



A-475-834

Administrative Review

POR: 5/1/2018 – 4/30/2019

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July 16, 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  
Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from Italy. The period of review (POR) is May 1, 2018 through April 30, 2019. The review covers seven producers and/or exporters of the subject merchandise. Commerce selected two respondents for individual examination, NLMK Verona SpA (NVR) and Officine Tecnosider s.r.l. (OTS). We preliminarily determine that sales of the subject merchandise have been made at prices less than normal value (NV). We also preliminarily determine that Lyman Steel Company had no shipments during the POR.

## II. BACKGROUND

On May 25, 2017, Commerce published in the *Federal Register* an AD order on CTL plate from Italy.<sup>1</sup> Subsequently, on May 1, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on CTL plate from Italy for the period May 1, 2018 through April 30, 2019.<sup>2</sup>

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<sup>1</sup> See *Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders*, 82 FR 24096, 24098 (May 25, 2017).

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



Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in May 2019, Commerce received requests to conduct an administrative review of the AD order on CTL plate from Italy from certain of the petitioners in this case<sup>3</sup> for seven Italian producers/exporters. Commerce also received requests to conduct an administrative review from NVR and OTS. On July 15, 2019, based on these timely requests, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the AD order on CTL plate from Italy.<sup>4</sup>

In the *Initiation Notice*, Commerce indicated that, in the event that we limited the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.<sup>5</sup> In July 2019, we selected NVR and OTS as mandatory respondents.<sup>6</sup> Accordingly, we issued the AD questionnaire to these companies.

In August and September 2019, we received timely responses from NVR and OTS to section A (*i.e.*, the section relating to general information) of the questionnaire, and in September 2019, we received responses from these companies to the remaining sections of the questionnaire (*i.e.*, sections B, C, and D, the sections covering comparison market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively). From November 2019 through January 2020, we issued supplemental sections A through D questionnaires to NVR and OTS. We received responses to these supplemental questionnaires during the same time period.

On January 9, 2020, Commerce extended the preliminary results of this review by 119 days, until May 29, 2020. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 20, 2020.<sup>7</sup>

### **III. SCOPE OF THE ORDER**

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other nonmetallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or

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<sup>3</sup> These companies are Nucor Corporation and SSAB Enterprises, LLC.

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

<sup>5</sup> See *Initiation Notice*, 83 FR at 33739.

<sup>6</sup> See Memorandum, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: 2018-2019 Antidumping Duty Administrative Review: Respondent Selection,” dated July 31, 2019 (Respondent Selection Memo).

<sup>7</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.

nonrectangular cross-section where such non-rectangular 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, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the 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; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, 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 cut-to-length plate. All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,
- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,
- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;

- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

- (i) 270-300 HBW,
- (ii) 290-320 HBW, or
- (iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and (d)

Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties: (i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or (ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

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

#### IV. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

Commerce did not select the following companies for individual examination: O.M.E.P SpA, Ofar SpA, Sesa SpA, and Tim-Cop Doo Temerin. None of these companies: (1) were selected as a mandatory respondent; (2) were the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these companies remain non-selected respondents.

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

In this review, we have preliminarily calculated a weighted-average dumping margin for these companies using the calculated rates of the mandatory respondents, NVR and OTS, which are not zero, *de minimis*, or determined entirely on the basis of facts available.<sup>8</sup>

#### V. DISCUSSION OF THE METHODOLOGY

##### A. Date of Sale

Section 351.401(i) of Commerce's regulations 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.<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>

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<sup>8</sup> See section 735(c)(5)(A) of the Act.

<sup>9</sup> See 19 CFR 351.401(i); see also *Allied Tube & 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; see also *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.

NVR reported the date of sale in the home market as the earlier of the date of shipment from the factory or consignment agent (as applicable), or the date of invoice to the unaffiliated customer.<sup>11</sup> In addition, NVR reported the U.S. date of sale as the shipment date from the factory for direct sales or the earlier of the date of shipment or the invoice date for stock and consignment sales.<sup>12</sup> OTS reported the date of sale in the home market as the earlier of the date of shipment from the factory or the invoice date. OTS reported the U.S. date of sale as the shipment date from the factory for all U.S. sales.<sup>13</sup> We preliminarily followed Commerce’s long-standing practice of basing the date of sale for all of NVR’s and OTS’s home market and U.S. sales on the earlier of the invoice date or the shipment date.<sup>14</sup>

## B. Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether NVR’s and OTS’s sales of CTL plate from Italy to the United States were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP) to the NV, as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this memorandum.

## C. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EP or CEP (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.<sup>15</sup>

In numerous AD investigations and reviews, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in

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<sup>11</sup> See NVR’s September 30, 2019, Sections B and C Questionnaire Response (NVR’s September 30, 2019 BCQR) at B-31 – B-33 and NVR’s December 23, 2019, Supplemental Sections A and B Questionnaire Response (NVR’s December 23, 2019 SABQR) at 2-6.

<sup>12</sup> See NVR’s September 30, 2019 BCQR at C-28 – C-30; NVR’s December 9, 2019, Supplemental Section C Questionnaire Response at 4-6; and NVR’s December 23, 2019 SABQR at 3.

<sup>13</sup> See OTS’s September 30, 2019, Sections B and C Questionnaire Response (OTS’s September 30, 2019 BCQR) at B-22 and C-22.

<sup>14</sup> See *e.g.*, *Shrimp from Thailand* IDM at Comment 10, and *Steel Beams from Germany* IDM at Comment 2.

<sup>15</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) (“{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).



a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>16</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 average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of 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 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 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. 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.

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<sup>16</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).

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.

#### D. Results of the Differential Pricing Analysis

##### NVR

For NVR, based on the results of the differential pricing analysis, Commerce preliminarily finds that 34.93 percent of the value of U.S. sales pass the Cohen’s *d* test,<sup>17</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 average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis*

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<sup>17</sup> See Memorandum, “Calculations for NLMK Verona SpA (NVR) for the Preliminary Results,” dated concurrently with this memorandum (NVR Preliminary Calculation Memo).

threshold when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test.<sup>18</sup> Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for NVR.

## OTS

For OTS, based on the results of the differential pricing analysis, Commerce preliminarily finds that 76.96 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 average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales.<sup>20</sup> Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for OTS.

### E. Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR to be foreign like products for purposes of determining NV for the merchandise sold in the United States. Pursuant to 19 CFR 351.414(f), we compared the respondents' U.S. sales of CTL plate to their sales of CTL plate made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales to sales of the most similar foreign-like product. In making the product comparisons, we matched foreign like products based on the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are as follows: quality, minimum specified carbon content, minimum specified chromium content, minimum specified nickel content, minimum specified tungsten content, minimum specified cobalt content, minimum specified molybdenum content, minimum specified vanadium content, minimum specified yield strength, nominal thickness, heat treatment, nominal width, form, whether painted, the existence of patterns in relief, and descaling.

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<sup>18</sup> *Id.*

<sup>19</sup> See Memorandum, "Calculations for Officine Tecnosider S.R.L. (OTS) for the Preliminary Results," dated concurrently with this memorandum.

<sup>20</sup> *Id.*

#### F. Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962

In March 2018, the President exercised his authority under section 232 of the Trade Expansion Act of 1962, as amended,<sup>21</sup> and issued Proclamation 9705 that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that Commerce assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties . . . .” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.”

The Court of Appeals for the Federal Circuit (CAFC) has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce’s determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.<sup>22</sup> Having acknowledged Commerce’s analysis of the legislative history to the Antidumping Act of 1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”<sup>23</sup>

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”<sup>24</sup> In comparing section 201 duties with antidumping duties, the CAFC found that: (1) “[l]ike antidumping duties, [section] 201 duties are remedial duties that provide relief from the adverse effects of imports;” (2) “[n]ormal customs duties, in contrast, have no remedial purpose;” (3) “antidumping and [section] 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;” and (4) “[section] 201 duties are like antidumping duties . . . because they provide only temporary relief from the injurious effects of imports,” whereas normal customs duties “have no termination provision, and are permanent unless modified by Congress.”<sup>25</sup> In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “[t]o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”<sup>26</sup>

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<sup>21</sup> See 19 U.S.C. § 1862.

<sup>22</sup> See *Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

<sup>23</sup> *Id.*, 495 F. 3d 1355 at 1361.

<sup>24</sup> *Id.*, 495 F. 3d 1355 at 1362.

<sup>25</sup> *Id.*, 495 F. 3d 1355 at 1362-63.

<sup>26</sup> *Id.*, 495 F. 3d 1355 at 1365.

Section 232 duties are not akin to antidumping or 201 duties. Proclamation 9705 states that it “is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the national security . . . .”<sup>27</sup> The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the national security of imports of the article.”<sup>28</sup> The particular national security risk identified in Proclamation 9705 is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs—a situation that is fundamentally inconsistent with the safety and security of the American people.”<sup>29</sup> In other words, section 232 duties are focused on addressing imports that threaten to impair national security, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Furthermore, the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.<sup>30</sup> The Annex to Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “[a]ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.” Notably, there is no express exception in the HTSUS revision in the Annex. Had the President intended that AD duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

For the reasons noted, and consistent with our treatment of 232 duties in *CWP Turkey 17-18*,<sup>31</sup> we have determined that section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act — and thereby as “U.S. Customs duties,” which are deducted from U.S. price.

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<sup>27</sup> See Proclamation 9705, 83 FR at 11627 (emphasis added); see also Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security”); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); and Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

<sup>28</sup> See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); see also section 232(a) of the Trade Expansion Act of 1962 (explaining that “[n]o action shall be taken . . . to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

<sup>29</sup> See Proclamation 9705, 83 FR at 11627.

<sup>30</sup> See Proclamation 9705, 83 FR at 11627; see also Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; and Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

<sup>31</sup> See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying PDM at 11-13, unchanged in *Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP Turkey 17-18*) and accompanying IDM at Comment 3.

### G. Export Price/Constructed Export Price

For all sales made by NVR, we used the CEP methodology, in accordance with section 772(b) of the Act, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer.

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

#### NVR

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for billing adjustments, where appropriate, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, international freight, marine insurance, U.S. brokerage and handling expenses and U.S. customs duties (including harbor maintenance fees), U.S. inland freight from port to warehouse, U.S. inland freight to the customer, U.S. loading and unloading fees, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by NVR and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

#### OTS

We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses (*i.e.*, foreign inland freight and foreign brokerage and handling expenses), in accordance with section 772(c)(2)(A) of the Act.

### H. 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 NVR's and OTS's respective home market sales of the foreign like product to the

volume of their 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 each of the respondents 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 NVR and OTS, in accordance with section 773(a)(1)(B)(i) of the Act.

## 2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>32</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>33</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>34</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>35</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>36</sup>

In this administrative review, we obtained information from NVR and OTS regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of

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<sup>32</sup> See 19 CFR 351.412(c)(2).

<sup>33</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>34</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>35</sup> See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>36</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

distribution.<sup>37</sup> Our LOT findings are summarized below. Selling activities can be generally grouped into five selling function categories for analysis: (1) provision of sales support;<sup>38</sup> (2) provision of training services;<sup>39</sup> (3) provision of technical support;<sup>40</sup> (4) provision of logistical services;<sup>41</sup> and (5) performance of sales-related administrative activities.<sup>42</sup>

## NVR

In the home market, NVR reported that it made sales through two channels of distribution: (1) direct sales of CTL plate to unaffiliated customers (*i.e.*, HM channel 1); and (2) consignment sales to unaffiliated customers (*i.e.*, HM channel 2).<sup>43</sup> NVR reported that sales made in these channels were made at the same LOT.<sup>44</sup> According to NVR, it performed the following selling functions at similar intensities for sales to all home market customers: provision of sales support; provision of training services; provision of technical support; provision of logistical services; and performance of sales related administrative activities.<sup>45</sup>

As noted above, selling activities can be generally grouped into five selling function categories. Based on these selling function categories noted above, we find that NVR performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its home market sales. Because we find that there were only minimal differences in selling activities performed by NVR to sell to its home market customers, we determine that there is one LOT in the home market for NVR.

With respect to the U.S. market, NVR reported that it made CEP sales to its affiliated U.S. reseller, North America Plate (NAP), in two channels of distribution: 1) made-to-order direct shipments to NAP's customers (US Channel 1); and 2) shipments to NAP, either for its own inventory or for resale on a consignment basis (US Channel 2).<sup>46</sup> NVR reported that sales made

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<sup>37</sup> See NVR's August 29, 2018, Section A Questionnaire Response (NVR's August 29, 2018 AQR) at 16-30; NVR's February 26, 2019, Supplemental Sections A and B Questionnaire Response (NVR's February 26, 2019 SABQR) at 4-8 and Exhibit SA-3; and OTS's August 21, 2018, Section A Questionnaire Response (OTS's August 21, 2018 AQR) at A-15 and Exhibit A-7; and OTS's November 21, 2018, Supplemental Sections A-C Response (OTS's November 21, 2018 SABQR) at 2-3 and Exhibit SA-2.

<sup>38</sup> The provision of sales support may include sales forecasting strategic/economic Planning, advertising, sales promotion, sales/marketing support, market research, and other related activities. See *Acetone from Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 49999 (September 24, 2019), and accompanying PDM at 17.

<sup>39</sup> The provision of training services may include personnel training/exchange, distributor/dealer training, and other related activities. *Id.*

<sup>40</sup> The provision of technical support may include engineering services, technical assistance, and other related activities. *Id.*

<sup>41</sup> The provision of logistical services may include inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities. *Id.*

<sup>42</sup> The performance of sales-related administrative activities may include order input/processing, rebate programs, warranty service, and other related activities. *Id.*

<sup>43</sup> See NVR's September 4, 2019, Section A Questionnaire Response (NVR's September 4, 2019 AQR) at A-19 – A-20.

<sup>44</sup> See NVR's September 4, 2019 AQR at A-18; NVR's September 30, 2019 BCQR at B-43.

<sup>45</sup> See NVR's September 4, 2019 AQR at Exhibit A-13.

<sup>46</sup> See NVR's September 4, 2019 AQR at A-19 – A-21 and Exhibit A-13.



in these channels were made at the same LOT.<sup>47</sup> NVR reported that it performed the same selling functions in Italy for U.S. sales as it did for home market sales and stated that it is not claiming an LOT adjustment in the instant review.<sup>48</sup> Accordingly, based on the selling function categories noted above, we find that NVR performed the following selling functions at similar intensities for sales to all U.S. customers: provision of sales support; provision of training services; provision of technical support; provision of logistical services; and performance of sales related administrative activities. As a result, we 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 NVR performed for its U.S. and home market customers do not differ significantly. Therefore, we preliminarily determine that sales to the United States and home market during the POR were made at the same LOT and, as a result, a CEP offset is not warranted.<sup>49</sup>

### OTS

In the home market, OTS reported that it made sales through three channels of distribution (*i.e.*, direct sales to trading companies, stockholders/service centers, and end users).<sup>50</sup> According to OTS, it performed the following selling functions for sales to all home market customers: strategic/economic planning; sales forecasting; sales force development; market research; solicitation of orders; provision of technical advice; negotiation of prices; operation of production facilities and customer liaison; processing purchase orders; invoicing; arranging for freight and delivery; accounts receivable management; advertising; inventory maintenance; and packing.<sup>51</sup>

As noted above, selling activities can be generally grouped into five selling function categories. Based on these selling function categories noted above, we find that OTS performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its home market sales. Because we find that there were no differences in selling activities performed by OTS to sell to its home market customers, we determine that there is one LOT in the home market for OTS.

With respect to the U.S. market, OTS reported that it made sales through one channel of distribution (*i.e.*, direct sales to unaffiliated U.S. trading companies).<sup>52</sup> OTS reported that it performed the following selling functions in Italy for sales to all U.S. customers: strategic/economic planning; sales forecasting; sales force development; market research; solicitation of orders; provision of technical advice; negotiation of prices; operation of production facilities and customer liaison; processing purchase orders; invoicing; arranging for

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<sup>47</sup> See NVR's September 4, 2019 AQR at A-18; and NVR's September 30, 2019 BCQR at C-38.

<sup>48</sup> See NVR's September 4, 2019 AQR at A-18 and Exhibit A-13.

<sup>49</sup> Further, we note that NVR did not claim a CEP offset. See NVR's December 23, 2019 Supplemental Section AB Questionnaire Response at 1.

<sup>50</sup> See OTS's August 22, 2019 AQR at A-12; and OTS's September 30, 2019 BCQR at B-20.

<sup>51</sup> See OTS's August 22, 2019 AQR at A-7; and OTS's December 3, 2019, Supplemental Sections A-C Questionnaire Response (OTS's December 3, 2019 SABCQR) at Exhibit SA-4.

<sup>52</sup> See OTS's August 22, 2019 AQR at A-12; and OTS's September 30, 2019 BCQR at C-21.

freight and delivery; accounts receivable management; advertising; and packing.<sup>53</sup> Accordingly, based on the selling function categories noted above, we find that OTS performed sales support, training services, technical support, logistical services, and sales-related administrative activities for all of its reported U.S. sales. Because OTS performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we 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 OTS performed for its U.S. and home market customers are virtually identical. Therefore, we preliminarily determine that 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.

### I. Cost of Production Analysis

Pursuant to section 773(b)(2)(A)(ii) of the Act, we request CV and COP information from respondent companies in all AD proceedings.<sup>54</sup> Accordingly, we requested this information from Industeel and NLMK Belgium in this review.

We examined NVR's and OTS's cost data. Based on our review of the quarterly average prices of the three largest material inputs, we determined that our quarterly cost methodology is not warranted for either respondent. Therefore, we applied our standard methodology of using annual average costs based on NVR's and OTS's reported data.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.<sup>55</sup> As noted above, we examined NVR's and OTS's cost data and preliminarily determine that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual average costs based on the reported data, as adjusted below.

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

- We revised OTS' financial expense rate according to our practice.<sup>56</sup>

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

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product in order to

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<sup>53</sup> See OTS's August 22, 2019 AQR at Exhibit A-7; and OTS's December 3, 2019 SABCQR at Exhibit SA-4.

<sup>54</sup> 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).

<sup>55</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

<sup>56</sup> See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Final Affirmative Determination of the Antidumping Duty Investigation*, 79 FR 19868 (April 10, 2014), and accompanying Issues and Decision Memorandum at Issue 3; and OTS Preliminary Calculation Memo.

determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of a respondent's home market sales of a given product are at prices less than the COP, we do not disregard any 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 accordance with section 773(b)(2)(B) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, the sales 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 NVR's and OTS's home market sales 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 disregarded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

### J. Calculation of Normal Value Based on Comparison Market Prices

#### NVR

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and rebates, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

For comparisons to CEP sales, we deducted home market credit expenses and commissions, pursuant to 773(a)(6)(C) of the Act.

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>57</sup> We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

## OTS

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for early payment discounts, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

For comparisons to EP sales, 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 and credit expenses) and added U.S. direct selling expenses (*i.e.*, 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 one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limited the amount of such allowance 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>58</sup> 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.

## **VI. 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.

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<sup>57</sup> See 19 CFR 351.411(b).

<sup>58</sup> See 19 CFR 351.411(b).

## VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



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Agree



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Disagree

7/16/2020

X



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Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance