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Administrative Review
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July 10, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2017-
2018 Administrative Review of the Antidumping Duty Order on
Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from
Japan

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on diffusion-annealed, nickel-plated flat-rolled steel products (nickel-plated steel products) from Japan. The period of review (POR) is May 1, 2017 through April 30, 2018. The administrative review covers one mandatory respondent, Toyo Kohan Co., Ltd. (Toyo Kohan). We preliminarily determine that Toyo Kohan's sales of subject merchandise have not been made at prices less than normal value (NV) during the POR.

II. BACKGROUND

On May 29, 2014, Commerce published in the *Federal Register* an AD order on nickel-plated steel products from Japan.¹ Subsequently, on May 1, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on nickel-plated steel products from Japan for the period May 1, 2017 through April 30, 2018.²

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in May 2018, Commerce received requests to conduct an administrative review of the AD order on nickel-plated steel products from Japan from Toyo Kohan and Thomas Steel

¹ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan*, 79 FR 30816 (May 29, 2014).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 19047 (May 1, 2018).

Strip Corporation, the petitioner in this proceeding.³ On July 12, 2018, based on these timely requests, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the AD order on nickel-plated steel products from Japan.⁴

On August 20, 2018, we received a certification of no shipments from Nippon Steel & Sumitomo Metal Corporation (Nippon Steel).⁵ In August and September 2018, we received timely responses to Commerce’s AD questionnaire, and, from December 2018 through June 2019, Toyo Kohan timely responded to our supplemental questionnaires.

In November 2018, we extended the preliminary results of this review to no later than May 31, 2019.⁶ Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.⁷ The revised deadline for the preliminary results of this review is now July 10, 2019.

III. 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.

³ See Petitioner’s Letter, “Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Request for Fourth Administrative Review,” dated May 23, 2018; and Toyo Kohan’s Letter, “Toyo Kohan’s Request for Antidumping Administrative Review Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan,” dated May 30, 2018.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 32270 (July 12, 2018).

⁵ See Nippon Steel’s Letter, “Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Certification of No U.S. Sales During Administrative Review Period,” dated August 20, 2018 (Nippon Steel No Shipments Certification).

⁶ See Memorandum, “Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Extension of the Deadline for Preliminary Results of 2017-2018 Antidumping Duty Administrative Review,” dated November 30, 2018.

⁷ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

In August 2018, Nippon Steel submitted a letter to Commerce certifying that it had no exports, sales, or entries of subject merchandise to the United States during the POR.⁸ There is no information on the record which contradicts Nippon Steel's no-shipment certification. Therefore, based on the evidence on the record, we preliminarily determine that Nippon Steel had no shipments of subject merchandise to the United States during the POR. Consistent with our practice, we are not preliminarily rescinding the review with respect to Nippon Steel. Instead, we will complete the review and issue appropriate instructions to CBP based on the final results of this review.⁹

V. DISCUSSION OF THE METHODOLOGY

A. Date of Sale and Universe of U.S. Sales

Pursuant to 19 CFR 351.401(i), in identifying the date of sale of the subject merchandise or foreign like product, Commerce 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. However, a date other than the date of invoice may be used if Commerce is satisfied that a different date reflects the date on which the exporter or producer establishes the material terms of the sale.

Toyo Kohan reported the date of sale in the home market as the earlier of the date of shipment from the factory or consignment agent (as applicable), or the date of invoice to the unaffiliated customer.¹⁰ For U.S. sales, Toyo Kohan reported the date of sale as the earlier of shipment date or invoice date.¹¹

For the universe of U.S. sales to be examined in this POR, Toyo Kohan reported U.S. sales with invoice dates during the POR, consistent with its methodology in previous reviews.¹² However, Commerce's normal practice is to examine each U.S. sale of merchandise entered for consumption during the POR, unless the respondent does not know the entry dates or the first sale to an unaffiliated party is after importation into the United States.¹³ Toyo Kohan is the importer of record and knows the entry date of all its U.S. sales.¹⁴ Thus, we requested, and Toyo

⁸ See Nippon Steel No Shipments Certification.

⁹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR 51306, 51307 (August 28, 2014).

¹⁰ See Toyo Kohan's September 14, 2018 Section B Questionnaire Response (Toyo Kohan's September 14, 2018 BQR) at 19-20.

¹¹ See Toyo Kohan's September 14, 2018 Section C Questionnaire Response (Toyo Kohan's September 14, 2018 CQR) at 16-18.

¹² *Id.*

¹³ See Commerce Letter re: AD Questionnaire, dated August 1, 2018, at C-2.

¹⁴ See Toyo Kohan's September 14, 2018 CQR at 53; see also Toyo Kohan's December 4, 2018 Supplemental Questionnaire Response (Toyo Kohan's December 4, 2018 SQR) at 17.

Kohan reported, all sales that entered the U.S. during this POR.¹⁵ Accordingly, in our preliminary results, we examined all U.S. sales that entered during the POR. We excluded from our analysis those sales which entered during the POR but were invoiced and we examined in the previous POR.¹⁶ We intend to examine sales which were invoiced in this POR but entered after this POR in the subsequent administrative review, if one is requested.

B. Comparisons to Normal Value

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

C. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce 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 (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the 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)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.¹⁷

In numerous AD investigations and reviews, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁸ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with

¹⁵ See Toyo Kohan's April 15, 2019 Supplemental Questionnaire Response (Toyo Kohan's April 15, 2019 SQR) at 13-15.

¹⁶ See Toyo Kohan's December 4, 2018 SQR at 16; *see also* Toyo Kohan's April 15, 2019 SQR at 13-15.

¹⁷ 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 (IDM) at Comment 1; *see also JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.") (citations omitted).

¹⁸ 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); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists 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 periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) 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 period of review 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 all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce 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* coefficient 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* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period 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* coefficient is used to evaluate the extent to which the prices to the 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 mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, 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 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 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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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, then 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 margins between the average-to-average method and the appropriate alternative 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 move across the *de minimis* threshold.

Interested parties may present arguments and justifications 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.¹⁹

D. Results of the Differential Pricing Analysis

For Toyo Kohan, based on the results of the differential pricing analysis, Commerce preliminarily finds that 41.08 percent of the value of U.S. sales pass the Cohen's *d* test,²⁰ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Toyo Kohan, in accordance with 19 CFR 351.414(c)(1) and (d).

¹⁹ The petitioner contends that Commerce should modify the time periods used in the differential pricing analysis to use quarters according to customer-specific pricing patterns. *See* Petitioner's Letter, "Thomas's Pre-Preliminary Results Comments," dated June 11, 2019 at 3-19 (the specific methodology for modifying the time periods includes proprietary information). However, the petitioner has not adequately explained how modifying the time periods in the manner it proposes would improve the analysis. We will consider any additional comments on this issue for purposes of the final results.

²⁰ *See* Memorandum, "Calculations for the Preliminary Results," dated July 10, 2019.

E. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Toyo Kohan covered by the description in the “Scope of the Order” section and sold in the home market during the POR to be foreign like products for purposes of determining NV for the merchandise sold in the United States. We compared U.S. sales to sales made in the home market for Toyo Kohan. Pursuant to 19 CFR 351.414(f), we compared Toyo Kohan’s U.S. sales of nickel-plated steel products to its sales of nickel-plated steel products made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or constructed value (CV), as appropriate. In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: steel type, coating type, nominal thickness, minimum specified coating weight totaled for both sides, and nominal width.

Toyo Kohan reported that Toyo Kohan sold a small quantity of overrun merchandise in the home market to certain customers during the POR.²¹ Consistent with our determination in the LTFV investigation²² and subsequent administrative reviews, we excluded these sales from our calculation of NV.

F. Export Price

For all sales made by Toyo Kohan, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts on the record.

We based EP on packed prices to the first unaffiliated purchaser in the United States. We increased the starting price by the amount of billing adjustments, where appropriate, pursuant to 19 CFR 351.401(c). We made deductions for movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and U.S. brokerage and handling), in accordance with section 772(c)(2)(A) of the Act.

Guided by section 772(c)(2)(A) of the Act, we determined that it is appropriate to deduct Section 232 duties from U.S. price when such duties are included in the U.S. price.²³ On this record,

²¹ See Toyo Kohan’s September 14, 2018 Section B Questionnaire Response at 11-12.

²² See *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), and accompanying IDM at Comment 1.

²³ See *Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine*, 83 FR 31369 (July 5, 2018); see also Memorandum, “Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from July 1, 2019, through December 31,

however, Toyo Kohan's reported gross unit price for the subject merchandise invoiced to the unaffiliated U.S. customer does not include the Section 232 duties. Rather, Toyo Kohan issues supplementary invoices to the U.S. customer for reimbursement of the Section 232 duties that Toyo Kohan has paid.²⁴ Based on these facts, we preliminarily determine that Toyo Kohan's reported prices to its unaffiliated U.S. customer do not include Section 232 duties. Accordingly, we have preliminarily made no adjustment to EP with respect to Section 232 duties.

G. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales 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), we compared the volume of Toyo Kohan's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), the aggregate volume of home market sales of the foreign like product for Toyo Kohan was sufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Toyo Kohan, in accordance with section 773(a)(1)(B)(i) of the Act.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁶ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category).

2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine," dated June 20, 2019, at Issue 1.

²⁴ See Toyo Kohan's December 4, 2018 Supplemental Questionnaire Response at 2-5; see also Toyo Kohan's September 14, 2018 CQR at 35 and Exhibit C-14.

²⁵ See 19 CFR 351.412(c)(2).

²⁶ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),²⁷ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d)(2) of the Act.²⁸

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁹

In this administrative review, we obtained information from Toyo Kohan regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.³⁰

In the home market, Toyo Kohan reported that it made sales through three channels of distribution during the POR, *i.e.*, through an unaffiliated trading company direct to customer, through an affiliated trading company direct to customer, and through an affiliated trading company from its inventory.³¹ According to Toyo Kohan, it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; advertising; sales promotion; distributor/dealer training; procurement/sourcing services; packing; inventory maintenance; direct sales personnel; sales/marketing support; market research; technical assistance; commissions; warranty service; guarantees; after-sales services; and freight and delivery.³²

Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Based on these selling function categories, we find that Toyo Kohan performed sales and marketing, inventory maintenance and warehousing, freight and

²⁷ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

²⁸ *See Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

²⁹ *See, e.g., OJ from Brazil* IDM at Comment 7.

³⁰ *See* Toyo Kohan's September 14, 2018 BQR at 18.

³¹ *See* Toyo Kohan's August 29, 2018 Section A Questionnaire Response (Toyo Kohan's August 29, 2018 AQR) at 12 and Exhibit A-8; *see also* Toyo Kohan's April 15, 2019 SQR at 2 and Exhibit S2-1.

³² *See* Toyo Kohan's August 29, 2018 AQR at 13-15 and Exhibit A-8; *see also* Toyo Kohan's April 15, 2019 SQR at Exhibit S2-1. Toyo Kohan's affiliated reseller Kohan Shoji Co., Ltd. also stated that it performed slitting services for customers in one home market sales channel. However, Commerce has previously determined that slitting is not a selling function. *See, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017), and accompanying IDM at Comment 4.

delivery, and warranty and technical support for all of its home market sales. Because we find that there were no significant differences in selling activities performed by Toyo Kohan to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Toyo Kohan.

With respect to the U.S. market, Toyo Kohan reported that it made sales through one channel of distribution, *i.e.*, to trading company warehouse in the United States.³³ Toyo Kohan reported that it performed the following selling functions for sales to all U.S. customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; advertising; sales promotion; distributor/dealer training; procurement/sourcing services; packing; inventory maintenance; direct sales personnel; sales/marketing support; market research; technical assistance; commissions; warranty service; guarantees; after-sales services; and freight and delivery.³⁴

Accordingly, based on the selling function categories noted above, we find that Toyo Kohan performed sales and marketing, inventory maintenance and warehousing, warranty and technical support, and freight and delivery for all of its U.S. sales. Because we find that there were no differences in selling activities performed by Toyo Kohan to sell to its U.S. customers, we preliminarily determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Toyo Kohan performed for its U.S. and home market customers do not differ significantly.³⁵ Therefore, we preliminarily determine that Toyo Kohan's sales to the United States and home market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted.

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

In this review, Toyo Kohan sold foreign like product to unaffiliated customers and to customers affiliated with Toyo Kohan, within the meaning of section 771(33) of the Act.³⁶ Consequently, we tested these sales to affiliates to ensure that they were made at arm's-length prices in accordance with 19 CFR 351.403(c) and our practice. To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all billing adjustments, discounts, movement charges, direct selling expenses, and packing expenses. 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.³⁷ Sales of foreign like product to Toyo Kohan's affiliated reseller passed the arm's-length test. Accordingly, we have included these sales in our preliminary margin analysis.

³³ *Id.*; see also Toyo Kohan's September 14, 2019 CQR at 16 and Exhibit C-7.

³⁴ See Toyo Kohan's August 23, 2018 AQR at 13 through 15 and Exhibits A-8; see also Toyo Kohan's April 15, 2019 SQR at Exhibit S2-1.

³⁵ *Id.*

³⁶ See Toyo Kohan's September 14, 2018 BQR at 4-5.

³⁷ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

H. Cost of Production Analysis

Pursuant to the amendment of section 773(b)(2)(A) of the Act, Commerce required that respondents provide CV and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.³⁸ 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.

We relied on the COP data submitted by Toyo Kohan, except as follows:³⁹

- We revised Toyo Kohan's reported cost of manufacture (COM) to include the unreconciled difference between the financial accounting system and steel production cost report; and
- We revised Toyo Kohan's reported COM to include an unexplained item in Toyo Kohan's COM reconciliation identified as "Fix Cost of indirect fix costs firm."

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs within an extended period of time in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard comparison 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)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and

³⁸ See the "Test of Comparison Market Sales Prices" section for treatment of home market selling expenses.

³⁹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Toyo Kohan Co., Ltd.," dated July 10, 2019.

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

In this case, we found that less than 20 percent of Toyo Kohan’s sales were at prices less than the COP. Therefore, we used all of Toyo Kohan’s home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

I. Calculation of NV Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, early payment discounts, and rebates in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for inland freight expenses.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in either market, also known as the “commission offset.” Specifically, we limited the amount of the commission offset to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of 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.⁴⁰

VI. CURRENCY CONVERSION

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

⁴⁰ See 19 CFR 351.411(b).

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.

Agree

Disagree

7/10/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance