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August 3, 2018

MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: James Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Certain Corrosion-
Resistant Steel Products from India; 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from India for the period of review (POR) January 4, 2016, through June 30, 2017.¹ The review covers one producer/exporter of the subject merchandise: JSW Steel Ltd. and JSW Steel Coated Products Limited (collectively, JSW). During the investigation, Commerce found JSW to be a single entity and, because there were no changes to the facts that supported that determination, we continue to find that these companies are a part of a single entity for this administrative review.² We preliminarily determine that the company subject to this review made sales of the subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On July 25, 2016, Commerce published in the *Federal Register* the AD order on CORE from India.³ On July 3, 2017, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.⁴ On July 31, 2017, AK Steel Corporation, ArcelorMittal

¹ See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (*Order*).

² *Id.* at 48393.

³ See *Order*.

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 30833 (July 3, 2017).



USA LLC, California Steel Industries, Inc., Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners), requested that Commerce conduct a review of exports from JSW and Uttam Galva Steel Limited; Uttam Value Steels Limited; Atlantis International Services Company Ltd; Uttam Galva Steels, Netherlands, B.V.; and Uttam Galva Steels (BVI) Limited (collectively, Uttam Galva) during the POR.⁵ Based on this timely request, on September 13, 2017, we initiated an administrative review on these companies.⁶ On December 12, 2017, the petitioners timely withdrew their request for an administrative review of exports from Uttam Galva.⁷ On December 22, 2017, Commerce published in the *Federal Register* the *Rescission, in Part*.⁸

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.⁹ On March 12, 2018, Commerce postponed the preliminary results of this review until August 3, 2018.¹⁰

III. SCOPE OF THE ORDER

The products covered by this *Order* are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the

⁵ See the Petitioners’ Letter, “Corrosion Resistant Steel Products from India: Request for Administrative Review,” dated July 31, 2017.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 13, 2017).

⁷ See the Petitioners’ Letter, “Corrosion-Resistant Steel Products from India: Partial Withdrawal of Administrative Review,” dated December 12, 2017.

⁸ See *Corrosion-Resistant Steel Products from India: Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 82 FR 60703 (December 22, 2017) (*Rescission, in Part*).

⁹ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “*Deadlines Affected by the Shutdown of the Federal Government*” (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

¹⁰ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated March 12, 2018.

scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this *Order* unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these *Order*:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the *Order* may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.414(c)(1) and (d), to determine whether JSW’s sales of the subject merchandise from India 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.

1. 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 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, 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 antidumping investigations.¹¹

In recent investigations, Commerce 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.¹² Commerce finds that the differential pricing analysis used in those investigations is 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 addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

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 codes or city and state names) 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 by 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

¹¹ 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; 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).

¹² 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); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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.

2. Results of the Differential Pricing Analysis

For JSW, based on the results of the differential pricing analysis, Commerce preliminarily finds that 47.15 percent of the value of U.S. sales pass the Cohen's *d* test,¹³ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests support the consideration of an alternative to the average-to-average method.¹⁴ However, Commerce preliminarily finds that there is no meaningful difference (*i.e.*, a 25 percent relative change) in the weighted-average dumping margin between the average-to-average method and the alternative method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for JSW.

V. DATE OF SALE

Section 19 CFR 351.401(i) states that “{i}n identifying the date of sale of the subject merchandise 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.” The regulation provides further that Commerce 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.¹⁵ Commerce 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.¹⁶

For both its home market and U.S. sales, JSW reported the invoice date as its date of sale.¹⁷ JSW stated that it selected the invoice date as the date of sale because that is the point in the sales process at which the material terms of sale are no longer subject to change.¹⁸ Further, there were no instances where shipment date predated the invoice date.¹⁹ Accordingly, we used the invoice date as the date of sale in both the U.S. and home markets for these preliminary results.

¹³ See Memorandum, “Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Productions from India: Preliminary Results Analysis Memorandum for JSW Steel Ltd. and JSW Coated Products Limited,” dated concurrently with this memorandum (Preliminary Analysis Memorandum) at 2.

¹⁴ *Id.*

¹⁵ See 19 CFR 351.401(i). See also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10. See also *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.

¹⁷ See JSW's November 6, 2017 Section B Questionnaire Response at 23; JSW's November 3, 2017 Section C Questionnaire Response at 20.

¹⁸ *Id.*

¹⁹ *Id.*

VI. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products sold in India during the POR that fit the description in the “Scope of the Order” section of this notice, above, that were in the ordinary course of trade. In making the product comparisons, we matched foreign like products to the products sold in the United States based on their physical characteristics. In order of importance, these physical characteristics are: type, reduction process, clad material/coating metal, metallic coating weight, metallic coating process, quality, yield strength, nominal thickness, nominal width, and form.

Pursuant to 19 CFR 351.414(f), we compared U.S. sales of CORE to home market sales of CORE 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, according to section 771(16)(B) of the Act, we compared U.S. sales of CORE to the most similar foreign like product made in the ordinary course of trade.

VII. 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 EP, in accordance with subsections 772(a) and (c) of the Act, because the subject merchandise was first sold in the country of manufacture (*i.e.*, India) to an unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. Therefore, with respect to JSW’s reported EP sales, we calculated EP based on the price to an unaffiliated purchaser in the United States, taking into account the reported terms of sale. We made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: domestic inland freight, domestic brokerage and handling, inland insurance, and international freight. Pursuant to section 772(c)(1)(C) of the Act, we made an adjustment to the reported EP for countervailable export subsidies.

VIII. NORMAL VALUE

A. Home Market Viability

In order to determine whether there was 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), Commerce compared the volume of JSW’s respective 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.²⁰ Based on this comparison, we determined that JSW had a viable home market during

²⁰ See JSW’s October 13, 2017 Section A Questionnaire Response (SAQR) at Exhibit A-1.

the POR. Consequently, we based normal value on home market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.²¹ Under Section 773(a)(5) of the Act, Commerce has considerable discretion in deciding whether to include affiliated party sales when calculating NV.²² Commerce excludes 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. Consistent with 19 CFR 351.403(c) and (d) and our practice, Commerce "may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length."²³

To test whether JSW's home market sales to affiliated customers were made at arm's-length prices, Commerce compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the price to affiliated customers was, on average, between 98 and 102 percent of the price of the same or comparable merchandise sold to an unaffiliated customer, we preliminarily determined that the sales to that affiliated customer were at arm's-length prices.²⁴ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because these sales were considered to be outside the ordinary course of trade.²⁵

C. 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).²⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

²¹ See 19 CFR 351.403(c).

²² See Section 773(a)(5) of the Act. See also *NTN Corp. v. United States*, 306 F. Supp. 2d 1319, 1332 (CIT 2004) (affirming Commerce's discretion to apply the arm's-length test to determine whether to exclude certain home market sales to affiliated parties in the NV calculation.).

²³ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003) (affirmed on remand, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

²⁴ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

²⁵ See Preliminary Analysis Memorandum for a detailed discussion of the Arm's-Length-Test.

²⁶ See 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.²⁷ 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), and the level of selling expenses for each type of sale.

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),²⁸ we consider the starting prices before any adjustments. Where NV is based on constructed value (CV), we determine the NV 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 we are unable to match U.S. sales of the foreign-like product in the comparison market at the same LOT as the EP, we may compare the U.S. sales to sales at a different LOT in the comparison market.

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.²⁹ 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 351.412.³⁰

In this review, we obtained information from JSW regarding the selling activities performed for both home market and U.S. sales, for each channel of distribution.³¹ In the home market, JSW reported that it made sales through four channels of distribution: 1) sales to original equipment manufacturers 2) sales from JSW branch/consignment agent to the end user/reseller; 3) sales directly to the end user/reseller; and 4) website auction sales.³² JSW reported that these four channels in the home market constitute one LOT.³³ 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 there were no significant differences in selling activities performed by JSW. Accordingly, we determine that all home market sales are at the same LOT.

²⁷ *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) and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

²⁸ Where NV is based on constructed value (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).

²⁹ See 19 CFR 351.412(c)(2).

³⁰ *Id.* See also *OJ from Brazil* at Comment 7.

³¹ See SAQR at 21-27 and Exhibit A-10.

³² *Id.* at 21-22.

³³ See JSW's November 6, 2017 Section B Questionnaire Response at 33.

With respect to the U.S. market, JSW reported that all of its sales were made through one channel of distribution, from JSW to traders.³⁴ Based on the above-referenced selling function categories, we find that JSW performed selling functions related to all four categories identified above for its U.S. sales. Accordingly, based on JSW's entire marketing process, including its reported channels of distribution and selling functions described above, Commerce preliminarily finds there is one LOT in the U.S. market.

When comparing the net differences between selling activities in the U.S. market LOT and the home market LOT, Commerce finds there were no significant differences in selling functions between the two markets. Accordingly, Commerce finds the home market LOT is the same LOT as the U.S. market. Because JSW's home market LOT is at the same LOT as the U.S. market, no LOT adjustment is necessary.

D. Cost of Production Analysis

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 Commerce to request constructed value and cost of production (COP) information from respondent companies in all antidumping duty proceedings.³⁵ Accordingly, Commerce requested this information from JSW in this review. We examined JSW's cost data and determined that the standard cost methodology, using annual costs based on the reported data, should be applied.

1. Calculation of COP

We calculated the COP for JSW based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative (SG&A) expenses and packing, in accordance with section 773(b)(3) of the Act.³⁶

We relied on the COP data submitted by JSW except as follows:

- We performed the arms-length test for certain inputs and adjusted as necessary in accordance with sections 773(f)(2) and (3) of the Act, *i.e.*, the transactions disregarded rule and the major input rule.³⁷

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the per-unit price of the comparison-market sales of the foreign like product to determine whether these sales

³⁴ See SAQR at 24.

³⁵ 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, 46794-95 (August 6, 2015).

³⁶ JSW requested that Commerce calculate costs on a quarterly basis. Based on our analysis, we preliminarily find that the facts in this case do not satisfy our requirements for qualifying for the quarterly cost methodology. See JSW's November 7, 2017 Section D Questionnaire Response at 2; Preliminary Analysis Memorandum at 7-8 for a detailed discussion of cost methodology.

³⁷ See Preliminary Analysis Memorandum at 4-5.

had been made at prices below the COP. In determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

3. Results of the COP Test

Section 773(b)(1) of the Act 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,” Commerce 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 made at prices less than the COP. We disregarded below-cost sales when 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.”³⁸ Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.³⁹

E. Calculation of NV Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers in the home market. We made adjustments, where appropriate, from the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions, where appropriate, from the starting price for certain movement expenses, *i.e.*, inland freight, for discounts, and for certain direct selling expenses, *i.e.*, bank charges, pursuant to section 773(a)(6)(B)(ii) of the Act.⁴⁰ For all sales, we then added U.S. direct selling expenses, *i.e.*, bank charges. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also adjusted for the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In accordance with 19 CFR 351.411(b), we based this adjustment on the difference in the variable cost of manufacturing of the foreign like product and that of the subject merchandise.

³⁸ See section 773(b)(2)(C)(ii) of the Act.

³⁹ See section 773(b)(2)(D) of the Act.

⁴⁰ See Preliminary Analysis Memorandum at 8-9.

IX. CURRENCY CONVERSION

We 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. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

8/3/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations