UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
Public Document
E&C/V: KJA

DATE: November 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement's and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Japan

I. SUMMARY

The Department of Commerce ("the Department") preliminarily determines that certain carbon and alloy steel cut-to-length plate ("CTL plate") from Japan is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying Federal Register notice.

II. BACKGROUND

On April 8, 2016, the Department received an antidumping duty ("AD") petition covering imports of CTL plate from Japan,[1] which was filed in proper form by ArcelorMittal USA LLC, Nucor Corporation ("Nucor"), and SSAB Enterprises, LLC (collectively, "Petitioners"). The Department initiated this investigation on April 28, 2016.[2]

In the Initiation Notice, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection ("CBP") data for certain of the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings listed in the scope of

[1] See Petitions for the Imposition of Antidumping Duties on Imports of Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey; and Countervailing Duties on Imports from Brazil, the People's Republic of China, and the Republic of Korea (April 8, 2016) ("the Petitions").
[2] See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair Value Investigations, 81 FR 27089 (May 5, 2016) ("Initiation Notice").

the investigation.[3] Accordingly, on April 29, 2016, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.[4] On May 6, 2016, we received comments on behalf of EVRAZ Inc. NA ("Evraz"), a domestic producer of CTL plate and interested party, and Hitachi Metals, Ltd. ("Hitachi Metals"), and Tokyo Steel Manufacturing Co., Ltd. ("Tokyo Steel"), producers/exporters of CTL plate from Japan.[5]

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of CTL plate to be reported in response to the Department's AD questionnaire.[6] The Department received a number of timely scope comments on the record this investigation, as well as on the records of the companion CTL plate investigations involving Austria, Belgium, Brazil, France, Germany, Italy, Korea, the People's Republic of China, South Africa, Taiwan, and Turkey.[7]

On May 23, 2016, the Department limited the number of respondents selected for individual examination to the two largest publicly-identifiable producers/exporters of the merchandise under consideration by volume, JFE Steel Corporation ("JFE Steel") and Tokyo Steel.[8] Accordingly, on May 23, 2016, we issued the AD questionnaire to JFE Steel and Tokyo Steel.[9]

On May 27, 2016, the U.S. International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of CTL plate from Japan.[10]

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[3] See Initiation Notice, 81 FR at 27095.
[4] See Memo to the File from Kabir Archuletta, Senior International Trade Analyst, "U.S. Customs Data for Respondent Selection" (April 29, 2016).
[5] See Letter to the Secretary of Commerce from Evraz, "Comments on Respondent Selection" (May 6, 2016); Letter to the Secretary of Commerce from Hitachi Metals, "Comments on CBP Data Released on April 29, 2016" dated May 12, 2016; Letter to the Secretary of Commerce from Tokyo Steel "Tokyo Steel Manufacturing Co., Ltd.'s Comments on Respondent Selection" (May 11, 2016); see also Letter to the Secretary of Commerce from Hitachi Metals "Entry of Appearance and Application for Access under Administrative Protective Order" (May 5, 2016).
[6] See Initiation Notice, 81 FR at 27090, 27091.
[7] For further discussion of these comments, see Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations" (September 6, 2016) ("Preliminary Scope Decision Memorandum"), and Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs" (October 13, 2016) ("Additional Preliminary Scope Decision Memorandum").
[8] See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Japan: Respondent Selection" (May 23, 2016).
[9] See Letters to JFE Steel and Tokyo Steel from Catherine Bertrand, Program Manager, Office V, regarding the AD questionnaire (May 23, 2016).
[10] See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey; Determinations, 81 FR 33705 (May 27, 2016). See also Memorandum to the File from Brittany Bauer, Analyst, "Placing the International Trade Commission Preliminary Report on the record for the Anti-Dumping Investigations of Certain Carbon and Alloy Steel Cut-To-

On June 2, 2016, one of the petitioners, i.e., Nucor, and various other interested parties in this and/or the companion AD investigations submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On June 8, 2016, Nucor and various other interested parties filed rebuttal comments.

On June 20, 2016, JFE Steel informed the Department that it did not intend to participate in this investigation.[11] Therefore, on July 1, 2016, the Department selected the next largest publicly-identifiable producer/exporter of the merchandise under consideration, Shimabun Corporation, as a mandatory respondent.[12] On July 29, 2016, Shimabun Corporation informed the Department that it did not intend to participate in this investigation.[13]

In June 2016, Tokyo Steel submitted a timely response to section A of the Department's AD questionnaire (i.e., the section relating to general information). In July 2016, Tokyo Steel responded to sections B, C, and D of the Department's AD questionnaire, i.e., the sections relating to home market sales, U.S. sales, and cost of production ("COP")/constructed value ("CV"), respectively.

In August 2016, Petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the Department published a postponement of the preliminary determination until no later than November 4, 2016.[14]

From July 2016 through September 2016, we issued supplemental questionnaires to Tokyo Steel, and received responses to these supplemental questionnaires from August 2016 through October 2016.

On September 6, 2016, the Department addressed the scope comments placed on the record of this investigation by interested parties.[15]

In October 2016, Tokyo Steel requested that the Department postpone the final determination, and that provisional measures be extended.[16] Also, in October 2016, Evraz and Tokyo Steel filed pre-preliminary determination comments.[17]

Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey" (October 7, 2016).

[11] See Letter to the Secretary of Commerce from JFE Steel, "Advisement of Non-Participation in Investigation" (June 15, 2016).

[12] See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Japan: Selection of Additional Mandatory Respondent" (July 1, 2016).

[13] See Letter to the Secretary of Commerce from Shimabun Corporation, "Shimabun's Notification of Non-Participation" (July 29, 2016).

[14] See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 81 FR 59185 (August 29, 2016).

[15] See Preliminary Scope Memorandum.

[16] See Letter to the Secretary of Commerce from Tokyo Steel, "Request for Extension of Final Determination and Provisional Measures" (October 19, 2016) ("Tokyo Steel Final Postponement Request").

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation ("POI") is April 1, 2015, through March 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2016.[18]

IV. SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations,[19] the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage, i.e., scope.[20] Certain interested parties commented on the scope of this investigation as it appeared in the Initiation Notice, as well as on additional language proposed by the Department.[21] For discussion of changes to the scope from that identified in the Initiation Notice, see the "Scope Comments" section of the accompanying Federal Register notice.

V. DISCUSSION OF THE METHODOLOGY

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 Tokyo Steel's sales of subject merchandise were made in the United States at LTFV, the Department compared the export price ("EP"), as appropriate, to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this memorandum.

A) *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs), i.e., the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) 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.

In recent investigations, the Department has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a

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[17] See Letter to the Secretary of Commerce from Evraz, "Evraz's Comments for the Preliminary Determination" (October 6, 2016) ("Evraz' Pre-Prelim Comments"); Letter to the Secretary of Commerce from Tokyo Steel "Tokyo Steel's Pre-Preliminary Rebuttal Comments" (October 18, 2016).
[18] See 19 CFR 351.204(b)(1).
[19] See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) ("Preamble").
[20] See Initiation Notice, 81 FR at 27090.
[21] For a summary of the product coverage comments and rebuttal responses submitted on the record of this investigation, and accompanying discussion and analysis of all comments timely received, see Preliminary Scope Memorandum and Additional Preliminary Scope Decision Memorandum.

particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[22] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods 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 consolidated customer codes. Regions are defined using the reported destination code, i.e., zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI 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 the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

[22] 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).

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 accounts 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, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) *Results of the Differential Pricing Analysis*

For Tokyo Steel, based on the results of the differential pricing analysis, the Department preliminarily finds that 65.65 percent of the value of U.S. sales pass the Cohen's *d* test,[23] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-

[23] See the Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Japan" dated concurrently with this memorandum ("Tokyo Steel Preliminary Analysis Memorandum") at 2-3.

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 this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Tokyo Steel.

VI. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[24]

Tokyo Steel reported that the material terms of sale for all of its U.S. and home market sales of merchandise under consideration were finalized by the date of Tokyo Steel's order confirmation.[25] Although Evraz raised concerns regarding the use of order confirmation date as the date of sale in the home market,[26] Tokyo Steel subsequently provided information clarifying and supplementing the record with respect to those concerns.[27] Therefore, we preliminarily used Tokyo Steel's sales order confirmation date as the date of sale in both markets, because Tokyo Steel submitted documentation indicating that the order confirmation date represents the date on which the material terms of sale were firmly established.[28]

VII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by Tokyo Steel in Japan during the POI that fit the description in the "Scope of Investigation" section of the accompanying Federal Register notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

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[24] See 19 CFR 351.401(i); see also Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).
[25] See Letter to the Secretary of Commerce from Tokyo Steel, "Tokyo Steel's Supplemental Section A Response" (August 4, 2016) at 29.
[26] See Evraz' Pre-Prelim Comments at 2-6.
[27] See Letter to the Secretary of Commerce from Tokyo Steel, "Tokyo Steel's 2nd Supplemental Section A, B, and C Response" (October 11, 2016) at 2-3.
[28] See 19 CFR 351.401(i). See also Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results of Antidumping Duty Administrative Review, 75 FR 47777 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: quality, minimum specified carbon content, minimum specified chromium content, minimum specified nickel content, minimum specified yield strength, nominal thickness, heat treatment status, nominal width, form, painting, the existence of patterns in relief, and descaling.

VIII. EXPORT PRICE

For all sales made by Tokyo Steel, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States prior to importation and CEP methodology was not otherwise warranted. Specifically, Tokyo Steel reported that all of its sales of subject merchandise during the POI were made to one unaffiliated Japanese trading company with the knowledge that the CTL plate would be exported to the United States.[29]

Tokyo Steel

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for discounts and, where appropriate, movement expenses, i.e., foreign inland freight and foreign brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

IX. NORMAL VALUE

A) *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare 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 investigation, we determined that the aggregate volume of home market sales of the foreign like product for Tokyo Steel was greater than five percent of the aggregate volume of its U.S. sales of merchandise under consideration. Therefore, we used home market sales as the basis for NV for Tokyo Steel, in accordance with section 773(a)(1)(B) of the Act.

[29] See Letter to the Secretary of Commerce from Tokyo Steel "Section A Response of Tokyo Steel Manufacturing Co., Ltd." (June 20, 2016) ("Tokyo Steel SAQR") at 10; see also Letter to the Secretary of Commerce from Tokyo Steel "Tokyo Steel's Supplemental Section A Response" (August 4, 2016) ("Tokyo Steel SuppA") at 22 and 34.

B) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[30] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[31] In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, i.e., the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, i.e., NV based on either home market or third country prices,[32] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[33]

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, i.e., no LOT adjustment is possible, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[34]

In this investigation, we obtained information from Tokyo Steel regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.[35] Our LOT findings are summarized below.

In the home market, Tokyo Steel reported that all of its sales were through two channels of distribution (i.e., to unaffiliated Japanese trading companies or to unaffiliated Japanese distributors).[36] According to Tokyo Steel, there was no difference in either the sales process or its selling functions for sales made through either channel.[37]

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[30] See 19 CFR 351.412(c)(2).
[31] Id.; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 ("OJ from Brazil").
[32] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).
[33] See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
[34] See, e.g., OJ from Brazil, at Comment 7.
[35] See Tokyo Steel SAQR at 9-17 and Exhibits 7 and 8; Tokyo Steel SuppA at 22-29 and Exhibit 7.
[36] See Tokyo Steel SuppA at 23.
[37] Id. Information reported by Tokyo Steel regarding the levels of selling activities performed by Tokyo Steel is business proprietary information. For further details, please see Tokyo Steel Preliminary Analysis Memorandum at

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Tokyo Steel performed sales and marketing, freight and delivery services, and warranty and technical support for its home market sales. Because we find that there were no differences in selling activities performed by Tokyo Steel to sell to its home market customers, we determine that there is one LOT in the home market for Tokyo Steel.[38]

With respect to the U.S. market, Tokyo Steel reported that it has only one U.S. customer of merchandise under consideration,[39] an unaffiliated Japanese trading company that took possession of the merchandise at the port in Japan.[40] Based on the selling function categories noted above, we find that Tokyo Steel performed sales and marketing and freight and delivery services for all of its reported U.S. sales.[41] Because Tokyo Steel performed the same selling functions at the same level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Tokyo Steel performed for its U.S. and home market customers do not differ significantly.[42] Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, an LOT adjustment is not warranted.

C) *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and countervailing duty ("CVD") law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than COP.[43] The 2015 law does not specify dates of application for those amendments.[44] On August 6, 2015, the Department published an interpretive rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[45] Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.[46] Accordingly, the Department requested this information

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[38] See, e.g., Tokyo Steel SuppA at 23 and Exhibit 7.

[39] Id. at 22.

[40] See Tokyo Steel SAQR at 10.

[41] For further details, please see Tokyo Steel Preliminary Analysis Memorandum at 3-4.

[42] See, e.g., Tokyo Steel SuppA at 22-29 and Exhibit 7.

[43] See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

[44] The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl; see also the Petitions.

[45] 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).

[46] Id., 80 FR at 46794-95.

from Tokyo Steel. We examined Tokyo Steel's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.

We relied on the COP data submitted by Tokyo Steel except as follows:

- We adjusted Tokyo Steel's reported general and administrative expense rate so as to include losses attributable to the sale of fixed assets in the calculation.[47]

2. 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 home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; 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 because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, 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 Tokyo Steel's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and

[47] See Memorandum to Neal M. Halper, Director, Office of Accounting, from Kristin Case, Senior Accountant, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Tokyo Steel" (November 4, 2016).

used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D) *Overrun Sales*

Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, inter alia, in the ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."

Tokyo Steel reported sales of overrun merchandise in the home market that are "produced as per specification but don't match to any orders"[48] because they are "excess in a production run."[49] In the past, the Department examined various factors to determine whether "overrun" sales are in the ordinary course of trade.[50] The Department has the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.[51] These factors include, but are not limited to, the following: (1) whether the merchandise is "off-quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.[52]

Given the discretion afforded the Department in conducting this analysis,[53] and considering the totality of the circumstances, we preliminarily find Tokyo Steel's sales of overrun merchandise to be outside the ordinary course of trade because these sales have characteristics that are different from those of sales generally made in the home market. Specifically, the average quantity and price, and the average profit realized, of Tokyo Steel's overrun and non-overrun sales demonstrate consistent differences on a control number-specific basis.[54] Accordingly, we excluded Tokyo Steel's sales of overrun merchandise for this preliminary determination.

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[48] See Letter to the Secretary of Commerce from Tokyo Steel "Tokyo Steel's Section B Questionnaire Response" (July 12, 2016) at 10.
[49] See Letter to the Secretary of Commerce from Tokyo Steel "Tokyo Steel's Supplemental Section B Response" (August 22, 2016) at 3.
[50] See China Steel Corp. v. United States, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003); see also, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 4385 (January 22, 2013) ("Korea Plate 2011-12 Prelim"), and the accompanying Preliminary Decision Memorandum at 7, unchanged in Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 29113, 29114 (May 17, 2013) ("Korea Plate 2011-12 Final").
[51] See Laclede Steel Co. v. United States, 19 CIT 1076, 1078 (1995) ("Laclede Steel").
[52] See Korea Plate 2011-12 Prelim and accompanying Preliminary Decision Memorandum at 7, unchanged in Korea Plate 2011-12 Final.
[53] See Laclede Steel, 19 CIT at 1078.
[54] Due to the proprietary nature of this information, see Tokyo Steel Preliminary Analysis Memorandum at 5-6 for further discussion.

E) *Calculation of NV Based on Comparison-Market Prices*

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and early payment discounts, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, i.e., credit expenses and other direct selling expenses, and added U.S. direct selling expenses, i.e., credit expenses and other direct selling expenses.[55]

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.[56]

X. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, JFE Steel and Shimabun Corporation were selected as mandatory respondents. Both companies received the Department's questionnaire and informed the Department that they would not participate in this investigation. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to JFE Steel and Shimabun Corporation.

A) *Application of Facts Available*

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Department; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the

[55] See Tokyo Steel Preliminary Analysis Memorandum at 6-7.
[56] See 19 CFR 351.411(b).

information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

JFE Steel and Shimabun Corporation did not respond to our original questionnaire or otherwise participate in this investigation. As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that JFE Steel and Shimabun Corporation withheld information the Department requested, that they failed to provide information by the specified deadlines, and that they significantly impeded the proceeding. Moreover, because JFE Steel and Shimabun Corporation failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine JFE Steel's and Shimabun Corporation's preliminary estimated weighted-average dumping margins.

B) *Use of Adverse Inference*

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.[57] In doing so, and under the TPEA,[58] 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.[59] In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA") explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[60] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[61] It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[62]

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[57] See 19 CFR 351.308(a); see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); and Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002).

[58] As noted above, on June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See Applicability Notice, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

[59] See section 776(b)(1)(B) of the Act.

[60] See H.R. Doc. 103-316, Vol. 1 (1994) at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007).

[61] See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000); Preamble, 62 FR at 27340.

[62] See, e.g., Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical

We preliminarily find that JFE Steel and Shimabun Corporation have not acted to the best of their ability to comply with the Department's request for information. JFE Steel and Shimabun Corporation informed the Department that they did not intend to participate in the investigation covering CTL plate from Japan. Further, both companies failed to respond to the Department's questionnaire. The failure of JFE Steel and Shimabun Corporation to participate in this investigation and respond to the Department's questionnaire has precluded the Department from performing the necessary analysis to calculate weighted-average dumping margins for them based on their own data. Accordingly, the Department concludes that JFE Steel and Shimabun Corporation failed to cooperate to the best of their ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.[63]

C) *Selection and Corroboration of the AFA Rate*

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.[64] In selecting a rate based on AFA, the Department selects a rate that 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.[65] The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.[66]

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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.[67] The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[68] To corroborate secondary information, the Department will, to the extent

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Circumstances, 79 FR 14476 (March 14, 2014).

[63] See, e.g., Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at pages 7-11, unchanged in Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part, 79 FR 61609 (October 14, 2014); see also Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

[64] See also 19 CFR 351.308(c).

[65] See SAA, at 870.

[66] See Welded Stainless Pressure Pipe From Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

[67] See SAA, at 870.

[68] Id.; see also 19 CFR 351.308(d).

practicable, examine the reliability and relevance of the information to be used.[69] Further, under the TPEA, 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.[70]

With respect to the investigation covering CTL plate from Japan, the dumping margin calculated for merchandise under consideration from Japan in the petition is 179.2 percent.[71] In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margin of 179.2 percent to the transaction-specific dumping margins for Tokyo Steel, we found that the petition dumping margin is significantly higher than the transaction-specific dumping margins calculated for Tokyo Steel. Therefore, we were unable to corroborate the dumping margin contained in the petition.[72]

Therefore, for the preliminary determination, we assigned to JFE Steel and Shimabun Corporation a dumping margin of 48.64 percent, which is the highest transaction-specific dumping margin for Tokyo Steel.[73] It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[74] The transactions underlying this dumping margin are neither unusual in terms of transaction quantities nor otherwise atypical.

XI. CURRENCY CONVERSION

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

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[69] See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

[70] See sections 776(d)(3)(A) and (B) of the Act.

[71] See Initiation Notice, 81 FR at 27094; see also AD Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-Length Plate from Japan (April 28, 2016).

[72] See Monosodium Glutamate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 26408 (May 8, 2014), and accompanying Preliminary Decision Memorandum at "Corroboration" section.

[73] See e.g., Silica Bricks and Shapes From the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination, 78 FR 37203 (June 20, 2013), and accompanying Preliminary Decision Memorandum at Section 3.

[74] See Section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information).

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 NOVEMBER 2016
Date