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June 6, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan; 2013-2015

SUMMARY

The Department of Commerce (the Department) is conducting this administrative review of the antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products (certain nickel-plated, flat-rolled steel) from Japan. The review covers one producer/exporter of the subject merchandise, Toyo Kohan Co., Ltd. (Toyo Kohan). The period of review (POR) is November 19, 2013, through April 30, 2015. We preliminarily find that Toyo Kohan has not sold subject merchandise at less than normal value (NV) during the POR.

Background

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.213(b), and the notice of opportunity to request an administrative review,[1] on May 7, 2015, Toyo Kohan requested an administrative review.[2] On July 1, 2015, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the antidumping duty order on certain nickel-plated, flat-rolled steel from Japan.[3]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 24898 (May 1, 2015).

[2] *See* Letter from Toyo Kohan Co., Ltd. to the Department regarding, "Diffusion-Annealed Nickel-Plated Flat-Rolled Steel from Japan," dated May 7, 2015.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015) (*Initiation Notice*).

The original deadline for the preliminary results of this review was February 1, 2016. On January 14, 2016, in accordance with section 751(a)(3)(A) of the Act, the Department extended the time period for issuing the preliminary results of this review by 67 days, to April 8, 2016.[4] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. Therefore, on January 27, 2016, the Department tolled the review by four business days, to April 14, 2016.[5] On April 7, 2016, the Department fully extended the review by an additional 53 days, to June 6, 2016.[6]

Scope of the Order

The diffusion-annealed, nickel-plated flat-rolled steel products included in this order 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 order, "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 order 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. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Toyo Kohan's sales of the subject merchandise from Japan to the United States were made at less than NV, the Department compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, from Dena Crossland, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, through Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, regarding, "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2013-2015," dated January 14, 2016.
[5] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm "Jonas," dated January 27, 2016.
[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, from Dena Crossland, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, through Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, regarding, "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2013-2015," dated April 7, 2016.

A. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(b) and (c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.[7]

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[8] The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.[9] The Department will 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 average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time

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[7] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

[8] *See*, *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013), and accompanying Preliminary Decision Memorandum at "Determination of Comparison Method" (*Certain Nickel-Plated, Flat-Rolled Steel Preliminary LTFV Determination*) unchanged in *Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan*, 79 FR 19869 (April 10, 2014) (*Certain Nickel-Plated, Flat-Rolled Steel Final LTFV Determination*).

[9] *See*, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 48651 (August 9, 2013), and accompanying Preliminary Decision Memorandum at "Determination of Comparison Method," unchanged in *Polyethylene Terephthalate Film Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 11407 (February 28, 2014).

periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined 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 (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing 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 (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* test is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two sales 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* coefficient is used to evaluate the extent to which the prices to a particular purchaser, region, or time period differ significantly from the 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 (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold 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 account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that passes 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 average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average 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 average-to-average 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 prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison 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 average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 average-to-average method and the appropriate alternative comparison method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method moves across the *de minimis* threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. *Results of the Differential Pricing Analysis*

For Toyo Kohan, based on the results of the differential pricing analysis, the Department finds that 50.14 percent of the value of U.S. sales pass the Cohen's *d* test, and, confirms the existence of a pattern of prices that that differ significantly among purchasers, regions, or time periods.[10] 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 applying the A-to-T method to those U.S. sales which passed the Cohen's *d* test and the A-to-A method to those sales which do not 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.[11]

<u>Product Comparisons</u>

In accordance with section 771(16) of the Act, we compared prices for products produced by Toyo Kohan and sold in the comparison market (*i.e.*, the home market) on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are (1) steel type; (2) coating type; (3) nominal thickness; (4) minimum specified coating weight; and (5) nominal width.[12]

[10] *See* Memorandum from Dena Crossland to the File, regarding "Analysis of Data Submitted by Toyo Kohan Co., Ltd. in the Preliminary Results of the 2013-2015 Administrative Review of the Antidumping Duty Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan (Toyo Kohan Preliminary Analysis Memorandum), dated concurrently with this memorandum.
[11] 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.
[12] *See* Letter from the Department of Commerce to Toyo Kohan Co., Ltd. regarding the antidumping duty questionnaire, dated July 8, 2015.

Date of Sale

19 CFR 351.401(i) states that the Department "normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business," as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.[13]

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."[14] 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."[15] The date of sale is generally the date on which the parties establish the material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[16]

In this case, Toyo Kohan reported the invoice date as the date of sale for its comparison market and U.S. sales.[17] In its AQR, Toyo Kohan explained that an invoice is generated each time merchandise is shipped from the factory and material terms of sale are established upon issuance of the invoice.[18] Additionally, 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.[19]

We have preliminarily determined, consistent with the investigation,[20] and consistent with our regulatory presumption at 19 CFR 351.401(i), that the appropriate date of sale for Toyo Kohan's sales in the comparison 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.

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[13] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.
[14] *See Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (Ct. Int'l Trade 2001).
[15] *See SeAH Steel Corp. v. United States*, 25 C.I.T. 133, 135 (Ct. Int'l Trade 2001).
[16] *See USEC Inc. v. United States*, 498 F. Supp. 2d 1337, 1344 (Ct. Int'l Trade 2007).
[17] *See* Toyo Kohan's Section A Questionnaire Response, dated August 7, 2015 (AQR), at 14.
[18] *Id*., at 16 and 17.
[19] *See* Toyo Kohan's Supplemental B-C Questionnaire Response, dated October 30, 2015, at 4 and 5.
[20] *See Certain Nickel-Plated, Flat-Rolled Steel Preliminary LTFV Determination*, at "Date of Sale," unchanged in *Certain Nickel-Plated, Flat-Rolled Steel Final LTFV Determination*.

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)." For purposes of these preliminary results, we calculated the U.S. price as the EP for Toyo Kohan in accordance with section 772(a) of the Act, because the merchandise was first sold, prior to importation by the producer, outside of the United States to the unaffiliated purchaser in the United States. There were no sales in the United States to affiliated parties. There were no CEP sales during the POR. Accordingly, we calculated EP based on the packed price that was charged to the first unaffiliated U.S. customer. We applied billing adjustments as reported. We made deductions for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act, including deductions for foreign inland freight (plant/warehouse to the border), international freight, and brokerage and handling. As discussed in the "Normal Value" section, below, we also made circumstances-of-sale adjustments, where appropriate, for imputed credit.

Normal Value

A. *Home Market Viability as Comparison Market*

To determine whether there was 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 five percent or more of the aggregate volume of U.S. sales), the Department compared the volume of Toyo Kohan's home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that Toyo Kohan had a viable home market during the POR, because its volume of sales of the foreign like product in the home market was five percent or more of the aggregate volume of U.S. sales of the subject merchandise.[21] Consequently, we based NV on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will determine NV based on sales of the foreign like product at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[22] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[23] In order to determine whether the comparison sales were at different stages in the marketing process than

[21] *See* Toyo Kohan's AQR at Exhibit A-1; and Toyo Kohan's First Supplemental Questionnaire Response, dated October 22, 2015, at Exhibit SA-1
[22] *See* 19 CFR 351.412(c)(2).
[23] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison-market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. Where NV is based on constructed value (CV), we determine the normal value LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible.

When the Department is unable to match U.S. sales of the foreign-like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market.[24]

To determine if the comparison 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.[25] If comparison 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 comparison 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.[26]

We obtained information from Toyo Kohan regarding the marketing stages involved in making sales in both the reported comparison and U.S. markets. Toyo Kohan provided a description of all selling activities performed among each channel of distribution and customer category for both markets.[27] For sales in the comparison market, Toyo Kohan reported three channels of distribution.[28]

With respect to the U.S. market, Toyo Kohan indicated that all sales were EP sales.[29] For sales in the U.S. market, Toyo Kohan reported one channel of distribution.[30] For its channel of distribution, Toyo Kohan reported that it sold subject merchandise to one type of customer.[31] We compared the selling activities performed in each market and found that all selling functions were performed at the same relative level of intensity for all customers in each market. Accordingly, we did not make an 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 comparison market LOT

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[24] *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6. *See also Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 74 FR 66620 (December 16, 2009), and accompanying Issues and Decision Memorandum at Comment 4.
[25] *See* 19 CFR 351.412(c)(2).
[26] *See, e.g.*, *Plate from South Africa*, 62 FR at 61732-33.
[27] *See* Toyo Kohan's AQR at 13-22 and Exhibit A-8.
[28] *Id*., at Exhibit A-8.
[29] *Id*., at 14.
[30] *Id*., at Exhibit A-8.
[31] *Id*., at 14.

and one U.S. LOT, and both the NV and EP sales were made at the same LOT. For a further discussion, *see* the Toyo Kohan Preliminary Analysis Memorandum.

C. *Sales to Affiliated Customers*

We exclude comparison 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.[32] 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."[33] 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.[34]

We preliminarily find that the sales Toyo Kohan made to its affiliated customer during the period of review failed the arm's-length test. Accordingly, we have excluded these sales from our preliminary margin analysis and have relied on the downstream sales reported by Toyo Kohan's affiliate.[35]

D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to United States antidumping and countervailing law, including amendments to section 773(b)(2)(A) of the Act.[36] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published and interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the act, which relate to determinations of material injury by the International Trade Commission.[37] Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and cost of production (COP) information from respondent companies in all antidumping proceedings.[38] Because these amendments apply to this review, the Department requested this information from Toyo Kohan.

[32] *See* 19 CFR 351.403(c).
[33] *See China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003).
[34] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).
[35] *See* Toyo Kohan Preliminary Analysis Memorandum at "Arm's-Length Test."
[36] *See Trade Preferences Extension Act of 2015*, Pub. L. 114-27, 129 Stat. 362 (2015) (TPEA).
[37] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).
[38] *Id.*, at 56794-95.

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 and interest expenses.[39] We relied on the COP data submitted by Toyo Kohan. 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.[40]

2. Test of Comparison Market Prices

With respect to Toyo Kohan, on a product-specific basis, pursuant to section 773(b)(2) of the Act, we compared the adjusted weighted-average COP to the comparison 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.[41]

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(1)(A) and (b)(2)(C)(i) of the Act, where less than 20 percent of respondent's comparison market sales of a given product are at prices less than the COP, we did not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in ''substantial quantities'' within an extended period of time. Where 20 percent or more of a respondent's comparison market sales of a given product are at prices below the COP, we disregard the below-cost sales when: 1) they are made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C)(i) of the Act, and 2) they are at prices which would not permit the recovery of all costs within a reasonable period of time based on our comparison of prices to the weighted-average COPs for the POR, in accordance with sections 773(b)(1)(B) and (b)(2)(D) of the Act.

In this case, we found that more than 20 percent of Toyo Kohan's comparison market sales of certain products were sold at prices below the cost of production within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time.[42] Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

[39] *See* "Test of Comparison Market Sales Prices" section below for treatment of comparison market selling expenses.
[40] *See* Toyo Kohan Preliminary Analysis Memorandum.
[41] *Id*.
[42] *Id*.

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 19 CFR 351.401(c) and section 773(a)(6)(B)(ii) of the Act.[43]

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.*, credit and commissions). We added U.S. packing costs and deducted comparison 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.[44] 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 comparison market match of identical 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 connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

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[43] *See* Toyo Kohan Preliminary Analysis Memorandum.
[44] *See* 19 CFR 351.411(b).

Currency Conversion

In accordance with section 773A(a) of the Act and 19 CFR 351.415, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.[45]

Recommendation

We recommend applying the above methodology for these preliminary results.

✓ ____________ ____________
Agree Disagree

____
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

6 JUNE 2016
____
Date

[45] The exchange rates are available on the Enforcement Compliance website at http://enforcement.trade.gov/exchange/index.html.