



A-588-851
Administrative Review
POR 06/01/14- 05/31/15
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July 5, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Certain Small Diameter Carbon
and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½
Inches) from Japan; 2014-2015 Administrative Review

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (under 4 ½ inches) from Japan. This review covers five companies.¹ The period of review (POR) is June 1, 2014, through May 31, 2015. We preliminarily find that sales of subject merchandise have been made at prices below normal value during the POR.

II. BACKGROUND

On June 26, 2000, the Department published the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (under 4 ½ inches) (small diameter seamless pipe) from Japan.² On June 1, 2015, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on small diameter seamless pipe from Japan for the period June 1, 2014, through May 31, 2015.³ On June 30, 2015, United States Steel Corporation (U.S. Steel), a domestic producer of the domestic like product, timely requested that the Department conduct an administrative review of: 1) JFE Steel Corporation (JFE); 2) Nippon Steel Corporation (NSC); 3) NKK Tubes (NKK); 4) Sumitomo

¹ The five companies are: JFE Steel Corporation, Nippon Steel & Sumitomo Metal Corporation, Nippon Steel Corporation, NKK Tubes, and Sumitomo Metal Industries, Ltd.

² See *Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 31017 (June 1, 2015).



Metal Industries, Ltd. (SMI); and 5) Nippon Steel & Sumitomo Metal Corporation (NSSMC).⁴ On August 3, 2015, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the *Federal Register* a notice of initiation of this antidumping duty administrative review.⁵

On September 15, 2015, the Department released U.S. Customs and Border Protection (CBP) import data for respondent selection purposes and invited parties to comment.⁶ The Department received no comments on the CBP data. On August 28, 2015, NKK submitted a letter to the Department certifying that it made no shipments or entries for consumption in the United States of subject merchandise during the POR. On December 18, 2015, the Department issued its respondent selection memorandum, selecting NSSMC for individual examination in this review.⁷ On December 23, 2015, the Department issued its antidumping duty questionnaire to NSSMC. NSSMC did not provide a response. On January 27, 2016, NSSMC submitted a letter to the Department certifying that NSSMC, NSC and SMI made no shipments or entries for consumption in the United States of subject merchandise during the POR.⁸ On March 1, 2016, the Department rejected NSSMC's no shipments filing because it was untimely filed.⁹

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 22, through January 27, 2016. *See* Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'" (January 27, 2016). Therefore, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review was March 7, 2016.¹⁰ On March 2, 2016, the Department extended the deadline for preliminary results to July 5, 2016.

⁴ *See* Letter from U.S. Steel to the Department, "Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan: Request for Administrative Review," (June 30, 2015).

⁵ *See* *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 45947 (August 3, 2015).

⁶ *See* Memorandum to the File regarding "Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan (Under 4 ½ Inches): *Antidumping Duty Administrative Review; 2014-15*: U.S. Customs and Border Protection (CBP) Data Release," (September 15, 2015) (CBP Import Data Release).

⁷ *See* Memorandum titled "Antidumping Administrative Review of Small Diameter Carbon and Alloy Seamless Standard Line, and Pressure Pipe from Japan: Respondent Selection," dated December 18, 2015 (Respondent Selection Memorandum).

⁸ *See* Letter to the Department, "Certain Small Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan: Certification of No U.S. Sales During Administrative Review Period," (January 27, 2016) (NSSMC Certification).

⁹ *See* Letter to NSSMC, "Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan: Rejection of No Sales Certification," (March 1, 2016). Also *see* Memorandum to the File, "Certain Small (Under 4 ½ inches) Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan: Rejection of Late Submission," (March 1, 2016).

¹⁰ If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.

III. SCOPE OF THE ORDER

The products covered by this order include small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the

metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or “hollow profiles” of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct CBP to require end-use certification until such time as Petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used

in covered applications as described above. For example, if, based on evidence provided by Petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise to the order is dispositive.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As noted above, on August 28, 2015, NKK timely submitted a letter to the Department certifying that it made no shipments or entries for consumption in the United States of subject merchandise during the POR. The Department subsequently confirmed with CBP the no shipment claim made by NKK. The Department finds that NKK's claim of no shipments or entries for consumption during the POR are substantiated. Based upon the certifications and the evidence on the record, we are satisfied that NKK did not have shipments of subject merchandise to the United States during the POR and, as such, we preliminarily determine that NKK had no reviewable transactions during the POR.

V. DISCUSSION OF THE METHODOLOGY

a. Use of Facts Otherwise Available

In accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we determine that the use of adverse facts available (AFA) is appropriate for these preliminary results with respect to NSSMC, the sole company selected for individual examination in this review. Thus, for the reasons discussed below, we preliminarily assign a dumping margin of 106.07 percent to NSSMC.

i. Use of Facts Available

As noted above, on December 23, 2015, the Department issued its antidumping duty questionnaire to NSSMC. NSSMC did not provide a response. Because NSSMC did not respond to the Department's questionnaire and thus, failed to provide the information required, we preliminarily find that NSSMC has failed to provide the Department with the information necessary to conduct an administrative review of the company, thereby warranting the use of facts otherwise available pursuant to sections 776(a) of the Act.

ii. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from

the facts otherwise available. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”¹¹ In addition, adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹²

NSSMC failed to respond to the Department's questionnaire and failed to request an extension of time to respond. The failure of NSSMC to respond to the delivered questionnaire demonstrates a failure to cooperate by this producer/exporter of merchandise to the United States. We have, therefore, preliminarily determined that NSSMC failed to cooperate to the best of its ability in providing the necessary information for the Department to conduct an administrative review. Accordingly, we preliminary find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.¹³

iii. Selection and Corroboration of Information Used as Facts Available

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to United States antidumping and countervailing law including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹⁴ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these preliminary results of review.¹⁵

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less-than fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.¹⁶

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent

¹¹ See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

¹² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 at 879, 103d Cong. (1994), reprinted in 1994 U.S.C.A.N. 37773, 4163SAA at 870 (SAA).

¹³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (where the Department applied total AFA because the respondent failed to respond to the questionnaire).

¹⁴ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

¹⁵ *Id.*

¹⁶ See also 19 CFR 351.308(c) and SAA at 868-870.

practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. However, pursuant to section 776(c)(2) as amended by the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

As AFA, we preliminarily assign to NSSMC the dumping margin of 106.07 percent, the highest petition rate.¹⁷ In the original LTFV investigation, we assigned this rate, as an AFA rate, to SMI, NSC, and Kawasaki Steel Corporation.¹⁸ According to section 776(c)(2) of the Act, as amended by the TPEA, this rate does not require corroboration. This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁹

b. Rate for Non-Examined Companies

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis* or based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to all other respondents. The SAA states that the “expected method” under “any reasonable method” is that we will weight-average the rates that are zero, *de minimis*, and based entirely on facts available.²⁰

¹⁷ See *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 64 FR 69718 (December 14, 1999).

¹⁸ See *Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000).

¹⁹ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010).

²⁰ See Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 Vol. I at 873 (1994), *reprinted in* 1994 U.S.C.C.A.N 3773, 4163 (“SAA”).

In this review, we have preliminarily determined a dumping margin for NSSMC, the sole company that we selected for individual examination. Applying the method set forth in section 735(c)(5)(B) of the Act and described as the “expected method” in the SAA, we preliminarily determine to apply to companies not selected for individual examination in this review the rate determined for NSSMC, the sole company individually examined.²¹ Accordingly, we preliminarily assign to the non-selected companies the dumping margin of 106.07 percent.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

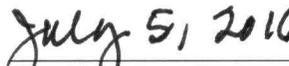
✓

Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



(Date)

²¹ In previous cases, the Department determined that a “reasonable method” to use when, as here, the rate of the respondent selected for individual examination is based on AFA, is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from the investigation or a prior administrative review). *See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 16. However, the U.S. Court of Appeals for the Federal Circuit recently rejected the Department’s reliance on methodologies that pulled forward rates from prior segments of the proceeding for non-selected companies in light of, *inter alia*, section 735(c)(5)(B) of the Act and the SAA’s identification of an “expected method.” *See Albemarle Corp. v. United States*, Case No. 2015-1288, 2015-1289, 2015-1290 at 16-28 & n. 8 (May 2, 2016).