



A-580-894
Investigation
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DATE: January 29, 2018

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

FROM: James P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Certain Tapered Roller
Bearings from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain tapered roller bearings (TRBs) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On June 28, 2017, Commerce received an antidumping duty (AD) petition covering imports of TRBs from Korea,¹ which was filed in proper form on behalf of the Timken Company (the petitioner). Commerce initiated this investigation on July 18, 2017.²

In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, in July 2017, Commerce released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding

¹ See the Petition for the Imposition of Antidumping Duties on Imports of Tapered Roller Bearings from the Republic of Korea, dated June 28, 2017 (the Petition).

² See *Certain Tapered Roller Bearings from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 34477 (July 25, 2017) (*Initiation Notice*).

³ See *Initiation Notice*, 82 FR at 34480.



the data and respondent selection.⁴ In July 2017, the petitioner submitted comments.⁵ In August 2017, Commerce limited the number of respondents selected for individual examination to the two producers or exporters accounting for the largest volume of the subject merchandise. These two respondents are, in alphabetical order, Bearing Art Corporation⁶ and Schaeffler Korea Corporation (Schaeffler) (collectively, the respondents),⁷ and Commerce issued the AD questionnaire to them the next day.⁸

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of TRBs to be reported in response to Commerce's AD questionnaire.⁹ In August 2017, Bearing Art requested that Commerce clarify that "Generation 1" wheel hub units are not covered by the scope.¹⁰ Also in August 2017, the petitioner and both respondents commented on the salient physical characteristics of the TRBs under consideration, as well as how Commerce should use these characteristics to make its product comparisons.¹¹ After evaluating the submissions related to product characteristics, we solicited comments on product matching using a "sum of the deviations" methodology,¹² and we received additional submissions from the petitioner and the respondents in the same month.¹³

⁴ See Commerce Letter re: Antidumping Duty Investigation of Certain Tapered Roller Bearings from the Republic of Korea: Customs Data for Use in Respondent Selection, dated July 24, 2017.

⁵ See Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea- Petitioner's Respondent Selection Comments," dated July 31, 2017.

⁶ Bearing Art Corporation reported that it sold TRBs through two affiliated companies, Iljin Bearing Corporation (Iljin Bearing), and Iljin Global Corporation (Iljin Global), one which also produces in-scope TRB components. For purposes of this preliminary determination, we are collapsing these companies. For further discussion, see the "Affiliation and Collapsing" section of this memorandum. The collapsed entity is hereinafter referred to as "Bearing Art."

⁷ See Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Tapered Roller Bearings from Korea," dated August 9, 2017.

⁸ See Commerce Letter re: Antidumping Duty Questionnaire, dated August 10, 2017.

⁹ See *Initiation Notice*, 82 FR at 34477-78.

¹⁰ See Bearing Art's Letter, "Tapered Roller Bearings from Korea: Comments on Product Scope," dated August 7, 2017 (Bearing Art Scope Comments).

¹¹ See Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea- Comments on Product Matching Characteristics," dated August 1, 2017 (Petitioner First Model Matching Comments); Bearing Art's Letter, "Tapered Roller Bearings from Korea: Comments on Product Characteristics for AD Questionnaires," dated August 1, 2017 (Bearing Art First Model Matching Comments); Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Rebuttal Comments on Product Characteristics," dated August 8, 2017 (Petitioner Second Model Matching Comments); Schaeffler's Letter, "Rebuttal Comments on Product Characteristics: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894)," dated August 8, 2017 (Schaeffler First Model Matching Comments); and Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Comments Addressing Certain Proposals Included in Schaeffler's Rebuttal Comments on Product Characteristics," dated August 15, 2017 (Petitioner Third Model Matching Comments).

¹² See Commerce Letter re: Product Characteristics for the Less-Than-Fair-Value Investigation of Certain Tapered Roller Bearings from the Republic of Korea, dated August 18, 2017 (Request for Comments).

¹³ See Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Comments on Commerce's Proposed Product Characteristics," dated August 22, 2017 (Petitioner Fourth Model Matching Comments); Bearing Art's Letter, "Tapered Roller Bearings from Korea: Additional Comments on Product Characteristics for AD Questionnaires," dated August 22, 2017 (Bearing Art Second Model Matching Comments);

On August 18, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of TRBs from Korea.¹⁴

In September and October 2017, the respondents submitted timely responses to sections A-D of Commerce's AD questionnaire, *i.e.*, the sections relating to general information, home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.¹⁵ From October 2017 through December 2017, we issued supplemental questionnaires to the respondents and received responses to these supplemental questionnaires from October 2017 through January 2018.^{16,17}

In October 2017, the petitioner alleged that a particular market situation (PMS) existed with respect to the respondents' reported POI costs of production,¹⁸ and in November 2017 we received comments on this allegation from the respondents¹⁹ and surrebuttal comments from the petitioner.²⁰ In December 2017, we accepted the allegation and the factual information provided

and Schaeffler's Letter, "Comments on Product Characteristics: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894)," dated August 22, 2017 (Schaeffler Second Model Matching Comments).

¹⁴ See *Tapered Roller Bearings from Korea: Determination*, 82 FR 39455 (August 18, 2017) (*ITC Preliminary Determination*).

¹⁵ See Bearing Art's September 12, 2017 Section A Questionnaire Response (Bearing Art September 12, 2017 AQR); Bearing Art's October 2, 2017 Sections B-C Response (Bearing Art October 2, 2017 BCQR); and Bearing Art's October 10, 2017, Section D Response; Schaeffler's September 13, 2017 Section A Questionnaire Response (Schaeffler September 13, 2017 AQR); Schaeffler's October 2, 2017 Section B and C Questionnaire Response (Schaeffler October 2, 2017 BCQR) and Schaeffler's October 10, 2017 Section D Questionnaire Response.

¹⁶ See Bearing Art's November 6, 2017 Supplemental Section A Questionnaire Response (Bearing Art November 6, 2017 SAQR); Bearing Art's November 21, 2017 Supplemental Section B Questionnaire Response; Bearing Art's December 1, 2017 Supplemental Section D Questionnaire Response; Bearing Art's December 26, 2018 Third-Country Produced Merchandise Response; Bearing Art's January 5, 2018 Supplemental Section C Questionnaire Response; and Bearing Art's January 5, 2018 2nd Supplemental Section D Questionnaire Response (Bearing Art January 5, 2017 SDQR).

¹⁷ See Schaeffler's October 26, 2017 Supplemental Section A Questionnaire Response (Schaeffler October 26, 2017 SAQR); Schaeffler's December 8, 2017 Supplemental Sections B and C Questionnaire Response; Schaeffler's December 18, 2017 2nd Supplemental Section B Questionnaire Response, refiled with Commerce's permission on January 18, 2018; Schaeffler's December 29, 2017 2nd Supplemental Sections A and C Questionnaire Response (Schaeffler December 29, 2017 SACQR); Schaeffler's December 8, 2017 Supplemental Section D Questionnaire Response; and Schaeffler's January 2, 2018 Third-Country Produced Merchandise Response.

¹⁸ See Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Preliminary Particular Market Situation Comments and Section D RFI," dated October 24, 2017 (PMS Allegation).

¹⁹ See Bearing Art's Letter, "Tapered Roller Bearings from Korea—Rebuttal to Petitioner's October 24, 2017 Particular Market Situation Allegation," dated November 3, 2017 (Bearing Art PMS Comments); and Schaeffler's Letter, "Response to Petitioner's Preliminary Particular Market Situation Comments: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894)," dated November 3, 2017 (Schaeffler PMS Comments).

²⁰ See Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Reply to Schaeffler's Particular Market Situation Rejection Request," dated November 6, 2017 (Petitioner Reply to Schaeffler); *see also* Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea—Petitioner's Reply to Bearing Art's Particular Market Situation Comments," dated November 8, 2017 (Petitioner Reply to Bearing Art).

in connection with it.²¹ Thereafter, the petitioner supplemented its PMS allegation,²² and we established a schedule for parties to provide rebuttal factual information, in accordance with 19 CFR 351.301(c)(2)(v).²³ We received additional rebuttal information in January 2018.²⁴

In November 2017, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 75 days after the date of initiation.²⁵ Based on the request, Commerce published a postponement of the preliminary determination until no later than January 24, 2018.²⁶

In January 2018, the petitioner and the respondents requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.²⁷ On January 23, 2018, Commerce exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018.²⁸ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary determination of this investigation is January 29, 2018, and the revised deadline for the final determination of this investigation is now April 16, 2018.

We are conducting this investigation in accordance with section 733(b) of the Act.

²¹ See Letter re: Less-Than-Fair-Value Investigation of Certain Tapered Roller Bearings from Korea: Allegation of a Particular Market Situation, dated December 8, 2017.

²² See Petitioner's Letter, "Certain Tapered Roller Bearings from Korea: Petitioner's Pre-Preliminary Determination Comments," dated December 15, 2017 (Petitioner Pre-Prelim Comments).

²³ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Tapered Roller Bearings from Korea: Schedule for Submitting New Factual Information pertaining to the Allegation of a Particular Market Situation," dated December 21, 2017.

²⁴ See Bearing Art's Letter, "Certain Tapered Roller Bearings from Korea: Rebuttal to Petitioner's Second Particular Market Situation Allegation," dated January 5, 2017 (Bearing Art Second PMS Comments); and Schaeffler's Letter, "Submission of Factual Information to Rebut, Clarify, or Correct Petitioner's Pre-Preliminary Determination Particular Market Situation Submission – Less Than Fair Value Investigation of Tapered Roller Bearings from the Republic of Korea," dated January 5, 2017 (Schaeffler Second PMS Comments).

²⁵ See Petitioner's Letter, "Certain Tapered Roller Bearings from the Republic of Korea – Petitioners' Request for Extension of the Preliminary Determination," dated November 8, 2017.

²⁶ See *Certain Tapered Roller Bearings from the Republic of Korea: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigations*, 82 FR 55351 (November 21, 2017).

²⁷ See Petitioner's Letter, "Certain Tapered Roller Bearings from Korea: Petitioner's Request to Extend Final Determination," dated January 12, 2018; Bearing Art's Letter, "Certain Tapered Roller Bearings from Korea: Request to Postpone Final Determination," dated January 10, 2018; and Schaeffler's Letter, "Request to Extend the Final Determination: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894)," dated January 2, 2018.

²⁸ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2017.²⁹

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³⁰ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope, and we stated that all such comments must be filed within 20 calendar days of publication of the *Initiation Notice*.³¹ On August 7, 2017, Bearing Art submitted comments requesting that Commerce clarify the scope of this investigation to confirm that "Generation 1" wheel hub bearings are excluded from the scope of the investigation.³² In October 2017, we requested that Bearing Art provide additional information related to these products, and Bearing Art submitted this information in November 2017. The petitioner did not comment on this issue.

As noted in the accompanying *Federal Register* notice, at Appendix I, the scope of this investigation excludes TRB wheel hub units, so long as these units are already assembled.³³ Because Bearing Art reported that its "Generation 1" wheel hub units are "finished/fully-assembled wheel hub units,"³⁴ we preliminarily find that they are not subject to this investigation. Further, because the existing scope exclusion language is clear, we also preliminarily find no reason to amend or modify the scope of the investigation.

The petitioner argued that Commerce should not use certain products assembled in Korea from finished TRB parts produced in a third country when calculating NV and COP.³⁵ Because the scope of this investigation includes "finished cup and cone assemblies," we preliminarily find that these TRBs are covered by the scope of this investigation. Accordingly, we have included sales containing inputs from third countries, as well as the costs of those inputs, when computing NV and COP for purposes of this preliminary determination. We invite interested parties to comment in their case briefs on this issue for purposes of the final determination.

²⁹ See 19 CFR 351.204(b)(1).

³⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³¹ See *Initiation Notice*, 82 FR at 34277-78.

³² See Bearing Art Scope Comments.

³³ Specifically, the scope includes "tapered roller bearings that ... that may be used in wheel hub units, ... but entered separately" and it excludes "tapered roller bearing wheel hub units, rail bearings, and other housed tapered roller bearings (flange, take up cartridges, and hanger units incorporating tapered rollers)."

³⁴ See Bearing Art November 6, 2017 SAQR at SA-18.

³⁵ See Petitioner Pre-Prelim Comments at 27.

V. AFFILIATION AND COLLAPSING

Legal Framework

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered “affiliated” or “affiliated persons” as: two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.³⁶ Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) notes that control may be found to exist within corporate groupings.³⁷ Commerce’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.³⁸

Section 351.401(f)(1) of Commerce’s regulations states that Commerce will treat affiliated producers as a single entity where they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production. Section 351.401(f)(2) of Commerce’s regulations further states that, in identifying a significant potential for manipulation, Commerce may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

While 19 CFR 351.401(f) refers to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has applied these criteria in determining whether non-producers likewise should be collapsed.³⁹

³⁶ See section 771(33)(F) of the Act.

³⁷ See SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994) (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

³⁸ See also *Preamble*, 62 FR at 27298.

³⁹ See, e.g., *Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), unchanged in *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 5. The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a “reasonable interpretation of the antidumping duty statute.” See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1338 (CIT 2003).

Affiliation and Single Entity Analysis

As noted in the “Background” section above, in September 2017, Bearing Art submitted a response to section A of the questionnaire.⁴⁰ In this submission, Bearing Art stated that it sold in-scope merchandise in Korea and to the United States during the POI through two companies which are members of the same corporate grouping. These companies are Iljin Global and Iljin Bearing. Bearing Art also stated that Iljin Global is also a producer of finished TRB components, which could be sold as in-scope products.⁴¹ At our request, in November 2017 Bearing Art provided additional information regarding its relationship with both entities, including the degree of their affiliation and the extent to which they interacted with each other.⁴² In December 2017, Commerce requested that Bearing Art report the cost of production for any inputs purchased from Iljin Global, and Bearing Art did so in January 2018.⁴³

We analyzed the information on the record and preliminarily determine that Bearing Art Corporation, Iljin Bearing, and Iljin Global are affiliated, pursuant to section 771(33)(F) of the Act.⁴⁴ In addition, based on the evidence provided in Bearing Art’s questionnaire responses, we also preliminarily determine that these three companies should be collapsed and treated as a single entity in this investigation. This finding is based on the determination that Bearing Art Corporation and Iljin Global have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure their manufacturing priorities, and that the level of common ownership, degree of overlapping management, and extent to which their operations are intertwined present a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f).⁴⁵

Finally, Bearing Art Corporation reported that it sold TRBs to certain U.S. and home market customers which are affiliated with one of the owners of Iljin Bearing.⁴⁶ For purposes of this preliminary determination, we have treated neither this owner of Iljin Bearing nor these customers as affiliated with the collapsed entity, Bearing Art. However, we are continuing to evaluate this issue and invite interested parties to comment on it in their case briefs.

VI. PMS ALLEGATION

In October 2017, the petitioner made a PMS allegation, in which it argued that the respondents’ costs for producing TRBs in Korea are distorted due to the following four market conditions: 1) below-market prices for input steel in Korea due to dumped Chinese steel imports; 2) Korean government subsidies to domestic steel producers; 3) Korean government subsidies in the

⁴⁰ See Bearing Art September 12, 2017 AQR.

⁴¹ Bearing Art reported that Iljin Global did not sell these finished components to unaffiliated parties during the POI. See Bearing Art November 6, 2017 SAQR.

⁴² See Bearing Art November 6, 2017 SAQR.

⁴³ See Bearing Art January 5, 2017 SDQR.

⁴⁴ See Memorandum, “Preliminary Affiliation and Collapsing for Bearing Art,” dated January 29, 2018 (Collapsing Memo).

⁴⁵ For a discussion of the facts on which these conclusions are based, see the Collapsing Memo.

⁴⁶ See Bearing Art September 12, 2017 AQR at A-14 – A-16; and Bearing Art October 2, 2017 BCQR at B-29 and C-23.

electricity market; and 4) a strategic alliance between Bearing Art and the Hyundai Group (Hyundai).⁴⁷ In December 2017, the petitioner submitted additional factual information to support its PMS allegation.⁴⁸ Based on our analysis of the information provided, we preliminarily find that the petitioner’s PMS allegation and supporting factual information are not sufficient to find that a PMS exists.

Legal Framework and Recent Administrative Determination

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) added language to sections 771(15) and 773(e) of the Act that expressly incorporated the concept of PMS into the statutory provisions concerning ordinary course of trade and CV, respectively. The TPEA further amended section 773(e) of the Act to expressly permit Commerce to use an alternative calculation methodology for normal value when a PMS exists such that the cost of materials does not “accurately reflect the cost of production in the ordinary course of trade.”⁴⁹

Section 771(15) of the Act now states, in relevant part:

The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(C) Situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price.

Section 773(e) of the Act now states, in relevant part:

For purposes of paragraph (1), if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.

The statute does not describe what circumstances might constitute a “particular market situation.” On April 17, 2017, Commerce published the final results in *OCTG from Korea*⁵⁰ determining that a PMS existed in Korea which distorted the cost of production for oil country tubular goods (OCTG) manufacturers. The *OCTG from Korea* PMS finding relied on the totality of the market conditions affecting OCTG production. Specifically, Commerce relied on the

⁴⁷ See PMS Allegation. We also received comments on this submission from both respondents, as well as replies from the petitioner. See Bearing Art PMS Comments, Schaeffler PMS Comments, Petitioner Reply to Bearing Art, and Petitioner Reply to Schaeffler.

⁴⁸ See Petitioner Pre-Prelim Comments. We also received comments on this submission from both respondents. See Bearing Art Second PMS Comments and Schaeffler Second PMS Comments.

⁴⁹ See section 773(e) of the Act.

⁵⁰ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea*), and accompanying IDM at Comment 3.

following four factors: 1) a flood into the Korean market of comparatively low-priced imports of the primary raw material input, hot-rolled coil, from China; 2) subsidization of hot-rolled coil by the Korean government; 3) strategic alliances between certain Korean hot-rolled coil producers and OCTG producers which may have affected prices; and 4) Korean government electricity subsidies. Commerce determined that “each of these allegations are contributing factors that, taken together, lead Commerce to conclude a particular market situation exists in Korea.”⁵¹

PMS Allegation

The petitioner argued that the facts in this investigation are analogous to those in *OCTG from Korea*, given that, during the POI, Korea experienced the same below-market priced imports of Chinese steel, the Korean government subsidized domestic steel producers and electricity providers, and Bearing Art had a strategic alliance with Hyundai.⁵² The petitioner alleged that, as a result, Commerce could not use the respondents’ production costs as reported. The basis for the petitioner’s allegation, as well as the respondents’ objections to it, are set forth below.

The Petitioner’s Arguments

With respect to imports of steel from China, the petitioner argued that overcapacity in steel production in China resulted in the massive dumping of steel products in Korea, depressing the cost of Korean steel products (including steel bar and tube, the most significant inputs into TRBs).⁵³ The data the petitioner provided to demonstrate this point includes: 1) import data for “other” steel bar and tube from four HTS categories which showed an increase in Chinese imports and a downward trend in Korean (and global) prices;⁵⁴ and 2) a 2016 statement from Korea’s largest steel producer blaming its first loss on a flood of cheap Chinese steel.⁵⁵

With respect to Korean government subsidies, the petitioner claimed that the Korean government heavily subsidizes Korean steel producers, further depressing steel prices.⁵⁶ As evidence for this assertion, the petitioner cited multiple U.S. countervailing duty (CVD) orders on Korean steel products.⁵⁷ In addition, the petitioner noted that Commerce previously found that government subsidies to a government-controlled electricity supplier known as “KEPCO” distorted its electricity costs,⁵⁸ a determination consistent with the U.S. Energy Information Administration’s finding that found KEPCO’s pricing for low-income and industrial consumers has, historically,

⁵¹ *Id.*

⁵² See PMS Allegation at 4-10.

⁵³ *Id.* at 4-6 and Attachments 3-5; and see Petitioner Pre-Prelim Comments at 6-16 and Attachments 1-10.

⁵⁴ See Petitioner Pre-Prelim Comments at 13-15 and Attachment 12-13; and PMS Allegation at 5 and Attachment 5.

⁵⁵ *Id.* at 5 and Attachment 3.

⁵⁶ *Id.* at 5-6; and Petitioner Pre-Prelim Comments at 6-16.

⁵⁷ See Petitioner Pre-Prelim Comments at 13.

⁵⁸ See PMS Allegation at 6-7; and Petitioner Pre-Prelim Comments at 18-20. The petitioner argues that *Maverick Tube Corporation v. United States*, Slip Op. 17-146, Ct. No. 15-00303 (CIT 2001) (*Maverick*) does not apply here (as claimed by the respondents; see below) because that case involved the countervailability standard, not whether KEPCO’s prices covered its costs.

not reflected true electricity costs;⁵⁹ and the Korea's Audit Board's 2013 holding that KEPCO's prices to industrial customers were 86 percent lower than costs.⁶⁰

Finally, the petitioner argued that a strategic alliance exists between Bearing Art and Hyundai (a company with an extensive history of unfair business practices). According to the petitioner, Hyundai's *chaebol* (i.e., a business conglomeration controlled by a powerful family) is the second largest in Korea. The petitioner asserts that the Korean Fair Trade Commission previously fined this *chaebol* for channeling business to *chaebol* members and forcing suppliers to accept lower-than-market prices. The petitioner contends that such strategic alliances are of a particular concern in this investigation, due to: 1) Bearing Art's relationship with the Hyundai companies; and 2) the fact that the Hyundai *chaebol* includes Hyundai Steel, Korea's second largest steel producer (raising further questions about the involvement of Hyundai in Bearing Art's input costs).⁶¹

According to the petitioner, Commerce does not require that a party prove that all aspects of a PMS exist before accepting an allegation, but instead the party must only provide a basis to suspect that one does. The petitioner argues that Commerce could not reasonably expect it to provide all information necessary to conduct a full PMS inquiry, given that much of this information comes from questionnaire responses.⁶²

Respondents' Arguments

The respondents argue that the petitioner's allegation fails to meet the high standard set in the TPEA for a PMS. According to the respondents, the petitioner ignored significant factual differences between this investigation and *OCTG from Korea*, including the fact that the Korean government subsidized the largest raw material input for OCTG (i.e., hot-rolled coil, accounting for 80 percent of costs). Both respondents note that they do not use hot-rolled coil to produce TRBs,⁶³ and there are no corresponding CVD orders on the inputs they do use.⁶⁴

The respondents assert that data provided to support the petitioner's Chinese overcapacity argument show, at best, that Chinese steel exports have impacted prices globally; however, they contend that the petitioner failed to demonstrate that these data show price distortion either in the Korean market in general or related to the specific steel inputs used to produce TRBs.⁶⁵ Further, the respondents claim that the petitioner based its argument on biased sources which overstate the impact of dumped Chinese steel; therefore, they provided other sources which demonstrate that Chinese steel prices in Korea rose steadily during the POI.⁶⁶

⁵⁹ See PMS Allegation at 6 and Attachment 6.

⁶⁰ *Id.* at 6 and Attachment 8.

⁶¹ *Id.* at 7-9.

⁶² See Petitioner Reply to Schaeffler at 6.

⁶³ See Bearing Art PMS Comments at 4; and Schaeffler PMS Comments at 6.

⁶⁴ See Bearing Art PMS Comments at 3-4; Bearing Art Second PMS Comments at 2-5; Schaeffler PMS Comments at 4-7; and Schaeffler Second PMS Comments at 5-9.

⁶⁵ See Bearing Art Second PMS Comments at 5-7; and Schaeffler Second PMS Comments at 5.

⁶⁶ See Schaeffler Second PMS Comments at 7.

The respondents claim that the petitioner's import price analysis is also flawed because it includes large volumes of imports from countries other than China and aggregates data from four basket HTS categories that may not include bearing quality steel bar.⁶⁷ Further, the respondents argue that the petitioner misstated the financial position of Korea's largest steel producer, given that its 2016 financial statement (which covers a portion of the POI) showed a net profit.⁶⁸

Regarding electricity, the respondents assert, among other things, that: 1) the KEPCO article is outdated; 2) KEPCO's financial statements show that its profitability has increased every year since 2012; 3) in the CVD final on *Welded Line Pipe from Korea*,⁶⁹ Commerce found that KEPCO's prices provided "adequate remuneration" and, in *Maverick*,⁷⁰ the CIT upheld that this pricing was "consistent with market principles"; 4) in *CTL Plate from Korea*, *Hot-Rolled Steel from Korea*, and *Cold-Rolled Steel from Korea*,⁷¹ Commerce found no countervailable subsidy with respect to electricity in Korea; and 5) even in *OCTG from Korea*, where Commerce found the existence of a PMS, it declined to adjust costs with respect to electricity.⁷²

Finally, regarding strategic alliances, the respondents note that Bearing Art does not purchase steel inputs from Hyundai, and the petitioner made no allegation with respect to Schaeffler.⁷³

Analysis

Commerce has reviewed the petitioner's allegation that four intertwined market conditions – 1) Chinese government subsidization, dumping and overcapacity in the steel industry; 2) the Korean government's intervention and subsidization of Korean steel production; 3) Korean government subsidization of the electricity market; and 4) a purported strategic alliance between Bearing Art and Hyundai – give rise to a PMS. We preliminarily determine that the allegations and supporting factual information, when viewed individually and in their totality, are not sufficient to find that a PMS exists.

⁶⁷ Schaeffler states that it only imports under one of the four HTS categories cited by the petitioner but that it is a basket category that includes types of steel bar (*i.e.*, non-bearing steel) that are not used in the production of TRBs. See Schaeffler Second PMS Comments at 7-8.

⁶⁸ See Bearing Art Second PMS Comments at 7-8; and Schaeffler Second PMS Comments at 8-9.

⁶⁹ See Bearing Art Second PMS Comments at 13 (citing *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at 17.

⁷⁰ *Id.* (citing *Maverick* at 17).

⁷¹ See Schaeffler PMS Comments at 7 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate From the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*CTL Plate from Korea*); *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), and accompanying IDM (*Hot-Rolled Steel from Korea*); and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) and accompanying IDM (*Cold-Rolled Steel from Korea*)).

⁷² See Schaeffler Second PMS Comments at 9.

⁷³ See Schaeffler PMS Comments at 7.

As a prefatory matter, we note that the Act expresses a preference for using a company's own books and records to determine costs for purposes of sections 773(b) and (e) of the Act.⁷⁴ This preference is long-established in Commerce practice.⁷⁵ The PMS provision of the TPEA is an exception to that rule, allowing Commerce to use another calculation methodology where reported prices or costs do not accurately reflect costs of production in the ordinary course of trade. To justify a departure from our standard practice, the burden is on the petitioner to substantiate its claim and demonstrate that a PMS exists.⁷⁶ Commerce has analyzed the record evidence underlying the petitioner's PMS allegation with respect to each of the market conditions that the petitioner claims create a PMS, and we preliminarily determine that the petitioner's allegations and supporting factual information are not sufficient to find that a PMS exists.

First, we preliminarily find that the petitioner's allegations regarding Chinese steel overcapacity and unfairly traded Chinese steel provide limited support for the petitioner's allegation that a PMS exists here. The petitioner provides a variety of documents and articles demonstrating the causes for, and extent of, China's steel overcapacity.⁷⁷ For instance, the petitioner provided reports concluding that Chinese government intervention contributed to steel overcapacity, and that this overcapacity impacted the U.S. steel industry,⁷⁸ and that countries have taken steps unilaterally and multilaterally to address issues surrounding Chinese steel overproduction.⁷⁹ The petitioner also provided a market research report noting that the steel sector in China grew faster than the economy as a whole from 2011 to 2015, that this growth was due in large part to government intervention, and that steel prices in China are distorted.⁸⁰ The petitioner also highlights the fact that Commerce has maintained AD and CVD cases against China relating to numerous steel products.⁸¹ Although the petitioner provides voluminous information concerning steel overcapacity in China, we preliminarily find that the petitioner has not identified any relationship between steel exports from China and steel prices in Korea for the inputs for producing TRBs in Korea, or distortions to the production costs of TRBs in Korea. Rather, we preliminarily find that the petitioner provides only general and unquantified assertions regarding the impact of steel exports from China on global market prices, for instance, stating that Chinese

⁷⁴ See *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review*, 66 FR 56274 (November 7, 2001) (noting that "the Department's long-standing practice, codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records where those records are prepared in accordance with home country accounting principles and reasonably reflect the costs of producing the merchandise).

⁷⁵ *Id.*

⁷⁶ See e.g., *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (noting that "the burden of creating an adequate record lies with interested parties and not with Commerce").

⁷⁷ See Petitioner Pre-Prelim Comments at 6 - 16 and Attachments 1 - 10. The petitioner provides several articles and the following documents in support of its allegations: 1) Steel Industry Coalition Report on Market Research into the Peoples Republic of China Steel Industry (June 2016); 2) European Union Chamber of Commerce in China Report on Overcapacity in China, An Impediment to the Party's Reform Agenda (2016); and 3) Stewart and Stewart and Economic Policy Institute Report on Surging Steel Imports Put up to Half a Million U.S. Jobs at Risk.

⁷⁸ See Petitioner Pre-Prelim Comments at Attachments 1-7, and 10 (noting continued overcapacity in the steel industry in China).

⁷⁹ *Id.* at 10 and Attachments 4 and 8.

⁸⁰ *Id.* at Attachment 1 (discussing the impact of state-owned enterprise on steel prices in China).

⁸¹ *Id.* at 9.

steel trade has “impacted the Korean market generally, including the types of steel used to produce tapered roller bearings, driving prices in Korea below market levels.”⁸²

Commerce has recognized that Chinese steel overcapacity and unfairly traded steel products from China are substantial concerns. We agree with the petitioner that a distortion which impacts multiple countries may, in certain cases, support an affirmative PMS finding. However, as discussed further below, an affirmative PMS determination must be based on evidence of cost distortions in a particular market. The burden is on the petitioner to substantiate its claim in this regard, and we preliminarily find that the petitioner has not done so here.

Second, we preliminarily find that the petitioner has not established the relevance of any of the existing CVD orders on Korean steel products.⁸³ While Commerce did consider a CVD order on Korean hot-rolled coil germane in *OCTG from Korea*, hot-rolled coil was the largest material input in that case, accounting for approximately 80 percent of production costs.⁸⁴ In this case, the petitioner has provided no evidence to show that the Korean government subsidized the major material inputs used to produce TRBs in Korea.

Third, Commerce preliminarily finds that the alleged distortions in the Korean electricity market only provide limited support for the petitioner’s claim that a PMS exists. The petitioner provides documents stating that the state-owned KEPCO plays a role in the electricity market in Korea.⁸⁵ Additionally, the petitioner asserts that the Government of Korea subsidized the steel industry through favorable electricity pricing in a period prior to the POI, and supports this claim with a report in the Korea JoongAng Daily.⁸⁶ However, we preliminarily find that the petitioner has not demonstrated that TRBs producers are impacted by the alleged distortions in the Korean electricity market – either directly or through their material input suppliers – and has not identified the extent of any such distortions. Ultimately, we preliminarily find that the petitioner’s allegation is supported only by the broad proposition that electricity prices in Korea are distorted.⁸⁷

Finally, Commerce preliminarily finds no basis for concluding that strategic alliances between the respondents and their input suppliers exist in this investigation. In *OCTG from Korea*, Commerce found that possible strategic alliances between input suppliers and OCTG producers contributed to the determination that a PMS existed in that situation. There, the record indicated that the price of the key input (*i.e.*, hot-rolled coil) was potentially distorted by coordination between hot-rolled coil suppliers and OCTG producers.⁸⁸ Additionally, hot-rolled coil

⁸² *Id.* at 6-7.

⁸³ See Petitioner Pre-Prelim Comments at 12-13.

⁸⁴ See *OCTG from Korea*, and accompanying IDM at Comment 3.

⁸⁵ *Id.* at 18-20 and Attachment 14. See also PMS Allegation at 6-7 and Attachment 6–8.

⁸⁶ See PMS Allegation at Attachment 8.

⁸⁷ In *OCTG from Korea*, Commerce determined that a distorted electricity market contributed to the ultimate decision to find a PMS, but emphasized that “{t}o be clear, our determination of a particular market situation in this review is not based solely upon any support from the government of Korea for electricity. To the contrary, as we stated above, each of these allegations are contributing factors that, taken together, lead the Department to conclude a particular market situation exists in Korea.” See *OCTG from Korea*, and accompanying IDM at Comment 3.

⁸⁸ See *OCTG from Korea*, and accompanying IDM at Comment 3.

constituted “approximately 80 percent of the cost of OCTG production; thus, distortions in the {hot-rolled coil} market have a significant impact on production costs for OCTG.”⁸⁹ Here, we preliminarily have not treated Bearing Art and Hyundai as affiliated parties,⁹⁰ and the petitioner provided no evidence to suggest that these companies are allied in other ways. Further, information on the record indicates that Bearing Art did not purchase material inputs from Hyundai⁹¹; thus, Hyundai was not a supplier for Bearing Art’s TRB production. Finally, the petitioner did not allege that Schaeffler had strategic alliances with its suppliers.

As noted above, in its PMS allegation, the petitioner claims that the various allegations in their totality support the finding that a PMS existed during the POI.⁹² When viewed together, we preliminarily find that the petitioner’s allegations, based on record evidence and considered in their totality, do not warrant a preliminary finding that a PMS exists. The petitioner’s allegation here covers the same factors examined in *OCTG from Korea*; however, we preliminarily find that evidence-based facts differ significantly. In particular, in this case, we preliminarily find that the petitioner does not: 1) provide evidence that the Korean government subsidized the main inputs used to produce TRBs; 2) provide compelling evidence that Chinese steel overcapacity depressed prices for those specific steel inputs used in the production of TRBs; 3) demonstrate that the respondents purchased electricity at below-market prices; or 4) substantiate its allegation that a strategic alliance impacting the COP for Bearing Art’s TRBs existed between Bearing Art and Hyundai or make a similar claim regarding Schaeffler.

With respect to a distorted electricity market in Korea and unfairly traded steel from China – we agree that these considerations may support a PMS allegation. However, these considerations alone do not warrant the application of cost adjustments under our PMS methodology, because neither consideration is supported by information demonstrating the impact of such factors on production costs for TRB producers in Korea. Thus, we preliminarily find that the petitioner has not effectively tied steel overcapacity to the prices paid by TRB producers for steel bar and steel wire, nor has it demonstrated that the TRB producers in this case have been directly impacted by the Korean government’s involvement in the domestic electricity market.

We also preliminarily find that the petitioner has not shown a connection between its allegations and the production experience of TRB producers in Korea. Commerce’s analysis must be focused on the impact that alleged distortions have on the cost of production for respondents. As such, to support a PMS allegation, the petitioner should provide a specific and quantifiable analysis that is particular to the industry in question.

In this case, we preliminarily find that the petitioner’s allegation is supported only by general references to the pricing effects of Chinese steel exports and electricity pricing in Korea. Although these considerations are relevant to price distortions, the allegations and information submitted do not provide a concrete demonstration of how such distortions impact the cost of production for respondents. Accordingly, we preliminarily determine that the petitioner’s PMS

⁸⁹ *Id.*

⁹⁰ See the “Affiliation and Collapsing” section of this memorandum.

⁹¹ See Bearing Art PMS Comments at 9.

⁹² See PMS Allegation at 4 and 9.

allegations and supporting factual information, when viewed in their totality, are not sufficient to find that a PMS exists.

VII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of subject merchandise from Korea to the United States were made at LTFV, Commerce compared the export price (EP) or constructed export (CEP), as appropriate, to the normal value (NV), as described in the "Export Price/Constructed Export Price," and "Normal Value" sections of this memorandum.

A) 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 EPs or CEPs, *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In 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.

In recent investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁹³ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. 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 this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code,

⁹³ 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).

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 POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (*i.e.*, 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 means of the test and comparison groups, while the small threshold provides the weakest indication that a significant difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting

from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁹⁴ Commerce received one such comment prior to this preliminary determination, where the petitioner requested that Commerce alter its methodology for defining a pattern of prices that differ significantly by finding that the existence of dumping constitutes a pattern.⁹⁵ We have not adopted this approach for the preliminary determination.

B) Results of the Differential Pricing Analysis

Bearing Art

For Bearing Art, based on the results of the differential pricing analysis, Commerce preliminarily finds that 43.35 percent of the value of U.S. sales pass the Cohen's *d* test,⁹⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Bearing Art.

Schaeffler

For Schaeffler, based on the results of the differential pricing analysis, Commerce preliminarily finds that 83.92 percent of the value of U.S. sales pass the Cohen's *d* test,⁹⁷ 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

⁹⁴ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) recently affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁹⁵ See Petitioner Pre-Prelim Comments at 41-44.

⁹⁶ See Memorandum, "Preliminary Determination Calculations for Bearing Art," dated January 29, 2018 (Bearing Art Preliminary Calculation Memo) at 2.

⁹⁷ See Memorandum, "Preliminary Determination Calculations for Schaeffler Korea Corporation," dated January 29, 2018 (Schaeffler Preliminary Calculation Memo) at 3.

account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Schaeffler.

VIII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁹⁸ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁹⁹

Regarding its home market and U.S. sales, Bearing Art reported the shipment date as the date of sale for all sales,¹⁰⁰ while Schaeffler reported the earlier of invoice date or the shipment date.¹⁰¹ For both respondents, we preliminarily followed Commerce's long-standing practice of basing the date of sale for all of the respondents' home market and U.S. sales on the earlier of the invoice date or the shipment date.¹⁰²

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Korea during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or CV, as appropriate.

⁹⁸ 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)).

⁹⁹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; *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.

¹⁰⁰ See Bearing Art September 12, 2017 AQR at A-30.

¹⁰¹ See Schaeffler September 13, 2017 AQR at 19-20.

¹⁰² See, e.g., *Shrimp from Thailand*, and accompanying IDM at Comment 11; *Steel Beams from Germany*, and accompanying IDM at Comment 2.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: product type, bearing type, number of rows, outside diameter, inside diameter, bearing width, cup width, cone width, roller small end diameter, roller large end diameter, roller length, dynamic load rating, Y2 factor, precision grade, and cage type.

As noted in the “Background” section, above, we received comments from the petitioner and both respondents on Commerce’s model matching methodology.¹⁰³ In its initial comments, the petitioner requested that, when there are no home market sales of identical merchandise, Commerce depart from its normal practice in two significant ways: 1) it should limit normal values to the home market sale prices of TRBs within the same “family” (*i.e.*, product type, number of rows, and bearing type); and 2) it should determine the most similar merchandise within the family that was sold in the home market by applying a “sum-of-the-deviations” method, which assigns equal weight to certain product characteristics (*i.e.*, outside diameter, inside diameter, width, dynamic load rating, and Y2 factor). The petitioner also requested that Commerce collect data to permit it to “split” the home market sale prices of TRB sets into their component parts in order to increase the likelihood of price-to-price comparisons.¹⁰⁴ Bearing Art and Schaeffler agreed with the petitioner’s general approach of matching by family and using a “sum-of-the-deviations” methodology.¹⁰⁵ Further, Bearing Art supported the petitioner’s set-splitting request, while Schaeffler opposed it.¹⁰⁶

Our normal practice for identifying similar comparison-market merchandise for merchandise sold in the U.S. market is guided by sections 771(16)(B) and (C) of the Act. Section 771(16)(B) of the Act instructs that there are three criteria that comparison-market merchandise must meet in order to be considered similar to merchandise sold in the U.S. market: the merchandise sold in the comparison market must be 1) produced in the same country and by the same person as the subject merchandise; 2) like the subject merchandise in component material or materials and in the purposes for which used; and 3) approximately equal in commercial value to the subject merchandise. Section 771(16)(C) of the Act instructs that, where no comparison-market sales of similar merchandise can be found under 771(16)(B) of the Act, three criteria must be met to consider a product similar to the merchandise sold in the U.S. market: the merchandise sold in the comparison market must be 1) produced in the same country and by the same person and of

¹⁰³ See Petitioner First Model Matching Comments; Bearing Art First Model Matching Comments; Petitioner Second Model Matching Comments; Schaeffler First Model Matching Comments; Petitioner Third Model Matching Comments; Petitioner Fourth Model Matching Comments, Bearing Art Second Model Matching Comments; and Schaeffler Second Model Matching Comments.

¹⁰⁴ See, *e.g.*, Petitioner First Model Matching Comments at 8-9. According to the petitioner, set splitting would allow Commerce to match U.S. sales of components to home market sales of the equivalent components derived from the “split” sets (or to match U.S. sales of components in “split” sets to home market sales of components). The petitioner contended that set splitting was particularly useful in instances where the respondents mainly or exclusively sold TRB sets in one market and components in another.

¹⁰⁵ See Bearing Art Second Model Matching Comments at 3; and Schaeffler First Model Matching Comments at 6.

¹⁰⁶ See Bearing Art’s Letter, “Certain Tapered Roller Bearings from Korea: Bearing Art’s Pre-Preliminary Determination Comments,” dated January 8, 2018 (Bearing Art Pre-Prelim Comments); and Schaeffler’s Letter, “Response to Petitioner’s Comments on Set Splitting: Antidumping Duty Investigation on Tapered Roller Bearings from Korea (A-580-894),” dated October 2, 2017. While Bearing Art generally supported the petitioner’s approach, it requested that Commerce use slightly different product characteristics to perform the “sum-of-the-deviations” analysis.

the same general class or kind as the merchandise which is the subject of the investigation; 2) like that merchandise in the purposes for which used; and 3) found to be reasonably comparable with the merchandise sold in the U.S. market.

In the vast majority of market-economy proceedings, Commerce's practice has been that any and all merchandise sold in the comparison market that are within the class or kind of merchandise are possible basis for normal value for similar merchandise sold in the U.S. market so long as they meet the other criteria of sections 771(16)(B) or (C) of the Act. This means that normally Commerce considers all products within the scope of a given antidumping duty proceeding to be like the subject merchandise in component material or materials and in the purposes for which used.

The hierarchy established in the statute instructs that the most accurate methodology is that methodology which selects the most-similar model and which results in the greatest number of reasonable price-to-price comparisons. This is generally satisfied by Commerce's standard model match methodology under 19 CFR 351.411, which recognizes that similar products may differ in certain physical respects, and it provides a mechanism to account for those differences (*i.e.*, the difference-in-merchandise (difmer) adjustment). Commerce's practice is to find that U.S. prices and normal values can be reasonably compared if the difmer adjustment is within 20 percent of the total cost of manufacture of the merchandise sold in the U.S. market.¹⁰⁷ The purpose of this guideline is to prevent the comparison of U.S. products to comparison market products that are too dissimilar to render a meaningful comparison.¹⁰⁸

Commerce has previously adopted alternative model match methodologies in past administrative reviews of the ball bearings and parts thereof antidumping duty orders from various countries.¹⁰⁹ Initially, in the 1988-89 anti-friction bearings (AFBs) administrative reviews, Commerce adopted a family-matching methodology which could most satisfactorily identify the sales of similar foreign like product when there were no sales of the identical product in the comparison market that was sold in the U.S. market.¹¹⁰ In the family-matching methodology, we treated all models within a family as equally similar although there were, in fact, other physical characteristics of varying degrees of differences for which we did not account under that methodology.¹¹¹ More recently, in 2005, Commerce revised the family-matching methodology in that it allowed us to select the single most-similar model within the defined family grouping

¹⁰⁷ See Antidumping Duty Manual, Chapter 8 at 63.

¹⁰⁸ *Id.*; and, *e.g.*, *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002) (which states, "while product characteristics differ from case to case, the Department generally does not compare a comparison market product to a given product sold in the United States if the difference in variable manufacturing costs of the two products is greater than 20 percent).

¹⁰⁹ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 70 FR 54711 (Sept. 16, 2005), and accompanying IDM at Comment 2 (Bearings AR15) (providing an extensive summary of this history); see also *JTEKT Corp. v. United States*, 675 F. Supp. 2d 1206, 1218-19 (CIT 2009).

¹¹⁰ See Ball Bearings AR15 at Comment 2 (explaining that we did not have the technological means to identify the single most-similar model at the time we developed the family-matching methodology, and that we developed the family-matching methodology to minimize the necessity for comparisons among an exceptionally large number of bearing models.)

¹¹¹ *Id.*

based on the “sum-of-the-deviations.”¹¹² These orders were revoked effective in 2011¹¹³ and 2014.¹¹⁴ This same family-groupings and sum-of-the-deviations approach had been used in the antidumping proceedings of TRBs from Japan,¹¹⁵ which was also affirmed by the court.¹¹⁶ This finding and order were revoked effective in 2000.¹¹⁷

It is our view that, if we must deviate from our standard model matching methodology, the reasons for that deviation must be justified and explained. After considering the arguments submitted on this topic, we preliminarily determine that it is appropriate to follow our standard model matching methodology in this investigation, and that adopting an alternative methodology, as we have done in past bearings cases, is no longer warranted. This approach is consistent with Commerce’s longstanding practice, including in similar cases covering both finished products and components where Commerce has treated the products and component parts as a single class or kind of merchandise.¹¹⁸

With regards to the petitioner’s and respondents’ comments on set splitting, Commerce preliminarily finds that set splitting is not warranted in this investigation. Set splitting was used in the Japan TRB proceedings (*i.e.*, A-588-054 and A-588-604) because Japanese producers typically sold TRB sets in the home market and individual cups and cones in the U.S. market. Accordingly, to derive normal value, Commerce “split” the home market prices of TRB sets to derive normal values for individual cups and cones sold in the U.S. market.¹¹⁹ In this investigation, Schaeffler and Bearing Art both sell TRB sets, cups and cones in both the home market and U.S. market. Thus, the circumstances in this investigation do not warrant Commerce’s practice of set splitting that was used in the Japan TRB proceedings.

¹¹² *Id.* (“This methodology selects the single most-similar model rather than relying on an average of the prices of a family of models. First, we select only those home-market models which are identical to the U.S. model with respect to bearing design, load direction, number of rows, and precision grade. From those models selected, we then select the single model that has the fewest physical differences from the U.S. model with respect to inner diameter, outer diameter, width, and load rating, with an upper boundary {the sum-of-deviations cap} of a 40-percent difference in the total deviation in the values for these four physical characteristics. We then use differences in level of trade and contemporaneity to resolve ties between “equally similar” home-market models as defined by our model match criteria.”)

¹¹³ See *Ball Bearings and Parts Thereof from France, Germany and Italy: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders*, 76 FR 57019 (Sept. 15, 2011).

¹¹⁴ See *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders*, 79 FR 16771 (March 26, 2014).

¹¹⁵ See *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 26054 (June 6, 1991) at comment 1; *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 41508 (August 21, 1991) at comments 1-6.

¹¹⁶ See *Timken v. United States*, Slip Op. 84-63 (7 CIT 319) (June 5, 1984); *Timken v. United States*, 630 F. Supp. 1327 (CIT 1986); *Timken v. United States*, 673 F. Supp. 495 (CIT 1987).

¹¹⁷ See *Revocation of Antidumping Duty Orders on Certain Bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy and the United Kingdom*, 65 FR 42667 (July 11, 2000).

¹¹⁸ See, e.g., *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 44395 (July 31, 2014), unchanged in *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014).

¹¹⁹ See *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 41508 (August 21, 1991) at comments 7.

Applying the standard methodology here results in numerous price-to-price comparisons within the 20 percent difference range. Therefore, for this preliminary determination, we find no reason to depart from our standard methodology.

X. EXPORT PRICE/CONSTRUCTED EXPORT PRICE

For certain sales made by the respondents, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted. For the respondents' remaining U.S. sales, we used 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 or exporter.

Schaeffler reported U.S. consignment sales as EP transactions. However, because the material terms of sale for these sales were not established until the merchandise was withdrawn from U.S. inventory (*i.e.*, after importation into the United States), we reclassified these transactions as CEP sales, in accordance with section 772(b) of the Act.

Bearing Art

A) Export Price

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

B) Constructed Export Price

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments. We also made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, foreign warehousing, foreign brokerage and handling, international freight, air freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees), warehouse fees, and U.S. inland freight from the warehouse to the unaffiliated U.S. customer, 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 and repacking expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses).

Finally, we made an adjustment for profit allocated to CEP selling 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 Bearing Art and its U.S. affiliate, Iljin USA Corporation, on their sales of the subject merchandise in the United States and the profit associated with those sales.

Schaeffler

A) Export Price

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

B) Constructed Export Price

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for early payment discounts and rebates. Although Schaeffler reported U.S. billing adjustments and rebates, we made no adjustment to the starting price for these items because Schaeffler did not demonstrate that their terms and conditions were known to the customer at the time of the sale, as required by 19 CFR 351.401(c).¹²⁰ We intend to examine these reported price adjustments at verification and reexamine the issue for the final determination, if appropriate.

We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland insurance, international freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees), U.S. inland freight from port to the warehouse, warehouse fees, U.S. inland insurance, and U.S. inland freight from the warehouse to the unaffiliated U.S. customer, 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, advertising fees, technical expenses, bank charges, and repacking expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). We recalculated Schaeffler's U.S. credit and inventory carrying costs to base them on the U.S. dollar borrowing rate provided by Bearing Art.¹²¹

Finally, we made an adjustment for profit allocated to CEP selling 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 Schaeffler and its U.S. affiliate, Schaeffler Group USA Inc (Schaeffler USA), on their sales of the subject merchandise in the United States and the profit associated with those sales.

¹²⁰ See *Modifications of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641, 15645 (March 24, 2016); see also Schaeffler Preliminary Calculation Memo at 3.

¹²¹ See Schaeffler Preliminary Calculation Memo at 2-3.

XI. NORMAL VALUE

A) 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 equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for both respondents, in accordance with section 773(a)(1)(B) of the Act.

B) 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).¹²² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹²³ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,¹²⁴ 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.¹²⁵

When Commerce is unable to match 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

¹²² See 19 CFR 351.412(c)(2).

¹²³ *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.

¹²⁴ 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 (SG&A), and profit for CV, where possible. See 19 CFR 351.412(c)(1).

¹²⁵ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

LOT in the comparison market. In comparing EP or CEP sales to 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 is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹²⁶

In this investigation, we obtained information from the respondents regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.¹²⁷ Our LOT findings are summarized below.

Bearing Art

In the home market, Bearing Art reported that it made sales through three channels of distribution: 1) sales by Bearing Art Corporation to companies in the Hyundai Motor Group; 2) resales by Iljin Bearing to companies in the Hyundai Motor Group; and 3) sales to all other customers.¹²⁸ Further, Bearing Art reported that it sold prototypes of new bearing models in each of these channels of distribution.

According to Bearing Art, it performed the following selling functions for sales to all home market customers: establishment of target pricing/quoting, processing of customer orders, handling of quality issues, inventory maintenance and just-in-time inventory services, arranging of freight and delivery, provision of warranty services, acceptance of customer rating feedback, negotiation of long-term agreements, communication with customers and development of customer relationships, sales forecasting and market research, extension of credit and performance of collection services, and the acceptance of material risk.¹²⁹

Bearing Art also reported that it performed a number of selling functions which appear to be either exclusively or more heavily related to sales of prototype models to home market customers.¹³⁰ These selling functions include: provision of application engineering services, customer-specific development of new products, “Advanced Product Quality Planning,”¹³¹ qualifying customers, and development of business and customer leads. Bearing Art generally described that these selling functions were performed at “first contact with a customer,” “as needed for new launches,” to “design a unique part number” or to “determine which companies

¹²⁶ See, e.g., *OJ from Brazil*, and accompanying IDM at Comment 7.

¹²⁷ See Bearing Art September 12, 2017 AQR at A-20 – A-38 and Exhibit A-10; and Bearing Art November 6, 2017 SAQR at SA-26 – SA-31 and Exhibit SA-16; see also Schaeffler September 13, 2017 AQR at 15-24 and Exhibits A-8 and A-9; and Schaeffler October 26, 2017 SAQR at 17-22 and Exhibit SA-14.

¹²⁸ See Bearing Art October 2, 2017 BCQR at B-29.

¹²⁹ See Bearing Art November 6, 2017 SAQR at Exhibit SA-16-B.

¹³⁰ See Bearing Art September 12, 2017 AQR at Exhibit A-10.

¹³¹ Bearing Art describes this as “gathering milestones from the customer and using this data to determine the timeline for launching the product.” *Id.*; see also Bearing Art November 6, 2017 SAQR at Exhibit SA-16-B.

may buy products.”¹³² Furthermore, according to Bearing Art, prototype design is a long and expensive process and requires custom designing for the customer’s application (e.g., providing a high level of technical assistance to the customer), retooling of the production line to produce a low volume of prototype bearings, and one-time invoicing.¹³³

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Bearing Art performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and technical support functions for all of its reported home market sales. Further, we find that Bearing Art performed significant, additional services related to sales of prototypes through its prototype-development services and customer-specific design process.¹³⁴

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Commerce’s LOT analysis takes into account qualitative factors, such as the significance of the activities themselves and the extent to which the activities are performed.¹³⁵ In this case, as noted above, we find substantial qualitative differences in the selling activities performed to sell prototypes versus non-prototypes. Therefore, because we determine that substantial differences in Bearing Art’s selling activities exist to sell prototype and non-prototype models in the home market, we determine that prototype and non-prototype sales in the home market during the POI were made at different LOTs.

With respect to the U.S. market, Bearing Art reported that it made sales through three channels of distribution: 1) sales through Iljin USA (CEP sales); 2) sales to a customer in the Hyundai Motor Group (EP sales); and 3) sales of prototypes (CEP sales).¹³⁶ Bearing Art reported that it performed the following selling functions for sales in all three distribution channels: qualifying customers, planning of advanced product quality, establishment of target pricing/quoting, processing of customer orders, handling of quality issues, inventory maintenance and just-in-

¹³² *Id.*

¹³³ See Bearing Art Pre-Prelim Comments at 6-7.

¹³⁴ See, e.g., *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016), and accompanying IDM at Comment 8 (finding that these type of activities are properly considered a selling activity), and citing *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews; 2010-2011*, 79 FR 56771 (September 23, 2014) (*Ball Bearings*), and accompanying Preliminary Decision Memorandum (PDM), at 14-15, unchanged in *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 80 FR 4248 (January 27, 2015) (finding that prototype-development services, custom-designed products, and customer-specific R&D are selling functions considered in the LOT analysis).

¹³⁵ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012) (*Orange Juice from Brazil*), and accompanying IDM at Comment 3; *Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007) (*Chlorinated Isocyanurates from Spain*), and accompanying IDM at Comment 1.

¹³⁶ See Bearing Art October 2, 2017 BCQR at C-23.

time inventory services, arranging of freight and delivery, provision of warranty services, development of business and customer leads, communication with customers and development of customer relationships, and sales forecasting and market research.¹³⁷ Additionally, Bearing Art reported that it: 1) accepted customer rating feedback, accepted material risk, and negotiated long-term agreements for its sales through Iljin USA and to Hyundai Motor Group customers; 2) performed international travel and incurred currency risk for its sales through Iljin USA and prototype sales; and 3) extended credit and made collections for its sales to Hyundai and prototype sales.

As in the home market, Bearing Art also reported that it performed a number of selling functions which appear to be either exclusively or more heavily related to sales of prototype models to U.S. customers.¹³⁸ These selling functions include: provision of application engineering services, customer-specific development of new products, “Advanced Product Quality Planning,” qualifying customers, and development of business and customer leads. Bearing Art described these selling functions in the same manner as it did in the home market.¹³⁹

Based on the selling function categories noted above, we find that Bearing Art performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and provided technical support for all of its reported U.S. sales. Further, as in the home market, we find that Bearing Art performed significant, additional services related to sales of prototypes through its prototype-development services and customer-specific designed process.¹⁴⁰

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). As noted above, Commerce’s LOT analysis takes into account qualitative factors, such as the significance of the activities themselves and the extent to which the activities are performed.¹⁴¹ In this case, like in the home market, we find substantial qualitative differences in the selling activities performed to sell prototypes versus non-prototypes. Therefore, because we determine that substantial differences in Bearing Art’s selling activities exist to sell prototype and non-prototype models in the U.S. market, we determine that U.S. prototype and non-prototype sales during the POI were made at different LOTs.

Finally, we compared the U.S. LOTs to the home market LOTs. We preliminarily find that the selling functions performed for Bearing Art’s non-prototype sales to its U.S. and home market customers do not differ significantly, nor do the selling functions performed for Bearing Art’s prototype sales to its U.S. and home market customers. Therefore, we preliminarily find that sales of non-prototype models are made at one LOT, while sales of prototype models are at another LOT. Consequently, we compared Bearing Art’s U.S. sales to sales at the same LOT in the home market, where possible. Where we could not compare Bearing Art’s U.S. sales to

¹³⁷ See Bearing Art November 6, 2017 SAQR at Exhibit SA-16-B.

¹³⁸ See Bearing Art September 12, 2017 AQR at Exhibit A-10.

¹³⁹ *Id.*; see also Bearing Art November 6, 2017 SQR at Exhibit SA-16-B.

¹⁴⁰ See *Ball Bearings*, and accompanying PDM at 14-15 (finding that prototype-development services, custom-designed products, and customer-specific R&D are selling functions considered in the LOT analysis).

¹⁴¹ See, e.g., *Orange Juice from Brazil*, and accompanying IDM at Comment 3; *Chlorinated Isocyanurates from Spain*, and accompanying IDM at Comment 1.

home market sales of the most similar product at the same LOT, we made an LOT adjustment, where warranted, pursuant to section 773(a)(7)(A) of the Act.

Schaeffler

In the home market, Schaeffler reported that it made sales through two channels of distribution: 1) direct sales to original equipment manufacturers (OEMs); and 2) direct sales to distributors.¹⁴² According to Schaeffler, it performed the following selling functions for sales to all home market customers: sales forecasting, strategic/economic planning, personnel training, provision of engineering services, advertising, packing, inventory maintenance, order input/processing, employment of direct sales personnel, provision of sales/marketing support, performance of market research, provision of technical assistance, provision of warranty services, after-sale services, provision of cash discounts and rebates, and arranging for freight and delivery.¹⁴³ Additionally, Schaeffler claims that, for its distributors alone, it conducted sales promotions and provided distributor/dealer training.¹⁴⁴

However, Schaeffler failed to provide an adequate description of the following functions¹⁴⁵ or to indicate how often it performed them, despite Commerce's direct request that it do so: personnel training, provision of engineering services, sales/marketing support, performance of market research, provision of technical assistance, after-sale services, sales promotions, and distributor/dealer training. For example, Schaeffler described sales promotions as "special promotional functions conducted for sales personnel" and distributor/dealer training as "special distributor and dealer training sessions to acquaint outside sales personnel with new products"; further, there is no evidence on the record demonstrating that Schaeffler conducted any sales promotion activities or trained any dealers during the POI.¹⁴⁶ Therefore, because the evidence on the record does not support Schaeffler's claims, we have not considered these selling functions in our analysis.

As noted above, selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Schaeffler performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and warranty and technical support for all of its reported home market sales. Because we find no differences in selling activities performed by Schaeffler to sell to its home market customers, we determine that there is one LOT in the home market for Schaeffler.

¹⁴² See Schaeffler October 2, 2017 BCQR at B-23.

¹⁴³ See Schaeffler September 13, 2017 AQR at A-15 through A-19, and Exhibit A-9.

¹⁴⁴ *Id.*; see also Schaeffler's home market sales listing.

¹⁴⁵ Instead, Schaeffler provided general explanations, accompanied by supporting documentation seemingly unrelated to the function at hand. For example, to support its market research claim in the home market, Schaeffler provided an exhibit with charts and graphs which appear to be prepared by Schaeffler USA. See Schaeffler October 26, 2017 SAQR SA-14F.

¹⁴⁶ See Schaeffler October 26, 2017 SAQR at 19.

With respect to the U.S. market, Schaeffler reported that it made sales through two channels of distribution 1) sales to U.S. OEM customers (EP sales); and 2) shipments to its U.S. affiliate, Schaeffler USA for resale to U.S. customers (CEP sales).¹⁴⁷ Schaeffler reported that it performed the following selling functions for sales in both distribution channels: sales forecasting, strategic/economic planning, packing, inventory maintenance, order input/processing, and arranging for freight and delivery.¹⁴⁸ Schaeffler also claimed that it performed the following selling functions only for its EP sales: engineering services, advertising, employment of direct sales personnel,¹⁴⁹ provision of sales/marketing support, performance of market research, provision of warranty services, and provision of after-sales services.¹⁵⁰ Finally, Schaeffler claimed personnel training/exchanges only for sales to Schaeffler USA.¹⁵¹

As in the home market, however, Schaeffler failed to provide an adequate description of the following functions¹⁵² or to indicate how often it performed them, despite Commerce's direct request that it do so: engineering services, personnel training/exchange, provision of sales/marketing support, performance of market research, and provision of after-sales services. Further, despite its claim, Schaeffler reported no warranty or advertising expenses in its U.S. sales listing, and there is no evidence on the record that it performed any selling functions related to them during the POI.¹⁵³ Therefore, because the evidence on the record does not support Schaeffler's claims, we have not considered these selling functions in our analysis.

Based on the selling function categories noted above, we find that Schaeffler performed sales and marketing, inventory maintenance and warehousing, and freight and delivery services for all of its reported U.S. sales. According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Because we find no

¹⁴⁷ See Schaeffler October 2, 2017 BCDQR at B-22.

¹⁴⁸ See Schaeffler September 13, 2017 AQR at A-15 through A-19, and Exhibit A-9. In this exhibit, Schaeffler also reported that it repacked TRBs for sale to its U.S. affiliate and to EP customers. However, Schaeffler did not report repacking expenses on any of these sales in its U.S. sales listing. Instead, Schaeffler reported repacking expenses associated with Schaeffler USA's resales to unaffiliated customers. As noted above, these repacking expenses are not part of Commerce's LOT analysis and we have not considered them here.

¹⁴⁹ Schaeffler describes employment of direct sales personnel as "representing in-house personnel engaged directly in selling products to customers." See Schaeffler October 26, 2017 SAQR at 19. Because Schaeffler's employees also sold to TRBs to Schaeffler USA, we find that Schaeffler performed this selling function equally for both its EP and CEP sales.

¹⁵⁰ See Schaeffler September 13, 2017 AQR at A-15 through A-19, and Exhibit A-9.

¹⁵¹ *Id.*

¹⁵² Instead, Schaeffler provided general explanations, accompanied by supporting documentation seemingly unrelated to the function at hand. For example, to support its U.S. market research claim, Schaeffler provided an exhibit with charts and graphs which appear to be prepared by Schaeffler USA. See Schaeffler October 26, 2017 SAQR SA-14F.

¹⁵³ Indeed, Schaeffler affirmatively stated that it incurred no warranty expenses on U.S. sales during the POI. See Schaeffler December 29, 2017 SACQR at 17-19. With respect to advertising, Schaeffler attempted to support its claim by providing a marketing brochure from an affiliated company located in Germany; this brochure does not indicate that Schaeffler advertises to its U.S. customers in Korea. See Schaeffler October 26, 2017 SAQR at Exhibit SA-14D.

differences in selling activities performed by Schaeffler to sell to its home market customers, we determine that sales to the U.S. market during the POI were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly. Specifically, we found that the differences were limited to the following activities: 1) provision of cash discounts and rebates; and 2) provision of warranty services. We find that Schaeffler's description of its cash discounts and warranty program is not significant enough to support that the U.S. and home market LOTs are different. Therefore, Commerce preliminarily finds that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, a CEP offset is not warranted.

C) Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from the respondents. We examined the respondents' cost data and determine that our quarterly cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on the 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 (G&A) expenses and interest expenses.

We relied on the COP data submitted by Bearing Art, except that we adjusted Iljin Global's SG&A expense rate to exclude miscellaneous income pertaining to duty drawback, scrap sales, and prototype sales.¹⁵⁴ We relied on the COP data submitted by Schaeffler as reported.

2. Test of Comparison Market Sales Prices

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

¹⁵⁴ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Bearing Art," dated January 29, 2018.

normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, 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 the respondents' home market sales during the POI 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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D) Calculation of NV Based on Comparison-Market Prices

Bearing Art

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

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. 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.*, imputed credit expenses, warranty expenses, and bank charges, and added U.S. direct selling expenses, *i.e.*, imputed credit expenses, warranties, and bank charges. Additionally, for comparisons to CEP sales, we made deductions for home market imputed credit expenses, warranties, and bank charges, 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 the subject merchandise.¹⁵⁵

¹⁵⁵ *Id.*

Schaeffler

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts, in accordance with 19 CFR 351.401(c). Although Schaeffler reported home market billing adjustments and rebates, we made no adjustment to the starting price for these items because Schaeffler did not demonstrate that their terms and conditions were known to the customer at the time of the sale, as required by 19 CFR 351.401(c).¹⁵⁶ We intend to examine these reported price adjustments at verification and reexamine the issue for the final determination, if appropriate.

We made deductions for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. 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. 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.*, imputed credit and warranty expenses, and added U.S. direct selling expenses, *i.e.*, imputed credit and warranty expenses. Additionally, for comparisons to CEP sales, we made deductions for home market imputed credit and warranty expenses, 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 the subject merchandise.¹⁵⁷

E) Price-to-CV Comparisons

For Bearing Art, where we were unable to base NV on home market sale prices of identical or similar merchandise, we based NV on CV in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Calculation of Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

For comparisons to Bearing Art's CEP sales, we deducted from CV direct selling expenses incurred on its home market sales, in accordance with section 773(a)(7)(ii)(B) of the Act. For comparisons to Bearing Art's EP sales, we made circumstances-of-sale adjustments by deducting

¹⁵⁶ See *Modifications of Regulations* at 81 FR 15641, 15645; see also Schaeffler Preliminary Calculation Memo at 2.

¹⁵⁷ *Id.*

direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses, to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

XII. CURRENCY CONVERSION

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

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

1/29/2018

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance