



A-535-903
Investigation
Public Document
E&C/Office VII: DL/KW

DATE: May 31, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Circular Welded Carbon-Quality Steel Pipe from Pakistan:
Affirmative Preliminary Less Than Fair Value Determination
Decision Memorandum

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that circular welded carbon-quality steel pipe (circular welded pipe) from Pakistan 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).

II. BACKGROUND

On October 28, 2015, the Department received, *inter alia*, an antidumping duty (AD) petition covering imports of circular welded pipe from Pakistan that was properly filed with the Department by Bull Moose Tube Company, EXLTUBE, Wheatland Tube Company, and Western Tube and Conduit (collectively, Petitioners).¹ The Department initiated this investigation on November 17, 2015.² On January 27, 2016, the Department uniformly tolled all

¹ See Letter from Petitioners, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the Republic of the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam," October 28, 2015 (alleging sales of subject merchandise from Pakistan at LTFV at Volume II (Petition)).

² See *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73708 (November 25, 2015) (*Initiation Notice*).



administrative deadlines by four business days due to a government closure.³ Subsequently, at Petitioners' request, we postponed our preliminary determination until May 31, 2016.⁴

In the *Initiation Notice*, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁵ The Department released the CBP entry data under administrative protective order on November 18, 2015.⁶ We received no comments on the CBP entry data or respondent selection methodology.

On December 16, 2015, the Department selected International Industries Limited (IIL) as the sole mandatory respondent.⁷ On the following day, the Department issued an AD questionnaire to IIL. IIL submitted timely responses to the Department's AD questionnaire between December 2015 and February 2016.⁸ The Department issued supplemental questionnaires to IIL, to which it received timely responses in April 2016.⁹ Petitioners filed comments on IIL's initial questionnaire responses in March 2016 and on IIL's supplemental questionnaire responses in May 2016.¹⁰

The *Initiation Notice* also notified parties of an opportunity to comment on the scope of this and the concurrent circular welded pipe investigations, as well as the appropriate physical characteristics of circular welded pipe to be reported in response to the Department's AD questionnaire.¹¹ Petitioners submitted comments on December 4, 2015, regarding the physical characteristics of the subject merchandise to be used for reporting purposes.¹² These comments were rebutted by a respondent in the concurrent AD investigation of circular welded pipe from

³ See Department Memorandum, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'," January 27, 2016.

⁴ See *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 81 FR 15039 (March 21, 2016).

⁵ See *Initiation Notice*, 80 FR at 73713.

⁶ See Department Memorandum, "Release of Customs Entry Data for Respondent Selection in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan," November 18, 2016.

⁷ See Department Memorandum, "Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan," December 16, 2015.

⁸ See Letter from IIL, "Responses to the Antidumping Investigation Questionnaire for Section A Questions 2a and 2e to 2g," December 29, 2015; see also Letter from IIL, "CWP from Pakistan – Submission of Complete Section A," January 19, 2016; Letter from IIL, "CWP from Pakistan – Submission of Section B & C," February 22, 2016 (BCIQR); Letter from IIL, "CWP from Pakistan – Submission of Section D," February 24, 2016.

⁹ See Letter from IIL, "CWP from Pakistan – Submission of Supplemental Questionnaire of Section D," April 15, 2016 (DSQR); see also Letter from IIL, "CWP from Pakistan – Re-submission of Section D Response," April 15, 2016; Letter from IIL, "CWP from Pakistan – Submission of Supplemental Questionnaire of Section A, B & C," April 29, 2016 (ABCSQR).

¹⁰ See Letter from Petitioners "Circular Welded Carbon-Quality Steel Pipe from Pakistan: Petitioners' Comments on IIL's Sections A-C Questionnaire Response," March 24, 2016; see also Letter from Petitioners "Circular Welded Carbon-Quality Steel Pipe from Pakistan: Petitioners' Deficiency Comments on IIL's Supplemental Sections A-C Questionnaire Response," May 16, 2016.

¹¹ See *Initiation Notice*, 80 FR at 73709-73710.

¹² See Letter from Petitioners, "Circular Welded Carbon-Quality Steel Pipe from Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam: Model Match Comments," December 4, 2015.

the United Arab Emirates.¹³ On February 9, 2016, IIL submitted comments to the Department regarding the scope of the circular welded pipe investigations.¹⁴ Petitioners filed scope comments on February 19, 2016.¹⁵ The Department addressed these comments and made a clarification to the scope on April 1, 2016.¹⁶

On December 14, 2015, the U.S. International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of circular welded pipe from Pakistan.¹⁷

On May 5, 2016, Petitioners requested that, in the event of a negative preliminary determination, the Department postpone its final determination.¹⁸

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2014, through September 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was October 2015.¹⁹

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(b)(2)(ii), on May 28, 2016, IIL requested that the Department extend the final determination deadline, and that provisional measures be extended.²⁰ In accordance with sections 735(a)(2)(A) and 733(d) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2)

¹³ See Letter from Universal Tube and Plastic Industries, Ltd., Prime Metal Corporation USA, and UTP Pipe USA Corporation, "Circular Welded Carbon-Quality Steel Pipe from Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam: Rebuttal Comments on Product Characteristics," December 11, 2015.

¹⁴ See Department Memorandum, "Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Scope Comments," March 15, 2016.

¹⁵ See Letter from Petitioners, "Request to Revise the Scope Definition in the Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam," February 19, 2016.

¹⁶ See Department Memorandum, "Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Scope Comments Decision Memorandum for the Preliminary Determinations," April 1, 2016 (Preliminary Scope Decision Memorandum).

¹⁷ See *Circular Welded Carbon-Quality Steel Pipe from Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam*, 80 FR 79093 (December 18, 2015).

¹⁸ See Letter from Petitioners, "Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam: Petitioners' Request to Extend Final Determination," May 5, 2016.

¹⁹ See 19 CFR 351.204(b)(1); see also *Initiation Notice*, 80 FR at 73709.

²⁰ See Letter from IIL, "CWP from Pakistan – Request to Postpone the Final Determination," May 28, 2016.

the requesting exporters account for a significant proportion of exports of the subject merchandise, (3) the requesting exporters have requested extension of provisional measures to a period not more than six months, and (4) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE COMMENTS

As noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding the products covered by the scope of this investigation.²¹

We received several comments concerning the scope of the AD investigations of circular welded pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and the countervailing duty (CVD) investigation of circular welded pipe from Pakistan.²² The Department evaluated these comments and addressed them in a separate memorandum, dated April 1, 2016, which is hereby adopted by this preliminary determination.²³ As discussed in the Preliminary Scope Decision Memorandum, we revised the scope language to clarify the inclusion of multi-stenciled pipe.²⁴ This modification applies to this investigation and all concurrent AD and CVD investigations of circular welded pipe.

VI. USE OF FACTS AVAILABLE WITH ADVERSE INFERENCES

As described below, the Department determines that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to IIL.

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 an interested party withholds information requested by the Department; fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to section 782(c)(1) and (e) of the Act; significantly impedes a proceeding, or 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 provides that, if an interested party, “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is

²¹ See *Initiation Notice*; see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²² See Letter from Petitioners, “Request to Revise the Scope Definition in the Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam,” February 19, 2016; see also Department Memorandum, “Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Scope Comments,” March 15, 2016.

²³ See Preliminary Scope Decision Memorandum.

²⁴ *Id.*

unable to submit the information requested in the requested form and manner,” then the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

In accordance with section 782(d) of the Act, if we determine that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states 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 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.

On June 29, 2015, the President of the United States signed into law the *TPEA*,²⁵ which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and (c) of the Act and the addition of section 776(d) of the Act.²⁶ The 2015 law does not specify dates of application for those amendments. Therefore, on August 6, 2015, the Department published an interpretive rule, in which it announced the applicability date for each amendment to the Act, except for amendments contained in section 771(7) of the Act, relating to determinations of material injury by the ITC.²⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.

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. In doing so, and under new section 776(d)(3) of the Act, as enacted by 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 LTFV investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a

²⁵ See *Trade Preferences Extension Act of 2015*, Pub. L. 114-27, 129 Stat. 362 (2015) (*TPEA*); see also *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*).

²⁶ See *TPEA*; see also *Applicability Notice*.

²⁷ See *Applicability Notice*.

more favorable result by failing to cooperate than if it had cooperated fully.”²⁸ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.²⁹ 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.³⁰

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 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 conducted under section 751 of the Act concerning the subject merchandise. Furthermore, pursuant to the new section 776(c)(2) of the act, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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

A. Application of Facts Available

In every AD investigation, the Department requests that a respondent provide information related to its sales and production costs, both in the United States and in a comparison market (generally, the home market). In this investigation, the Department requested this same information from IIL. IIL’s initial responses to the Department’s questionnaire contained a significant number of deficiencies, unanswered questions, and uncorroborated or unsupported data. Based on an analysis of the initial responses, the Department issued supplemental questionnaires related to IIL’s initial sales and cost responses, identifying deficiencies and requesting that IIL remedy them.³¹ IIL submitted its responses but again, the Department notes that the majority of the original deficiencies were not remedied in the company’s supplemental responses.

²⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H. Rep. No. 103-316, vol. 1 (1994) at 870, reprinted in 1994 U.S.C.A.N. 4040, 4199; see also *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1338 (Fed. Cir. 2016) (*Nan Ya Plastics Corp.*).

²⁹ 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) (*Hollow Products from Japan*); *Preamble*, 62 FR at 27340.

³⁰ 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 Preliminary 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 Circumstances*, 79 FR 14476 (March 14, 2014).

³¹ See, e.g., Letter to IIL, “Antidumping Duty Less Than Fair Value Investigation Circular Welded Carbon-Quality Steel Pipe from Pakistan,” dated March 21, 2016 (DSQ); see also Letter to IIL, “Sections A, B and C Supplemental

Sales

With respect to sales, the Department requested that IIL provide data on all sales of subject merchandise and related expenses made during the POI (*e.g.*, physical characteristics, gross unit price, quantity, imputed credit and inventory expenses, freight and packing costs). Additionally, IIL was instructed to submit detailed explanations, calculations and supporting documentation for all reported expenses and other information relied upon as part of completing the sales databases (*e.g.*, conversion ratios or short-term interest rates).

Regarding the data IIL submitted in the initial questionnaire response, the Department identified a number of concerns related to the reliability and/or usability of the information provided in the response. The Department subsequently requested that IIL remedy these concerns through a supplemental questionnaire.³² Although IIL did provide some additional information or clarification in the supplemental questionnaire responses, in many instances, it either disregarded our questions or provided incomplete information that did not resolve the Department's concerns. For example, while sales quantities and prices are originally recorded on a per-meter basis, all expenses were reported on a metric-ton basis.³³ As such, it was necessary for IIL to convert quantity and price. The company provided product-specific conversion ratios but, despite the Department's requests that the respondent demonstrate the appropriateness of the conversion ratios by submitting information to show how the ratios were obtained and that they are industry-accepted ratios, IIL did not submit any of this information.³⁴ Thus, without being certain that the correct conversion ratios were applied, we cannot conclude that any reported quantities or prices in metric tons are reliable. As sales quantities and prices, in particular, are vital to any margin calculation, the fact that we find the reported values to be unreliable and the fact that IIL did not address these issues, the Department cannot conclude with any certainty that relying on this key data would result in a reliable margin calculation in this investigation.

There are a significant number of other issues with data in the sales databases which render the sales data unusable. In some instances, IIL explained that the reported costs were estimations or that it made certain assumptions in calculating certain costs, with no accompanying explanation of how the costs were estimated or why those assumptions were made.³⁵ In other instances, for example, the Department pointed out certain obvious deficiencies in the initial response and requested corrections (*e.g.*, missing U.S. sales prices in metric tons). In response, IIL made no attempt to address or remedy the issue and in some cases, even stated that the information it provided was correct, despite obvious errors or deficiencies.³⁶ When the Department requested that IIL provide supporting documentation for the interest rate it calculated from its outstanding short-term loans during the POI for use in the imputed credit and inventory expenses, IIL referred the Department to the record of the companion CVD investigation rather than providing

Questionnaire in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steep Pipe from Pakistan," March 25, 2016 (ABCSQ).

³² See, generally, ABCSQ.

³³ See, generally, ABCSQR.

³⁴ *Id.* at 4.

³⁵ See, *e.g.*, ABCSQR at 34.

³⁶ See, *e.g.*, ABCSQR at 43-44.

the explanations, as requested.³⁷ Finally, the Department was clear in both the initial and supplemental questionnaires that all values in the U.S. sales database should be reported in the original currency in which the transaction took place. IIL informed the Department that U.S. sales and related expenses are originally made in U.S. Dollars but, despite two Department requests to report these in the original currency, IIL informed us that it was reporting these in Pakistani Rupees.³⁸ Because exchange rates and the timing of sales and payments in other currencies can affect the accuracy of dumping margins, by refusing to comply with the Department's instructions, IIL has again rendered any data that originated in a currency other than Pakistani Rupees unreliable for the purposes of calculating a dumping margin in this investigation.

Additionally, while IIL submitted data regarding sales and related expenses, as well as some supporting worksheets, the company generally disregarded the Department's requests in the initial and supplemental questionnaires to provide supporting documentation and explanations for each reported data field.³⁹ Even in cases where IIL did submit worksheets, the worksheets and any accompanying narrative continued to lack either the requested data or sufficient explanation of the calculations, thus impeding the Department's ability to ensure that the data was properly calculated and reported.⁴⁰ For example, in the initial questionnaire, while IIL reported ocean freight values for each U.S. sale, it failed to respond to our request for supporting documentation and an explanation of how these values were calculated. In the supplemental questionnaire, the Department requested that IIL provide the missing narrative explanation as well as a worksheet demonstrating the steps taken to derive this value from the POI costs. In response, IIL failed to explain how these values were calculated, instead stating that the reported values are estimates and referred the Department to a worksheet that did not tie to the U.S. sales database.⁴¹ As such, even in those cases where IIL submitted some supporting documentation, the company's refusal to provide the requested explanations means that the Department is still unable to understand whether the reported values are reliable reflections of IIL's sales and sales-related expenses during the POI.

Cost

IIL's cost responses contain multiple deficiencies that render the cost data unreliable and unusable for purposes of the margin calculations. The Department requested that the respondent provide product-specific cost data for each product with unique physical characteristics that was sold during the POI. In addition, we requested that IIL explain how the company normally accounts for cost differences between products of different physical characteristics (*e.g.*, cost differences between black pipe and galvanized pipe), and how it accounted for such differences in its reported costs. Further, we requested that, if the company does not normally calculate unique costs for any of the identified physical characteristics, it must account for and explain how it determined cost differences for the products in its reported cost, or if unable to account for cost difference, explain why it is unable to calculate unique costs. Instead of reporting product-

³⁷ See, *e.g.*, ABCSQR at 32.

³⁸ See ABCSQ at 13; *see also* ABCSQR at 46.

³⁹ See, *e.g.*, BCIQR at Exhibits 7, 11; *see also*, generally, ABCSQR.

⁴⁰ See, *e.g.*, ABCSQR at 45 (regarding International Freight).

⁴¹ See, *e.g.*, ABCSQR at 45.

specific cost data, IIL submitted cost data that varied in only a few instances between products with different physical characteristics. For example, there are only few different values reported for labor and overhead costs, across the hundreds of different products.⁴² Moreover, IIL failed to provide any explanations regarding the lack of product-specific costs. In the supplemental questionnaire, the Department again requested that IIL provide product-specific cost information but again, IIL failed to provide any of the necessary requested information.⁴³ As such, without the product-specific costs, the Department is unable to perform an accurate sales-below-cost test and make accurate difference-in-merchandise adjustments for similar product comparisons. The Department also requested that IIL provide sample calculations of its reported product-specific raw material costs and how it ties into the company's financial accounting system but IIL failed to provide any of this information.⁴⁴ As such, IIL provided none of the requested explanations and supporting documents (*e.g.*, worksheets, ledgers) required for the Department to understand how the reported costs were calculated, which would allow the Department to properly analyze the reported data.

Additionally, IIL failed to report any costs for a significant number of products that were produced and sold during the POI. The Department instructed IIL to provide the product-specific cost of production for all products produced during the POI. Yet, a large portion of its POI sales did not have a reported cost.⁴⁵ IIL provided no explanation for these missing costs nor did it correct any of the deficiencies related to missing or unexplained cost data when requested to do so in the supplemental questionnaire.⁴⁶ As such, the Department finds that the substantial problems with the reported costs data, combined with IIL's unresponsiveness, result in cost data that the Department cannot consider to be reliable in the calculation of a margin in this investigation.

Taken together, all of the deficiencies contained within IIL's sales and cost responses, as well as its refusal to provide supporting documentation and explanations, ultimately leads the Department to preliminarily conclude that, in accordance with section 782(e)(3) of the Act, the information IIL provided is so incomplete, unreliable and unsupported that the Department does not have any information that can be used as a basis for reaching a determination. 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 IIL's preliminary, estimated dumping margins.

B. Use of Adverse Inference

In selecting from among the facts available, we find that an adverse inference is warranted for IIL, pursuant to section 776(b)(1)(A) of the Act, because IIL has failed to cooperate to the best of its ability in this investigation. As discussed in the section above, IIL repeatedly failed to respond to the Department's requests for information related to its sales and production costs of subject merchandise. The Department provided IIL multiple opportunities to remedy its deficiencies but, in most cases, the respondent either failed to respond to the requests or provided

⁴² See DSQR at Exhibit 6.

⁴³ See, *e.g.*, DSQR at Question 19.

⁴⁴ See, *e.g.*, DSQR at Question 23 and Exhibit 6.

⁴⁵ See DSQR at Exhibit 6; *see also* ABCSQR at Exhibits 8.1, 14.

⁴⁶ See, *e.g.*, DSQR at Question 24.

information which was unresponsive to the questions.⁴⁷ As such, the resulting information submitted by IIL on the record of this investigation is so incomplete and unreliable that the Department does not have sufficient information to reach a determination in this case based on IIL's data. Accordingly, the Department concludes that IIL failed to cooperate to the best of its ability to comply with a request for information by the Department, in accordance with section 776(b) of the Act. Based on the above, the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.⁴⁸

C. Selection of the Adverse Facts Available Rate

As discussed above, 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.⁴⁹ 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.⁵⁰ The Department's practice further ensures that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁵¹ The Department's practice in investigations 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.⁵² In this investigation, the only dumping margin alleged in the Petition is 11.80 percent. Further, because IIL is the sole mandatory respondent in this investigation, no rate will be calculated for an individually-examined respondent.⁵³ Thus, consistent with our practice, we have selected the dumping margin alleged in the Petition as the AFA rate applicable to IIL.

D. Corroboration of Secondary Information

As discussed above, when using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as information in the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the

⁴⁷ See, e.g., ABCSQ, see also DSQ.

⁴⁸ 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 for Germany at 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 *Hollow Products from Japan*, 65 FR at 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁴⁹ See also 19 CFR 351.308(c).

⁵⁰ See SAA at 870; see also *Nan Ya Plastics Corp.*, 810 F.3d at 1338.

⁵¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁵² See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), accompanying Issues and Decision Memorandum at Comment 3 (*WSPP from Thailand*).

⁵³ See *Initiation Notice*, 80 FR at 73712; see also "Antidumping Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from Pakistan," dated November 17, 2015 (Initiation Checklist) at 9.

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.”⁵⁴ Thus, because the 11.80 percent AFA rate applied to IIL is derived from the Petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁵ The SAA and the Department’s regulations explain that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁵⁶ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.⁵⁷ The SAA, however, emphasizes that the Department need not prove the selected facts available to be the best alternative information.⁵⁸ Furthermore, pursuant to section 776(d)(3) of the Act, as enacted by the recent *TPEA* amendments, 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.⁵⁹

We determined that the margin of 11.80 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁶⁰

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margin for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations to derive the alleged dumping margin.⁶¹ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive the dumping margin alleged in the Petition.⁶²

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioner’s EP and NV information and calculations to be reliable.⁶³ Because

⁵⁴ See SAA at 870; see also 19 CFR 351.308(c)(1).

⁵⁵ See SAA at 870; see also 19 CFR 351.308(d).

⁵⁶ *Id.*

⁵⁷ See *WSPP From Thailand*.

⁵⁸ See SAA at 869-870.

⁵⁹ See *TPEA*; see also *Applicability Notice*.

⁶⁰ See Initiation Checklist.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margin calculated for the purposes of this investigation to be reliable.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. Because there are no other participating cooperative respondents in this investigation, we relied upon the data used in calculating the dumping margins alleged in the Petition, which is the only information regarding the circular welded pipe industry reasonably at the Department's disposal. Furthermore, as noted in *GOES from China*, in which the only mandatory respondent also received AFA, "there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information."⁶⁴

Accordingly, the Department preliminarily determines that a dumping margin based on the data used in calculating the dumping margin alleged in the Petition has probative value and has corroborated the AFA rate of 11.80 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the data used in the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant to the uncooperative mandatory respondent.⁶⁵

VII. ALL-OTHERS RATE

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As noted above, IIL is the sole mandatory respondent in this investigation, and its estimated dumping margin is determined entirely under section 776 of the Act. Consequently, the dumping margin for this preliminary determination is based on information used in the alleged Petition dumping margin. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances has been to assign, as the "all-others" rate, a simple average of the Petition

⁶⁴ See *Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES from China*), and accompanying Issues and Decision Memorandum at Comment 2.

⁶⁵ See section 776(c) of the Act; 19 CFR 351.308(c)-(d).

rates.⁶⁶ However, because the Petition contained only one estimated dumping margin, there are no additional estimated margins available with which to base the “all-others” rate. Consequently, and consistent with our practice, the Department is using the margin of 11.80 percent as the “all-others” rate to entities not individually examined in this investigation.⁶⁷

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES IN COMPANION COUNTERVAILING DUTY INVESTIGATION

Pursuant to section 772(c)(1)(C) of the Act, the Department makes adjustments for countervailable export subsidies. The Department is making no adjustments to IIL’s antidumping cash deposit rate in the instant investigation because the Department has made no findings in the companion CVD investigation that any of the programs are export subsidies. While we recognize that certain programs in the companion CVD investigation were alleged to be export subsidies, the Government of Pakistan and IIL, the sole mandatory company respondent in the CVD investigation, did not cooperate to the best of their ability, and so the Department’s preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences. In relying on facts available with adverse inferences, the Department did not preliminarily determine that the subsidies in question were export subsidies.⁶⁸ As such, the Department finds that, without a determination in the companion CVD investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to section 772(c)(1)(C) of the Act. Accordingly, we will not apply the export subsidy offset to the cash deposit rates assigned to IIL or to the “all-others” rate, which are reflected in the accompanying *Federal Register* notice.

IX. VERIFICATION

On the basis that the mandatory respondent in this investigation has not provided the necessary information requested by the Department and that the Department preliminarily determines that the mandatory respondent has been uncooperative, we do not intend to conduct verification.

⁶⁶ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁶⁷ See *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487, 10488 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 41978, 41979 (July 18, 2014).

⁶⁸ See, *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 81 FR 20619 (April 8, 2016) and accompanying Preliminary Determination Memorandum at 12 (“Because the GOP and IIL failed to act to the best of their ability, as discussed above, we are making an adverse inference that each of these programs provides a financial contribution within the meaning of section 771(5)(D) of the Act, *is specific in accordance with section 771(5A) of the Act*, and confers a benefit in accordance with section 771(5)(E) of the Act”) (emphasis added).

X. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date