



A-580-874

AR: 07/01/16 – 6/30/17

Public Document

EC/OIV: TT/RG/MK

DATE: July 5, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: Wendy J. Frankel
Director, U.S. Customs and Border Protection Liaison Unit
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Decision Memorandum for Preliminary Results of the 2016-2017
Antidumping Duty Administrative Review of Certain Steel Nails
from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain steel nails (steel nails) from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is July 1, 2016 through June 30, 2017. The review covers three mandatory respondents: Daejin Steel Co. (Daejin), Koram Inc. (Koram), and Korea Wire Co., Ltd. (Kowire). We preliminarily determine that all three mandatory respondents sold subject merchandise at prices below normal value during the POR.

II. BACKGROUND

On July 13, 2015, Commerce published in the *Federal Register* an AD order on steel nails from Korea.¹ On July 3, 2017, we published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on steel nails from Korea.² On July 31, 2017, Daejin³

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 30833 (July 3, 2017).

³ See Letter from Daejin, “Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Korea – Request for Review,” dated July 31, 2017.

and Kowire⁴ each requested an administrative review, and the petitioner⁵ requested an administrative review of 206 producers and/or exporters, including Daejin, Koram, Koram Steel Co., Ltd., and Kowire. On September 13, 2017, we initiated an administrative review of the AD order with respect to each of the companies identified by the petitioner.⁶

On September 28, 2017, the petitioner withdrew its administrative review request with respect to 202⁷ of the 206 companies identified as producers/exporters in the petitioner's July 31, 2017 letter. The petitioner maintained its request with respect to Daejin, Koram, Koram Steel Co., Ltd., and Kowire. As noted in the "Methodology" section, below, we preliminarily determine that Koram is the successor-in-interest to Koram Steel Co., Ltd.; accordingly, Koram is the respondent covered by this review.

We issued our AD questionnaire to the three mandatory respondents on October 10, 2017.⁸ From November 2017 through June 2018, we issued supplemental questionnaires to the three mandatory respondents and received timely responses from the companies. On May 16, 2018, we extended the deadline for the preliminary results in this review to no later than July 5, 2018.⁹

III. SCOPE OF THE ORDER

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches.¹⁰ Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

⁴ See Letter from Kowire, "Steel Nails from the Republic of Korea – Request for Administrative Review," dated July 31, 2017.

⁵ See Letter from the petitioner, "Certain Steel Nails from the Republic of Korea: Request for Administrative Reviews," dated July 31, 2017. The petitioner is Mid Continent Steel & Wire.

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

⁷ See Letter from the petitioner, "Certain Steel Nails from the Republic of Korea: Withdrawal of Request for Administrative Reviews," dated September 28, 2017 (Petitioner's Partial Withdrawal of Request for Review).

⁸ See Commerce's Letter, "Administrative Review of Certain Steel Nails from Korea: Antidumping Duty Questionnaire," dated October 10, 2017; see also Memorandum, "2016-2017 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Issuance of Questionnaire," dated October 6, 2018.

⁹ See Memorandum, "Antidumping Duty Administrative Review of Certain Steel Nails from Korea: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 16, 2018.

¹⁰ The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

Excluded from the scope of the order are nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: 1) builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; 2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; 3) swivel seats with variable height adjustment; 4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); 5) seats of cane, osier, bamboo or similar materials; 6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); 7) furniture (other than seats) of wood (with the exception of i) medical, surgical, dental or veterinary furniture; and ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or 8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.*, furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of the order are nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision). Also excluded from the scope of the order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of the order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of the order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of the order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Nails subject to the order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00.

Nails subject to the order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. RESCISSION OF REVIEW, IN PART

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. We initiated the instant review on September 13, 2017.¹¹ The petitioner withdrew its request for an administrative review of all identified producers and exporters except for Daejin, Koram, Koram Steel Co., Ltd., and Kowire on September 28,¹² 2017, which is within the 90-day period. Because the petitioner's withdrawal of its request for review was timely, and because no other party requested a review of the remaining 202 companies, we are rescinding this review, in part, with respect to these companies. For a list of the companies for which we are rescinding this review, see Appendix II to the accompanying *Federal Register* notice.

V. AFFILIATION

The petitioner asserts that a close supplier relationship exists between Kowire and a toller such that Kowire can control the toller's production, pricing, and/or cost. We examined the relationship between Kowire and the toller in the previous administrative review and found no affiliation between Kowire and the company in question.¹³ For these preliminary results, we find that the facts have not changed between the previous administrative review and this review such that we must revisit our previous determination that Kowire and the toller were not affiliated during the POR. Because our discussion regarding this affiliation issue relies on business proprietary information, for a complete discussion, *see* the Kowire Preliminary Analysis Memorandum.¹⁴

VI. DUTY ABSORPTION

Section 751(a)(4) of the Act provides that, if requested during an administrative review initiated two or four years after the publication of the order, Commerce will determine whether antidumping duties have been absorbed by a foreign producer or exporter through an affiliated importer. On October 10, 2017, the petitioner requested that, pursuant to 19 C.F.R. 351.213(j)(1), we conduct a duty absorption inquiry for Daejin, Koram, and Kowire.¹⁵

¹¹ *See Initiation Notice.*

¹² *See* Petitioner's Partial Withdrawal of Request for Review.

¹³ *See, e.g., Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 36749 (August 7, 2017) (*Steel Nails ARI*).

¹⁴ *See* Memorandum, "Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Korea Wire Co. Ltd. Preliminary Analysis Memorandum," dated concurrently with this memorandum (Kowire Preliminary Analysis Memorandum).

¹⁵ *See* Letter from the petitioner, "Certain Steel Nails from the Republic of Korea: Request for Duty Absorption Inquiry," dated October 10, 2017.

The three respondents reported that they had exclusively export price sales during the POR.¹⁶ Accordingly, because the subject merchandise was not sold through an importer who is affiliated with the foreign producer/exporter, we are not examining duty absorption.¹⁷

VII. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Act and 19 CFR 351.213.

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of subject merchandise to unaffiliated U.S. customers were made at less than normal value (NV), we compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, we examine whether to compare weighted-average NVs with the EPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, we nevertheless find that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.¹⁸

Commerce has applied a "differential pricing" analysis to determine 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.¹⁹ We find that the differential pricing analysis used in recent investigations may be instructive for purposes of considering whether to

¹⁶ See Daejin's January 16, 2018 Questionnaire Response at 4; Koram's December 6, 2017 Section A Questionnaire Response at Exhibit A-1; Kowire's November 7, 2017 Section A Questionnaire Response at A-12.

¹⁷ See section 751(a)(4) of the Act and *Agro Dutch Industries, Ltd. v. United States*, 508 F.3d 1024 (Fed. Cir. 2007).

¹⁸ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1. See also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

¹⁹ See, e.g., *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016), and accompanying Preliminary Decision Memorandum at 22, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017); *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 12431 (March 3, 2017), and accompanying Preliminary Decision Memorandum at 5-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42075 (September 6, 2017).

apply an alternative comparison method in this administrative review. We will continue to develop our approach in this area based on comments received in this and other proceedings, and on our additional experience with addressing the potential masking of dumping that can occur when we use the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code or state code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the 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 we use in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales, as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the 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, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, we test whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio test described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.²⁰

2. Results of the Differential Pricing Analysis

For Daejin, based on the results of the differential pricing analysis, we preliminarily find that 55.90 percent of the value of U.S. sales pass the Cohen's *d* test,²¹ and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to 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 the preliminary results, we are applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping

²⁰ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) recently affirmed much of our differential pricing methodology. We ask that interested parties present arguments only on issues that have not already been decided by the CAFC.

²¹ See Memorandum, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Daejin Steel Co.," dated concurrently with this memorandum (Daejin Preliminary Analysis Memorandum).

margin for Daejin.

For Koram, based on the results of the differential pricing analysis, we preliminarily find that 59.08 percent of the value of U.S. sales pass the Cohen's *d* test,²² and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is not a meaningful difference between the weighted-average dumping margins 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 the preliminary results, we are applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Koram.

For Kowire, based on the results of the differential pricing analysis, we preliminarily find that 45.55 percent of the value of U.S. sales pass the Cohen's *d* test,²³ and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to 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 the preliminary results, we are applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Kowire.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section above produced and sold by the mandatory respondents in the comparison market during the POR to be foreign like products for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise, we made product comparisons using constructed value as discussed in the "Calculation of Normal Value Based on Constructed Value" section below.²⁴

C. 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, we normally will use the date of

²² See Memorandum, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Koram Inc.," dated concurrently with this memorandum (Koram Preliminary Analysis Memorandum).

²³ See Kowire Preliminary Analysis Memorandum.

²⁴ See section 773(a)(4) of the Act.

invoice as recorded in the exporter's or producer's records kept in the ordinary course of business. However, the regulations permit us to use a date other than the date of invoice if a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁵ We have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²⁶

For their comparison market and U.S. sales, all three respondents reported the date when the material terms are firmly established, which is the earlier of the shipment date or the invoice date in accordance with our practice.²⁷ Based on this information, and consistent with prior practice,²⁸ we preliminarily determine that the earliest date, either the invoice date or the shipment date, is the most appropriate selection for the date of sale for sales in both the comparison and U.S. markets.

D. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we 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).²⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁰ 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.³¹

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),³² we consider the

²⁵ 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)).

²⁶ See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10; *see also* *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

²⁷ See Daejin's November 7, 2017 Section A Questionnaire Response at 15; Koram's December 11, 2017 Supplemental Section A Questionnaire Response at 6-7; Kowire's November 7, 2017 Section A Questionnaire Response at A-16.

²⁸ See *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627 (October 7, 2015) and accompanying Preliminary Decision Memorandum at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

²⁹ See 19 CFR 351.412(c)(2).

³⁰ *Id.*; *see also* *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7.

³¹ See, *e.g.*, *Steel Nails ARI*.

³² 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 (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

starting prices to be the gross unit prices less all discounts and rebates. When we are unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP sale, we may compare the U.S. sale to sales at a different LOT in the comparison market.

1. Daejin

Daejin reported that it sold steel nails during the POR through one channel of distribution in each market and all sales were shipped directly to the unaffiliated customer.³³ Daejin identified two customer categories that it sold to in the home and U.S. markets: distributors and end users.³⁴ Daejin reported that it performed the following selling functions to all of its customers in the U.S. and home markets: advertising; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; warranty service; and freight and delivery.³⁵ Daejin made no distinction in selling functions it provided based on channel of distribution or customer categories in either the home or U.S. markets.³⁶ As such, we compared the selling functions and determined that there are no significant differences in selling and marketing practices between Daejin's home and U.S. markets, and that a single LOT exists in each market. Therefore, we matched U.S. sales at the same LOT in the comparison market, and made no level-of-trade adjustment.

2. Koram

For the Australian market (*i.e.*, third country market), Koram reported that it sold steel nails during the POR through one channel of distribution (*i.e.*, direct sales to unaffiliated distributors in Australia).³⁷ Koram reported that it performed the following selling functions for sales to all Australian customers: sales forecasting; strategic/economic planning; personnel training/exchange; advertising; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel, sales/marketing support; market research; technical assistance; provide warranty service; provide guarantees; and freight and delivery arrangement.³⁸

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support.³⁹ Based on these selling function categories, we find that Koram performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its reported sales in Australia. Because Koram performed the same selling functions at the same relative level of intensity for all its Australian sales, we determine that all Australian sales are at the same LOT.

³³ See Daejin's November 7, 2017 Section A Questionnaire Response at 11; *see also* Daejin's November 30, 2017 Section B & C Questionnaire Response at 14 and 51.

³⁴ See Daejin's November 7, 2017 Section A Questionnaire Response at 11.

³⁵ *Id.* at Exhibit A-4.

³⁶ *Id.* at Exhibit A-4; *see also* Daejin's January 16, 2018 Supplemental Section A Questionnaire Response at 17.

³⁷ See Koram's November 30, 2017 Section B Questionnaire Response at 19.

³⁸ See Koram's December 6, 2017 Section A Questionnaire Response at Exhibit SA-6.

³⁹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less than Fair Value*, 82 FR 16360 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comments 2 and 5; *see also* *Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1023 (January 9, 2018) and accompanying Preliminary Decision Memorandum at 18.

In the U.S. market, Koram reported that it made sales through one channel of distribution (*i.e.*, direct sales to unaffiliated U.S. distributors and manufacturers).⁴⁰ Koram reported that it performed the following selling functions for sales to all U.S. market customers: sales forecasting; strategic/economic planning; personnel training/exchange; advertising; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel, sales/marketing support; market research; technical assistance; provide commissions, provide warranty service; provide guarantees; and freight and delivery arrangement.⁴¹ Based on these selling functions categories, we find that Koram performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its reported sales to customers in the United States. Because Koram performed the same selling functions at the same relative level of intensity for all its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the Australian LOT and found that the selling functions Koram performed for its sales to its U.S. and Australian customers are the same. Therefore, we preliminarily determine that Koram's sales to Australia during the POR were made at the same LOT as its U.S. sales. Consequently, we matched U.S. sales to Australian market sales at the same LOT, and made no LOT adjustment.

3. Kowire

Kowire reported that it sold steel nails during the POR through one channel of distribution, unaffiliated distributors, for the home and U.S. markets.⁴² Additionally, Kowire indicated that it performed substantially the same selling functions, regardless of market, with only minor differences in intensity for two of the listed sales functions.⁴³ As a result, we compared the selling functions and we preliminarily determine that the LOT of Kowire's U.S. sales were at the same LOT as its home market sales. Therefore, we matched U.S. sales at the same LOT in the comparison market and made no LOT adjustment.

E. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." In accordance with section 772(a) of the Act, we used the EP methodology for all three respondents' sales because the companies sold merchandise under consideration directly to unaffiliated purchasers in the United States before the date of importation.⁴⁴ There were no constructed export price (CEP) sales for the three mandatory respondents during the POR.

⁴⁰ See Koram's November 30, 2017 Section C Questionnaire Response at 19.

⁴¹ See Koram's December 6, 2017 Section A Questionnaire Response at Exhibit SA-6.

⁴² See Kowire's November 7, 2017 Section A Questionnaire Response at A-12.

⁴³ *Id.* at Exhibit A-6.

⁴⁴ See Daejin's January 16, 2018 Questionnaire Response at 4; Koram's December 6, 2017 Section A Questionnaire Response at Exhibit A-1; Kowire's November 7, 2017 Section A Questionnaire Response at A-12.

We calculated EP based on the packed price that was charged to the first unaffiliated U.S. customer. We made deductions for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act, including deductions for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and other U.S. transportation expenses. Also, where appropriate, we made deductions from the starting price for selling expenses (*e.g.*, commissions, warranties, credit expense, and bank charges).⁴⁵

Commerce has not increased U.S. price to account for the duty drawback program (*i.e.*, “Simplified Fixed Drawback” scheme) used by Daejin,⁴⁶ in accordance with section 772(c)(1)(B) of the Act. Section 772(c)(1)(B) of the Act states that the price used to establish EP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted.⁴⁷ We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to U.S. prices.⁴⁸ The first prong of the test requires that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); the second prong of the test requires that the company demonstrate that there were sufficient imports of materials to account for the duty drawback or exemption granted for the export of the manufactured product.⁴⁹

Under the Simplified Fixed Drawback system, the amount of duty drawback Daejin received was based on a percentage of the free on board (FOB) value of exports, not on the amount of import duties paid by the company for raw material inputs.⁵⁰ Therefore, the amount of the duty drawback that Daejin received, and the amount of import duties that Daejin paid, are not directly linked to, and dependent upon, one another as required by prong one of our two-prong duty drawback test. Accordingly, consistent with our recent determinations concerning this program,

⁴⁵ Additionally, Commerce followed its normal practice by treating freight revenue as an offset to freight costs for Kowire. *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁶ *See* Daejin’s November 30, 2017 Section B and C Questionnaire Response at 71 and Exhibit C-12; *see also* Daejin’s February 16, 2018 Supplemental Section B and C Questionnaire Response at 20 and Exhibit SC-7; Daejin’s March 9, 2018 Second Supplemental Section BCD Questionnaire Response at 4.

⁴⁷ *See Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

⁴⁸ *See id.*

⁴⁹ *Id.*; *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁰ *See e.g. Ferrovanadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 FR 14874 (March 23, 2017) and accompanying Issues and Decision Memorandum at Comment 2 (determining that the amount of the duty drawback that the respondent received under the fixed rate drawback system, and the amount of import duties that it pays, are not directly linked to, and dependent upon, one another, as required by prong one of Commerce’s two-prong duty drawback test).

we have not granted Daejin's duty drawback offset.⁵¹

F. Normal Value

1. Comparison Market Viability

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 a respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of 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 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.

For Daejin and Kowire, we preliminarily determine that the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales of the subject merchandise.⁵² Therefore, for the margin analyses for Daejin and Kowire, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

For Koram, we preliminarily determine that Koram's aggregate volume of sales in the home market of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used Australia as Koram's comparison market in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404, because Koram reported that Australia was its only viable market.⁵³

2. Cost of Production Analysis

In accordance with section 773(b)(2)(A) of the Act, we requested cost information from all respondents in this review to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices less than the COP of the product.⁵⁴

(a) Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated cost of production (COP) based on the sum of 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 Daejin, Koram, and Kowire, with the exceptions noted below. We revised

⁵¹ See *id.*; *Steel Nails ARI* and accompanying Preliminary Decision Memorandum at 11; see also Daejin Preliminary Analysis Memorandum.

⁵² See Daejin's November 7, 2017 Section A Questionnaire Response at 3; Kowire's November 7, 2017 Section A Questionnaire Response at A2-A3.

⁵³ See Koram's December 6, 2017 Section A Questionnaire Response at 1-4 and Exhibit A-1; see also Koram's December 11, 2017 Supplemental Section A Questionnaire Response at 3.

⁵⁴ See Daejin's November 30, 2017 Section D Questionnaire Response; Koram's November 30, 2017 Section D Questionnaire Response; Kowire's December 1, 2017 Section D Questionnaire Response.

Koram's G&A expenses to exclude a line-item for a duty drawback offset.⁵⁵ We revised Koram's G&A expenses with respect to certain non-operating income.⁵⁶ We revised Daejin's G&A expenses to exclude certain offsets made by Daejin.⁵⁷ We denied Daejin's by-product offset for steel scrap.⁵⁸ Finally, we adjusted Daejin's reported costs to ensure that similar control numbers are not assigned substantially different costs.⁵⁹

(b) Cost of Production Test

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the comparison market prices of the foreign like product 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 net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁶⁰

(c) Results of the COP Test

In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of a 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 because: 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 POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for each of the three mandatory respondents, more than 20 percent of sales of certain comparison market products during the POR were at prices less than the COP and, in addition, such sales did not permit 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.⁶¹

⁵⁵ See Koram Preliminary Analysis Memorandum.

⁵⁶ *Id.*

⁵⁷ See Daejin Preliminary Analysis Memorandum.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*; Koram Preliminary Analysis Memorandum; Kowire Preliminary Analysis Memorandum.

⁶¹ See Daejin Preliminary Analysis Memorandum; Koram Preliminary Analysis Memorandum; Kowire Preliminary Analysis Memorandum.

3. Calculation of NV Based on Comparison Market Prices

We calculated NV based on packed, delivered or ex-factory prices to unaffiliated customers in the comparison market. We made deductions, where appropriate, from the starting price for certain movement expenses, *e.g.*, inland freight, and for certain direct selling expenses, *e.g.*, credit expenses, pursuant to section 773(a)(6)(B)(ii) of the Act.⁶²

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also adjusted for 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 of the foreign like product and the subject merchandise.⁶³

4. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on constructed value (CV). Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each mandatory respondent, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section. We based SG&A and profit for each respondent on the actual amounts incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410.

G. Successor-In-Interest Determination – Koram

Koram reported that, on January 5, 2016, the company changed its name from “Koram Steel Co., Ltd.” to “Koram Inc.”⁶⁴ To determine whether Koram Steel Co., Ltd. is entitled to the dumping margin calculated for Koram, we conducted a successor-in-interest analysis.

In making a successor-in-interest determination, we examine several factors, including, but not limited to, changes in the following: 1) management; 2) production facilities; 3) supplier relationships; and 4) customer base.⁶⁵ While no single factor or combination of factors will

⁶² See Daejin Preliminary Analysis Memorandum; Koram Preliminary Analysis Memorandum; Kowire Preliminary Analysis Memorandum.

⁶³ See Daejin Preliminary Analysis Memorandum; Koram Preliminary Analysis Memorandum; Kowire Preliminary Analysis Memorandum.

⁶⁴ See Letter from Koram, “Certain Steel Nails from the Republic of Korea: Section A Supplemental Questionnaire Response,” dated June 25, 2018 (Koram July 25, 2018 SQR Response) at 1.

⁶⁵ See, *e.g.*, *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand*, 75 FR 61702, 61703 (October 6, 2010) (*Shrimp from Thailand Preliminary Results*); unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand*, 75 FR 74684 (December 1, 2010) (*Shrimp from Thailand*

necessarily provide a dispositive indication of a successor-in-interest relationship, we will generally consider the new company to be the successor to the previous company if the new company's resulting operations are not materially dissimilar to that of its predecessor.⁶⁶ Thus, if the record demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the predecessor company, we generally accord the new company the same antidumping treatment as its predecessor.⁶⁷

Here, the name change did not affect the Koram's legal and/or ownership structure, and did not result in any modification to Koram's production and distribution of nails.⁶⁸ Rather, the record demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the predecessor company.⁶⁹ Therefore, we preliminarily determine that Koram is the successor-in-interest to Koram Steel Co., Ltd. Accordingly, we will not calculate a separate dumping margin for Koram Steel Co., Ltd.⁷⁰

VIII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

Final Results); *Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6946 (February 14, 1994).

⁶⁶ See *Shrimp from Thailand Preliminary Results*, 75 FR at 61703 (unchanged in *Shrimp from Thailand Final Results*, 75 FR at 74684).

⁶⁷ See Koram July 25, 2018 SQR Response at 1.

⁶⁸ *Id.* at 1-6.

⁶⁹ *Id.*

⁷⁰ For additional details on our successor-in-interest analysis, please see the Koram Analysis Memorandum.

IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.



Agree



Disagree

7/5/2018

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance