



A-580-887
Administrative Review
POR: 5/1/2019-4/30/2020
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July 30, 2021

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

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

SUBJECT: Decision Memorandum for Preliminary Results of 2019-2020
Antidumping Duty Administrative Review: Certain Carbon and
Alloy Steel Cut-To-Length Plate from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea. The review covers one producer/exporter of the subject merchandise, POSCO, POSCO International Corporation, POSCO SPS, and certain distributors and service centers (Taechang Steel Co., Ltd., Winsteel Co., Ltd., and Shinjin Esco Co., Ltd.) (collectively the POSCO single entity). The period of review (POR) is May 1, 2019, through April 30, 2020. We preliminarily determine that sales of subject merchandise by the POSCO single entity were not made at prices below normal value (NV) during this POR.

II. BACKGROUND

On May 25, 2017, the Department of Commerce (Commerce) published in the *Federal Register* the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea).¹ On May 1, 2020, Commerce published a notice of opportunity to request an administrative review of the *Order*.² Subsequently, POSCO and the

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders*, 82 FR 24096 (May 25, 2017) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 25394 (May 1, 2020).



petitioners³ requested a review of POSCO's entries.⁴

On July 10, 2020, we initiated an administrative review of the *Order* for POSCO.⁵ In the "Respondent Selection" section of the *Initiation Notice*, we stated that, if necessary, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of CTL plate from Korea during the POR.⁶

Accordingly, on August 17, 2020, we released the CBP data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁷ We received comments on behalf of POSCO, requesting that Commerce select POSCO as a mandatory respondent.⁸ We received no other comments.

From September 1, 2020 to May 18, 2021, we issued several questionnaires to, and received responses from, POSCO.

On July 21, 2020, Commerce tolled all preliminary and final results deadlines in administrative reviews by 60 days, thereby extending the deadline for these preliminary results until April 1, 2021.⁹ On March 22, 2021, we extended the preliminary results of this review to no later than July 30, 2021.¹⁰

On July 16, 2021 Commerce received pre-preliminary comments from POSCO.¹¹ However, due to the proximity of these comments to the preliminary results deadline, we were unable to consider these comments in the preliminary results and will consider them for the final results if included in briefs.

III. SCOPE OF THE *ORDER*

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates

³ Cleveland-Cliffs LLC (formerly known as ArcelorMittal USA LLC), Nucor Corporation, and SSAB Enterprises LLC (the petitioners).

⁴ See POSCO's Letter, "Administrative Review Request," dated May 8, 2020; see also Petitioners' Letter, "Petitioners' Request for 2019/2020 Administrative Review," dated May 29, 2020.

⁵ See *Initiation of Antidumping and Countervailing Duty Administration Reviews*, 85 FR 41540 (July 10, 2020) (*Initiation Notice*).

⁶ *Id.*, 85 FR at 41541.

⁷ See Memorandum, "Antidumping Duty Administrative Review: Carbon and Alloy Cut-to-Length Plate from the Republic of Korea: Release of Customs and Border Protection Data," dated August 17, 2020.

⁸ See POSCO's Letter, "Respondent Selection Comments," dated August 24, 2020.

⁹ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

¹⁰ See Memorandum, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Extension of Deadline for the Preliminary Results of the 2019-2020 Antidumping Duty Administrative Review," dated March 22, 2021.

¹¹ See POSCO's Letter, "POSCO's Pre-Preliminary Comments," dated July 16, 2021.

(i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, i.e., products which have been “worked after rolling” (e.g., products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

- (1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

- (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;
- (2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

MIL-A-12560,

MIL-DTL-12560H,

MIL-DTL-12560J,

MIL-DTL-12560K,
MIL-DTL-32332,
MIL-A-46100D,
MIL-DTL-46100-E,
MIL-46177C,
MIL-S-16216K Grade HY80,
MIL-S-16216K Grade HY100,
MIL-S-24645A HSLA-80;
MIL-S-24645A HSLA-100,
T9074-BD-GIB-010/0300 Grade HY80,
T9074-BD-GIB-010/0300 Grade HY100,
T9074-BD-GIB-010/0300 Grade HSLA80,
T9074-BD-GIB-010/0300 Grade HSLA100, and
T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

- (3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;
- (4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;
- (5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:
 - (a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):
Carbon 0.23-0.28,
Silicon 0.05-0.20,
Manganese 1.20-1.60,
Nickel not greater than 1.0,

Sulfur not greater than 0.007,

Phosphorus not greater than 0.020,

Chromium 1.0-2.5,

Molybdenum 0.35-0.80,

Boron 0.002-0.004,

Oxygen not greater than 20 ppm,

Hydrogen not greater than 2 ppm, and

Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270-300 HBW,

(ii) 290-320 HBW, or

(iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

Carbon 0.23-0.28,

Silicon 0.05-0.15,

Manganese 1.20-1.50,

Nickel not greater than 0.4,

Sulfur not greater than 0.010,

Phosphorus not greater than 0.020,

Chromium 1.20-1.50,

Molybdenum 0.35-0.55,

Boron 0.002-0.004,

Oxygen not greater than 20 ppm,

Hydrogen not greater than 2 ppm, and

Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs. (single value) and equal or greater than 20 ft. lbs. (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs. (single value) and equal or greater than 31 ft. lbs. (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

Carbon 0.25-0.30,

Silicon not greater than 0.25,

Manganese not greater than 0.50,

Nickel 3.0-3.5,

Sulfur not greater than 0.010,

Phosphorus not greater than 0.020,

Chromium 1.0-1.5,

Molybdenum 0.6-0.9,

Vanadium 0.08 to 0.12

Boron 0.002-0.004,

Oxygen not greater than 20 ppm,

Hydrogen not greater than 2 ppm, and

Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs. (single value) and equal or greater than 25 ft. lbs. (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS subheadings: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. AFFILIATION AND COLLAPSING

Due to the business proprietary nature of information relating to this analysis, a more detailed discussion of this matter can be found in the Affiliation and Collapsing Memorandum.¹²

To the extent that Commerce's practice does not conflict with section 773(c) of the Tariff Act of 1930, as amended (the Act), Commerce has, in prior determinations, treated certain exporters and/or producers as a single entity if record facts of the case supported such treatment.¹³

Pursuant to 19 CFR 351.401(f)(1), Commerce will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.¹⁴ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that Commerce may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.¹⁵

"Collapsing" starts with a determination as to whether two or more companies are affiliated. Section 771(33)(E) of the Act defines affiliated persons to include "any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization." Section 771(33)(F) of the Act defines affiliated persons to include "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person." Section 771(33)(G) of the Act defines affiliated persons to include "any person who controls any other person and such other person." Section 771(33) of the Act further provides that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

¹² See Memorandum, "2019-2020 Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate (CTL Plate) from the Republic of Korea: POSCO Affiliation and Collapsing Memorandum," dated July 30, 2021 (Affiliation and Collapsing Memorandum).

¹³ See, e.g., *Certain Steel Nails from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008).

¹⁴ See, e.g., *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).

¹⁵ See, e.g., *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93-80 (CIT May 25, 1993); and *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

In previous segments of this proceeding, Commerce has treated POSCO and its affiliated resellers and service centers as a single entity.¹⁶ We find that record evidence continues to support treatment of certain of these companies as a single entity in this administrative review. Specifically, for the reasons outlined in the Affiliation and Collapsing Memorandum, Commerce preliminarily determines that POSCO, POSCO International Corporation, POSCO SPS, and certain distributors and service centers (Taechang Steel Co., Ltd., Winsteel Co., Ltd., and Shinjin Esco Co., Ltd.) (collectively, the POSCO single entity¹⁷) are affiliated pursuant to section 771(33)(E) of the Act, and further Commerce finds that these companies should be treated as a single entity pursuant to 19 CFR 351.401(f).¹⁸

V. DISCUSSION OF THE METHODOLOGY

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

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the POSCO single entity's sales of CTL plate from Korea to the United States were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP) to the NV, as described in the "Export Price/Constructed Export Price," and "Normal Value" sections of this memorandum.

1. *Determination of Comparison Method*

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

¹⁶ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017); see also *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results and Final Determination of No Shipments of Antidumping Administrative Review; 2016-2018*, 84 FR 70951 (December 26, 2019); and *Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 15643 (March 24, 2021) (AR2 Final).

¹⁷ Note that we are preliminarily collapsing Shinjin Esco Co., Ltd. with POSCO only for the portion of the POR during which it was affiliated with POSCO, *i.e.*, from May 1, 2019 to February 10, 2020. See Affiliation and Collapsing Memorandum.

¹⁸ See Affiliation and Collapsing Memorandum for a full discussion of the proprietary details of Commerce's collapsing analysis.

nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in a less-than-fair-value investigation.¹⁹

In numerous AD investigations and administrative reviews, Commerce applied a “differential pricing” analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁰ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in these preliminary results.²¹

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

¹⁹ 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 *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014); and *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363–65 (Fed. Cir. 2015) (“{t}he 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).

²⁰ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

²¹ The differential pricing analysis used in these preliminary results was affirmed by the Court of Appeals for the Federal Circuit (CAFC) as in accordance with law in *Apex Frozen Foods Private Ltd. v. United States*. See *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff’d*, 862 F. 3d 1322 (Fed. Cir. 2017) (*Apex*).

to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.²²

²² As noted, the CAFC has affirmed much of Commerce's differential pricing methodology. *See Apex*, 862 F. 3d 1322. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

2. *Results of the Differential Pricing Analysis*

For the POSCO single entity, based on the results of the differential pricing analysis, Commerce preliminarily finds that 88.77 percent of the value of U.S. sales pass the Cohen's d test,²³ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-A method to all U.S. sales to calculate the weighted-average dumping margin for the POSCO single entity.

B. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, under the regulation, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁴ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, the shipment date better reflects the date on which the material terms of sale are established.²⁵

The POSCO single entity reported the shipment date from the factory as the date of sale for all of its home market and EP sales, as well as for its "back to back" CEP sales that were shipped directly from Korea to the unaffiliated customer.²⁶ Further, the invoice to the U.S. customer is always issued after shipment from the factory by the POSCO single entity. Nothing on the record suggests that a different date better reflects the date on which the material terms of sale are established. Thus, we are basing the date of sale on the shipment date for the POSCO single entity's home market, EP, and "back to back" CEP sales.

The POSCO single entity reported that there were no CEP sales made by the POSCO single entity's U.S. affiliates out of inventory during the POR.²⁷

²³ See Memorandum, "Preliminary Results Margin Calculation for the POSCO Single Entity; 2019-2020 Administrative Review of Carbon and Alloy Steel Cut-to-Length Plate from Korea," dated concurrently with this memorandum (Preliminary Calculation Memorandum).

²⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²⁵ 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; and *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.

²⁶ See POSCO's Letter, "Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: POSCO's Section A Questionnaire Response," dated October 13, 2020 (Initial Sec A Response) at 32.

²⁷ See POSCO's Letter, "Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: POSCO's Section B-D Questionnaire Response," dated November 9, 2020 at C-40.

C. Product Comparisons

For the purposes of determining an appropriate comparison of NV based on comparison market sales to the U.S. sales, in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the “Scope of the Order” section of this notice, above, that were in the ordinary course of trade. In making these comparisons, we matched foreign like product sold in the home market to the product sold in the United States based on the physical characteristics. In order of importance, these physical characteristics are Quality, Minimum Specified Carbon Content, Minimum Specified Chromium Content, Minimum Specified Nickel Content, Minimum Specified Tungsten Content, Minimum Specified Cobalt Content, Minimum Specified Molybdenum Content, Minimum Specified Vanadium Content, Minimum Specified Yield Strength, Nominal Thickness, Heat Treatment, Nominal Width, Form, Painting, Patterns in Relief, and Descaling.

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

D. Export Price/Constructed Export Price

We used the EP methodology, in accordance with section 772(a) of the Act, when the merchandise under consideration was first sold before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, and the CEP methodology was not otherwise warranted. We adjusted the POSCO single entity’s EP prices in accordance with section 772(c) of the Act.

We used the CEP methodology, in accordance with section 772(b) of the Act, when the subject merchandise was first sold in the United States before or after the date of importation by a U.S. seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, and the EP methodology was not otherwise warranted. We adjusted the POSCO single entity’s CEP sales in accordance with sections 772(c) and (d) of the Act.

We calculated both EP and CEP based on prices to unaffiliated purchasers in the United States. We made an adjustment, where appropriate, to the starting prices for billing adjustments. We also made deductions, where appropriate, for movement expenses (*e.g.*, foreign inland freight, international freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees), and U.S. inland freight to the unaffiliated U.S. customer, in accordance with section 772(c)(2)(A) of the Act.

For CEP transactions, in accordance with section 772(d)(1) of the Act, we also deducted selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses and inspection fees), and indirect selling expenses (inventory carrying costs and other indirect selling expenses). Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) and 772(f) of the Act.²⁸

E. Normal Value

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

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Based on this comparison, we determine that, pursuant to 19 CFR 351.404(b), the POSCO single entity had a viable home market during the POR because the volume of the POSCO single entity's home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales.

2. *Level of Trade (LOT)*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales of the foreign like product at the same LOT as U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁰ To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we review the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, where NV is based on either home market or third country prices),³¹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling

²⁸ See Preliminary Calculation Memorandum.

²⁹ See 19 CFR 351.412(c)(2).

³⁰ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997); and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

³¹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1); see also, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081, 47086 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004).

activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³²

When Commerce is unable to match U.S. sales with sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, Commerce may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³³

In this administrative review, we obtained information from the POSCO single entity regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution.³⁴ Our LOT findings are summarized below.

In the home market, the POSCO single entity reported that it made sales through four channels of distribution during the POR: (1) sales to end-users (both affiliated and unaffiliated) (HM Channel 1), (2) sales through affiliated resellers (HM Channel 2), (3) “cyber transactions” to unaffiliated end-users which typically involve sales of overrun and “non-prime” merchandise (HM Channel 3), and (4) sales through affiliated service centers (HM Channel 4).³⁵ Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance of sales-related administrative activities. Based on these selling function categories, we find that the POSCO single entity provided sales support, training services, technical support, logistical services, and sales-related administrative activities at substantially similar levels of intensity across HM Channels 1, 2 and 4. Further, the POSCO single entity reported performing no selling functions for HM Channel 3, through which the POSCO single entity auctioned overrun and non-prime merchandise through “cyber transactions.”³⁶ Therefore, we find two LOTs existed in the home market for the POSCO single entity during the POR: (1) sales of predominantly prime merchandise directly or indirectly to unaffiliated customers through affiliated resellers/service centers, *i.e.*, HM Channels 1, 2, and 4, and (2) sales of secondary (overrun and non-prime) merchandise through cyber auctions, or HM Channel 3 (for which no selling activities were performed).

With respect to the U.S. market, the POSCO single entity reported that it made EP sales through two distribution channels and CEP sales through another as follows: (1) EP sales through affiliated Korean trading companies to unaffiliated U.S. customers, (2) CEP sales through affiliated U.S. subsidiaries to unaffiliated U.S. customers, and (3) EP sales through unaffiliated

³² See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

³³ See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

³⁴ See Initial Sec A Response at 20-31.

³⁵ *Id.* at 21-22.

³⁶ *Id.* at Exhibit A-8.

Korean trading companies to unaffiliated U.S. customers.³⁷ Further, the POSCO single entity reported that it provided sales support, training services, technical support, logistical services, and sales-related administrative activities at substantially similar levels of intensity across all U.S. sales channels during the POR.³⁸ Therefore, we find one LOT existed in the U.S. market for the POSCO single entity during the POR.

Finally, we compared the U.S. LOT to the home market LOTs. We note that the POSCO single entity reported no cyber sales of overrun or non-prime merchandise like those in HM Channel 3 in the U.S. market during the POR, and in fact the POSCO single entity reported no selling functions performed for those sales in the home market during the POR. Therefore, we considered only the first HM LOT, *i.e.*, sales of predominantly prime merchandise directly or indirectly to unaffiliated customers through affiliated resellers/service centers, in this analysis. When comparing this HM LOT to the U.S. LOT, we find the POSCO single entity performed the same selling functions at substantially similar levels of intensity during the POR.³⁹ Therefore, we preliminarily determine that sales to the United States and home market during the POR were made at the same LOT and, as a result, no LOT adjustment or CEP offset is warranted.

F. Cost of Production (COP) Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from the POSCO single entity. We examined the POSCO single entity's cost data and determined that our quarterly cost methodology is not warranted; therefore, we are applying our standard methodology of using annual costs based on the reported data.

1. *Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated weighted-average COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for G&A expenses and financial expenses. We relied on the data submitted by the POSCO single entity in calculating the COP.⁴⁰

2. *Test of Comparison Market Sale Prices*

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs for the POSCO single entity to the home market sale prices of the foreign like product, in order to determine whether the sale prices were below the COPs within an extended period of time (*i.e.*, normally a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We compared the COP to the comparison market prices. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses.

³⁷ *Id.* at 22–23.

³⁸ *Id.* at Exhibit A-8.

³⁹ *Id.*

⁴⁰ See Preliminary Calculation Memorandum.

3. *Results of the COP Test*

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities;⁴¹ and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.⁴² In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard the below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

In this case, we found that for certain products more than 20 percent of the POSCO single entity's home market sales during the POR were at prices less than the COP and that such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Act.

G. Calculation of NV Based on Comparison Market Prices

For the POSCO single entity's comparison market sales, we calculated NV based on prices to unaffiliated customers. We made an adjustment, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for inland freight to the warehouse, warehousing expenses, and inland freight from the warehouse under section 773(a)(6)(B)(ii) of the Act. We offset these movement expenses with reported freight revenue, with the latter capped at no higher than the sum of movement expenses, in accordance with our normal practice.⁴³

For comparisons to EP sale prices, we made adjustments, where appropriate, under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b) for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, inspection fees and credit expenses) and added U.S. direct selling expenses (*i.e.*, credit expenses).

For comparisons to CEP sale prices, we deducted home market credit expenses and inspection fees pursuant to 773(a)(6)(C)(iii) of the Act.

⁴¹ See sections 773(b)(2)(B) and (C) of the Act (defining "extended period of time" and "substantial quantities").

⁴² See section 773(b)(2)(D) (defining "recovery of costs").

⁴³ See, *e.g.*, *CC Metals and Alloys, LLC v. United States*, 145 F.Supp.3d 1299, 1307-08 (Ct. Int'l Trade 2016).

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using period-wide, weighted-average costs.⁴⁴

H. Calculation of Normal Value Based on Constructed Value

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 base NV on comparison market sale prices of identical or similar merchandise. Further, 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, and profit. In accordance with section 773(e)(2)(A) of the Act and 19 CFR 351.405(b)(1), we based selling expenses and profit on the amounts that the POSCO single entity incurred and realized in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, as appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

I. 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.

⁴⁴ See Preliminary Calculation Memorandum.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

7/30/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary
for Enforcement and Compliance