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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 Preliminary Results and Partial
Rescission of Antidumping Duty Administrative Review: Certain
Steel Nails from Malaysia; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain steel nails from Malaysia. The period of review (POR) is July 1, 2017 through June 30, 2018. The review covers two producers/exporters of the subject merchandise: Inmax Sdn. Bhd. (Inmax Sdn.) and Inmax Industries Sdn. Bhd. (Inmax Industries) (collectively, Inmax); and Region System Sdn. Bhd. (Region System) and Region International Co. Ltd. (Region International) (collectively, Region). Commerce preliminarily finds that Region sold subject merchandise at less than normal value during the POR and that Inmax did not do so. We are rescinding the review with respect to five additional companies for which the petitioner, Mid Continent Steel & Wire, Inc., timely withdrew its request for review.

II. BACKGROUND

On July 29 and July 30, 2018, Region and Inmax respectively filed requests for an administrative review of their own imports of certain steel nails from Malaysia.¹ The petitioner filed a request for review of these companies and five other companies on July 31, 2018. Commerce published a notice of initiation of the review on September 10, 2018.²

On October 18, 2018, the petitioner withdrew its request for review for all companies except Inmax and Region. On December 9, 2018, Region filed a timely withdrawal of its request for

¹ See Region's Letter, "Steel Nails from Malaysia," dated July 29, 2019; Inmax's Letter, "Steel Nails from Malaysia: Request for Administrative Review," dated July 30, 2018; and Petitioner's Letter, "Certain Steel Nails from Malaysia: Request for Administrative Reviews," dated July 31, 2018.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596 (September 10, 2018) (*Initiation Notice*).



review. Commerce exercised its discretion to toll deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019. The revised deadline was May 13, 2019.³ On May 9, 2019, we extended the time limit for completion of the preliminary results of the review to no later than August 27, 2019.⁴ On August 19, 2019, we extended the time limit for completion of the preliminary results of the review to no later than September 6, 2019.⁵

III. SCOPE OF THE ORDER

The merchandise covered by the antidumping duty order is certain steel nails having a nominal shaft length not exceeding 12 inches.⁶ 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

³ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding by 40 days.

⁴ See Memorandum, "Certain Steel Nails from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017-2018," dated May 9, 2019.

⁵ See Memorandum, "Certain Steel Nails from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017-2018," dated August 19, 2019.

⁶ The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

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 this order also may be classified under HTSUS subheadings 7907.00.60.00, 7806.00.80.00, 7318.29.00.00, 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 this order is dispositive.

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

As noted in the "Background" section above, the petitioner filed a request for review of Inmax, Region, and an additional five companies on July 31, 2018 and we initiated a review of these

companies.⁷ However, on October 18, 2018, the petitioner filed a withdrawal of its request for review of Astrotech Steels Private Limited; Caribbean International Co. Ltd.; Chia Pao Metal Co., Ltd.; Jinhai Hardware Co. Ltd.; and Tag Fasteners Sdn. Bhd. As no other party requested a review of these companies and in response to the petitioner's timely filed withdrawal request, we are rescinding the administrative review in part, pursuant to 19 CFR 351.213(d)(1), with respect to these companies.

V. DISCUSSION OF THE METHODOLOGY

A. Collapsing of Affiliated Companies

Commerce's regulations at 19 CFR 351.401(f) state that Commerce will treat affiliated producers as a single entity where producers have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities and there is a significant potential for manipulation of price or production.⁸ The regulation at 19 CFR 351.401(f) further states that, in identifying a significant potential for manipulation, Commerce may consider 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 operations 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. Commerce also previously explained its practice of collapsing affiliated companies:

Because Commerce calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. Commerce reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, Commerce normally examines the question of whether reviewed companies "constitute separate manufacturers or exporters for purposes of the dumping law."⁹

The U.S. Court of International Trade (CIT) has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by Commerce in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.¹⁰

⁷ See *Initiation Notice*, 83 FR at 45597-45598.

⁸ While 19 CFR 351.401(f) uses the term "producers," Commerce's practice is to apply this regulation to resellers and other affiliated companies as well. See, e.g., *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988) (*Colombian Flowers*)).

⁹ See *Colombian Flowers*, 53 FR at 24337.

¹⁰ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007), citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

Also, while 19 CFR 351.401(f) applies only to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.¹¹

Based on this collapsing analysis, we preliminarily determine that Inmax Sdn. and Inmax Industries are both ultimately owned by, and under common control of, the same group of individuals and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. Furthermore, as Inmax Sdn. and Inmax Industries produced and sold foreign like product or subject merchandise during the period of review, we preliminarily find that, pursuant to 19 CFR 351.401(f)(1), the companies had production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities. We also find that the record shows there is a significant potential for manipulation of price or production between the two companies, pursuant to 19 CFR 351.401(f), due to the significant level of common ownership between Inmax Sdn. and Inmax Industries, the considerable overlap in the directorship and management of the Inmax companies, and the intertwined operations between Inmax Sdn. and Inmax Industries because of approval over sales prices by the same president and a shared website for pricing information. Thus, we preliminarily determine that these two companies should be treated as a single entity for antidumping purposes pursuant to 19 CFR 351.401(f).¹²

With respect to Region, we preliminarily determine that Region System, a producer of subject merchandise, is affiliated with Region International, the company that exports its subject merchandise to the United States, pursuant to section 771(33)(B) and (F) of the Act. We also preliminarily determine that Region System and Region International should be treated as a single entity for antidumping purposes, pursuant to 19 CFR 351.401(f). As explained in the Region Analysis Memorandum, these companies are both ultimately owned by and under common control of the same group of individuals and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. In addition, there is significant common ownership and other shared operations between the producing affiliate and the exporting company. We also preliminarily determine that there is a significant potential for the manipulation of prices among these companies, as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies. Thus, we have preliminarily treated these companies as a single entity.¹³

¹¹ See, e.g., *Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), unchanged in *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); and *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), and accompanying IDM at Comment 5. The CIT has found that collapsing exporters is consistent with a “reasonable interpretation of the antidumping duty statute.” See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d. 1323, 1338 (CIT 2003).

¹² For a more detailed analysis for Inmax, see “Analysis Memorandum for Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd. in the Preliminary Results of the 2017/2018 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Malaysia,” dated concurrently with this memorandum (Inmax Analysis Memorandum), at 2-4.

¹³ For a more detailed analysis for Region, see “Analysis Memorandum for Region International Co. Ltd. and Region Systems Sdn. Bhd. in the Preliminary Results of the 2017/2018 Administrative Review of the Antidumping

B. Date of Sale

Section 351.401(i) of Commerce's regulations states that, "[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁴ 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.¹⁵

For its home-market sales, we found that Inmax reported the actual sales/tax invoice date as its date of sale because that date represented the earliest date on which all material terms of sale, specifically quantity and value, are fixed. Inmax reported the date of the delivery order as the date of sale for its U.S. sales because the material terms of sale did not change after the issuance of this document. Based on this record, we preliminarily find that the actual sales/tax invoice date is the most appropriate date of sale for Inmax's home-market sales, as the record indicates that the terms of sale are established by the time that the actual sales/tax invoice is issued and that the date of the delivery order is the most appropriate date of sale for U.S. sales, as the record shows that the terms of sale for these sales are established by this date.¹⁶

Region reported the dates of sale for its home-market sales as the invoice date because the invoice is the first document in which the final price and quantity for sale are agreed upon and memorialized in Region's records in their ordinary course of business. Therefore, we preliminarily determine to use Region's invoice date as the date of sale for its home market sales. For U.S. market sales, Region reported the invoice date or shipment date from the factory, whichever occurred first, as the date of sale. We preliminarily find that the date of sale is the earlier of these two dates for the U.S. sales.¹⁷

C. 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 Inmax and Region's sales of the subject merchandise from Malaysia to the United States

Duty Order on Certain Steel Nails from Malaysia," dated concurrently with this memorandum (Region Analysis Memorandum), at 2-4.

¹⁴ 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)).

¹⁵ 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.

¹⁶ For a more detailed analysis, see Inmax Analysis Memorandum at 4.

¹⁷ For a more detailed analysis, see Region Analysis Memorandum at 5.

were made at less than normal value, Commerce compared the export price to the normal value as described in the “Export Price” and “Normal Value” sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*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 normal values with the export prices (or constructed export prices) 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.¹⁸

In recent investigations, Commerce 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 section 777A(d)(1)(B) of the Act.¹⁹ Commerce finds that the differential pricing analysis used in those investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the 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 export prices (or constructed export 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 in to account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, state for Region, and zip code for Inmax) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of

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

¹⁹ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 export price (or constructed export price) and normal value for the individual dumping margins.

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

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the 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.

2. Results of the Differential Pricing Analysis

For Inmax, based on the results of the differential pricing analysis, Commerce preliminarily finds that 63.32 percent of the value of U.S. sales pass the Cohen's *d* test,²⁰ 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 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-average method for all U.S. sales to calculate the weighted-average dumping margin for Inmax.

For Region, based on the results of the differential pricing analysis, Commerce preliminarily finds that 75.07 percent of the value of U.S. sales pass the Cohen's *d* test,²¹ 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 all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Region.

3. Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for goods produced by Inmax and Region and sold in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are (1) nail form; (2) product form; (3) steel type; (4) surface finish; (5) diameter; (6) shank length; (7) collation material; (8) head style; (9) shank style; and (10) heat treatment.

²⁰ See Inmax Analysis Memorandum at 10.

²¹ See Region Analysis Memorandum at 9.

4. Export Price

Section 772(a) of the Act defines export price 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 U.S. to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the U.S., as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the export price methodology for both Inmax and Region because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price was not otherwise warranted.

With respect to Inmax, in accordance with section 772(c)(2) of the Act, and where appropriate, we made adjustments to the starting price for billing adjustments and deductions for certain movement expenses for foreign inland freight, domestic brokerage and handling, international freight, U.S. brokerage and handling, U.S. duties, and other import fees. Pursuant to section 772(d)(1) of the Act, we made additional adjustments to export price for warranty expenses, other direct selling expenses (*i.e.*, bank and fumigation charges), credit expenses, and indirect selling expenses.

For Region, in accordance with section 772(c)(2) of the Act, and where appropriate, we made deductions from the starting price for certain movement expenses (*e.g.*, foreign inland freight, and domestic brokerage and handling). Pursuant to section 772(d)(1) of the Act, we made additional adjustments to export price for warranty expenses, bank charges and late fees, credit expenses, and indirect selling expenses.

D. Normal Value

1. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of nails in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), Commerce compared the volume of Inmax and Region’s respective home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.²² Based on this comparison, we determine that both companies had a viable home market during the period of review. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

2. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the export

²² See Inmax’s November 21, 2018 Section A Questionnaire Response (Inmax Section A Response) at Exhibit A-1; see also Region’s November 26, 2018 Section A Questionnaire Response (Regional Section A Response) at Exhibit A-1.

price or constructed export price.²³ Pursuant to 19 CFR 351.412(c)(1)(iii), the level of trade for normal value is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses (SG&A), and profit.

To determine if normal value sales are at a different level of trade than export price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.²⁴ If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Based on the sales process and selling-function information provided by Inmax, we found that its home-market sales were made at one level of trade to dealers or end users during the POR. We further found that, based on the information provided by Inmax about its U.S. sales, these sales were made to traders and distributors at one level of trade. Because there was only one level of trade in the home market and no data was available to determine the existence of a pattern of price differences within that market, and because we do not have any other information that provides an appropriate basis for determining a level-of-trade adjustment, we have not calculated a level-of-trade adjustment. Therefore, for these preliminary results, we have matched Inmax's export-price sales to its home-market sales without making a level-of-trade adjustment to normal value.²⁵

Region stated there is only one channel of distribution in each market and all sales were shipped directly to the unaffiliated customer. Region identified four customer categories in the home market: (1) end users; (2) trading companies; (3) distributors, and (4) retailers, and just one customer category in the U.S. market: trading companies. Region made little distinction in selling functions based on channels of distribution or customer categories. Region identified three selling functions that are never performed on sales to the U.S. market, which are only occasionally or rarely performed for home market sales: sales marketing support, provision of certain other discounts, and commission payments. Aside from these small differences, Region stated that there is no difference in the selling functions between the customer categories in the home market and the U.S. market. Commerce preliminarily determines that, for Region, there were no significant differences in selling and marketing practices between their respective home and U.S. markets, and that a single level of trade exists in each market. Therefore, for these preliminary results, we matched Region's export price sales to its home market sales without making a level-of-trade adjustment to normal value.²⁶

²³ See section 773(a)(7) of the Act.

²⁴ See 19 CFR 351.412(c)(2).

²⁵ For a more detailed analysis, see Inmax Analysis Memorandum at 5-6.

²⁶ For a more detailed analysis, see Region Analysis Memorandum at 5-6.

3. Sales to Affiliates

We exclude comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.²⁷ To test whether the respondents' comparison market sales are made at arm's-length prices, we compare the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party are at arm's-length prices.²⁸ Because neither Inmax nor Region reported sales to affiliates in the comparison market, we did not test to see if such sales were made at arm's-length prices for our preliminary results.

4. Cost of Production

Pursuant to section 773(b)(2) of the Act,²⁹ Commerce required that both respondents provide constructed-value and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing. For these calculations, we used the COP information submitted by Inmax and Region, but made certain adjustments to the data.

For Inmax, we found significant differences in the energy, labor, and overhead costs when comparing products with similar or identical control numbers (CONNUMs) produced by Inmax Sdn. and Inmax Industries. Further, we noted that these differences appeared to be related to where the product was produced, rather than due to differences in the physical characteristics of the merchandise. Therefore, we recalculated the reported energy, labor, and overhead costs to eliminate these differences.³⁰

For Region, we adjusted the reported amounts for services obtained from affiliated providers for electroplating, heat treatment and annealing of certain products to reflect transactions disregarded from these providers. In addition, we limited Region's scrap offset to an amount that reflected the amount estimated to have been generated during the POR. Finally, we made an adjustment to Region's reported interest expenses to include an additional expense.³¹

²⁷ See 19 CFR 351.403(c).

²⁸ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

²⁹ See 19 USC 1677b(b)(2)(A)(ii).

³⁰ For a more detailed discussion of these adjustments, see Inmax Analysis Memorandum at 9-10.

³¹ For a more detailed discussion of these adjustments, see Region Analysis Memorandum at 8.

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the per-unit price of the comparison-market sales of the foreign like product to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

c. Results of the COP Test

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

We found that, for certain products, more than 20 percent of Inmax and Region's home market sales during the period of review were at prices less than the COP, they were made within and extended period of time, and 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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

5. Calculation of Normal Value Based on Comparison Market Prices

We calculated normal value for Inmax and Region based on the reported packed, ex-factory, or delivered prices to comparison-market customers.

With respect to Inmax, we made adjustments, where appropriate, to normal value for inland freight revenues. We also made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight) and for certain direct selling expenses (*e.g.*, warranty and credit expenses), pursuant to section 773(a)(6)(B)(ii) of the Act. In accordance with our practice, we capped the amount of inland freight revenues permitted to offset gross unit price at no greater than the amount of the corresponding inland freight expenses incurred by Inmax. We added U.S. packing costs and deducted home-market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

For Region, we made adjustments, where appropriate, to normal value for certain billing adjustments and other discounts. Additionally, we made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight and inland insurance) and for certain direct selling expenses (*i.e.*, credit, warranty, commission, and bank expenses), pursuant to section 773(a)(6)(B)(ii) of the Act. We added U.S. packing costs and deducted home-market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

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

6. Price-to-Constructed Value Comparison

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

In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of the respondents' material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of constructed value 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 on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Commerce's normal practice is to rely on the financial information most contemporaneous with the period of review.³² Because the majority of Region's fiscal year 2017-2018 fell within this period, we have relied on Inmax and Region's general and administrative and financial expense rates for fiscal years 2017 and 2017-2018, respectively.³³

VI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) 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. The exchange rates are available on Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange>.

³² See, e.g., *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007), and accompanying IDM at Comment 3.

³³ As Inmax's fiscal year coincides with the calendar year, its financial information is based on the first six months of the period of review. See Inmax Section A Response at A-21; see also Region Section A Response at A-28.

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

9/5/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance