



A-580-885  
Administrative Review  
POR: 10/14/2016-3/31/2018  
**Public Document**  
E&C/OIII: CR

June 10, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review: Phosphor Copper  
from the Republic of Korea; 2016-2018

## I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on phosphor copper from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930 (the Act), as amended. The review covers one producer or exporter of the subject merchandise, Bongsan Co., Ltd. (Bongsan). The period of review (POR) is October 14, 2016 through March 31, 2018. We preliminarily determine that Bongsan did not sell subject merchandise at less than normal value (NV) during the POR.

## II. Background

On April 27, 2017, Commerce published in the *Federal Register* an AD order on phosphor copper from Korea.<sup>1</sup>

On April 2, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order* for the POR.<sup>2</sup> Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), Commerce received a timely request to conduct an administrative review of Bongsan from Metallurgical Products Company (Metallurgical), a U.S. producer of phosphor copper and the petitioner in the proceeding's less-than-fair-value investigation. On June 6, 2018,

---

<sup>1</sup> See *Phosphor Copper from the Republic of Korea: Antidumping Duty Order*, 82 FR 18893 (April 24, 2017) (*Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 13949 (April 2, 2018).



in accordance with 19 CFR 351.221(c)(1)(i), we published in the *Federal Register* a notice of initiation of administrative review for Bongsan.<sup>3</sup>

On June 13, 2019, Commerce issued the standard antidumping questionnaire<sup>4</sup> to Bongsan. Bongsan submitted its section A response on July 19, 2018<sup>5</sup> and its sections B, C, and D response on August 13, 2018.<sup>6</sup> On September 20, 2018, Commerce issued a supplemental questionnaire to Bongsan, to which it responded on October 18, 2018.<sup>7</sup> On November 7, 2018, Commerce issued a second supplemental questionnaire to Bongsan, to which it responded on November 29, 2018.<sup>8</sup>

On December 3, 2018, the petitioner alleged that cost-based particular market situations exist with regard to the copper and electricity markets in Korea.<sup>9</sup> On December 10, 2018, the petitioner further alleged that a purported AD reimbursement arrangement that Bongsan established for certain of its U.S. sales of subject merchandise creates differing market conditions between the export price (EP) and NV which distorts the proper comparison of such values, and therefore requires the application of a particular market situation adjustment.<sup>10</sup> On December 17, 2018, Bongsan submitted rebuttal comments requesting that Commerce reject the petitioner's particular market situation allegations as an untimely filed submissions.<sup>11</sup> On December 18, 2018, the petitioner submitted its response to Bongsan's rebuttal comments.<sup>12</sup> On March 15, 2019, Commerce officials met with counsel to the petitioner to discuss issues raised in the petitioner's particular market situation allegations.<sup>13</sup> Also on March 15, 2019, Commerce issued a deficiency questionnaire to the petitioner regarding its particular market situation allegations,<sup>14</sup> to which the petitioner responded on March 26, 2019.<sup>15</sup> On April 10, 2019,

---

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 26258 (June 6, 2018) (*Initiation Notice*).

<sup>4</sup> See Commerce's Letter, "Issuance of Initial Questionnaire to Bongsan," dated June 13, 2018 (Initial Questionnaire).

<sup>5</sup> See Bongsan's Letter, "Phosphor Copper from the Republic of Korea – Section A Response," dated July 19, 2018 (Section A Response).

<sup>6</sup> See Bongsan's Letter, "Phosphor Copper from the Republic of Korea – Section B–D Response," dated August 13, 2018 (Section BCD Response).

<sup>7</sup> See Bongsan's Letter, "Phosphor Copper from the Republic of Korea – First Supplemental Questionnaire Response," October 18, 2018 (First Supplemental Response).

<sup>8</sup> See Bongsan's Letter, "Phosphor Copper from the Republic of Korea – Second Supplemental Questionnaire Response," dated November 29, 2018 (Second Supplemental Response).

<sup>9</sup> See the Petitioner's letter, "Phosphor Copper from the Republic of Korea: Petitioner's Particular Market Situation Allegation," dated December 3, 2018 (Particular Market Situation Allegation).

<sup>10</sup> See the Petitioner's letter, "Phosphor Copper from the Republic of Korea: Petitioner's Additional Particular Market Situation Allegation," dated December 11, 2018 (Second Particular Market Situation Allegation).

<sup>11</sup> See Bongsan's letter, "Phosphor Copper from the Republic of Korea: Request to Reject to Untimely Particular Market Situation Allegation," dated December 17, 2018 (Bongsan's First Particular Market Allegation Rebuttal).

<sup>12</sup> See the Petitioner's letter, "Phosphor Copper from the Republic of Korea: Petitioner's Response to Request to Reject Particular Market Situation Allegations," dated December 18, 2018.

<sup>13</sup> See Commerce Memorandum, "Meeting with Interested Party," dated March 15, 2019.

<sup>14</sup> See Commerce's Letter, "Deficiency Questionnaire Regarding the Petitioner's Particular Market Situation Allegation," dated March 15, 2019.

<sup>15</sup> See the Petitioner's letter, "Phosphor Copper from the Republic of Korea: Petitioner's Response to the Particular Market Situation Deficiency Questionnaire," dated March 26, 2019 (Petitioner's Particular Market Situation Allegation Supplemental Response).

Bongsan submitted rebuttal factual information relating to the petitioner's Particular Market Situation Supplemental Response.<sup>16</sup>

Concurrently with these preliminary results, we have accepted the petitioner's particular market situation allegation and the supporting factual information on the record, and are initiating an inquiry into whether particular market situations exist in the Korean copper and electricity markets.<sup>17</sup> We have declined to initiate a particular market situation inquiry with regard to the alleged AD reimbursement arrangement alleged by the petitioner.<sup>18</sup> However, we intend to solicit additional information from Bongsan concerning the petitioner's AD reimbursement allegation, and we intend to address this issue subsequent to these preliminary results.

Further, because we are initiating an inquiry into the petitioner's particular market situation allegations concurrently with these preliminary results, we invite interested parties to submit new factual information to rebut, clarify or correct the factual information submitted by the petitioner concerning these allegations,<sup>19</sup> and we intend to subsequently issue a post preliminary analysis memorandum.

### **III. Scope of the Order**

The merchandise covered by this *Order* is master alloys<sup>20</sup> of copper containing between five percent and 17 percent phosphorus by nominal weight, regardless of form (including but not limited to shot, pellet, waffle, ingot, or nugget), and regardless of size or weight. Subject merchandise consists predominantly of copper (by weight), and may contain other elements, including but not limited to iron (Fe), lead (Pb), or tin (Sn), in small amounts (up to one percent by nominal weight). Phosphor copper is frequently produced to JIS H2501 and ASTM B-644, Alloy 3A standards or higher; however, merchandise covered by this investigation includes all phosphor copper, regardless of whether the merchandise meets, fails to meet, or exceeds these standards.

Merchandise covered by this *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7405.00.1000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of this *Order* is dispositive.

---

<sup>16</sup> See Bongsan's letter, "Phosphor Copper from the Republic of Korea: Rebuttal Factual Information Relating to the Petitioner's Response to the PMS Deficiency Questionnaire," dated April 10, 2019 (Bongsan's Second Particular Market Allegation Rebuttal).

<sup>17</sup> See Commerce Memorandum, "Allegation of a Particular Market Situation in the 2016-18 Antidumping Duty Administrative Review of Phosphor Copper from the Republic of Korea," dated concurrently with these preliminary results at 2-7 (Particular Market Situation Initiation Memorandum).

<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> A "master alloy" is a base metal, such as copper, to which a relatively high percentage of one or two other elements is added.

## IV. Discussion of the Methodology

### A. Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Bongsan's sales of the subject merchandise were made at less than NV, Commerce compared the 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 a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate. In a less-than-fair-value (LTFV) investigation, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in a LTFV investigation.<sup>21</sup>

In recent investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>22</sup> 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 administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating a respondent's weighted-average dumping margin.

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

---

<sup>21</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014), *aff'd* 862 F.3d 1323 (Fed. Cir. 2017).

<sup>22</sup> See, e.g. *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review 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 normal value for the individual dumping margins.

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, then Commerce

examines whether using only the A-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.<sup>23</sup>

## 2. Results of the Differential Pricing Analysis

For Bongsan, based on the results of the differential pricing analysis, we preliminarily find that 96.25 percent of the value of Bongsan's U.S. sales pass the Cohen's *d* test,<sup>24</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an A-T method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-A method for all U.S. sales to calculate the weighted-average dumping margin for Bongsan.

### B. Date of Sale

Under 19 CFR 351.401(i), in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the producer's or exporter'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.<sup>25</sup> Commerce has a long-

---

<sup>23</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. July 12, 2017) 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.

<sup>24</sup> See Memorandum, "Phosphor Copper from the Republic of Korea (2016-2018): Sales and Cost of Production Calculation Memorandum for the Preliminary Results of Bongsan Co., Ltd.," dated concurrently with this memorandum (Bongsan's Preliminary Sales and Cost Calculation Memorandum) for further details.

<sup>25</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.")

standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>26</sup>

For its home market sales, Bongsan reported as the date of sale the earlier of: (1) the physical shipment date; or (2) the tax invoice date.<sup>27</sup> Bongsan explained that it generally issued tax invoices at the time of shipment; however, in some instances, Bongsan issued tax invoices at the end of the month to cover all sales made during the month.<sup>28</sup> For those sales for which Bongsan issued tax invoices for all sales made during the month at the end of the month, Bongsan reported the date of physical shipment as the date of sale.<sup>29</sup> Therefore, we are using the earlier of the physical shipment date or the tax invoice date as the date of sale for Bongsan's home market sales.

For its U.S. sales, Bongsan reported the date of tax invoice issuance as the date of sale, which is generally issued approximately five to ten days before the physical shipment date to ensure timely export clearance.<sup>30</sup> Therefore, for these preliminary results, we are using the earlier of the physical shipment date or the tax invoice date as the date of sale for Bongsan's U.S. sales.

### **C. Product Comparisons**

For the purposes of determining an appropriate NV based on home market prices for comparison to the U.S. sale prices, in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the scope of the *Order* (i.e., the foreign like product) that were in the ordinary course of trade. To identify identical or similar merchandise, we matched foreign like products to the products sold in the United States based on the physical characteristics. In order of importance, these physical characteristics are: (1) category, (2) stage, (3) state, and (4) range of concentration of active ingredients.

Pursuant to 19 CFR 351.414(f), we compared U.S. sale prices of phosphor copper to NVs based on home market sale prices of phosphor copper products within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sale prices of phosphor copper products to NVs based on sale prices of the most similar foreign like product in the ordinary course of trade.

---

<sup>26</sup> See, e.g. *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015), and accompanying IDM at Comment 1; *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 IDM at Comment 10.

<sup>27</sup> See Section BCD Response at B-14 and B-15.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See Section BCD Response at C-16 and C-17.

## **D. Export Price**

According to section 772(a) of the Act, EP is 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 the 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 section 772(c) of the Act. Pursuant to section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under {sections 772(c) and (d) of the Act}.”

In accordance with section 772(a) of the Act, for Bongsan’s U.S. sales we used the EP methodology because Bongsan sold subject merchandise outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation into the United States.<sup>31</sup> We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we adjusted the EP to reflect billing adjustments.

In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for movement expenses, inland freight, brokerage and handling, international freight, marine insurance, and U.S. customs duties.

## **E. Normal Value**

### **1. Home Market Viability and Comparison Market Selection**

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Bongsan’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because Bongsan’s aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determine that Bongsan’s home market is a viable basis for calculating NV.<sup>32</sup>

### **2. Level of Trade**

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sale prices at the same level of trade (LOT) as the U.S. sale prices. Sale prices are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>33</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>34</sup> To determine whether the

---

<sup>31</sup> See Section BCD Response at C-14.

<sup>32</sup> See Section A Response at A-2 and Exhibit A-1.

<sup>33</sup> See 19 CFR 351.412(c)(2).

<sup>34</sup> See *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, 51001 (August 18, 2010), and accompanying IDM at 16-23.



comparison market sale prices are at different stages in the marketing process than the U.S. sale prices, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, 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 EPs and comparison market sale prices (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. For CEPs, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>35</sup> Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the comparison market sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible.<sup>36</sup>

When we are unable to match sale prices of the foreign like product in the comparison market at the same LOT as the EPs or CEPs, we may compare the U.S. sale prices to sale prices at a different LOT in the comparison market. In comparing EPs or CEPs to sale prices at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEPs only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEPs and there is no basis for determining whether the difference in LOTs between NV and the CEPs affects price comparability (*i.e.*, no LOT adjustment is possible), we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).<sup>37</sup>

In Bongsan's Section A Response, Bongsan indicated that its selling activities do not vary by customer category or channel of distribution, and that it shipped foreign like product directly to unaffiliated end users and distributors from its production facility in Incheon to the location designated by the customer.<sup>38</sup> Bongsan also noted that its prices do not vary depending on the channel of distribution in either the U.S. market or the home market. Rather, as a general matter, the terms of sale and selling prices for sales of phosphor copper made by Bongsan vary based on sales-specific negotiations.<sup>39</sup> Therefore, Bongsan stated that it had a single home market level of trade during the POR.<sup>40</sup> In its Section BCD Response, Bongsan further indicated that it sold only to unaffiliated end users and distributors and performed similar selling functions for both purchasers in both the home market and U.S. market.<sup>41</sup> Accordingly, Bongsan stated that it had a single level of trade in the home market and its U.S. market during the POR.<sup>42</sup>

The "Selling Functions Chart" provided in Bongsan's Section A Response at Exhibits A-7, lists 24 possible selling functions or activities. We find that Bongsan performed only five basic

---

<sup>35</sup> See *Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314-15 (Fed. Cir. 2001).

<sup>36</sup> See 19 CFR 351.412(c)(1).

<sup>37</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

<sup>38</sup> See Section A Response at A-13.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See Section A Response at A-10 through A-13; Section BCD Response at B-22 and C-25, respectively.

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

functions to its home market and U.S. market customers during the POR.<sup>43</sup> We further find that Bongsan provided identical services to all home market and U.S. market customers with respect to three of these five selling functions.<sup>44</sup> For the two remaining functions, we note that one function was provided at a lesser degree to home market distributors, but at the same degree to its home market end users and its U.S. customers, while the other function was provided equally and solely to home market customers.<sup>45</sup>

Based on the foregoing, we find that in the home market that, although Bongsan provided less of one selling function to one customer category, we determine that a lesser degree of one of the five selling functions provided to a customer category is not sufficient to determine that Bongsan's home market LOT is at different level. Therefore, we determine that there is only one LOT in Bongsan's home market. Further, we find that Bongsan provided a service in the home market at a moderate level of intensity that it did not provide in the U.S. market.<sup>46</sup> However, we preliminarily determine that the provision of the additional service in the home market is not sufficient to determine that Bongsan's U.S. LOT is different from the home market LOT. Therefore, based on the totality of the facts, we preliminarily determine that sales to the home market during the POR were made at the same LOT as Bongsan's EP sales to the U.S. market. Consequently, we matched EP sales to home market sales at the same LOT, and we have made no LOT adjustment.

## **F. Cost of Production Analysis**

In accordance with section 773(b)(2)(A)(ii) of the Act,<sup>47</sup> we requested cost of production (COP) information from Bongsan, to which it submitted timely responses.<sup>48</sup> We examined Bongsan's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

### **1. Calculation of Cost of Production**

In accordance with section 773(b)(3) of the Act, we calculated product-specific weighted-average COPs based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses. We relied on the COP data submitted by Bongsan in its questionnaire responses for the COP calculation.<sup>49</sup>

---

<sup>43</sup> Because Bongsan's selling functions/activities are proprietary information, *see* Bongsan's Preliminary Sales and Cost Calculation Memorandum for further details; *see also* Section A Response at Exhibit A-7.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *See* Section A Response at Exhibit A-7.

<sup>47</sup> *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794 (August 6, 2015) (explaining the amendments to section 773(b)(2) of the Act made by section 504 of the Trade Preferences Extension Act of 2015).

<sup>48</sup> *See* Section BCD Response at Exhibit D-1, which contains Bongsan's reported COP database.

<sup>49</sup> *Id.*

## 2. Test of Comparison Market Sales Prices

Pursuant to sections 773(b)(1) and (2) of the Act, we compared the product-specific, weighted-average COP for the POR to the comparison market sale prices of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.<sup>50</sup>

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's home 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 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.

The sales-below-cost test for Bongsan indicates that, for home market sales of certain products, less than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we did not exclude any below-cost sales from our analysis and used all Bongsan's reported home market sale prices to determine NV.<sup>51</sup>

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

We calculated NV for Bongsan based on the reported prices to unaffiliated customers in the home market. We made adjustments, where appropriate, from the starting price for inland freight, pursuant to 19 CFR 351.401(c) and section 773(a)(6)(B)(ii) of the Act.<sup>52</sup> Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

---

<sup>50</sup> See Bongsan's Preliminary Sales and Cost Calculation Memorandum.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

When comparing U.S. sale prices with home market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in 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.<sup>53</sup> For detailed information on the calculation of NV, *see* Bongsan's Preliminary Sales and Cost Calculation Memorandum.

## **H. 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 date of the U.S. sales as certified by the Federal Reserve Bank.<sup>54</sup>

## **V. Recommendation**

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

6/10/2019

**X** 

---

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

---

<sup>53</sup> See 19 CFR 351.411(b).

<sup>54</sup> The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.