



A-580-874
Administrative Review
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October 28, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Certain Steel Nails
From the Republic of Korea; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain steel nails (steel nails) from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). We preliminarily determine that Daejin Steel Company (Daejin) and Korea Wire Co., Ltd. (Kowire) sold subject merchandise at prices below normal value (NV) during the period of review (POR), July 1, 2018 through June 30, 2019. Interested parties are invited to comment on these preliminary results.

II. BACKGROUND

On July 13, 2015, Commerce published the AD order on certain steel nails from Korea in the *Federal Register*.¹ On July 1, 2019, Commerce notified interested parties of the opportunity to request an administrative review of orders with anniversaries in July 2019.² Between July 11 and 31, 2019, Koram Inc. (Koram), Je-il Wire Production Co., Ltd. (Je-il), and Kowire requested an administrative review.³ Additionally, on July 31, 2019, Mid Continent Steel & Wire, Inc. (the

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

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 31295 (July 1, 2019).

³ See Koram's Letter, "Certain Steel Nails from the Republic of Korea, Case No. A-580-874: Request for Administrative Review," dated July 11, 2019; see also Je-il's Letter, "Certain Steel Nails from the Republic of Korea: Request for Administrative Review for the Period July 1, 2018 – June 30, 2019," dated July 30, 2019 (Je-il's Request for Review); and Kowire's Letter, "Steel Nails from the Republic of Korea – Request for Administrative Review," dated July 31, 2019 (Kowire's Request for Review).



petitioner) requested an administrative review of 131 producers and/or exporters, including Daejin, Je-il, Koram, and Kowire.⁴ On September 9, 2019, Commerce initiated an administrative review of the *Order* with respect to each of the 131 companies identified by the petitioner.⁵

On September 12, 2019, Commerce posted U.S. Customs and Border Protection (CBP) import data to the record, showing the top exporters/producers of subject merchandise in Korea for the POR, for use in respondent selection.⁶ On September 23, 2019, the petitioner submitted comments requesting Commerce use the CBP data to select the two largest exporters, in alphabetical order, Daejin and Kowire, as respondents.⁷

On October 2, 2019, the petitioner withdrew its administrative review request with respect to 129 of the 131 companies identified as producers/exporters in their July 31, 2019 letter.⁸ The petitioner maintained its administrative review request with respect to Daejin and Kowire.⁹ Further, neither Je-il nor Kowire withdrew their administrative review requests.¹⁰ Thus, only four companies remained for which administrative review requests were not withdrawn, *i.e.*, Daejin, Je-il, Koram, and Kowire. Therefore, Commerce selected Daejin, Je-il, Koram, and Kowire as the mandatory respondents and issued the initial AD questionnaire to them.¹¹ On October 14, 2019, Koram withdrew its request for review.¹² On October 16, 2019, Je-il withdrew its request for an administrative review of its sales.¹³

Between November 1, 2019 and October 20, 2020, Daejin and Kowire timely submitted responses to the initial AD questionnaire and Commerce's subsequent supplemental

⁴ See Petitioner's Letter, "Certain Steel Nails from Korea: Request for Administrative Reviews," dated July 31, 2019.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 47242 (September 9, 2019).

⁶ See Memorandum, "2018-2019 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Release of U.S. Customs and Border Protection Information," dated September 12, 2019.

⁷ See Petitioner's Letter, "Certain Steel Nails from Korea: Comments on Respondent Selection," dated September 23, 2019.

⁸ See Petitioner's Letter, "Certain Steel Nails from Korea: Withdrawal of Requests for Administrative Reviews," dated October 2, 2019.

⁹ *Id.*

¹⁰ See Je-il's Request for Review; *see also* Kowire's Request for Review.

¹¹ See Memoranda, "2018-2019 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Issuance of Questionnaire," dated October 4, 2019; and "2018-2019 Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Issuance of Questionnaire," dated October 10, 2019.

¹² See Koram's Letter, "Certain Steel Nails from the Republic of Korea, Case No. A-580-874: Withdrawal of Request for Administrative Review," dated October 14, 2019.

¹³ See Je-il's Letter, "Certain Steel Nails from the Republic of Korea: Withdrawal of Review Request and Request for Rescission," dated October 16, 2019.

questionnaires.¹⁴ Between December 13, 2019 and October 7, 2020, Commerce received comments from the petitioner regarding Daejin and Kowire's questionnaire responses.¹⁵

On March 18, 2020, Commerce extended the due date for issuing the preliminary results of this review by 90 days, until June 30, 2020.¹⁶ On April 24, 2020, and July 21, 2020, Commerce tolled the deadlines for administrative reviews by an additional 50 and 60 days, respectively.¹⁷ On October 15, 2020, Commerce extended the due date for issuing the preliminary results of this review by 10 days.¹⁸ The current deadline to issue the preliminary results of this review is October 28, 2020.

¹⁴ See Kowire's Letter, "Steel Nails from the Republic of Korea; KOWIRE Section A Questionnaire Response," dated November 1, 2019 (Kowire's Section A Response); *see also* Kowire's Letter, "Steel Nails from the Republic of Korea; KOWIRE Section B, C, and D Questionnaire Response," dated November 22, 2019 (Kowire's Section B-D Response); Kowire's Letter, "Steel Nails from the Republic of Korea: First Supplemental Sections A-C Supplemental Questionnaire Response," dated February 11, 2020; Kowire's Letter, "Steel Nails from the Republic of Korea: Supplemental Sections A-C Supplemental Questionnaire Response (Part 2)," dated February 18, 2020; Kowire's Letter, "Steel Nails from the Republic of Korea: Second Supplemental Sections B-D Supplemental Questionnaire Response," dated April 14, 2020; Kowire's Letter, "Steel Nails from the Republic of Korea: Third Supplemental Section D Questionnaire Response," dated June 3, 2020; and Kowire's Letter, "Steel Nails from the Republic of Korea: Fourth Supplemental Section D Questionnaire Response," dated September 29, 2020 (Kowire's Fourth Supplemental Response), Kowire's Letter, "Steel Nails from the Republic of Korea: Response to the Department's October 19th Supplemental Questionnaire," dated October 20, 2020; *see also* Daejin's Letter, "Response of Daejin Steel Company To Section A of the Department's October 4 Questionnaire," dated November 1, 2019 (Daejin's Section A Response); Daejin's Letter, "Response Of Daejin Steel Company To Section B and C Of The Department's October 4 Questionnaire," dated November 25, 2019 (Daejin's Section B-C Response); Daejin's Letter, "Response of Daejin Steel Company to Section D of the Department's October 4 Questionnaire," dated November 25, 2019 (Daejin's Section D Response); Daejin's Letter, "Third [Fourth] Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Korea – Response to February 7 Supplemental Questionnaire," dated March 16, 2020 (Daejin's First Supplemental Response); Daejin's Letter, "Response of Daejin Steel Company To The Department's June 19 Supplemental Questionnaire," dated July 7, 2020 (Daejin's Second Supplemental Response); Daejin's Letter, "Response of Daejin Steel Company To The Department's July 20 Supplemental Questionnaire," dated July 23, 2020; and Daejin's Letter, "Response of Daejin Steel Company To the Department's September 4 Supplemental Questionnaire," dated September 18, 2020 (Daejin's Fourth Supplemental Response).

¹⁵ See Petitioner's Letter, "Certain Steel Nails from Korea: Comments on Korea Wire Co., Ltd.'s Sections A, B, C, D Questionnaire Responses," dated December 13, 2019; *see also* Petitioner's Letter, "Certain Steel Nails from Oman: Comments on Daejin Company's Sections A, B, C, D Questionnaire Responses," dated December 13, 2019; Petitioner's Letter, "Certain Steel Nails from Korea: Comments on Korea Wire Co., Ltd.'s First Supplemental Sections A – C Supplemental Questionnaire Response," dated March 3, 2020; and Petitioner's Letter, "Certain Steel Nails from Oman: Comments on Daejin Company's Supplemental Sections A, B, C, D Questionnaire Response," dated March 30, 2020; Petitioner's Letter, "Certain Steel Nails from Korea: Comments on Korea Wire Co., Ltd.'s Second Supplemental Sections B – D Questionnaire Response," dated April 28, 2020; Petitioner's Letter, "Certain Steel Nails from Korea: Comments on Korea Wire Co., Ltd.'s Third Supplemental Section D Questionnaire Response," dated June 16, 2020; Petitioner's Letter, "Certain Steel Nails from Korea: Pre-Preliminary Comments," dated August 21, 2020.

¹⁶ See Memorandum, "Certain Steel Nails from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 18, 2020.

¹⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020; *see also* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

¹⁸ See Memorandum, "Certain Steel Nails from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated October 15, 2020.

III. SCOPE OF THE *ORDER*

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches. 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.

Excluded from the scope of this order are certain steel 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, certain steel 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 certain steel 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 this order are steel 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 this 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 this 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 this 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 this order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to this 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. Certain steel nails subject to these orders 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 these orders is dispositive.

IV. RESCISSION OF REVIEW, IN PART

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. We initiated the instant review on September 9, 2019.¹⁹ On October 2, 2019, the petitioner withdrew its administrative review request with respect to 129 of the 131 companies identified as producers/exporters in the petitioner's July 31, 2019 letter, leaving its request for Daejin and Kowire.²⁰ On October 14, 2019, Koram withdrew its request for review²¹ and Je-il withdrew its request for an administrative review of its sales on October 16, 2019,²² both of which were within the 90-day period. Because all requests for review for these companies was timely withdrawn, we are rescinding this review, in part, with respect to the companies listed in Appendix II of the accompanying *Federal Register* notice.

¹⁹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 47242 (September 9, 2019).

²⁰ See Petitioner's Partial Withdrawal of Request for Reviews, "Certain Steel Nails from Korea: Withdrawal of Requests for Administrative Reviews," dated October 2, 2019.

²¹ See Koram's Letter, "Certain Steel Nails from the Republic of Korea, Case No. A-580-874: Withdrawal of Request for Administrative Review," dated October 14, 2019.

²² See Je-il's Letter, "Certain Steel Nails from the Republic of Korea: Withdrawal of Review Request and Request for Rescission," dated October 16, 2019.

V. DISCUSSION OF THE METHODOLOGY

Normal Value Comparisons

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

Comparisons to Normal Value

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

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, 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 less-than-fair-value investigations.²³

In recent investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.²⁴ 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

²³ 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 (IDM) at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363–65 (Fed. Cir. 2015) ("the fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties") (citations omitted).

²⁴ See, e.g., *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

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

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

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those

sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.²⁵

B. Results of the Differential Pricing Analysis

For Daejin, based on the results of the differential pricing analysis, Commerce preliminarily finds that 74.86 percent of the value of U.S. sales pass the Cohen's *d* test,²⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping crosses the *de minimis* threshold when calculated by applying the average-to-transaction method to all U.S. sales. Thus, for the preliminary results, we are applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Daejin.

For Kowire, based on the results of the differential pricing analysis, Commerce preliminarily

²⁵ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g., Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

²⁶ For details on Commerce's preliminary calculations, *see* Memorandum, "Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Daejin Steel Company," dated currently with this memorandum (Daejin Preliminary Analysis Memorandum), at 3.

finds that 42.14 percent of the value of U.S. sales pass the Cohen's d test,²⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's d test and the average-to-average method to those sales which did not pass the Cohen's d test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's d test and the average-to-average method to those sales which did not pass the Cohen's d test to calculate the weighted-average dumping margin for Kowire, *i.e.*, the "mixed" alternative method..

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section above produced and sold by the mandatory respondents in the comparison market during the POR to be foreign like products for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise, we made product comparisons using constructed value as discussed in the "Calculation of Normal Value Based on Constructed Value" section below.²⁸

Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. However, the regulations permit Commerce to 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.²⁹ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.³⁰

²⁷ For details on Commerce's preliminary calculations, see Memorandum, "Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Korea Wire Co., Ltd.," dated currently with this memorandum (Kowire Preliminary Analysis Memorandum), at 3.

²⁸ See section 773(a)(4) of the Act.

²⁹ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (citing 19 CFR 351.401(i)).

³⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

For the comparison and the U.S. market, both Daejin and Kowire reported the date when the material terms are firmly established, which is the earlier of the shipment date or the invoice date in accordance with our practice.³¹ Therefore, consistent with our practice,³² Commerce has preliminarily determined that the earliest date, either the invoice date or the shipment date, is the most appropriate selection for the date of sale for sales in both the comparison and U.S. markets.

Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the EP methodology for Daejin and Kowire because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States.³³ There were no constructed export price (CEP) sales, sales for which the subject merchandise was sold in the United States by U.S. sellers affiliated with the mandatory respondents, during the POR.

For Daejin and Kowire, we based EP on packed prices to the first unaffiliated customer for all sales destined for the United States. We based the starting price on the prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.³⁴ Also, where appropriate, we made deductions from the starting price for selling expenses (e.g., commissions, credit expense, and bank charges).

Commerce has not increased U.S. price to account for the duty drawback program (*i.e.*, “Simplified Fixed Drawback” scheme) used by Daejin,³⁵ in accordance with section 772(c)(1)(B) of the Act. Section 772(c)(1)(B) of the Act states that the price used to establish EP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or

³¹ See Kowire’s Section B- D Response at B-19 and C-19; *see also* Daejin’s Sections B-C Response at B-15 and C-50.

³² See *Narrow Woven Ribbon with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627 (October 7, 2015), and accompanying Preliminary Decision Memorandum (PDM) at 9, unchanged in *Narrow Woven Ribbon with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

³³ See Kowire’s Section B-D Response at C-17; *see also* Daejin’s Section A Response at 11,13 and Appendix A-3; and Daejin’s Section B-C Response at 49.

³⁴ For further discussion, *see* Daejin Preliminary Analysis Memorandum; *see also* Kowire Preliminary Analysis Memorandum.

³⁵ See Daejin’s Section B-C Response at 69-70 and Exhibit C-12; *see also* Daejin’s First Supplemental Response at 38-40 and Exhibit SC-8-A and SC-8-B.

exempted.³⁶ We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two – pronged” test in order for this adjustment to be made to U.S. prices.³⁷ The first prong of the test requires that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); the second prong of the test requires that the company demonstrate that there were sufficient imports of raw materials to account for the duty drawback or exemption granted for the export of the manufactured product.³⁸

Under the Simplified Fixed Drawback system, the amount of duty drawback Daejin received was based on a percentage of the free on board (FOB) value of exports, not on the amount of import duties paid by the company for raw material inputs.³⁹ Therefore, the amount of the duty drawback that Daejin received, and the amount of import duties that Daejin paid, are not directly linked to, and dependent upon, one another as required by of the first prong of our duty drawback test. Accordingly, consistent with our recent determinations concerning this program, we have not granted Daejin’s duty drawback offset.⁴⁰

Level of Trade

To the extent practicable, we determine NV based on sales of the foreign like product at the same level of trade (LOT) as the EP sales.⁴¹ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴³ In order to determine whether the home market sales were at different stages in the

³⁶ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

³⁷ *Id.*

³⁸ *Id.*; see also *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying IDM at Comment 2.

³⁹ See, e.g., *Ferrovaniadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 FR 14874 (March 23, 2017), and accompanying IDM at Comment 2 (determining that the amount of the duty drawback that the respondent received under the fixed rate drawback system, and the amount of import duties that it pays, are not directly linked to, and dependent upon, one another, as required by prong one of Commerce’s two-prong duty drawback test).

⁴⁰ *Id.*; see also *Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 36749 (August 7, 2017), and accompanying PDM at 11, unchanged in *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 83 FR 4028 (January 29, 2018) and accompanying IDM; *Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32265 (July 12, 2018), and accompanying PDM at 12-13, unchanged in *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 4770 (February 19, 2019) and accompanying IDM; and *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 PDM at 12-13, unchanged in *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 56424 (October 22, 2019) and accompanying IDM.

⁴¹ See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412.

⁴² See 19 CFR 351.412(c)(2).

⁴³ *Id.*

marketing process than the U.S. sales, 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 LOT for EP or comparison market sales (*i.e.*, NV based on either home market or third country prices),⁴⁴ we consider the starting prices before any adjustments.

When we are unable to match NV at the same LOT as the EP, we may compare U.S. sale prices to comparison market sale prices at a different LOT. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sale prices at a different LOT in the NV market under consideration, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

1. Daejin

Daejin reported that it sold steel nails during the POR through one channel of distribution, directly to unaffiliated customers, for both the home and U.S. markets.⁴⁵ Additionally, Daejin indicated that it performed in both the U.S. and the home markets, the following selling functions: advertising; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; warranty service; and freight and delivery.⁴⁶ As such, we compared the selling functions and we preliminarily determine that the LOT of Daejin's U.S. sales were at the same LOT as its home market sales. Therefore, we matched U.S. sales at the same LOT in the comparison market and made no LOT adjustment.

2. Kowire

Kowire reported that it sold steel nails during the POR through one channel of distribution, directly to unaffiliated customers, for both the home and U.S. markets.⁴⁷ Additionally, Kowire indicated that it performed substantially the same selling functions, regardless of market, with only minor differences in intensity for four of the listed sales functions, namely, inventory maintenance, provision of freight and delivery, payment of commissions, and provision of warranty service.⁴⁸ As such, we compared the selling functions and we preliminarily determine that the LOT of Kowire's U.S. sales were at the same LOT as its home market sales. Therefore, we matched U.S. sales at the same LOT in the comparison market and made no LOT adjustment.

⁴⁴ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

⁴⁵ *See* Daejin's Section A Response at 11 and 16; *see also* Daejin's Section B-C Questionnaire Response at 12-13 and 48-49.

⁴⁶ *See* Daejin's Section A Response at Appendix A-4.

⁴⁷ *See* Kowire's Section B- D Response at B-19 and C-19.

⁴⁸ *See* Kowire's Section A Response at Exhibit A-6.

Normal Value

A. Comparison Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign – like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare a respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may use a respondent’s sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

For Daejin and Kowire, we preliminarily determine that the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales of the subject merchandise.⁴⁹ Therefore, for the margin analyses for Daejin and Kowire, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

B. Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request cost information from respondent companies in all AD proceedings. Therefore, Commerce requested cost information from the respondents and they submitted timely responses.⁵⁰ We examined the respondents’ cost data and determined that our quarterly cost methodology was not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

Calculation of Cost of Production (COP)

We calculated the COP on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) and financial expenses, in accordance with section 773(b)(3) of the Act. Except as stated below, we relied on the COP data submitted by Daejin and Kowire in their questionnaire responses for the COP calculation.

We allowed a scrap offset for Daejin with no adjustments.⁵¹ We allowed a scrap offset for Kowire, but calculated an adjustment.⁵² In addition, for certain common expenses (*e.g.*, vehicle expenses, entertainment, taxes and dues, *etc.*)⁵³ we assigned certain non-salary expenses into G&A expenses because Daejin and Kowire were not able to explain why their proposed

⁴⁹ See Kowire’s Section A Response at A-2 and Exhibit A-1; *see also* Daejin’s Section A Response at 3 and Appendix A-1.

⁵⁰ See Kowire’s Section B- D Response; *see also* Daejin’s Section D Response.

⁵¹ See Daejin Preliminary Analysis Memorandum.

⁵² See Kowire Preliminary Analysis Memorandum.

⁵³ See Daejin’s Section D Response at Appendix D-11; Daejin’s First Supplemental Response at Appendix SD-10; Daejin’s Second Supplemental Response at Appendix S2D-6; Daejin’s Fourth Supplemental Response at Appendix S4D-1; and Kowire’s Fourth Supplemental Response at Exhibit S4-3(1).

methodology of allocating the non-salary expenses based on the ratio of salaries and bonuses was reasonable or non-distortive.⁵⁴ We denied interest expense offset for Daejin because it could not establish the short-term nature of its interest revenue.⁵⁵

Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales 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.

Results of the Cost of Production Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted average of the COPs, 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.

Our cost tests for all mandatory respondents indicated that more than 20 percent of sales of certain home market products were made at prices below the COP within an extended period of time and were made at prices which would not permit the recovery of all costs within a reasonable period of time.⁵⁶ Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis for each respondent and used the remaining above-cost sales to determine NV.

C. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home market prices. We calculated NV based on packed, delivered or ex-factory prices to unaffiliated customers in the comparison market. We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in circumstances of sale (for imputed credit expenses, warranty

⁵⁴ See Daejin Preliminary Analysis Memorandum; *see also* Kowire Preliminary Analysis Memorandum.

⁵⁵ See Daejin Preliminary Analysis Memorandum.

⁵⁶ See Daejin Preliminary Analysis Memorandum, *see also* Kowire Preliminary Analysis Memorandum.

expenses, and other selling expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.⁵⁷

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also adjusted 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 of the foreign like product and the subject merchandise.⁵⁸

D. Calculation of Normal Value Based on CV

Where we were unable to find a home-market match of identical or similar merchandise, we based NV on constructed value in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we used CV as the basis for NV for the U.S. sales for which we could not find comparison market sales of similar or identical merchandise. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit. For each mandatory respondent, we calculated the COP component of CV as described above in the “Calculation of Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit for each mandatory respondent on the amounts incurred and realized for each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.⁵⁹

E. Currency Conversion

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

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

VI. RECOMMENDATION

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



Agree

Disagree

10/28/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance