded the highest margin as “best information available” (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense that resulted in an unusually high dumping margin.⁹¹

In *Am. Silicon Techs. v. United States*, the Court of International Trade found that a particular AFA rate bore a “rational relationship” to the respondent’s “commercial practices” and was, therefore, relevant.⁹² In the pre-initiation stage of this investigation, we confirmed that the calculation of the margin in the Petition reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine that the margin in the Petition, which we determined during our pre-initiation analysis was based on adequate and accurate information, and which we have corroborated for purposes of this preliminary determination, is relevant as the AFA rate for NSSMC.⁹³ As described above, the Department attempted to corroborate all of the secondary information from which the margin in the Petition was calculated by reviewing all of the data presented and by requesting clarification, attestation, and confirmation from Petitioner and its sources, as needed.

Based on our examination of the information, as discussed in detail in the Initiation Checklist and *Initiation Notice*, we consider the Petitioner’s calculation of the U.S. price and NV underlying the 77.70 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the Petition by examining source documents as well as publicly available information, we determine that the 77.70 percent margin in the petition is reliable for purposes of this investigation. With respect to the relevance aspect of corroboration, we also considered information reasonably at our disposal to determine whether a margin continues to have relevance.

We found that the 77.70 percent rate in the Petition reflects the commercial practices of the diffusion-annealed nickel-plated flat-rolled steel products industry, and, as such, is relevant to NSSMC. In making this determination, we compared the model-specific margins we calculated for the cooperative mandatory respondent, Toyo Kohan, for the POI to the Petition rate of 77.70 percent. We found that the highest model-specific margins we calculated for Toyo Kohan in this investigation were within the range of the 77.70 percent margin alleged in the Petition.

⁹¹ See *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (*Fresh Cut Flowers from Mexico*).

⁹² See *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003).

⁹³ See, e.g., *Glycine from Japan*.

Specifically, after calculating the margins for Toyo Kohan, we examined individual model comparisons and the margins we calculated based on those model comparisons in order to determine whether the rate of 77.70 percent is probative. We found a number of model comparisons with dumping margins above the rate of 77.70 percent.⁹⁴ Accordingly, we determine that the AFA rate is relevant as applied to NSSMC for this investigation because it falls within the range of model-specific margins we calculated for Toyo Kohan in this investigation.⁹⁵

The Department also is aware of no other independent sources of information that would enable it to corroborate further the U.S. and home-market prices, as furnished by Petitioner, for this preliminary determination. Similar to *Polyethylene Bags from Thailand*, because this is the first proceeding involving NSSMC, there are no probative alternatives.⁹⁶ Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation, as well as examining individual margin calculations with respect to the one cooperative respondent, we have preliminarily determined the rate to be reliable and relevant to NSSMC in this investigation, and we have therefore corroborated the AFA rate “to the extent practicable.”⁹⁷

Therefore, based on our efforts described above to corroborate the margin in the Petition, we find that the estimated margin of 77.70 percent in the *Initiation Notice* has probative value within the meaning of section 776(c) of the Act.⁹⁸ Consequently, in selecting an AFA margin with respect to NSSMC, we have applied the highest margin rate of 77.70 percent, the estimated dumping margin set forth in the *Initiation Notice*.⁹⁹

⁹⁴ See Memorandum to the File entitled “Corroboration of Secondary Information Used as Adverse Facts Available in Preliminary Determination,” dated November 8, 2013.

⁹⁵ This corroboration methodology is consistent with our past practice. See *Narrow Woven Ribbons With Woven Selvage from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808, 41811 (July 19, 2010)); *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea*, 77 FR 75988, (December 26, 2012). A similar corroboration methodology has been upheld by the Court of Appeals for the Federal Circuit. See *PAM S.p.A. v. United States*, 582 F.3d 1336, 1340 (Fed. Cir. 2009).

⁹⁶ See *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (*Polyethylene Bags from Thailand*) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)).

⁹⁷ See section 776(c) of the Act; 19 CFR 351.308(d); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, “pursuant to the to the extent practicable language...the corroboration requirement itself is not mandatory when not feasible.”); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Canada*, 63 FR 59527, 59529 (November 4, 1998) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (March 31, 1999)).

⁹⁸ See section 776(c) of the Act; see also 19 CFR 351.308(d).

⁹⁹ See *Initiation Notice*.

RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

Agree ✓ Disagree

 Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

 8 NOVEMBER 2017
Date