



A-557-816
POR: 7/1/2019-6/30/2020
Public Document
E&C Office VI: PNC

July 27, 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 and Partial
Rescission of Antidumping Duty Administrative Review; 2019-
2020

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, 2019, through June 30, 2020. The administrative review covers five producers or exporters of the subject merchandise. Commerce selected one mandatory respondent: Region System Sdn. Bhd. (Region System) and Region International Co. Ltd. (Region International) (collectively, Region). Commerce preliminarily finds that Region made sales of subject merchandise at less than normal value during the POR.

II. BACKGROUND

On July 13, 2015, we published in the *Federal Register* an antidumping duty antidumping duty order on certain steel nails from Malaysia.¹ On July 1, 2020, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.²

On July 31, 2020, Mid Continent Steel & Wire, Inc. (the petitioner) filed a timely request for review of twenty-five companies,³ and Inmax Sdn. Bhd., Inmax Industries Sdn. Bhd., and

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

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531 (July 1, 2020).

³ See Petitioner's Letter, "Certain Steel Nails from Malaysia – Request for Administrative Review," dated July 31, 2020.



Region filed timely requests for review of their companies.⁴ On September 3, 2020, Commerce initiated this administrative review in accordance with 19 CFR 351.221(c)(1)(i).⁵ On October 27, 2020, Commerce selected Region for individual examination⁶ and issued its initial questionnaire to this mandatory respondent on November 4, 2020.⁷

On September 24, 2020, the petitioner timely withdrew its request for review for all companies except Inmax Sdn. Bhd., Inmax Industries Sdn. Bhd., Region System, Region International, and Tag Fasteners Sdn. Bhd.⁸ On December 2, 2020, Region filed a timely withdrawal of its request for review.⁹

Region submitted timely responses to Commerce's antidumping duty questionnaire between December 2020 and January 2021.¹⁰ Between February 2021 and July 2021, Region timely responded to Commerce's supplemental questionnaires.¹¹

On March 25, 2021, Commerce extended the time limit for these preliminary results to July 30, 2021, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).¹²

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.¹³ 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.

⁴ See Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd.'s Letter, "Steel Nails from Malaysia: Request for Administrative Review," dated July 31, 2020; *see also* Region's Letter, "Steel Nails from Malaysia," dated July 31, 2020.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

⁶ See Memorandum, "Administrative Review of Antidumping Duty Order on Certain Steel Nails from Malaysia: Respondent Selection," dated October 27, 2020.

⁷ See Commerce's Letter, Initial AD Questionnaire, dated November 4, 2020.

⁸ See Petitioner's Letter, "Certain Steel Nails from Malaysia – Withdrawal of Request for Administrative Review," dated September 24, 2020 (Petitioner's Withdrawal of Request for Administrative Review).

⁹ See Region's Letter, "Steel Nails from Malaysia," dated December 2, 2020.

¹⁰ See Region's Letter, "Steel Nails from Malaysia," dated December 2, 2020 (Region Section A Response); *see also* Region's Letter, "Steel Nails from Malaysia," dated January 12, 2021.

¹¹ See Region's Letter, "Steel Nails from Malaysia," dated February 17, 2021 (Region Section A Supplemental Response); *see also* Region's Letter, "Steel Nails from Malaysia," dated May 19, 2021; Region's Letter, "Steel Nails from Malaysia," dated May 26, 2021; and Region's Letter, "Steel Nails from Malaysia," dated July 6, 2021.

¹² See Memorandum, "Certain Steel Nails from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019-2020," dated March 25, 2021.

¹³ 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.

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 the *Order* are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; 2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; 3) swivel seats with variable height adjustment; 4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); 5) seats of cane, osier, bamboo or similar materials; 6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); 7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or 8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.*, furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of the *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 the *Order* are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of the *Order* are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of the *Order* are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of the *Order* are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to the *Order* are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to the *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 the *Order* is dispositive.

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

As noted in the “Background” section, the petitioner filed a timely request for review of twenty-five companies, and we initiated a review of these companies.¹⁴ However, on September 24, 2020, the petitioner timely withdrew its request for review of 20 of the companies requested for review. 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 20 companies. For a list of the companies, see Appendix II in the accompanying *Federal Register* notice.

V. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

Commerce did not select the following companies for individual examination as mandatory respondents: Inmax Sdn. Bhd., Inmax Industries Sdn. Bhd., and Tag Fasteners Sdn. Bhd. These companies did not submit a claim of no shipments and were not the subject of a withdrawal of request for review.

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.”

In this review, we preliminarily calculated a weighted-average dumping margin for Region that was not zero, *de minimis*, or based entirely on facts available. Because Region is the sole mandatory respondent and its calculated dumping margin was not zero, *de minimis*, or based

¹⁴ See *Initiation Notice*, 85 FR at 54985-54986.

entirely on facts available, we have preliminarily assigned the weighted-average dumping margin calculated for Region as the weighted-average dumping margin for the non-individually examined companies.

VI. DISCUSSION OF THE METHODOLOGY

A. Collapsing of Affiliated Companies

Section 771(33) of the Act, in pertinent parts, identifies persons that shall be considered “affiliated” or “affiliated persons” as, *inter alia*, “{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.”¹⁵ Section 771(33) of the Act further stipulates 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,” and the SAA¹⁶ states that control may be found to exist within corporate groupings.¹⁷ In determining whether control over another person exists on the basis of a corporate grouping, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.¹⁸

The criteria for treating affiliated producers as a single entity for purposes of antidumping duty proceedings are outlined in 19 CFR 351.401(f). Commerce will treat affiliated producers as a single entity if they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production.¹⁹ 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 or treated as a single entity and has used the regulatory criteria in its analysis.²⁰

In identifying a significant potential for manipulation, Commerce may consider factors including the level of common ownership;²¹ “{t}he extent to which managerial employees or board

¹⁵ See section 771(33)(F) of the Act.

¹⁶ See the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316 (1994).

¹⁷ See SAA at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings; (2) franchises or joint ventures; (3) debt financing; and (4) close supplier relationships in which either party becomes reliant upon the other).

¹⁸ See 19 CFR 351.102(b)(3).

¹⁹ See 19 CFR 351.401(f)(1).

²⁰ 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); *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 Issues and Decision Memorandum (IDM) at Comment 5 (“More recently the CIT found that collapsing exporters, rather than producers, is consistent with a ‘reasonable interpretation of the antidumping duty statute.’” (internal citation omitted)); and *United States Steel Corp. v. United States*, 179 F. Supp. 3d 1114, 1136, 1142 (CIT 2016) (“Therefore, Commerce’s practice for collapsing exporters with affiliated producers is to look *solely* at the second requirement under its regulation that the relationship between the affiliated companies raises ‘a significant potential for manipulation of price or production.’” (emphasis added)).

²¹ See 19 CFR 351.401(f)(2)(i).

members of one firm sit on the board of directors of an affiliated firm;²² and “{w}hether 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.”²³ Commerce considers these criteria in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.²⁴

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 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.²⁵

B. Date of Sale

According to 19 CFR 351.401(i), “{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.²⁶ 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.²⁷

²² See 19 CFR 351.401(f)(2)(ii).

²³ See 19 CFR 351.401(f)(2)(iii).

²⁴ 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 IDM at Comment 10).

²⁵ For a more detailed analysis, see “Analysis Memorandum for Region International Co., Ltd. and Region System Sdn. Bhd. in the Preliminary Results of the 2019/2020 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Malaysia,” dated concurrently with this memorandum (Region Analysis Memorandum) at 2-4.

²⁶ 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)).

²⁷ 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.

Region reported the invoice date as the date of sale for its home market sales 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.²⁸ Therefore, we preliminarily find that Region's invoice date is the most appropriate date of sale for its home market sales, as the record indicates that the terms of sale are established and no longer subject to change. For U.S. sales, Region reported the invoice date or shipment date from the factory, whichever occurred first, as the date of sale.²⁹ We preliminarily find that the date of sale is the earlier of the invoice date or shipment date from the factory, as the record shows that the terms of sale for U.S. sales are established by this date.

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 Region's sales of the subject merchandise from Malaysia to the United States 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.³⁰

In numerous proceedings, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³¹

²⁸ See Region Section A Response at 20 and 24.

²⁹ *Id.* at 23-24.

³⁰ 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 (CIT 2014).

³¹ See, e.g., *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017), and accompanying Preliminary Decision Memorandum at 21-24, unchanged in *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018); and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018) (*2016-17 Prelim*), and accompanying Preliminary Decision Memorandum at 3-6, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

Commerce finds that the differential pricing analysis used in these investigations and administrative reviews 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 weighted-average dumping margin for each respondent.

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 into 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 customer codes. Regions are defined using the reported destination code (*i.e.*, state) 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 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 Region, based on the results of the differential pricing analysis, Commerce preliminarily finds that 34.72 percent of the value of U.S. sales pass the Cohen's *d* test,³² and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test

³² See Region Analysis Memorandum at 6.

and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Region.

3. Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for goods produced by 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.

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 Region because the first sale to an unaffiliated party was made before the date of importation, and the use of constructed export price methodology was not otherwise warranted.

We based export price on a packed price to the first unaffiliated purchaser in the United States. We made deductions from the starting price for certain movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight and domestic brokerage and handling.

D. Normal Value

1. Home Market Viability as Comparison Market

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

In this review, Commerce determined that the aggregate volume of home market sales of the foreign like product for Region was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.³³ Based on this comparison, we determine that Region had a

³³ See Region Section A Response at A-4 and Exhibit A-1.

viable home market during the POR. Therefore, we used home market sales as the basis for normal value for Region in accordance with section 773(a)(1)(B) of the Act.

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 price or constructed export price. 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, 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.³⁴ 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.

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁵ Commerce's level-of-trade analysis takes into account qualitative factors, such as the significance of the activities themselves and the extent to which the activities are performed. In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (*i.e.*, customer category), and the level of selling expenses for each type of sale.

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.³⁶ Region made little distinction in selling functions based on channels of distribution or customer categories. Region identified one selling function which it always performed on sales to the U.S. market but only frequently performed for home market sales: provision of freight and delivery.³⁷ Additionally, Region identified one selling function that is never performed on sales to the U.S. market but is sometimes performed for home market sales: commission payments.³⁸ Aside from these small differences, Region stated that there is no difference in the selling functions between the

³⁴ See 19 CFR 351.412(c)(2).

³⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

³⁶ See Region Section A Response at A-14-16.

³⁷ See Region Section A Supplemental Response at Exhibit A-5.

³⁸ *Id.*

customer categories in the home market and the U.S. market. Commerce preliminarily finds 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. 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 matched Region's export price sales to its home market sales without making a level-of-trade adjustment to normal value.³⁹

3. Sales to Affiliates

We exclude from our margin analysis comparison market sales to affiliated customers that are not made at arm's-length prices because we consider them to be outside the ordinary course of trade.⁴⁰ 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.⁴¹ Because Region reported that it made no 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.⁴²

4. Cost of Production

Pursuant to section 773(b)(2)(A) of the Act, Commerce we requested cost information from Region in this review 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 cost of production (COP) of the product. We examined Region's cost data and determined that the quarterly cost methodology is not warranted for Region and, therefore, we applied our standard methodology of using annual average costs based on the reported data.

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 general and administrative and financial expenses. For these calculations, we used the COP information submitted by Region but made certain adjustments to the data; we adjusted the reported amounts

³⁹ See section 773(a)(7)(A) of the Act.

⁴⁰ See 19 CFR 351.403(c).

⁴¹ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

⁴² See Region Section A Response at A-3.

for services obtained from affiliated providers for electroplating, heat treatment and annealing of certain products to reflect transactions disregarded from these providers.⁴³

b. Test of Comparison Market Sales Prices

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

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.

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

5. Calculation of Normal Value Based on Comparison Market Prices

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

⁴³ For a more detailed discussion of these adjustments, see Region Analysis Memorandum at 5-6.

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.⁴⁴

6. Calculation of Normal Value Based on Constructed Value

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, and where applicable, we calculated constructed value based on the sum of Region's material and fabrication costs, selling, general and administrative (SG&A) and financing expenses, profit, and U.S. packing costs, as adjusted (where applicable). 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 in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market. Commerce's normal practice is to rely on the financial information most contemporaneous with the period of review.⁴⁵ Because the majority of Region's fiscal year 2019-2020 fell within this period, we have relied on Region's general and administrative and financial expense rates for fiscal year 2019-2020.⁴⁶

VII. 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. These exchange rates are available on the Enforcement and Compliance website at <https://enforcement.trade.gov/exchange>.

⁴⁴ See 19 CFR 351.411(b).

⁴⁵ 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.

⁴⁶ See Region Section A Response at A-29.

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

7/27/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance