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Administrative Review  
POR: 5/1/18-04/30/19  
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July 14, 2020

**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 2018-2019 Administrative Review of the Antidumping Duty Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan

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## 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, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is May 1, 2018 through April 30, 2019. The review covers one producer/exporter of the subject merchandise, Toyo Kohan Co., Ltd. (Toyo Kohan). We preliminarily determine that Toyo Kohan's sales of the subject merchandise have been made at prices less than normal value (NV) during the POR.

## II. BACKGROUND

In May 2014, Commerce published in the *Federal Register* an AD order on nickel-plated steel products from Japan.<sup>1</sup> On May 1, 2019, 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 POR.<sup>2</sup> Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), Commerce received a request to conduct an administrative review of the AD order on nickel-plated steel products from Japan from Toyo Kohan.<sup>3</sup> On July 15, 2019, based on

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

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 18479 (May 1, 2019).

<sup>3</sup> See Toyo Kohan's Letter, "Toyo Kohan's Request for Antidumping Administrative Review: Diffusion-Annealed, Nickel-Plated Flat Rolled Steel Products from Japan," dated May 31, 2019.



this timely request for review, 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.<sup>4</sup>

In September and October 2019, we received timely responses from Toyo Kohan and its affiliated home market reseller, Kohan Shoji Co., Ltd. (Kohan Shoji), to Commerce's AD questionnaire.<sup>5</sup> From December 2019 through April 2020, we issued supplemental questionnaires to Toyo Kohan; we received timely responses to these supplemental questionnaires from December 2019 through May 2020.<sup>6</sup> In January 2020, we extended the preliminary results of this review to no later than May 29, 2020.<sup>7</sup> On April 24, 2020, Commerce tolled the deadline for issuing its preliminary results by an additional 50 days.<sup>8</sup> Thus, the revised deadline for the preliminary results in this administrative review is July 20, 2020.

### 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.

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<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739 (July 15, 2019).

<sup>5</sup> See Toyo Kohan's September 3, 2019 and October 2, 2019 Errata Letter Section A Questionnaire Responses (collectively, Toyo Kohan's September 3, 2019 AQR); Toyo Kohan's September 23, 2019 Section B Questionnaire Response (Toyo Kohan's September 23, 2019 BQR); Kohan Shoji's September 23, 2019 Section B Questionnaire Response; Toyo Kohan's September 23, 2019 Section C Questionnaire Response (Toyo Kohan's September 23, 2019 CQR); and Toyo Kohan's September 23, 2019 Section D Questionnaire Response.

<sup>6</sup> See Toyo Kohan's December 26, 2019 Supplemental Questionnaire Response (Toyo Kohan's December 26, 2019 SQR); Toyo Kohan's January 13, 2020, Supplemental Questionnaire Response; Kohan Shoji's March 19, 2020 Supplemental Questionnaire Response; and Toyo Kohan's May 13, 2020 Supplemental Questionnaire Response.

<sup>7</sup> See Memorandum, "Diffusion-Annealed, Nickel-Plated Flat Rolled Steel Products from Japan: Extension of the Deadline for Preliminary Results of the 2018-2019 Antidumping Duty Administrative Review," dated January 9, 2020.

<sup>8</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

## IV. DISCUSSION OF THE METHODOLOGY

### A. Date of Sale and Universe of Sales

Section 351.401(i) of Commerce's regulations states that, "in 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." Further, the regulations provide 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.<sup>9</sup> 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.<sup>10</sup>

For home market sales, Toyo Kohan reported the invoice date as the date of sale, which is the same date the merchandise leaves the factory.<sup>11</sup> For U.S. sales, Toyo Kohan stated in its questionnaire response that the appropriate date of sale for its U.S. sales is the commercial invoice date because this is the date that sets the material terms of sale.<sup>12</sup> Therefore, for the preliminary results, we based the date of sale for Toyo Kohan's U.S. sales on the commercial invoice date.

Regarding the universe of sales examined in this POR, 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.<sup>13</sup> Toyo Kohan is the importer of record and knows the entry date of all its U.S. sales.<sup>14</sup> Accordingly, consistent with our practice in the prior segment of this proceeding,<sup>15</sup> we examined all U.S. sales that entered during the POR in our preliminary results.

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<sup>9</sup> See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>10</sup> 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) (*Shrimp from Thailand*), and accompanying Issues and Decision Memorandum (IDM) at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

<sup>11</sup> See Toyo Kohan's September 23, 2019 BQR at 19.

<sup>12</sup> See Toyo Kohan's September 3, 2019 AQR at 14; see also Toyo Kohan's September 23, 2019 CQR at 16-18.

<sup>13</sup> See, *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34131 (July 17, 2019) (*Nickel-Plated from Japan AR4 Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 3, unchanged in *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64042 (November 20, 2019) (*Nickel-Plated from Japan AR4*), and accompanying IDM at Comment 1.

<sup>14</sup> See Toyo Kohan's September 3, 2019 AQR at 32; see also Toyo Kohan's September 23, 2019 CQR at 36 and 54.

<sup>15</sup> See *Nickel-Plated from Japan AR4 Prelim* and accompanying PDM at 3-4, unchanged in *Nickel-Plated from Japan AR4*.

## 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 nickel-plated steel products 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.

### 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 constructed export prices (CEPs)) (*i.e.*, the average-to-average (A-A) 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 (A-T) 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.<sup>16</sup>

In numerous AD investigations and reviews, Commerce has applied a "differential pricing" analysis for determining whether application of the A-A method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>17</sup> Commerce finds that the differential pricing analysis used in 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 addressing the potential masking of dumping that can occur when Commerce uses the A-A 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 prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all U.S. 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

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<sup>16</sup> 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 IDM at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("the 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).

<sup>17</sup> 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).

account when using the A-A 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 consolidated customer codes reported by the respondent. 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 POR based upon the U.S. date of sale.<sup>18</sup> 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 A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method and application of the A-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of 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

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<sup>18</sup> Consistent with our practice in the prior segment of this proceeding, we used entry date to define the time periods for the differential pricing analysis. See *Nickel-Plated from Japan AR4* IDM at Comment 1.

whether using only the A-A 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 A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A 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 A-A 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 A-A 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 Toyo Kohan, based on the results of the differential pricing analysis, Commerce preliminarily finds that 94.79 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>19</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-A method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-T 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 (e).

### C. **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 comparison market during the POR to be foreign like products for purposes of determining NV for the merchandise sold in the United States. 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 comparison 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 Toyo Kohan's U.S. sales to either sales of the most similar foreign like product made

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<sup>19</sup> *Id.*

in the ordinary course of trade or to constructed value (CV), pursuant to section 773(a)(4) of the Act, 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 it sold a small quantity of overrun merchandise in the home market to certain customers during the POR.<sup>20</sup> Consistent with our determination in the LTFV investigation and subsequent administrative reviews,<sup>21</sup> we excluded these sales from our calculation of NV.

#### **D. 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.<sup>22</sup> On this record, 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.<sup>23</sup> 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.

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<sup>20</sup> See Toyo Kohan's September 23, 2019 BQR at 11-12.

<sup>21</sup> 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; see also, *e.g.*, *Nickel-Plated from Japan AR4 Prelim PDM* at 7, unchanged in *Nickel-Plated from Japan AR4*.

<sup>22</sup> 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, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine," dated June 20, 2019, at Issue 1.

<sup>23</sup> See Toyo Kohan's September 23, 2019 CQR at 55-59 and Exhibit C-20.

## E. 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. Affiliated Party Transactions and Arm's-Length Test

In this review, Toyo Kohan sold foreign like product to affiliated and unaffiliated customers in the comparison market, within the meaning of section 771(33) of the Act. Commerce calculates 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 producer or exporter, *i.e.*, sales at "arm's length."<sup>24</sup> To test whether Toyo Kohan's sales to affiliated customers were made at arm's-length prices, where appropriate, we compared the starting prices of sales to affiliated and unaffiliated customers on a model-specific basis, net of all applicable billing adjustments, discounts and rebates, movement charges, direct selling expenses, and packing expenses. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length and included such sales in the calculation of NV.<sup>25</sup> Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>26</sup>

Toyo Kohan's sales of foreign like product to its affiliated home market reseller, Kohan Shoji, failed the arm's-length test. Therefore, Toyo Kohan reported Kohan Shoji's downstream sales, and we used the reported downstream sales data in our calculations for these preliminary results.

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<sup>24</sup> See 19 CFR 351.403(c).

<sup>25</sup> See *Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 39615 (August 7, 2009), unchanged in *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review*, 75 FR 6631 (February 10, 2010).

<sup>26</sup> See section 771(15) of the Act; see also 19 CFR 351.102(b) (defining "ordinary course of trade").

### 3. 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).<sup>27</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>28</sup> In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed 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),<sup>29</sup> 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) of the Act.<sup>30</sup>

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 an 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 was possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>31</sup>

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.<sup>32</sup> Selling activities can generally be grouped into five categories for our analysis: Provision of Sales

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<sup>27</sup> See 19 CFR 351.412(c)(2).

<sup>28</sup> *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.

<sup>29</sup> 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).

<sup>30</sup> See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>31</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

<sup>32</sup> See Toyo Kohan's September 3, 2019 AQR at Exhibit A-9; see also Toyo Kohan's December 26, 2019 SQR at Exhibit SA1-3.

Support,<sup>33</sup> Provision of Training Services,<sup>34</sup> Provision of Technical Support,<sup>35</sup> Provision of Logistical Services,<sup>36</sup> and Performance of Sales Related Administrative Activities.<sup>37</sup>

In the home market, Toyo Kohan reported that it made sales through three channels of distribution during the POR: 1) through an unaffiliated trading company direct to customer; 2) through an affiliated trading company direct to customer; and 3) through an affiliated trading company from its inventory.<sup>38</sup> According to Toyo Kohan, it performed the following selling functions for sales through all home market channels of distribution: 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; commissions; guarantees; after-sales services; and freight and delivery.<sup>39</sup>

As noted above, selling activities can be generally grouped into five selling function categories. Based on these selling function categories, we find that Toyo Kohan performed sales support, training services, technical support, logistical services, and sales related administrative activities for all of its home market sales. Because we find that there were no 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: to a trading company warehouse in the United States.<sup>40</sup> Toyo Kohan reported that it performed the following selling functions for all U.S. sales: 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; commissions; guarantees; after-sales services; and freight and delivery.<sup>41</sup>

Accordingly, based on the selling function categories noted above, we find that Toyo Kohan performed sales support, training services, technical support, logistical services, and sales related administrative activities for all of its U.S. sales. Because we find that there were no differences

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<sup>33</sup> *Id.* The Provision of Sales Support can include: sales forecasting, strategic/economic planning, advertising, sales promotion, sales/marketing support, market research, and other related activities.

<sup>34</sup> *Id.* The Provision of Training Services can include: personnel training/exchange, distributor/dealer training, and other related activities.

<sup>35</sup> *Id.* The Provision of Technical Support can include: engineering services, technical assistance, and other related activities.

<sup>36</sup> *Id.* The Provision of Logistical Services can include: inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities.

<sup>37</sup> *Id.* The Performance of Sales Related Administrative Activities can include: order input/processing, rebate programs, warranty service, and other related activities.

<sup>38</sup> See Toyo Kohan's September 3, 2019 AQR at Exhibit A-9; see also Toyo Kohan's December 26, 2019 SQR at Exhibit SA1-3.

<sup>39</sup> *Id.*; see also Toyo Kohan's September 23, 2019 BQR at 16 and Exhibit B-7.

<sup>40</sup> *Id.*; see also Toyo Kohan's September 23, 2019 CQR at 14 and Exhibit C-6.

<sup>41</sup> See Toyo Kohan's September 3, 2019 AQR at 13 and Exhibit A-9; see also Toyo Kohan's December 26, 2019 SQR at Exhibit SA1-3.

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.<sup>42</sup> 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.

#### 4. Cost of Production Analysis

Pursuant to the amendment of section 773(b)(2)(A)(ii) 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.

##### a. Calculation of the COP

In accordance with section 773(b)(3) of the Act, we calculated Toyo Kohan's COP based on the sum of cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses.<sup>43</sup> We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of calculating an annual weighted-average cost.

We relied on the COP data submitted by Toyo Kohan, except as follows:<sup>44</sup>

- 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."

##### b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COP 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.

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<sup>42</sup> *Id.*

<sup>43</sup> See the "Test of Comparison Market Sales Prices" section for treatment of comparison market selling expenses.

<sup>44</sup> See Preliminary Calculation Memorandum.

c. 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 disregard none of the 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 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) the sales 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.

We found that, for certain products, more than 20 percent of Toyo Kohan's home market sales during the POR were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

5. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for Toyo Kohan based on delivered prices to unaffiliated customers. We made deductions to the starting price, where appropriate, 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 in accordance with section 773(a)(6)(B)(ii) of the Act. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, commissions, credit expenses, and other direct selling expenses, as appropriate) and added U.S. direct selling expenses (*i.e.*, commissions and credit 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.<sup>45</sup>

**V. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A 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.

**VI. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

7/14/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>45</sup> See 19 CFR 351.411(b).