



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

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Public Document

March 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement 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 Hot-Rolled Steel Flat
Products from Japan

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from Japan are being, or are 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 August 11, 2015, the Department received an antidumping duty (AD) petition covering imports of certain hot-rolled steel products from Japan,¹ which was filed in proper form by AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners). The Department initiated this investigation on August 31, 2015.²

¹ See Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, Turkey, and the United Kingdom, dated August 11, 2015 (the Petition).

² See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 FR 54261 (September 9, 2015) (Initiation Notice).



X. USE OF FACTS AVAILABLE AND ADVERSE FACTS AVAILABLE

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Such 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.⁴⁶

A. Use of Facts Available

As noted further below in this section, both the Nippon Group and the JFE Group did not provide certain requested information necessary for the Department to calculate dumping margins for them in this investigation. By not responding to certain sections of the Department’s questionnaire or not providing the information, the Nippon Group and the JFE Group withheld information requested by the Department, failed to provide such information by the deadlines for submission of the information or in the form and manner requested by the Department, and significantly impeded this proceeding. Accordingly the use of facts available is warranted in determining AD margins for Nippon Group and the JFE Group, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act.

B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.⁴⁷ In addition, the 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.”⁴⁸ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁴⁹

⁴⁶ See also 19 CFR 351.308(c).

⁴⁷ See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 70295, 70297 (December 11, 2007).

⁴⁸ See SAA at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty

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 CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁵⁰ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁵¹

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

We preliminarily find that the Nippon Group and the JFE Group failed to cooperate by not acting to the best of their abilities to comply with requests for certain information in this investigation, within the meaning of section 776(b) of the Act, because each failed to respond to the Department's requests for information. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to these respondents.⁵²

C. Selection and Corroboration of Adverse Facts Available (AFA) Rate

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁵³ Under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such

Administrative Review, 72 FR 69663, 69664 (December 10, 2007); see also 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).

⁴⁹ See Preamble, 62 FR at 27340

⁵⁰ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

⁵¹ Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

⁵² See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁵³ See SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. In selecting a rate based on adverse facts available, 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.⁵⁴ 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 dumping margin of any respondent in the investigation.⁵⁵ In those instances described below where we rely upon AFA, we preliminarily apply to the Nippon Group and the JFE Group the highest company-specific rate alleged in the petition.⁵⁶

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.⁵⁷ 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.⁵⁸ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although 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.⁶⁰ Thus, because the AFA rates applied to the Nippon Group and the JFE Group are derived from the petition and, consequently, are based upon secondary information, the Department must corroborate it to the extent practicable. 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.⁶¹ Thus, we determined that the petition margins provided for the Nippon Group and the JFE Group of 28.86 percent and 28.34 percent, respectively, is reliable, to the extent appropriate information was available, by reviewing the adequacy and accuracy of the

⁵⁴ See SAA at 870.

⁵⁵ See, e.g., 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.

⁵⁶ See Petition Volume IV at 9 and Exhibit IV-15.

⁵⁷ See also 19 CFR 351.308(d).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 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, Finishing 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).

⁶¹ *Id.*

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DATE: March 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel
Flat Products from Brazil

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from Brazil are being, or are 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 August 11, 2015, the Department received an antidumping duty (AD) petition covering imports of hot-rolled steel from Brazil,¹ which was filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively "the petitioners"). The Department initiated this investigation on August 31, 2015.²

In the *Initiation Notice*, the Department notified the public that the Department intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of hot-rolled steel from Brazil during the period of investigation (POI) under the Harmonized Tariff

¹ See Petitions for the Imposition of Antidumping Duties on imports of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, dated August 11, 2015 (Petitions).

² See *Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 54261 (September 9, 2015) (*Initiation Notice*).



1. Application of Facts Available With an Adverse Inference

The Department preliminarily finds that Usiminas failed to cooperate to the best of its ability in providing the requested information. As explained above, despite numerous extensions, Usiminas declined to respond to sections B, C, and D of the AD questionnaire and, thus, failed to cooperate to the best of its ability in this proceeding. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to Usiminas, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).³⁰

2. Selection of Information Used as Facts Available

In applying an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.³¹ In selecting an adverse facts available (AFA) rate, 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.³² In an investigation, the Department's practice with respect to the assignment of an AFA rate is to select the higher of (1) the highest dumping margin alleged in the petition or (2) the highest calculated dumping margin of any respondent in the investigation.³³ In this investigation, the dumping margin calculated for CSN is the only calculated dumping margin for a respondent in this investigation, and it is lower than the sole petition rate in this investigation. Thus, for the preliminary determination, we assigned to Usiminas the AFA rate of 34.28 percent, which is the petition rate.³⁴

3. Selection and Corroboration of the AFA Rate

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.³⁵ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value,³⁶ although under the TPEA, the Department is not required to corroborate any

³⁰ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

³¹ See section 776(b) of the Act.

³² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 870.

³³ See, e.g., *Certain Uncoated Paper From Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

³⁴ See *1,1,1,2-Tetrafluoroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and the accompanying Issues and Decision Memorandum at 3.

³⁵ See SAA, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994), at 870.

³⁶ See SAA at 870; see also 19 CFR 351.308(d).

dumping margin applied in a separate segment of the same proceeding.³⁷ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although 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.³⁸ Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.³⁹

The AFA rate that the Department used is from the petition, as revised by the Department, and is thus secondary information subject to the corroboration requirement.⁴⁰ The petitioners’ methodology for calculating the export price and NV in the petition is discussed in the initiation notice.⁴¹ To corroborate the AFA margin we have selected, we compared that margin to the control number-specific margins we found for CSN. We explain this comparison in more detail in our AFA memorandum for Usiminas, which contains CSN’s business proprietary information.⁴² As a result, we find the AFA rate of 34.28 percent to be corroborated “to the extent practicable.”⁴³ There is no information on the record that calls into question the relevance or reliability of the petition rate, and Usiminas provided no company-specific sales information. Therefore, we preliminarily determine that the AFA rate is corroborated for purposes of this investigation.

IX. DATE OF SALE

In identifying the date of sale of the merchandise under consideration or foreign like product, “the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.”⁴⁴ Additionally, “the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.”⁴⁵

³⁷ See section 776(c)(2) of the Act; TPEA, section 502.

³⁸ 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).

³⁹ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁴⁰ See *Initiation Notice*, 80 FR at 54264-65.

⁴¹ *Id.*

⁴² See the memorandum to the File entitled “Certain Hot-Rolled Steel Flat Products from Brazil: Corroboration of a Rate Based on Adverse Facts Available” dated concurrently with this Preliminary Decision Memorandum for more details which contain CSN’s business-proprietary information.

⁴³ See section 776(c) of the Act; SAA, at 870; 19 CFR 351.308(d).

⁴⁴ See 19 CFR 351.401(i).

⁴⁵ *Id.* See also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (“As elaborated by Department practice, a date other than invoice date ‘better reflects’ the date when ‘material terms of sale’ are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.”).

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Investigation
Public Document
E&C/VI: SBT/W

March 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Certain Polyethylene
Terephthalate Resin from the People's Republic of China

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation on certain polyethylene terephthalate resin (PET resin) from the People's Republic of China (PRC). As a result of our analysis, we made changes to the Preliminary Determination.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

The period of investigation (POI) is July 1, 2014, through December 31, 2014. On October 15, 2015, the Department of Commerce (Department) published its Preliminary Determination in the less than fair value (LTFV) investigation of PET resin from the PRC, and on November 10, 2015, we published a Correction of Preliminary Determination. In the Preliminary Determination, we noted that we did not have usable information on the record for valuing Thai brokerage and handling and inland freight.² Subsequently, one of the mandatory respondents, Jiangyin Xingyu New Material Co., Ltd. (Xingyu), asked that the Department place on the record the complete Trading Across Borders excerpt from the World Bank's Doing Business in Thailand 2015 report (Doing Business in Thailand).³

¹ See Certain Polyethylene Terephthalate Resin From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 62024 (October 15, 2015) (Preliminary Determination) and accompanying Decision Memorandum ("Preliminary Decision Memorandum"); see also Certain Polyethylene Terephthalate Resin From the People's Republic of China: Notice of Correction to Preliminary Affirmative Less Than Fair Value Determination, 80 FR 69643 (November 10, 2015) (Correction of Preliminary Determination).

² See Preliminary Decision Memorandum at 27.

³ See Letter from Xingyu, entitled "Request to Supplement Record," dated October 30, 2015.



The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

We made changes from the Preliminary Determination, as discussed below, and as described in the Xingyu Final Analysis Memorandum and in the FEIS Final Analysis Memorandum.¹¹ Included among those changes, with respect to Xingyu, we applied facts available, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act), to one of Xingyu's incorrectly calculated factors of production (FOP), as discussed in the Xingyu Final Analysis Memorandum (see Comment 17, below). The other changes we are making in this final determination are: deducting letter of credit costs from Xingyu's brokerage and handling expenses (see Comment 4, below), no longer adding brokerage and handling expenses in the valuation of inputs (see Comment 5, below), various minor changes identified at the FEIS verification (see Comment 11, below), and an adjustment to reported FEIS U.S. inland freight expense (see Comment 15, below).

V. USE OF ADVERSE FACTS AVAILABLE

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping duty (AD) statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

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 CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d)

¹¹ See Memoranda to the File, entitled "Analysis Memorandum for Jiangyin Xingyu New Material Co., Ltd. for the Final Determination of Certain Polyethylene Terephthalate Resin from the People's Republic of China," dated March 4, 2016 (Xingyu Final Analysis Memorandum), and "Analysis Memorandum for Far Eastern Industries (Shanghai) Ltd. for the Final Determination of Certain Polyethylene Terephthalate Resin from the People's Republic of China," dated March 4, 2016 (FEIS Final Analysis Memorandum), respectively.

of the Act.¹² The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹³

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

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 under section 751 of the Act concerning the subject merchandise. Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

In the Preliminary Determination, we determined that 20 PRC exporters and/or producers of merchandise under consideration named in the petition did not timely respond to the Department’s quantity and value questionnaire. We further determined that because non-responsive PRC companies had not demonstrated their eligibility for separate rate status, the Department considers them part of the PRC-wide entity. Finally, the Department preliminarily assigned a PRC-wide rate based on facts available, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, applying an adverse inference, pursuant to 776(b) of the Act.¹⁴ No parties commented on this preliminary finding, and the Department continues to find that the PRC-wide entity, of which the 20 non-responding companies are a part, failed to cooperate to the best of its ability in responding to the Department’s requests for information. The AFA rate applied in this final determination continues to be the highest calculated margin for a specific control number (CONNUM) for either of the mandatory respondents, as discussed below.

¹² See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the USITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

¹³ Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹⁴ See Preliminary Decision Memorandum at 18-21.

In order to induce the respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the petition; or (b) the highest calculated rate for any respondent in the investigation.¹⁵ In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. The Court of International Trade (CIT) has held that "the Department's practice of applying the highest previously determined overall rate to an uncooperative respondent as AFA is based on the presumption that such a rate is inherently adverse. This practice is longstanding, frequently used, and has been held, in most circumstances, to be lawful."¹⁶

In the Preliminary Determination, we determined that the highest CONNUM-specific margin of 145.94 percent demonstrated that the petition margin of 206.42 percent had no probative value. We, therefore, determined that the 206.42 percent rate has not been corroborated and, instead, used the highest calculated CONNUM-specific margin of 145.94 percent as the AFA rate applied to the PRC-wide entity.¹⁷ After revising our margin calculations, based on the changes described below, the highest CONNUM-specific margin on the record is 126.58 percent for one of the Xingyu CONNUMs.¹⁸ Therefore, the Department has determined to continue to assign the PRC-entity the highest CONNUM-specific margin of 126.58 percent. There is no need to corroborate the selected margin because it is based on information submitted by Xingyu in the course of this investigation, *i.e.*, it is not secondary information.¹⁹

VI. DISCUSSION OF THE ISSUES

Comment 1: PTA Value

Comment 2: Brokerage and Handling Expense Source of Valuation

Comment 3: Brokerage and Handling Expense Denominator's Cargo Load Volume

Comment 4: Brokerage and Handling Expense Letter of Credit Cost

Comment 5: Addition of Brokerage and Handling Expense to FOP Surrogate Values

Comment 6: Inland Freight Expenses Source of Valuation

Comment 7: Inland Freight Expense Denominator's Cargo Load Volume

Comment 8: Inland Freight Expense Denominator's Distance

Comment 9: Thai Labor Values

Comment 10: Irrecoverable VAT

Comment 11 FEIS Verification Minor Corrections

¹⁵ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 65 FR 5510, 5518 (February 4, 2000) (the Department applied the initiation margin as AFA); Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China, 71 FR 16116, 16118-19 (March 30, 2006).

¹⁶ See Mueller Comercial de Mexico v. United States, 807 F. Supp. 2d 1361, 1371 (CIT 2011).

¹⁷ See Preliminary Decision Memorandum at 20-21.

¹⁸ See Xingyu Final Analysis Memorandum and FEIS Final Analysis Memorandum.

¹⁹ See 19 CFR 351.308(c) and (d) and section 776(c) of the Act. 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, 46794 (August 6, 2015) ("Section 502 provides that, in making AD and CVD determinations on the basis of the facts available, the Department is not required to corroborate, in certain circumstances, the information employed, to make certain estimates or demonstrations concerning that information, or to address certain claims regarding the 'alleged commercial reality' of non-cooperating parties.").



A-570-909

AR: 8/01/2013 – 7/31/2014

Public Document

E&C/V: JEH, MR, and OQ

DATE: March 7, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Steel Nails from the People's Republic of China: Issues
and Decision Memorandum for the Final Results of the Sixth
Antidumping Duty Administrative Review

SUMMARY

The Department of Commerce (“Department”) analyzed comments submitted by Qingdao D&L, *et al.*,¹ Nanjing Yuechang Hardware Co., Ltd. (“Nanjing Yuechang”), National Nail Corp. (“National Nail”), Mid Continent Steel & Wire, Inc. (“Petitioner”), Shandong Oriental Cherry Hardware Group Co., Ltd. (“Shandong Oriental Cherry”), The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, “Stanley”), the Hillman Group, and Tianjin Jinchi Metal Products Co., Ltd. (“Tianjin Jinchi”) in the sixth administrative review (“AR”) of the antidumping duty order on steel nails from the People’s Republic of China (“PRC”).²

Following the *Preliminary Results*³ and the analysis of the comments received, we made changes to the margin calculations for the final results. We continue to find that it is appropriate to apply our differential pricing analysis to the calculation of Stanley margin for the final results.⁴ Additionally, we continue to find that Shandong Oriental Cherry withheld requested information, significantly impeded this AR, and did not cooperate to the best of its ability. Accordingly,

¹ Qingdao D&L, *et al.* consists of: Qingdao D&L Group Ltd. (“Qingdao D&L”), SDC International Aust. PTY. Ltd. (“SDC International”), Tianjin Lianda Group Co., Ltd. (“Tianjin Lianda”), and Tianjin Universal Machinery Import & Exp. Corporation (“Tianjin Universal”). See Letter to the Secretary from Qingdao D&L, *et al.*, “Certain Steel Nails from the People’s Republic of China: Case Brief” (October 30, 2015) (“Qingdao D&L, *et al.*’s Case Brief”).

² See *Notice of Antidumping Duty Order: Certain Steel Nails from the People’s Republic of China*, 73 FR 44961 (August 1, 2008) (“PRC Nails Order”).

³ See *Certain Steel Nails From the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 53490 (September 4, 2015) (“*Preliminary Results*”) and accompanying Preliminary Decision Memorandum.

⁴ See Comments 1-2 for further discussion.



- Shandong Oriental Cherry does not produce the gunpowder-actuated hand tool and does not possess the technical descriptions of these hand tools. The Department cannot apply AFA to a respondent because it failed to provide data obtainable only from a non-related entity which is not a party to the proceeding.¹⁵⁹
- The Department cannot apply AFA to Shandong Oriental Cherry on this issue because Shandong Oriental Cherry cannot credibly be considered inattentive, careless, or inadequate in its record keeping of information related to the shooting nail powder-actuated hand tool.¹⁶⁰ Additionally, Shandong Oriental Cherry did not significantly impede the proceeding when it did not report the sales and FOP data for Jining Dragon Fastener's shooting nails after the Department excused Jining Dragon Fastener from reporting this data and never issued another questionnaire requesting this data.

Petitioner did not comment on this issue.

Department's Position:

As explained in detail below, the Department continues to find that it is appropriate to apply total AFA to Shandong Oriental Cherry for these final results. In the discussion below, the Department will first address its conclusion to apply facts available on the basis of missing information related to Shandong Oriental Cherry's FOP database, sales reconciliation, and shooting nails. The Department will then address the application of facts available with adverse inferences, due to Shandong Oriental Cherry's failure to act to the best of its ability in providing responses to the Department.

Section 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: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use 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 unable to submit the information requested in the requested form and manner," the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines 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

¹⁵⁹ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1336 (Fed. Cir. 2002) ("*Ta Chen 2002*").

¹⁶⁰ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (CAFC 2003) ("*Nippon Steel*").

within the applicable time limits, the Department may, subject to section 782(e), 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 information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (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 Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act, and the addition of section 776(d) of the Act.¹⁶¹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁶²

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) 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.

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

A. Application of Facts Available

The Department continues to find that the use of the facts otherwise available is warranted with respect to Shandong Oriental Cherry, pursuant to section 776(a) of the Act.

¹⁶¹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

¹⁶² *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.



A-570-029

Investigation

POI: 1/01/2015-06/30/2015

Public Document

E&C/VI: SHoefke

February 29, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Chris Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat
Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain cold-rolled steel flat products (cold-rolled steel) from the People's Republic of China (PRC) are being, or are 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 margin is shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On July 28, 2015, the Department received an antidumping duty (AD) petition covering imports of cold-rolled steel from the PRC, which was filed in proper form by United States Steel Corporation, Nucor Corporation, ArcelorMittal USA LLC, AK Steel Corporation, and Steel Dynamics Inc., (collectively, Petitioners) covering cold-rolled steel from the PRC.¹ The Department initiated this investigation on August 18, 2015.²

¹ See "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, Netherlands, Russia, and the United Kingdom," July 28, 2015 (Petition).

² See *Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 51198 (August 24, 2015) (*Initiation Notice*).



company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

The record indicates there are PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive any responses to its Q&V questionnaire or separate rate applications from PRC exporters and/or producers of merchandise under consideration that were named in the Petition and to whom the Department issued Q&V questionnaires.³⁸ Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them to be part of the PRC-wide entity. In addition, no other party has applied for a separate rate. We have preliminarily assigned the PRC-wide entity a weighted-average dumping margin of 265.79 percent, which is the Petition rate. As explained below, we have preliminarily determined the PRC-wide rate on the basis of adverse facts available (AFA).

C. Application of Facts Available and Adverse Inferences

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

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 776(b) and 776(c) of the Act

³⁴ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

³⁵ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

³⁶ *Id.*

³⁷ See *Notice of Final Determination of Sales at less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994)(*Silicon Carbide*)

³⁸ See Q&V Recipients Memo, see also Q&V Recipients Memo 2, see also Q&V Recipients Memo 3, see also Q&V Recipients Memo 4, see also Q&V Recipients Addresses. Of the 21 sent Q&V questionnaires, 11 were delivered, 7 were refused by recipients, and 3 were ultimately found to be delivered because of insufficient or incorrect addresses.

and the addition of section 776(d) of the Act.³⁹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁴⁰

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) 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.

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

I. Use of Facts Available

Information on the record of this investigation indicates that the PRC-wide entity was unresponsive to the Department's requests for information. Specifically, as discussed above, no company responded to our questionnaires requesting Q&V information. It is our standard practice to select respondents in NME investigations based on Q&V information we receive from potential respondents.⁴¹ Without a Q&V response from a potential respondent, we are not able to select a respondent for individual examination in accordance with our normal methodology and calculate a rate. Accordingly, the Department preliminarily finds that the PRC-wide entity failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Moreover, because the PRC-wide entity failed to provide any information, section 782(d) of the Act is inapplicable. Accordingly,

³⁹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

⁴⁰ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁴¹ See *Initiation Notice*.

the Department preliminarily determines that use of facts available is warranted in determining the rate of the PRC-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.⁴²

2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that because the PRC-wide entity failed to provide the requested information, the PRC-wide entity failed to cooperate by not acting to the best of its ability.⁴³ Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the PRC-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁴⁴

3. *Selection and Corroboration of the AFA rate*

When using facts otherwise available, section 776(c) of the Act provides that, generally, 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.⁴⁵ The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁴⁶ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although 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.⁴⁷ Finally, under section 776(d) of the Act, the

⁴² See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

⁴³ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed (i.e., information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”)).

⁴⁴ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁴⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, at 870 (1994) (SAA).

⁴⁶ See SAA at 870; see also 19 CFR 351.308(d).

⁴⁷ 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).

Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.⁴⁸

The only rate on the record of this investigation is the rate in the Petition. We have no calculated margins based on respondents' submissions. Therefore, as AFA we are preliminarily assigning the highest petition margin of 265.79 percent as the rate applicable to the PRC-wide entity. The petition rate was calculated by Petitioners following the Department's standard NME methodology using consumption rates from their own records in this segment of the proceeding compared to a price quote from a cold-rolled steel producer/exporter from China.

We determined that the petition margin of 265.79 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.⁴⁹

We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export price (EP), based on a price quote from a Chinese cold-rolled steel producer, and normal value (NV) calculations used in the petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources (to the extent that such information was reasonably available) provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the key elements of the EP and NV calculations used in the petition to derive an estimated margin.⁵⁰

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioner's EP and NV calculations to be reliable.⁵¹ Because we obtained no other information that would make us question the validity of the sources of information or the validity of 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 margin in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that this petition rate is reliable for the purposes of assigning an AFA rate as the PRC-wide rate in this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. No information has been placed on the record to indicate that the rates in the petition are unreflective of commercial practices of the cold-rolled steel industry. As such, we find the petition rate of 265.79 percent relevant to the PRC-wide entity. Furthermore,

⁴⁸ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁴⁹ See Enforcement and Compliance Office of AD/CVD Operations AD Investigation Initiation Checklist: "Certain Cold-Rolled Steel Flat Products from the People's Republic of China (PRC)" (August 17, 2015) (Initiation Checklist).

⁵⁰ See Initiation Checklist at 6-11 for details of our pre-initiation analysis and all source documents used.

⁵¹ *Id.*

as there are no respondents in this investigation for which we are calculating a dumping margin, we relied upon the rates found in the petition, which is the only information regarding the cold-rolled steel industry reasonably at the Department's disposal.

Accordingly, the Department has corroborated the AFA rate of 265.79 percent to the extent practicable within the meaning of section 776(c) of the Act.

VII. ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT

In applying section 777A(f) of the Act, the Department examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.⁵² For a subsidy meeting these criteria, the statute requires the Department to reduce the AD by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.⁵³

Because there has been no demonstration that an adjustment for domestic subsidies is warranted, the Department is not making any such adjustment to the rate being assigned to the PRC-wide entity.

VIII. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

For this proceeding, for the PRC-wide entity, which received an AFA rate as discussed above, we are adjusting the PRC-wide entity's AD cash deposit rate by the countervailing duty attributable to export subsidies. In this case, the Department in the corresponding CVD investigation initiated on 13 export-specific programs and determined as AFA all 13 programs to be countervailable.⁵⁴ Those programs were: Export Loans; Preferential Lending to Cold-Rolled Steel Producers and Exporters Classified As "Honorable Enterprises"; Preferential Income Tax Subsidies for Foreign Invested Enterprises – Export Oriented FIEs; Programs to Rebate Antidumping Legal Fees; Foreign Trade Development Fund Grants; Export Assistance Grants; Subsidies for Development of Famous Export Brands and China World Top Brands; Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands; Export Interest Subsidies; Export Seller's Credits; Export Buyer's Credits; Export Credit Insurance Subsidies; and Export Credit Guarantees".⁵⁵ Therefore, we are making an offset adjustment of

⁵² See section 777A(f)(1)(A)-(C) of the Act.

⁵³ See section 777A(f)(1)-(2) of the Act.

⁵⁴ See *Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations*, 80 FR 51206 (August 24, 2015), see also *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79562 (December 22, 2015) and accompanying Preliminary Decision Memorandum at 11-15 and Appendix 1.

⁵⁵ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Preliminary Affirmative Determination, Preliminary Partial Affirmative Critical Circumstances*



A-570-022

POI: 7/1/14 – 12/31/14

Public Document

AD/CVD/OIII: SM/LRL/BQ

DATE: January 8, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Certain Uncoated Paper
from the People's Republic of China

I. SUMMARY

The Department of Commerce (“the Department”) determines that certain uncoated paper (“uncoated paper”) from the People’s Republic of China (“PRC”) is being, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification,¹ we made certain changes to the margin calculation for the mandatory respondent, Greenpoint Global Trading (Macao Commercial Offshore) Ltd., (“Greenpoint”), Asia Symbol (Guangdong) Paper Co. Ltd., (“AS Guangdong”), and Asia Symbol (Shandong) Pulp and Paper Co. Ltd., (“AS Shandong”), (collectively, “Asia Symbol”).² The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying *Federal Register* notice.

¹ See Memorandum to the File, “Verification of the Sales and Factors Responses of Greenpoint Global Trading (Macao Commercial Offshore) Ltd., Asia Symbol (Guangdong) Paper Co. Ltd., and Asia Symbol (Shandong) Pulp and Paper Co., Ltd. in the Antidumping Investigation of Uncoated Paper from the People’s Republic of China,” dated November 10, 2015 (“Asia Symbol Verification Report”).

² The Department preliminarily collapsed AS Guangdong, AS Shandong, and Greenpoint, treating them as a single entity for the purposes of calculating a margin in this investigation. See Memorandum, “Investigation of Uncoated Paper from the People’s Republic of China: Preliminary Determination Regarding Affiliation and Collapsing of Asia Symbol (Guangdong) Paper Co., Ltd., Asia Symbol (Shandong) Pulp and Paper Co., Ltd., and Greenpoint Global Trading (Macao Commercial Offshore) Ltd.,” dated August 19, 2015. No party provided further comment or subsequent challenge to this finding. Accordingly, the Department sustains this collapsing determination for the final determination.



and is not undermined by the sole cooperative respondent, Asia Symbol, having lower margins.

- If the Department determines that Asia Symbol's highest transaction-specific rate of 193.30 percent is sufficiently high in the context of this case, it should use that rate without making a specific finding that the petition cannot be corroborated, so as not to preclude the use of a Petition rate in excess of a transaction specific rate if necessary in future cases.

Asia Symbol's Rebuttal Arguments

- Asia Symbol did not provide rebuttal comment.

Department Position: We disagree with Petitioners and for the final determination continue to use the highest-transaction specific dumping margins calculated for Asia Symbol as the AFA rate for the PRC-wide entity.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.²⁰⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.²⁰⁹

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability

evidence of current margins because, if it were not so, the responding party knowing of the rule, would have produced current information showing the margin to be less").

²⁰⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) ("TPEA"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) ("Applicability Notice").

²⁰⁹ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²¹⁰ Further, section 776(b)(2) 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.²¹¹

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.²¹² 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.²¹³ Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.²¹⁴

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.²¹⁵ The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²¹⁶

Petitioners argue that for the final determination the Department should use as AFA the highest rate contained in the Petition and that the Petition rate has been corroborated. As discussed below, we disagree.

As we explained in the *Preliminary Determination*, we are unable to corroborate the petition margins because “when we compared the petition dumping margins of 243.65 percent to 271.87 percent, to the model-specific dumping margins for the mandatory respondent (*i.e.*, Asia Symbol), we found that the petition dumping margins are significantly higher than each of the model-specific dumping margins calculated for Asia Symbol.”²¹⁷ Based on the transaction-specific dumping margins calculated for Asia Symbol for the final determination, we continue to find that the Petition margin is significantly higher.²¹⁸ Accordingly, we continue to determine that we are unable to corroborate the 243.65 percent to 271.87 percent dumping margins contained the Petition.

²¹⁰ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

²¹¹ See also 19 CFR 351.308(c).

²¹² See also 19 CFR 351.308(d).

²¹³ See SAA at 870.

²¹⁴ See section 776(c)(2) of the Act; TPEA, section 502(2).

²¹⁵ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

²¹⁶ See section 776(d)(3) of the Act; TPEA, section 502(3).

²¹⁷ See *Preliminary Determination*, and Preliminary Decision Memorandum at 24-25.

²¹⁸ For details regarding this finding, see Asia Symbol Final Analysis Memorandum.

In an investigation, the Department's general practice with respect to the assignment of adverse rates is to assign the higher of the highest rate in the petition or the highest calculated dumping margin of any respondent in the investigation.²¹⁹ Petitioners argue that the Department should expect non-cooperating parties to dump at rates higher than the Petition rate.²²⁰ While such an inference may be permissible,²²¹ it is not appropriate to use the petition rate here. Other information on the record and obtained during the course of the investigation fails to corroborate, pursuant to section 776(c) of the Act, the secondary information contained in the petition. The SAA states 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."²²² In this case, the Department has done so by selecting the highest transaction-specific margin, a significantly higher rate than the weighted average dumping margin of the cooperating company.

Petitioners argue that the Department's acceptance of the Petition at the initiation stage means that the Department has already determined that the information in the Petition has probative value. They argue that the margin in the petition here was corroborated by independent information when it was first calculated and the Department initiated this investigation. Petitioners cite to *KYD* (Fed. Cir. 2010). Petitioners' reliance on *KYD* is misplaced.

The court in *KYD* stated that the Department's choice of the 122.88 percent AFA rate was well grounded because the margin was supported not only by evidence submitted with the petition, but also by the high-volume transaction-specific margins for cooperative companies.²²³ Here, as discussed above, the Department also made the comparison between the Petition rates and the highest transaction-specific margin and determined that because the 243.65 to 271.87 percent dumping margin in the Petition was significantly higher than Asia Symbol's highest transaction-specific margin, we are unable to corroborate.²²⁴

²¹⁹ See, e.g., *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying IDM at Comment 20.

²²⁰ Petitioners cite to *Dongtai Peak*, 777 F.3d 1343, 1356 (Fed. Cir. 2015), quoting *KYD*, ("Commerce's selection of the highest prior margin as the AFA rate reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the responding party knowing of the rule, would have produced current information showing the margin to be less") claiming that it is reasonable for the Department to make the "common sense inference" that Asia Symbol cooperated *because* its margin was lower than the rates alleged in the Petition and that other exporters elected not to cooperate *because* their margins were not lower. Unlike the facts in *Dongtai Peak* where the AFA rate at issue was for the China-wide entity, had been previously applied to the entity, and derived from verified sales and cost data, the same inference cannot be made in the instant case where the rate was not similarly derived or applied, and the secondary information underlying the rate cannot be corroborated.

²²¹ See, e.g., *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

²²² See SAA 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); see also *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).

²²³ See *KYD*, 607 F.3d at 766.

²²⁴ See *Preliminary Determination*, and Preliminary Decision Memorandum at 24-25 and Asia Symbol Final Analysis Memorandum.