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October 16, 2019

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

FROM: James Maeder
Deputy Assistant Secretary
for Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2017-2018 Administrative Review of the Antidumping Duty Order
on Certain Steel Nails from the Republic of Korea

I. SUMMARY

We analyzed the comments submitted by interested parties in the 2017-2018 administrative review of the antidumping duty order on certain steel nails (steel nails) from the Republic of Korea (Korea). The review covers four mandatory respondents: Daejin Steel Company (Daejin), Je-il Wire Production Co., Ltd. (Je-il), Koram Inc. (Koram), and Korea Wire Co., Ltd. (Kowire). Following the *Preliminary Results*¹ and based on our analysis of the comments received, we made no changes to the margin calculations for any of the mandatory respondents for the final results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this administrative review for which we received comments from interested parties:

Daejin-Specific Issues

Comment 1: Daejin’s Scrap Offset
Comment 2: Daejin’s Interest Rate Calculation on Short-term Borrowings
Comment 3: Daejin’s U.S. Sales Database
Comment 4: Differential Pricing

¹ See *Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 28278 (June 18, 2019) and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

Koram-Specific Issues

Comment 5: Revision of Koram's General and Administrative Expense Ratio

II. BACKGROUND

On June 18, 2019, we published the *Preliminary Results* of this administrative review.² On July 18, 2019, we received case briefs from interested parties,³ and on July 26, 2019, we received rebuttal briefs.⁴ On July 18, 2019, Daejin and Koram requested that Commerce conduct a hearing in this proceeding⁵ and on August 14 and 16, 2019, Daejin and Koram, respectively, withdrew their requests for a hearing.⁶

III. SCOPE OF THE ORDER

The products covered by this order are certain steel nails having a nominal shaft length not exceeding 12 inches.⁷ 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.

² *Id.*

³ See Daejin's Letter, "Administrative Review of the Antidumping Order on Certain Steels Nails from Korea – Redacted Case Brief," dated September 24, 2019 (Daejin's Case Brief); see also Petitioner's Letter, "Certain Steel Nails from Korea: Case Brief on Daejin Steel Company and Koram Inc.," dated July 18, 2019 (Petitioner's Case Brief). The petitioner is Mid-Continent Steel & Wire Inc.

⁴ See Daejin's Letter, "Administrative Review on of the Antidumping Order on Certain Steel Nails from Korea – Rebuttal Brief of Daejin Steel Company," dated July 26, 2019 (Daejin's Rebuttal Brief); see also Koram's Letter, "Certain Steel Nails from the Republic of Korea: Rebuttal Brief," dated July 26, 2019 (Koram's Rebuttal Brief); Petitioner's Letter, "Certain Steel Nails from Korea: Rebuttal Brief on Daejin Steel Company," dated July 26, 2019 (Petitioner's Rebuttal of Daejin).

⁵ See Daejin's Letter, "Certain Steel Nails from the Republic of Korea – Hearing Request," dated July 18, 2019; see also Koram's Letter, "Certain Steel Nails from the Republic of Korea: Koram Request to Participate in Hearing," dated July 18, 2019.

⁶ See Daejin's Letter, "Administrative Review of the Antidumping Order on Certain Steel Nails from the Republic of Korea – Withdrawal of Hearing Request," dated August 14, 2019; see also Koram's Letter, "Certain Steel Nails from the Republic of Korea: Koram Withdrawal of Hearing Request," dated August 16, 2019.

⁷ 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. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received from interested parties, we made no changes to our margin calculations for Daejin, Je-il, Koram, or Kowire.⁸

V. DISCUSSION OF THE ISSUES

Daejin-Specific Issues

Comment 1: Daejin's Scrap Offset

Petitioner's Comments

- In the *Preliminary Results*, Commerce stated that it denied Daejin's scrap adjustment. However, Commerce miscalculated the cost of manufacturing field in the program and allowed the scrap offset. Commerce should correct this error in the final determination by subtracting the scrap offset from the cost of manufacturing field.⁹

Daejin's Comments

- In the *Preliminary Results*, Commerce denied an adjustment to offset Daejin's costs of production by the scrap sold during the POR. However, Commerce's practice is to grant an offset for by-product sold that is capped by the amount produced during the POR. If the amount generated exceeds the amount sold, then the offset should be equal to the amount sold.¹⁰
- Commerce calculated an estimated quantity for scrap generated that is greater than the amount sold during the POR. However, Commerce has suggested that if the amount of scrap produced is greater than the amount sold, the offset granted would be equal to zero. Because this understanding is inconsistent with Commerce's practice, Commerce should grant Daejin an offset equal to the reported quantity sold.¹¹

Petitioner's Rebuttal

- Daejin is incorrect in its assertion that Commerce denied its requested scrap offset. Commerce did grant Daejin's full scrap offset and did not make any adjustment because the amount of scrap Daejin could have produced is greater than the amount of scrap sold

⁸ See Memorandum, "Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Daejin Steel Company," dated October 16, 2019 (Daejin's Final Analysis Memorandum); *see also* Memoranda, "Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Je-il Wire Production Co., Ltd.," dated October 16, 2019; "Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Koram Inc.," dated October 16, 2019; and "Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Korea Wire Co., Ltd.," dated October 16, 2019.

⁹ See Petitioner's Case Brief at 2-3.

¹⁰ See Daejin's Case Brief at Attachment at 1-3.

¹¹ *Id.* at Attachment at 4.

during the POR. However, Commerce should make an adjustment to the cost of manufacturing to exclude the scrap offset.¹²

Daejin's Rebuttal

- Commerce's decision to deny Daejin's scrap offset is not in accordance with Commerce's practice. If the amount of scrap produced is greater than the amount of scrap sold, Commerce does not make an adjustment to the scrap offset, and grants an offset based on the reported value of the scrap sold. In the preliminary margin calculation, Commerce did not need to adjust the cost of manufacturing field.¹³

Commerce's Position: We disagree with the petitioner in part, and with Daejin in part. In our *Preliminary Results*, we did allow Daejin's full reported scrap offset. A review of the record demonstrates that we intentionally did not adjust Daejin's scrap offset and, accordingly, did not make an adjustment to its cost of manufacturing. Specifically, line 7459 of the home market program log shows that we did not exclude the scrap offset from the total cost of manufacturing field.¹⁴ Further, in Daejin's Preliminary Analysis Memorandum, we stated that "the amount of scrap Daejin could have generated during the POR is greater than the quantity of scrap it sold during the POR, and thus an adjustment to its scrap offset is not warranted."¹⁵ We did not state that the entire scrap offset is not warranted, but only that an adjustment to the scrap offset is not warranted. Therefore, for the final results, we have continued to provide Daejin a full scrap offset.

Comment 2: Daejin's Interest Rate Calculation on Short-term Borrowings

Petitioner's Comments

- In the *Preliminary Results*, Commerce used the home market credit and inventory carrying costs reported in the home market sales database ("Daejin_HM_03") submitted in Daejin's April 26, 2019 Supplemental Sections B, C, and D questionnaire response. In this file, Daejin calculated the interest rate on its short-term borrowings by dividing the total interest expenses for the POR by the average monthly loan balance, which is not a reasonable methodology because it results in a monthly interest rate.¹⁶
- The most recent database submitted in Daejin's May 10, 2019 Third Supplemental Sections B and D questionnaire response, in which Daejin calculated the interest rate by dividing the total interest expenses by the total loan balances for the POR, properly expresses the interest rate on an annual basis. Accordingly, Commerce should use Daejin's most recent home market sales database for the final results.¹⁷

Daejin's Rebuttal

¹² See Petitioner's Rebuttal of Daejin at 1.

¹³ See Daejin's Rebuttal Brief at 1-2.

¹⁴ See Memorandum, "Certain Steel Nails from the Republic of Korea: Preliminary Results Analysis Memorandum for Daejin Steel Company," dated June 11, 2019 (Daejin's Preliminary Analysis Memorandum) at Attachment 1.

¹⁵ *Id.* at 4-5.

¹⁶ See Petitioner's Case Brief at 3-4.

¹⁷ *Id.* at 4-5.

- In the *Preliminary Results*, Daejin initially calculated an average interest rate to determine home market credit expenses and inventory carrying costs by dividing the total interest expense on short-term Korean Won borrowings by the average loan balance for the POR. Daejin then revised the interest rate calculation per the incorrect methodology suggested by the petitioner. However, Commerce correctly selected Daejin's interest rate methodology in the home market program used to calculate the preliminary results.¹⁸
- Daejin's initial interest rate calculation is consistent with both the methodology Daejin used in the previous administrative reviews and with Commerce's methodology. Additionally, Daejin followed basic accounting principles in its initial calculation of the average annual interest rate. In contrast, the petitioner's suggested methodology would yield a monthly interest rate. Thus, Commerce should continue to apply Daejin's initial interest rate calculation methodology for the final results.¹⁹

Commerce's Position: We disagree with the petitioner. Commerce requires information from respondents to calculate the average lending rate on short-term borrowings to quantify incurred credit expenses.²⁰ Commerce Policy Bulletin 98.2, which describes our practice, states: "For the purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction."²¹

Accordingly, we requested that Daejin provide the equation or otherwise indicate the source it used to calculate the interest rate for its short-term borrowings.²² To arrive at the interest rate for its loan balance for the POR, Daejin divided the total POR interest expense on its short-term Korean Won borrowings by the average loan balance for the POR in its first three submitted home market databases.²³ To evaluate the methodology suggested by the petitioner, Commerce requested that Daejin revise its home market database.²⁴ Daejin applied this methodology in its May 10, 2019 home market database.²⁵ In the *Preliminary Results*, we determined that the method used by Daejin was the most appropriate means for calculating its credit expenses; thus, we used the home market database that Daejin submitted on April 26, 2019.

¹⁸ See Daejin's Rebuttal Brief at 4-5.

¹⁹ *Id.* at 5-9.

²⁰ See Commerce Policy Bulletin No. 98.2 "Imputed Credit Expenses and Interest Rates," dated February 23, 1998 (Policy Bulletin 98.2), available on Commerce's website at <https://enforcement.trade.gov/policy/bull98-2.htm>.

²¹ *Id.*

²² See Commerce's Letter, "Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Request for Information from Daejin Steel Co.," dated October 15, 2018 at B-25 and B-28.

²³ See Daejin's Letter, "Response of Daejin Steel Company to Section B and C of the Department's October 15 Questionnaire," dated December 10, 2018 at Appendix B-1; see also Daejin's Letters, "Response of Daejin Steel Company to the Department's February 27 Supplemental Questionnaire," dated March 21, 2019 (Daejin's Supplemental Sections B and C Questionnaire Response) at 14-15 and Appendices SB-1 and SB-8; and "Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Korea – Response to April 15 Supplemental Questionnaire," dated April 26, 2019 at Appendix S2B-1.

²⁴ See Commerce's Letter, "Third Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Republic of Korea: Sections B and D Supplemental Questionnaire," dated May 3, 2019 at 2.

²⁵ See Daejin's Letter, "Response of Daejin Steel Company to the Department's May 3 Supplemental Questionnaire," dated May 10, 2019 at Appendix S3B-1.

We find that the methodology suggested by the petitioner, and applied in Daejin's May 10, 2019 home market database, does not arrive at an average interest rate because it divides the total POR interest expense by the sum of the monthly loan balances for the entire POR rather than by the average loan balance. Therefore, for the final results, we will continue to use Daejin's interest rate calculation from its April 26, 2019 "Daejin_HM_03" home market database, which we will apply in calculating its home market credit expense.²⁶

Comment 3: Daejin's U.S. Sales Database

Petitioner's Comments

- Commerce used an outdated U.S. sales file in its preliminary margin calculation, and should use the most recent U.S. sales file submitted in Daejin's March 21, 2019 Supplemental Sections B and C questionnaire response in the final determination.²⁷

Daejin's Rebuttal

- Commerce used the correct, most recent U.S. sales file in its preliminary margin calculation. However, Commerce might consider renaming the U.S. sales file from "Daejin_US_02" to "Daejin_US_03" to avoid confusion in the final determination.²⁸

Commerce's Position: We disagree with the petitioner. A review of the record demonstrates that Commerce did use the most recent U.S. sales database submitted by Daejin in the margin calculation program. Specifically, we noted in Daejin's Preliminary Analysis Memorandum that we used the U.S. sales database ("Daejin_US_02") provided in Daejin's March 21, 2019 Supplemental Sections B and C questionnaire response, and a review of the margin calculation program at line 355 also indicates that we used this referenced U.S. sales database ("Daejin_US_02").²⁹ Further, the inclusion of, for example, fields PAYDATE1U and PAYDATE2U in the "Daejin_US_02" file that were only present in Appendix SC-1 of Daejin's March 21, 2019 response and not in earlier submissions of the U.S. sales database indicates that this is the appropriate U.S. sales database.³⁰ Therefore, record evidence indicates that we used the correct and most recent U.S. sales database in our preliminary calculation of Daejin's dumping margin.

Comment 4: Differential Pricing

Daejin's Comments

- Commerce is required to justify the numerical thresholds used in the differential pricing analysis based on substantial evidence on the record.³¹

²⁶ See Daejin's Final Analysis Memorandum at 1-2.

²⁷ See Petitioner's Case Brief at 5.

²⁸ See Daejin's Rebuttal Brief at 3-4.

²⁹ See Daejin's Preliminary Analysis Memorandum at 2 and Attachment 2; see also Daejin's Supplemental Sections B and C Questionnaire Response at Appendix SC-1.

³⁰ *Id.*

³¹ See Daejin's Case Brief at Attachment at 5-7.

- Commerce may adopt a rule that establishes numerical cut-offs that follows the notice and comment requirements of the Administrative Procedure Act (APA), but is has not done so in this case.
 - If Commerce applies such numerical cut-offs on a case-by-case basis, it must provide evidence and analysis demonstrating why the cut-offs for the Cohen's d test and ratio test are suitable in this investigation, in keeping with the Court of International Trade's (CIT) and Court of Appeals for the Federal Circuit's (CAFC) past rulings.³²
- The 0.8 cut-off used in the Cohen's d test is not supported by substantial evidence on the record.³³
 - Commerce cannot rely on an allegedly "widely adopted" statistical test when it is not using that test in the context for which it was proposed and is appropriately applied.
 - Although Commerce claims that the "T-Test for Means" is irrelevant to Commerce's differential pricing analysis, the "T-Test for Means" was very relevant to Professor Cohen's development and presentation of his d statistic and the various cut-offs he proposed for establishing whether d is small or large.³⁴
 - Despite Commerce's acknowledgment that the subject of Professor Cohen's book is "statistical power analysis," Commerce argues that it does not intend to be conducting a "power analysis" in its differential pricing analysis."³⁵
 - Commerce has applied a statistical tool in its differential pricing analysis in situations that are inconsistent with the limitations described by Professor Cohen.
 - Neither mathematics nor substantial evidence supports Commerce's use of Professor Cohen's cut-offs simply because Commerce is analyzing an entire population of U.S. sales, rather than a sample.
- The 33- and 66-percent cut-offs used in the ratio test are not supported by substantial evidence on the record.³⁶
 - Commerce has never explained why 33- and 66-percent should be the thresholds for this test, or why a ratio between 33- and 66-percent or over 66 percent calls for consideration of a methodology other than the average-to-average comparison (A-to-A) method.
 - Numerical thresholds not established through notice-and-comment rulemaking can only be upheld if supported by substantial record evidence in each case in which they are applied.³⁷ Commerce has provided no mathematical justifications for the cut-offs. Without justification, these thresholds are arbitrary and improper.

³² *Id.* at Attachment at 5-7 (citing *Carlisle Tire v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (*Carlisle Tire*) and *Washington Red Raspberry Commn. v. United States*, 859 F.2d 898, 903-904 (Fed. Cir. 1988) (*Washington Raspberry*)).

³³ See Daejin's Case Brief at Attachment at 7-10.

³⁴ *Id.* at Attachment at 7-10 (citing *Final Results of the Antidumping Duty Administrative Review: Oil Country Tubular Goods from the Republic of Korea; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying Issues and Decision Memorandum (IDM) (*First OCTG Review*) at 22).

³⁵ *Id.* at Attachment at 7-10 (citing *First OCTG Review* at 23).

³⁶ See Daejin's Case Brief at Attachment at 11.

³⁷ *Id.* (citing *Carlisle Tire and Washington Raspberry*).

- The differential pricing analysis fails to explain why patterns of prices that differ significantly were not, or could not, be taken into account using the A-to-A method.³⁸
 - The statute allows Commerce to depart from the A-to-A or transaction-to-transaction comparison (T-to-T) method for “targeted dumping” only if: (1) “there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time” and (2) Commerce “explains why such differences cannot be taken into account using” the A-to-A method or T-to-T method.³⁹
 - Commerce only showed that the weighted-average dumping margin calculated using an alternate comparison method differed meaningfully from that calculated using a standard comparison method. However, the existence of different results does not satisfy the statutory requirements.
 - The different results are mainly a function of zeroing or not zeroing.
 - Commerce did not provide support demonstrating that the difference in weighted-average dumping margins is meaningful when there is at least a 25 percent change in margin between the A-to-A method and an alternative comparison method. Thus, Commerce’s use of the 25 percent measure is inherently arbitrary and improper.
- Under the relevant provisions of the statute, Commerce is not permitted to utilize the average-to-transaction comparison (A-to-T) method for any of Daejin’s U.S. sales.⁴⁰
 - Neither the petitioner nor Commerce has shown, based on the record evidence, that the criteria for application of the average-to-transaction (A-to-T) comparison method have been satisfied. Furthermore, even if a pattern of U.S. prices for comparable merchandise that differ from Daejin’s U.S. sales were to exist, Commerce’s differential pricing analysis would not explain why such differences could not be taken into account using either the A-to-A or T-to-T comparison methods. Thus, Commerce is required to use the A-to-A method to calculate Daejin’s dumping margin for the final results.

Petitioner’s Rebuttal

- Daejin has previously raised similar arguments and Commerce has considered and rejected them in prior decisions. Accordingly, for the final results, Commerce should again reject Daejin’s arguments against differential pricing.⁴¹
- The CIT has upheld the use of the numerical thresholds used in the differential pricing analysis, *i.e.*, the 0.8 cut-off used for the Cohen’s *d* test and the 33- and 66-percent cut-offs used for the ratio test, based on substantial evidence on the record.⁴²
 - The CIT has accepted Commerce’s explanation for why the Cohen’s *d* test is a “reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.” Additionally, the CIT has rejected the argument that the price difference must be statistically significant and that the “small,” “medium,” and “large” thresholds are arbitrary.

³⁸ See Daejin’s Case Brief at Attachment at 12-13.

³⁹ *Id.* (citing section 777A(d)(1)(B) of the Act) and section 777A(d)(1)(B).

⁴⁰ See Daejin’s Case Brief at Attachment at 13.

⁴¹ See Petitioner’s Rebuttal of Daejin at 3.

⁴² *Id.* (citing *Tri Union Frozen Products, Inc. v. United States*, 163 F. Supp. 3d 1255, 1301 (CIT 2016); *Mid Continent Steel & Wire, Inc. v. United States*, 219 F. Supp. 3d 1326, 1339 (CIT 2017)).

- The CIT has rejected arguments that the Cohen’s *d* test can only be used where samples have been randomly and independently drawn from normal populations and where they do not have substantially unequal variances or sample sizes.
- The CIT has upheld the use of the 33- and 66-percent thresholds to determine the extent of significant price differences to which the A-to-T method can be applied as lawful and reasonable.
- Because the numerical thresholds are applied to the entirety of a respondent’s sales information on the record of a proceeding, the use of these thresholds in the differential pricing analysis is not necessarily a case-by-case determination. Furthermore, Commerce has explained why these thresholds are appropriate in the context of this administrative review of Daejin.
- The differential pricing analysis properly explains why patterns of prices that differ significantly cannot be taken into account using the A-to-A method.⁴³
 - The CIT has ruled that it is reasonable for Commerce to presume that the A-to-A comparison method cannot account for price differences where A-to-A is unable to uncover any dumping and the A-to-T method is able to do so.
 - The CIT and other courts have upheld the meaningful difference test and use of zeroing in the differential pricing analysis. Therefore, Commerce should continue using the meaningful difference test and zeroing in the final results to uncover potential targeted dumping.

Commerce’s Position: As an initial matter, we note that there is nothing in section 777A(d) of the Tariff Act of 1930, as amended (the Act) that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method cannot account for such differences. On the contrary, carrying out the purpose of the statute⁴⁴ here is a gap filling exercise properly conducted by Commerce.⁴⁵ As explained in the *Preliminary Results*, as well as in various other proceedings,⁴⁶ Commerce’s differential pricing analysis is

⁴³ See Petitioner’s Rebuttal of Daejin at 10-12 (citing *Apex Frozen Foods Pvt. Ltd. v. United States*, 144 F. Supp. 3d 1308, 1332-35 (CIT 2016) (*Apex II*), *aff’d*, *Apex Frozen Foods Pvt. Ltd. v. United States*, 862 F.3d 1337, 1346, 1348-49 (Fed. Cir. 2017)).

⁴⁴ See *Koyo Seiko Co., Ltd. v. United States*, 20 F. 3d 1156, 1159 (Fed. Cir. 1994) (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

⁴⁵ See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous, and an agency’s interpretation is reasonable); see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (applying *Chevron* deference in the context of Commerce’s interpretation of section 777A(d)(1) of the Act).

⁴⁶ See, e.g., *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 5; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018), and accompanying IDM (*Second OCTG Review*) at Comment 8; *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80

reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

We note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including: the application of the "meaningful difference" standard, which compares the calculated weighted-average dumping margins using the A-to-A method without zeroing and an alternative comparison method based on the A-to-T method with zeroing; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference; Commerce's justification for applying the A-to-T method to all U.S. sales; Commerce's use of zeroing in applying the A-to-T method; that Congress did not dictate how Commerce should determine if the A-to-A method accounts for "targeted" or masked dumping; that the "meaningful difference" test is reasonable; and that Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method.⁴⁷

A. APA Rulemaking is Not Required

Commerce disagrees with Daejin that it is obligated to follow the APA in establishing the differential pricing methodology. The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."⁴⁸ Further, Commerce normally makes these types of changes in practice (e.g., the change from the targeted dumping analysis to the current differential pricing analysis) in the context of its proceedings, on a case-by-case basis.⁴⁹ As the CAFC has recognized, Commerce is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.⁵⁰ The CAFC has also held that Commerce's meaningful difference analysis was reasonable.⁵¹ Moreover, the CIT in *Apex II* recently held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the {A-to-A} comparison method. Commerce additionally explained that the new approach is "a more precise characterization

FR 32937 (June 10, 2015) and accompanying IDM at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4.

⁴⁷ See *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) (*Apex*); *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) (*Apex I*).

⁴⁸ See 5 U.S.C. § 553(b)(3)(A).

⁴⁹ See *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

⁵⁰ See *Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); see also *Washington Raspberry*, 859 F. 2d at 902-03; *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

⁵¹ See *Apex I*, 862 F.3d 1337, 1347-1351.

of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}” and is the product of Commerce’s “experience over the last several years . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method.” Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce’s explanation is sufficient. Therefore, Commerce’s adoption of the differential pricing analysis was not arbitrary.⁵²

Moreover, as we noted previously, the CIT acknowledged in *Apex II* that as Commerce “gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the average-to-average comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method.”⁵³ Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties’ comments in each case.

B. The Application of the Cohen’s *d* Coefficient and the Threshold of 0.8 for the Cohen’s *d* Coefficient is Reasonable

As stated in the *Preliminary Results*, the purpose of the Cohen’s *d* test is to evaluate “the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise.”⁵⁴ The Cohen’s *d* coefficient is a recognized measure which gauges the extent (or “effect size”) of the difference between the means of two groups and provides “a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone.”⁵⁵ “Effect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*.”⁵⁶ As stated in the *Second OCTG Review*, the purpose for which Commerce relies on the Cohen’s *d* test is to satisfy the statutory language, is to measure whether a difference is significant.⁵⁷

Further, in describing “effect size” and the distinction between effect size and statistical significance, Commerce stated in *Shrimp from Vietnam*:⁵⁸

⁵² See *Apex II*, 37 F. Supp. 3d at 1308, 1322.

⁵³ *Id.*

⁵⁴ See *Preliminary Results* at 6.

⁵⁵ See *Second OCTG Review* at 68 (quoting Coe, Robert, “It’s the Effect Size, Stupid: What effect size is and why it is important,” (September 2002) (Coe’s Paper)).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016), and the accompanying IDM (*Shrimp from Vietnam*) at 16-17 (quoting Ellis, Paul D., *The Essential Guide to Effect Sizes*; Cambridge University Press (2010) (*Ellis*) at 3-5); see also *Second OCTG Review* at 67-72.

Dr. Paul Ellis, in his publication *The Essential Guide to Effect Sizes*, introduces effect size by asking a question: “So what? Why do this study? What does it mean for the man on the street?” Dr. Ellis continues:

A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.

In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this “implies an estimation of one or more effect sizes.”

An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.

Commerce further stated in *Shrimp from Vietnam*:⁵⁹

As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of significance are independent of one another. In its case brief, VASEP {the Vietnamese respondent} accedes to the distinction and meaning of “effect size” when it states “While application of the t test {a measure of statistical significance} in addition to Cohen’s *d* might at least provide the cover of statistical significance, it still would not ensure practical significance.” The Department agrees with this statement – statistical significance is not relevant to the Department’s examination of an exporter’s U.S. prices when examining whether such prices differ significantly. The Department’s differential pricing analysis, including the Cohen’s *d* test, includes all U.S. sales which are used to calculate a respondent’s weighted-average dumping margin; therefore, statistical significance, as discussed above, is inapposite. The question is whether there is a practical significance in the differences found to exist in the exporter’s U.S. prices among purchasers, regions or time periods. Such practical significance is quantified by the measure of “effect size.”

Lastly, in *Shrimp from Vietnam*, Commerce again pointed to Dr. Ellis, where he addresses populations of data:

Dr. Ellis also states in his publication that the “best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.”⁶⁰

⁵⁹ See *Shrimp from Vietnam* at 16-17; see also *Second OCTG Review* at 67-72.

⁶⁰ See *Shrimp from Vietnam* at 17 (quoting Ellis); see also *Second OCTG Review* at 67-72.

There are two separate concepts and measurements when analyzing whether the means of two sets of data are different. The first measurement, when these two sets of data are samples of a larger population, is whether this difference is statistically significant, as measured by a t-test. This will determine whether this difference rises above the sampling error (or in other words, noise or randomness) in selecting the sample. This will answer the question of whether picking a second (or third or fourth) set of samples will result in a different outcome than the first set of samples. When the t-test results in determining that the difference is statistically significant (*i.e.*, the null hypothesis is false), then these results rise above the sampling error and are statistically significant.

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an “effect size” such as Cohen’s *d* coefficient. As noted above, this quantifies the real-world relevance of this difference “and may therefore be said to be a true measure of the significance of the difference.”⁶¹ This is the basis for Commerce’s determination whether prices in a test group differ significantly from prices in a comparison group.

Daejin claims that Commerce’s use of Cohen’s stated thresholds to determine whether Cohen’s measurement of effect size is significant is not appropriate. Daejin states that these thresholds, and consequently the Cohen’s *d* coefficient,

could only appropriately be applied in specific circumstances – where ‘samples, each of *n* cases, have been randomly and independently drawn from normal populations,’ and where the two samples do not have ‘substantially unequal variances’ or ‘substantially unequal sample sizes (whether small or large).’⁶²

Daejin’s claim is misplaced. Daejin’s quotation is from section 2.1 of Dr. Cohen’s text, “Introduction and Use” of “The T Test for Means.”⁶³ As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of “effect size” for sampled data,⁶⁴ but that is not the basis for Commerce’s analysis of Daejin’s U.S. sale price data.

Further, the subject for Dr. Cohen’s book and the discussion therein is “statistical power analysis.” Power analysis involves the interrelationship between statistical and practical significance to attain a specified confidence or “power” in the results of one’s analysis. Indeed, the beginning of the “Introduction and Use” of “The T Test for Means,” including Daejin’s first quotation, is:

⁶¹ See *Second OCTG Review* at 69 (citing Coe’s Paper).

⁶² See Daejin’s Case Brief at Attachment at 8 (citing *First OCTG Review* (quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences, Second Edition* (1988) (Cohen) at 19-20)).

⁶³ *Id.*

⁶⁴ See *Second OCTG Review* at 69 (citing, for example, Cohen at 21-23, section 2.2.1).

The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of n cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal...⁶⁵

Again, Commerce is not conducting a “power analysis” which guides researchers in their construction of a project in order to obtain a prescribed “power” (*i.e.*, confidence level, certainty in the researchers’ results and conclusions). This incorporates a balance between sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen’s d test in this final determination only measures the significance of the observed differences in the mean prices for the test and comparison groups with no need to draw statistical inferences regarding sampled price data or the “power” of Commerce’s results and conclusions.

The 0.8 threshold for the Cohen’s d coefficient, which establishes whether the price difference between the test and comparison groups is significant (*i.e.*, the “large” effect size), is subjective and objectively supported with real-world observations, and thus it is not arbitrary. Further, Dr. Cohen’s thresholds are widely accepted, and thus have been found by others to represent reasonable standards to define the magnitude of effect size. Commerce addressed the same argument by the respondent Deosen in *Xanthan Gum*, stating:

Deosen’s claim that the Cohen’s d test’s thresholds of “small,” “medium,” and “large” are arbitrary is misplaced. In “Difference Between Two Means,” the author states that “there is no objective answer” to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the “guidelines are somewhat arbitrary,” the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size “have been widely adopted.” The author further explains that Cohen’s d is a “commonly used measure {}” to “consider the difference between means in standardized units.” At best, the article may indicate that although the Cohen’s d test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen’s d test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.⁶⁶

As Commerce explained in the *Preliminary Results*, the magnitude of the price differences as measured with the Cohen’s d coefficient:

⁶⁵ *Id.* (quoting Cohen at 19 (emphasis in italics, Daejin’s quotation underlined)).

⁶⁶ See *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying IDM (*Xanthan Gum*) at Comment 3 (quoting Dave Lane et al., Chapter 19 “Effect Size,” Section 2 “Difference Between Two Means”); see also *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4; *Certain Steel Nails from the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM at Comment 7; and *Second OCTG Review* at 67-72.

... 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.⁶⁷

Commerce has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate “real world” understanding of the small, medium and large thresholds where a “large” difference “is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls....”⁶⁸ In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the “large” threshold is a reasonable yardstick to determine whether prices differ significantly.

Therefore, Commerce disagrees with Daejin's arguments that its application of the Cohen's *d* test in this administrative review is improper. As a general matter, Commerce finds that the U.S. sales data which Daejin has reported to Commerce constitutes a complete population. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to Commerce's analysis.⁶⁹ Furthermore, Commerce finds that Dr. Cohen's thresholds are reasonable, and the use of the “large” threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.⁷⁰

Finally, we note that, in the *Preliminary Results*, we requested that interested parties “present arguments and justifications in relation to the above-described differential pricing approach used in the preliminary results, including arguments for modifying the group definitions used in this proceeding.”⁷¹ Daejin has submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for Daejin in this administrative review. Accordingly, Daejin's arguments at this late stage of the administrative review are unsupported by the record and appear only to convey Daejin's

⁶⁷ Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. *See, e.g., Preliminary Results* at 6.

⁶⁸ *See Second OCTG Review* at 71 (citing Cohen at 27).

⁶⁹ *See, e.g., Xi'an Metals & Materials Imp. & Exp. Co. v. United States*, 256 F. Supp. 3d 1346, 1364-65 (CIT 2017) (“‘{S}tatistical significance’ is irrelevant where, as here, the agency has a complete set of data to consider . . . {I}f Congress wanted ITA to measure ‘statistical significance,’ it would have included the word ‘statistical’ {when it drafted the statute}.”); and *Stanley Works Langfang Fastening Sys. Co. v. United States*, 333 F. Supp. 3d 1329, 1346 (CIT 2018) (*Stanley Works*) (similar).

⁷⁰ *See Stanley Works*, 333 F. Supp. 3d at 1346-46 (“Commerce lawfully used these thresholds to help it determine which sales ‘pass’ its Cohen's *d* test.”).

⁷¹ *See Preliminary Results* at 7.

disagreement with the results of Commerce's application of a differential pricing analysis in this administrative review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

C. The 33- and 66-Percent Thresholds for the Ratio Test Are Reasonable

We disagree with Daejin's contention that Commerce has never explained the 33- and 66-percent thresholds used in the ratio test. Specifically, in *OCTG from India*, we addressed the establishment of the 33- and 66-percent thresholds as follows:

In the differential pricing analysis, the Department reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. The Department finds that when a third or less of a respondent's U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute...

Likewise, the Department finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit the Department to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, the Department considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when the Department finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, the Department finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.⁷²

Although the selection of these thresholds is subjective, Commerce's stated reasons behind the 33- and 66-percent thresholds does not render them arbitrary. In its case brief, Daejin proffers several pairs of other possible thresholds but without reasoning or support to argue that these values are more appropriate than those used by Commerce in this administrative review.⁷³ Likewise, during the course of this administrative review, Daejin has submitted no factual evidence or argument that these thresholds should be modified. Accordingly, Daejin's arguments at this late stage of the administrative review are unsupported by the record and appear only to convey Daejin's disagreement with the results of Commerce's application of a

⁷² See *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014), and accompanying IDM (*OCTG from India*) at Comment 1.

⁷³ See Daejin's Case Brief at Attachment at 11.

differential pricing analysis in this administrative review rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

D. The Differential Pricing Analysis Appropriately Explains Whether the A-to-A Method Can Account for Significant Price Differences

We disagree, in part, with Daejin that “the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements”⁷⁴ of whether the A-to-A method can account for significant price differences which are imbedded in Daejin’s pricing behavior in the U.S. market. We do agree with Daejin that this difference is due to zeroing, because weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield the identical results. This is evidenced with the calculation results for Daejin in the preliminary results (unchanged in the final results).⁷⁵

The difference in the calculated results specifically reveals the extent of the masked dumping which is being concealed when applying the A-to-A method.⁷⁶ The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower-priced U.S. sales, is hidden or masked by higher U.S. prices,⁷⁷ such that the A-to-A method would be unable to account for such differences.⁷⁸ Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked dumping, Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked dumping.

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the

⁷⁴ *Id.* at Attachment at 12.

⁷⁵ See Daejin’s Preliminary Analysis Memorandum at Attachment 2 (pages 97-98 of the SAS output (pages 361-362 of the PDF)), where the calculation results of the A-to-A method, the “mixed” method, and the A-to-T method are summarized. The sum of the “Positive Comparison Results” and the “Negative Comparison Results” for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results); the amount of dumping is identical. As such, the difference, between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing).

⁷⁶ See *Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

⁷⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 842 (SAA).

⁷⁸ See *Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) (“{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.”).

aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that so-called “targeted dumping” is a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”⁷⁹ The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales⁸⁰ remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.⁸¹ The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the normal value is less than all U.S. prices and there is no dumping;
- 2) the normal value is greater than all U.S. prices and all sales are dumped;
- 3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;⁸²
- 4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;

⁷⁹ See SAA at 842.

⁸⁰ These characteristics include items such as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

⁸¹ The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. See footnote 73, above, which identifies the specific calculation results for Daejin in these final results.

⁸² As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

- 5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount of dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping, or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can Commerce consider the use of an alternative comparison method.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-A / A-to-T method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping with the applied offsets.

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limited circumstances are present (*i.e.*, scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

Further, for each A-to-A comparison result which does not result in the set of circumstances in scenario (5), the “meaningfulness” of the difference in the weighted-average dumping margins between the two comparison methods will be diminished. This is because for these A-to-A comparisons which do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin) but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no “meaningful” difference will thus dilute the significance of other A-to-A comparison results where there is a “meaningful” difference, which the A-to-T method avoids.

Therefore, Commerce finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method cannot account for the significant price differences in Daejin’s pricing behavior in the U.S. market. Congress’s intent of addressing so-called “targeted dumping,” when the requirements of section 777A(d)(1)(B) of the Act are satisfied,⁸³ would be thwarted if the A-to-T method without zeroing were applied because this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that Commerce finds that the A-to-A method cannot take into account the pattern of prices that differ significantly for Daejin, *i.e.*, Commerce identified conditions where “targeted” or masked dumping “may be occurring” in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, Commerce continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping,”⁸⁴ and has applied an alternative comparison method based on the A-to-A method for sales not passing the Cohen’s *d* test and the A-to-T method for sales passing the Cohen’s *d* test to calculate the weighted-average dumping margin for Daejin in these final results.

E. Application of the Average-to-Transaction Method is Supported by Record Evidence and Commerce’s Analysis

Commerce disagrees with Daejin that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and considers the application of an alternative comparison method based on the A-to-T method appropriate. As set forth in the *Preliminary Results*,⁸⁵ and further explained above, Commerce’s differential pricing analysis for Daejin in this review is both lawful, reasonable, and completely within Commerce’s discretion in executing the statute.

⁸³ See SAA at 842-843.

⁸⁴ See *Apex II*, 37 F. Supp. 3d at 1296.

⁸⁵ See *Preliminary Results* at 5-7.

Koram-Specific Issues

Comment 5: Revision of Koram's General and Administrative Expense Ratio

Petitioner's Comments

- Commerce should include two line-items reported as “Other Operating Expense,” which Koram improperly excluded from the calculation of General and Administrative (G&A) expenses without justification.⁸⁶ Commerce should use the revised G&A expense ratio as recalculated by the petitioner.⁸⁷

Koram's Rebuttal

- Koram included the first line-item reported as “Other Operating Expense” in the calculation of its G&A expense ratio in the subsequent questionnaire response.⁸⁸
- The second line-item is an “additional corporation tax {} incurred and paid in March 2017 after tax adjustments for {Fiscal Year (FY)} 2016” which was “recognized as the additional payment of Income taxes,” and therefore qualifies for exclusion from the calculation. Furthermore, Koram provided supporting documentation indicating the nature of this income tax payment. Commerce did not notify Koram that its response was deficient. Therefore, Commerce should not revise Koram's G&A expense ratio to include the second line item.⁸⁹

Commerce's Position: In the *Preliminary Results*, we used Koram's G&A expense ratio as provided in its Supplemental Sections, A, C, and D questionnaire response where only the first line item was included in the G&A expense ratio.⁹⁰ Therefore, we agree with Koram that no revision is necessary with respect to the first line item included in “Other Operating Expense” and is consistent with the petitioner's re-calculation. With respect to the second line-item, which was excluded from the calculation of Koram's G&A expense ratio, we also agree with Koram. Koram provided supporting documentation, namely, “Additional income taxes payment after tax adjustment for FY 2016,” which is part of the income statement.⁹¹ The petitioner claims that regardless of its accounting label, this line-item does not represent its described label. However, the petitioner has not provided any record evidence to substantiate its allegation. After examination of the record evidence, we find that this line-item represents income tax, and our practice is to exclude income tax from the calculation of cost of production. Therefore, for the final results, we have continued to include Koram's first line-item in the Koram's G&A expense ratio, and have continued to exclude Koram's second line-item from the G&A expense ratio.

⁸⁶ See Koram's Letter, “Steel Nails from the Republic of Korea, 7/1/2017-6/30/2018 Administrative Review, Case No. A-580-874: Sections B-D Initial Questionnaire Response,” dated December 7, 2018 at 24, 31, and Exhibit D-12.

⁸⁷ See Petitioner's Case Brief at 7.

⁸⁸ See Koram's Rebuttal Brief at 1; see also Koram's Letter, “Steel Nails from the Republic of Korea, 7/1/2017-6/30/2018 Administrative Review, Case No. A-580-874: Sections A, C, and D Supplemental Questionnaire Response,” dated May 2, 2019 (Koram's Supplemental Sections A, C, and D Questionnaire Response) at Exhibit D-24.

⁸⁹ See Koram's Rebuttal Brief at 1-3.

⁹⁰ See Koram's Supplemental Sections A, C, and D Questionnaire Response at Exhibit D-24.

⁹¹ *Id.* at Exhibit D-25; see also Koram's Letter, “Steel Nails from the Republic of Korea, 7/1/2017-6/30/2018 Administrative Review, Case No. A-580-874: Section A Initial Questionnaire Response,” dated November 13, 2018 at Exhibit A-10.

VI. RECOMMENDATION

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



Agree



Disagree

10/16/2019

X 

Signed by: JEFFREY KESSLER