



A-588-869
Administrative Review
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March 16, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2018-2019 Administrative Review of the Antidumping Duty Order
on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products
from Japan

I. SUMMARY

We analyzed the comments of the interested parties in the 2018-2019 administrative review of the antidumping duty (AD) order covering diffusion-annealed, nickel-plated flat-rolled steel products (nickel-plated steel products) from Japan. As a result of our analysis, we made certain changes to the *Preliminary Results*¹ margin calculations for the only producer/exporter subject to this review, Toyo Kohan Co., Ltd. (Toyo Kohan). We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

- Comment 1: Which Control Number (CONNUMs) to Use for Downstream Home Market Sales Made by Kohan Shoji Co., Ltd. (Kohan Shoji)
- Comment 2: Ministerial Error in the *Preliminary Results*

II. BACKGROUND

On July 21, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. On this same date, Commerce also tolled all deadlines in this

¹ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Results of the Antidumping Duty Administrative Review; 2018–2019*, 85 FR 44041 (July 21, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



administrative review by 60 days.² The period of review (POR) is May 1, 2018, through April 30, 2019.

We invited parties to comment on the *Preliminary Results*.³ On August 27, 2020, we received a case brief from the petitioner.^{4,5} On September 3, 2020, we received a rebuttal brief from Toyo Kohan.⁶ After analyzing these comments, we made changes to the weighted-average dumping margin calculated for Toyo Kohan from those presented in the *Preliminary Results*.

III. MARGIN CALCULATIONS

For Toyo Kohan, we calculated export price and normal value (NV) using the same methodology stated in the *Preliminary Results*, except as follows:

- For Kohan Shoji's further processed downstream home market sales, we revised the calculations to use the CONNUM of the product sold by Toyo Kohan to Kohan Shoji for matching purposes, rather than the CONNUM of the further processed sale. *See* Comment 1 below.
- We corrected a ministerial error in our treatment of Kohan Shoji's reported further processing revenue in the *Preliminary Results* margin calculations. *See* Comment 2 below.

IV. DISCUSSION OF ISSUES

Comment 1: Which CONNUMs to Use for Downstream Home Market Sales Made by Kohan Shoji

Petitioner's Case Brief

- Toyo Kohan sold foreign like product to its affiliate, Kohan Shoji, during the POR. In accordance with its established practice, Commerce determined that all sales to Kohan Shoji failed the arm's-length test and excluded them from the margin calculation.⁷
- Kohan Shoji reported that the majority of the products it obtained from Toyo Kohan were slit at an unaffiliated processor prior to resale, resulting in a change to the width matching

² *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

³ *Preliminary Results*, 85 FR at 44042.

⁴ *See* Petitioner's Letter, "Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Case Brief of Thomas Steel Strip Corporation," dated August 27, 2020 (Petitioner's Case Brief).

⁵ The petitioner in this proceeding is Thomas Steel Strip Corporation.

⁶ *See* Toyo Kohan's Rebuttal Brief, "Toyo Kohan's AD Rebuttal Brief: Diffusion-Annealed, Nickel-Plated Flat Rolled Steel Products from Japan," dated September 3, 2020 (Toyo Kohan's Rebuttal Brief).

⁷ *See* Petitioner's Case Brief at 2 (citing *Preliminary Results* PDM at 8; and 19 CFR 351.403(c)).

criterion.⁸ This results in a change to original CONNUM sold by Toyo Kohan to reflect the narrower product Kohan Shoji sold.⁹

- Kohan Shoji reported the processing charges for slitting as a direct selling expense. Thus, Toyo Kohan anticipated that, if its sales to Kohan Shoji failed the arm's-length test, Commerce would deduct the processing costs as a direct selling expense and make other adjustments to Kohan Shoji's downstream sales price, based on Commerce's practice in prior proceedings.¹⁰
- In this review, all home market sales to Kohan Shoji failed the arm's-length test.¹¹ However, Commerce did not implement the methodology it adopted in *2016-2017 Final Results*, but rather: (1) treated the processing costs as selling expenses and deducted them from the gross unit price of the downstream sale; and (2) failed to use the incoming CONNUM from Toyo Kohan for matching purposes.¹²
- The methodology in the *2016-2017 Final Results* for treating further processing costs as a direct selling expense was based on facts available.¹³ However, it would be more appropriate to have Toyo Kohan report the costs of the further-processed products sold by Kohan Shoji.¹⁴
- Further processing costs typically are not reported as a selling expense. In *Sheet and Strip from Germany*, Commerce refused to treat the respondent's "processing costs" as direct selling expenses, but instead included them in the cost of manufacture.¹⁵
- In *Hot-Rolled Steel from Japan*, where the respondent sent its steel coil to a trading company for slitting and cutting before shipment, Commerce found that "processing costs" are not a direct selling expense because they are not sales-related expenses.¹⁶
- Therefore, Commerce should follow its methodology from *2016-2017 Final Results* and: (1) use Toyo Kohan's reported CONNUM for matching purposes; and (2) treat slitting expenses as a direct selling expense.¹⁷

⁸ *Id.* at 3 and 7 (citing Kohan Shoji's Letter, "Kohan Shoji's 1st Supplemental B Questionnaire Response: Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan," dated March 19, 2020 at Exhibit SBKS-1).

⁹ *Id.* at 3-4 (citing Kohan Shoji's Letter, "Kohan Shoji's Section B Response: Diffusion-Annealed Nickel-Plated Flat Rolled Steel Products from Japan," dated September 23, 2019 (Kohan Shoji September 23, 2019 BQR) at 16).

¹⁰ *Id.* at 4 (citing *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 26955 (June 11, 2018) (*2016-2017 Preliminary Results*), and accompanying PDM at 10, unchanged in *Diffusion-Annealed, Nickel-Plated, Flat-Rolled Steel Products from Japan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64327 (December 14, 2018) (*2016-2017 Final Results*)).

¹¹ *Id.* at 7.

¹² *Id.* (citing *2016-2017 Preliminary Results* PDM at 10).

¹³ *Id.* at 6-8 (citing *2016-2017 Final Results*).

¹⁴ *Id.*

¹⁵ *Id.* at 4 (citing *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710, 30730 (June 8, 1999) (*Sheet and Strip from Germany*)).

¹⁶ *Id.* at 5 (citing *Certain Hot-Rolled Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 31025 (June 28, 2019) (*Hot-Rolled Steel from Japan*), and accompanying IDM at Comment 5; see also *Certain Hot-Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 53406 (August 12, 2016) (*Hot-Rolled Steel from Australia*), and accompanying IDM at Comment 5).

¹⁷ *Id.* at 9.

- If Commerce does not follow this methodology, then it must rely on partial adverse facts available (AFA) to address Toyo Kohan’s failure to report accurate costs for Kohan Shoji’s further processed sales.¹⁸

Toyo Kohan’s Rebuttal Brief

- Calculating a margin for downstream home market sales that do not pass the arm’s-length test is not a unique issue and Commerce’s standard programming language addresses this scenario.¹⁹
- In Commerce’s standard program, there are no CONNUM coding changes to make when downstream home market sales transactions are used in the calculation.²⁰
- Thus, Commerce’s margin calculation program applies the same overall methodology with respect to CONNUM matching for all home market sales, including both sales made by the respondent and the downstream home market affiliate.
- In *2016-2017 Final Results*, Commerce departed from the standard methodology and changed the reported CONNUMs for all sales made by Kohan Shoji, replacing the actual CONNUM sold (a slit coil), with that of the CONNUM of the unslit coil which had been purchased from Toyo Kohan.²¹
- This change meant that Commerce incorrectly assumed that Kohan Shoji sold the CONNUM of the unslit coil during a particular month of the POR.²² However, Kohan Shoji made no sales of this CONNUM during the entire POR.²³
- This methodology was not requested by any party and lacked sufficient explanation in *2016-2017 Final Results*. However, because the methodology did not change Toyo Kohan’s expected margin significantly, this issue was not previously raised.²⁴
- The petitioner’s argument to apply AFA to Toyo Kohan is unjustified and unlawful. AFA can be applied when a party does not cooperate to the best of its ability to respond to Commerce’s request of information.²⁵ For this review, in no instance did Toyo Kohan fail to supply any requested information or data concerning Kohan Shoji’s processing costs.²⁶
- Toyo Kohan reported Kohan Shoji’s processing costs as a direct selling expense for Kohan Shoji’s downstream sales in all segments of this proceeding and neither Commerce nor the petitioner previously questioned this approach.²⁷

¹⁸ *Id.* at 8.

¹⁹ See Toyo Kohan’s Rebuttal Brief at 2-3 (citing Memorandum, “Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: 2018 2019 Antidumping Duty Administrative Review, Calculations for the Preliminary Results,” dated July 14, 2020 at Attachment 1).

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *Id.* at 3-4.

²² *Id.* Because the specifics of the petitioner’s examples are business proprietary information, we cannot discuss them here.

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.* at 6 (citing section 776(a)(2) of the Tariff Act of 1930, as amended).

²⁶ *Id.*

²⁷ *Id.*

- Commerce has an explicit legal obligation to notify Toyo Kohan of a perceived deficiency and provide an opportunity to remedy it before it can lawfully apply AFA.²⁸ Because Commerce did not do inform Toyo Kohan of issues with Kohan Shoji's data, it cannot now apply AFA to Toyo Kohan regarding this issue.

Commerce's Position: We agree with the petitioner that we used the incorrect CONNUM for Kohan Shoji's further processed downstream sales in our margin calculations for the *Preliminary Results*. Therefore, for the final results, we calculated NV based on the product characteristics and corresponding CONNUM of the product produced by Toyo Kohan, rather than the further-processed product, consistent with Commerce's established practice.²⁹ We also deducted further processing costs as a direct selling expense for certain of Kohan Shoji's reported downstream sales to calculate the net home market prices.³⁰

The petitioner contends that it would be more appropriate for Commerce to treat Kohan Shoji's further processing costs as part of the cost of production (COP), consistent with *Hot-Rolled Steel from Japan* and *Hot Rolled Steel from Australia*. In *Hot-Rolled Steel from Japan* and *Hot-Rolled Steel from Australia*, we determined that it was appropriate to collapse the producers and affiliated resellers and treat them as a single entity, pursuant to 19 CFR 351.401(f).³¹ As a result of the collapsing decision in those cases, we determined that it was appropriate to treat all further processing performed by the respondents' affiliated resellers as part of the COP.³²

However, consistent with the investigation and subsequent segments of this proceeding, we did not collapse Kohan Shoji with Toyo Kohan in the instant case,³³ which distinguishes it from *Hot-Rolled Steel from Japan* and *Hot-Rolled Steel from Australia*. Because we did not collapse Kohan Shoji and Toyo Kohan, in the final results we based our comparisons for Kohan Shoji's further processed sales on the product characteristics and corresponding CONNUM of the subject merchandise as produced by Toyo Kohan, prior to the further processing. As a result, it would not be appropriate to consider the further processing incurred by Kohan Shoji to be part of

²⁸ *Id.* at 7 (citing *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1338 (Fed. Cir 2002)).

²⁹ See 2016-2017 *Preliminary Results*, 83 FR 26955, unchanged in 2016-2017 *Final Results*. See also *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017) (*CTL Plate from Germany*), and accompanying IDM at Comment 9.

³⁰ See Final Sales Calculation Memorandum at 1-2.

³¹ See *Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 56813 (November 14, 2018), and accompanying PDM at 7-9, unchanged in *Hot-Rolled Steel from Japan*; and *Hot Rolled Steel from Australia* at Comment 5.

³² The petitioner also cites *Sheet and Strip from Germany* as support for its position on this issue. While we agree that Commerce included the slitting costs incurred by a home market affiliated reseller as part of the COP in that case, we note that *Sheet and Strip from Germany* is more than 20 years old. See *Sheet and Strip from Germany*, 64 FR at 30730. Commerce's practice regarding this issue has changed over this time period, as demonstrated by *CTL Plate from Germany* and 2016-2017 *Final Results*.

³³ See Toyo Kohan's Letter, "Toyo Kohan's Section A Response: Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan," dated September 3, 2019 at 3 and Exhibit A-5. See also *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013), and accompanying PDM at 3, unchanged in *Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan*, 79 FR 19869 (April 10, 2014).

the COP of the subject merchandise used to calculate NV.³⁴ Consequently, in order to calculate the net home market prices for these sales using the product characteristics and CONNUM as produced by Toyo Kohan, we deducted the further processing costs as a direct selling expense in our calculations for the final results.

Comment 2: Ministerial Error in the Preliminary Results

Petitioner's Case Brief

- Kohan Shoji stated that it occasionally charged its customer for further processing the product as a separate revenue item, which is reported in the same manner as freight revenue.³⁵
- In the *Preliminary Results*, Commerce inadvertently deducted this further processing revenue, rather than adding it to gross unit price.³⁶ Therefore, Commerce should correct this ministerial error in the final results.

Toyo Kohan did not comment on this issue.

Commerce's Position: We agree with the petitioner that we made a ministerial error in our margin calculations for the *Preliminary Results* by deducting further processing revenue, rather than adding it to the gross unit price, for certain of Kohan Shoji's reported downstream sales. Therefore, we corrected this error in our final results margin calculations.³⁷

³⁴ In the deficiency comments the petitioner filed requesting that Kohan Shoji report a separate COP database, it cited *Hot-Rolled Steel from Japan* as support for this approach. See Petitioner's Letter, "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Deficiency Comments Concerning Toyo Kohan's A-D Responses," dated November 7, 2019 at 37. However, as noted above, the facts in the instant case are significantly different from those of *Hot-Rolled Steel from Japan*. As a result, we did not request that Toyo Kohan submit a separate COP database for Kohan Shoji in the supplemental questionnaire. Thus, we find no basis to apply AFA to Toyo Kohan for not providing information which Commerce did not request.

³⁵ See Petitioner's Case Brief at 11 (citing Kohan Shoji September 23, 2019 BQR at 37).

³⁶ *Id.*

³⁷ See Final Sales Calculation Memorandum at 2.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree



Disagree

3/16/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary

for Enforcement and Compliance