



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

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Investigation
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DATE: December 21, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman *ST*
Associate 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 Corrosion-
Resistant Steel Products from India

I. SUMMARY

The Department of Commerce ("Department") preliminarily determines that certain corrosion-resistant steel products ("corrosion-resistant steel") from India 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 June 3, 2015, the Department received antidumping duty ("AD") petitions covering imports of corrosion-resistant steel from India,¹ which were filed in proper form on behalf of United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc., (collectively "Petitioners"). The Department initiated this investigation on June 23, 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 corrosion-resistant steel from Italy during the period of investigation ("POI") under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings listed in the scope of

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Corrosion-Resistant Steel Products from Italy, India, the PRC, Korea, and Taiwan, dated June 3, 2015 ("Petitions").

² See Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations, 80 FR 37228 (June 30, 2015) ("Initiation Notice").



the investigation.³ On June 24, 2015, the Department released CBP import data to interested parties.⁴ On July 1, 2015, the Department received comments on the CBP data from Petitioners.⁵

The Department selected JSWSL and UGSL (collectively “Respondents”) as mandatory respondents for this investigation⁶ and, on July 23, 2015, issued AD questionnaires to JSWSL and UGSL.⁷ In August 2015, JSWSL and JSW Coated Products Limited, (“JSCPL”), (collectively “JSW”),⁸ Uttam Galva and Uttam Value Steels Limited (“UVSL”), (collectively “Uttam Galva”)⁹ submitted timely consolidated responses to section A of the Department’s AD questionnaire (i.e., the section relating to general information), and in September 2015, JSW and Uttam Galva responded to sections B and C of the Department’s AD questionnaire (i.e., the sections relating to home market and U.S. sales). In October 2015, the respondents submitted timely responses to the section D (i.e., the section relating to cost of production and constructed value). From September through November 2015, we issued supplemental questionnaires to JSW and Uttam Galva, and we received responses to these supplemental questionnaires from October through December 2015.¹⁰

Additionally, in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of corrosion-resistant steel to be reported in response to the Department’s AD questionnaire.¹¹ In July and August 2015, POSCO, Totem Steel International (Totem), a U.S. importer of subject merchandise, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc., (collectively, Baosteel), Great Grandeul Steel Co., Ltd. (GGS), and Yieh Phui Enterprise Co., Ltd. (Yieh Phui), respondents in the companion LTFV investigations on corrosion-resistant steel, submitted comments on the scope of this investigation. On July 24, 2015, Petitioners submitted rebuttal scope comments in response to POSCO, Totem, Yieh Phui, Baosteel, and GGS.

On July 17, 2015, Petitioners, Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd. (Dongkuk/Union Steel), and Hyundai Steel Company (Hyundai), and Prosperity Tieh Enterprise

³ Id., 80 FR at 37233.

⁴ See Memorandum to the File from Alexis Polovina, Senior International Trade Analyst, Office V, Antidumping and Countervailing Duty Operations, re: “Certain Corrosion-Resistant Steel Products from India: Customs Data for Respondent Selection Purposes,” dated June 24, 2015.

⁵ See Letter from Petitioners, re: “Certain Corrosion-Resistant Steel Products from India: Comments Regarding CBP Data,” dated July 1, 2015.

⁶ See Memorandum to Christian March, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Ryan Mullen, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations, re: “Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Respondent Selection,” dated July 22, 2015.

⁷ See Letter to JSW Steel Limited, dated July 23, 2015; see also Letter to Uttam Galva Steels Ltd., dated July 23, 2015.

⁸ See infra “Affiliation and Collapsing” for a discussion of the collapsing treatment of JSW and the single entity treatment of Uttam Galva.

⁹ Id.

¹⁰ Because JSW’s response to the Department’s second supplemental section D questionnaire was received on December 10, 2015, and Uttam Galva’s response on December 18, 2015, the Department was not able to adequately analyze the responses prior to the preliminary determination. Therefore, we will consider these responses for the final determination.

¹¹ See Initiation Notice, 80 FR at 37229.

Co., Ltd. (Prosperity Tieh), and Yieh Phui, respondents in the companion AD investigations on corrosion-resistant steel, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. Then, on July 27, 2015, Petitioners filed rebuttal comments to comments on product characteristics comments filed by Dongkuk/Union Steel, Hyundai, Prosperity Tieh, and Yieh Phui. On the same date, Acciaieria Arvedia SPA (“Arvedi”), Marcegagli SpA (“Marcegaglia”), Dongkuk/Union Steel, Hyundai, and POSCO, and JSW Steel Ltd. (“JSWSL”) and JSW Steel Coated Products Limited, Prosperity Tieh, Yieh Phui, and Uttam Galva Steels Limited (“UGSL”) filed rebuttal comments to Petitioners comments regarding the physical characteristics of the merchandise under consideration.

On July 22, 2015, the Department selected JSWSL and UGSL (collectively “Respondents”) as mandatory respondents for this investigation¹² and, on July 23, 2015, issued AD questionnaires to JSWSL and UGSL.¹³ In August 2015, JSWSL and JSW Coated Products Limited, (“JSCPL”), (collectively “JSW”),¹⁴ Uttam Galva and Uttam Value Steels Limited (“UVSL”), (collectively “Uttam Galva”)¹⁵ submitted timely consolidated responses to section A of the Department’s AD questionnaire (i.e., the section relating to general information), and in September 2015, JSW and Uttam Galva responded to sections B and C of the Department’s AD questionnaire (i.e., the sections relating to home market and U.S. sales). In October 2015, the respondents submitted timely responses to the section D (i.e., the section relating to cost of production and constructed value). From September through November 2015, we issued supplemental questionnaires to JSW and Uttam Galva, and we received responses to these supplemental questionnaires from October through December 2015.¹⁶

On July 24, 2015, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of corrosion-resistant steel from India.¹⁷

On October 14, 2015, the Department published the notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Act and 19

¹² See Memorandum to Christian March, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Ryan Mullen, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations, re: “Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Respondent Selection,” dated July 22, 2015.

¹³ See Letter to JSW Steel Limited, dated July 23, 2015; see also Letter to Uttam Galva Steels Ltd., dated July 23, 2015.

¹⁴ See *infra* “Affiliation and Collapsing” for a discussion of the collapsing treatment of JSW and the single entity treatment of Uttam Galva.

¹⁵ *Id.*

¹⁶ Because JSW’s response to the Department’s second supplemental section D questionnaire was received on December 10, 2015, and Uttam Galva’s response on December 18, 2015, the Department was not able to adequately analyze the responses prior to the preliminary determination. In addition, the responses to JSW’s and Uttam Galva’s third supplemental section D questionnaires are due on December 24, 2015, after the preliminary determination. Therefore, we will consider these responses for the final determination.

¹⁷ See Certain Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan, 80 FR 44151 (July 24, 2015).

CFR 351.205(f)(1).¹⁸ As a result of the 41-day postponement, the revised deadline for the preliminary determination of this investigation is now December 21, 2015.¹⁹

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

III. PERIOD OF INVESTIGATION

The POI is April 1, 2014, through March 31, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2015.²⁰

IV. PRELIMINARY DETERMINATION OF NO CRITICAL CIRCUMSTANCES

On July 23, 2015, Petitioners filed allegations that critical circumstances exist with respect to imports of corrosion-resistant steel from India.²¹ On October 29, 2015, the Department issued its preliminary critical circumstances determination.²² Pursuant to this determination, the Department determined that critical circumstances do not exist for imports of corrosion-resistant steel from India.

V. SCOPE OF THE INVESTIGATION

The products covered by the scope are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metal coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness 4.75 mm or more than a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

¹⁸ See Certain Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 61793 (October 14, 2015).

¹⁹ *Id.*

²⁰ See 19 CFR 351.204(b)(1).

²¹ See Letter from Petitioners, “Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Critical Circumstances Allegations,” July 23, 2015.

²² See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances, signed October 29, 2015, 80 FR 68504 (November 5, 2015).

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for above, and
- (2) where the width and thickness vary for a specific period (e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope in this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measure at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant steel flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

VI. 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 zero or de minimis margins, and any margins determined entirely under section 776 of the Act.

Specifically, this rate of 6.76 percent is based on a weighted-average of the estimated dumping margins calculated for the mandatory respondents using each company’s publicly-ranged values for the merchandise under consideration.²³

²³ See Memorandum to the File, From Ryan Mullen, International Trade Compliance Analyst, “Certain Corrosion-Resistant Steel Products from India: Calculation of All-Others’ Rate in Preliminary Determination,” dated concurrently with this preliminary determination.

VII. AFFILIATION AND COLLAPSING

Section 771(33)(E) of the Act, in pertinent part, identifies persons that shall be considered “affiliated” or “affiliated persons” as: any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization. Section 771(33)(F) of the Act further provides that persons shall be considered affiliated when there are two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.²⁴ Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”) notes that control may be found to exist within corporate groupings.²⁵ The Department’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁶

JSWSL and JSCPL

For the reasons set forth in the proprietary Preliminary Affiliation Memorandum, which we incorporate by reference, we preliminarily determine that JSWSL and JSCPL, are affiliated pursuant to section 771(33)(E) of the Act because JSCPL is the wholly-owned subsidiary to JSWSL.²⁷

The Department relies on the totality of the circumstances in deciding when to treat affiliated parties as a single entity. In this case, we have sufficient information to find that JSWSL and JSCPL are affiliated and produced the merchandise under consideration during the POI. Moreover, record evidence demonstrates significant potential for manipulation of prices and production between JSWSL and JSCPL because of: 1) level of common ownership; 2) overlapping board members; and 3) intertwined operations.²⁸

²⁴ See section 771(33)(F) of the Act.

²⁵ See SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994) (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

²⁶ See also Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 2727298 (May 19, 1997).

²⁷ For further discussion of this issue, see Memorandum to James C. Doyle, Director, Office V, from Alexis Polovina, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Antidumping Duty Investigation of Certain Corrosion Resistant Steel Products from India: JSW Preliminary Affiliation and Collapsing Memorandum” (“JSW Prelim Affiliation and Collapsing Memo”), dated concurrently with this preliminary determination.

²⁸ See JSW Prelim Affiliation and Collapsing Memo.

In accordance with 19 CFR 351.401(f) and the Department's practice,²⁹ we are treating JSWSL and JSCPL as a single entity for the purposes of this preliminary determination.³⁰

Uttam Galva

For the reasons set forth in the proprietary Preliminary Affiliation Memorandum, which we incorporate by reference, we preliminarily determine that UGSL, UVSL, Uttam Galva North America ("Uttam NA"), Atlantis International Services Company Ltd. ("Atlantis"), Uttam Galva Steels, Netherlands, B.V. ("Uttam Netherlands"); and Uttam Galva Steels (BVI) Limited ("Uttam BVI") are affiliated pursuant to section 771(33)(F) of the Act due to common control, ownership, family ownership, and interlocking directorates.³¹

The Department relies on the totality of the circumstances in deciding when to treat affiliated parties as a single entity. In this case, we have sufficient information to find that parties are affiliated and produced and/or resold the merchandise under consideration during the POI. Moreover, record evidence demonstrates significant potential for manipulation of prices and production between each of the above-referenced entities because of: 1) level of common ownership; 2) common management; and 3) intertwined operations.³²

In accordance with 19 CFR 351.401(f) and the Department's practice,³³ we are treating UGSL, UVSL, Atlantis, Uttam Netherlands, and Uttam BVI as a single entity for the purposes of this preliminary determination.³⁴

VIII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether JSW and Uttam Galva's sales of the subject merchandise from India to the United States were made at less than normal value, the Department compared the export price (EP) and constructed

²⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

³⁰ See JSW Prelim Affiliation and Collapsing Memo.

³¹ For further discussion of this issue, which includes business proprietary information, see Memorandum to James C. Doyle, Director, Office V, from Ryan Mullen, International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Antidumping Duty Investigation of Certain Corrosion Resistant Steel Products from India: Uttam Galva Preliminary Affiliation and Single Entity Memorandum" ("Uttam Galva Prelim Affiliation and Single Entity Memo") dated concurrently with this preliminary determination.

³² See JSW Prelim Affiliation and Collapsing Memo.

³³ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

³⁴ See JSW Prelim Affiliation and Collapsing Memo.

export price (CEP) to the normal value (NV) as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

A) Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³⁵ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by JSW,³⁶ and based on the consolidated customer codes reported by Uttam Galva.³⁷ Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than

³⁵ See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); or Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

³⁶ See Letter to the Secretary of Commerce from JSW, “JSW’s Third Sections B&C Supplemental Response” at 6, dated November 29, 2015, (“JSW 3rd BCQR”) where JSW clarifies that the customer code is the entity making the pricing and purchasing decisions.

³⁷ See, e.g., Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva’s Section C Response” at Exhibits C-9 and C-10, dated September 29, 2015 (“Uttam Galva’s SCQR”).

purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

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

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-

average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) Results of the Differential Pricing Analysis

JSW

For JSW, based on the results of the differential pricing analysis, the Department preliminarily finds that 76.60 percent of the value of U.S. sales pass the Cohen's *d* test,³⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for JSW.

Uttam Galva

For Uttam Galva, based on the results of the differential pricing analysis, the Department preliminarily finds that 55.36 percent of the value of U.S. sales pass the Cohen's *d* test,³⁹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weight-average dumping margin calculated using an alternative comparison method based on applying the mixed alternative method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Uttam Galva.

IX. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of

³⁸ See Memorandum to the File from Alexis Polovina, "Preliminary Determination Calculation for JSW in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India", dated December 21, 2015 ("JSW Preliminary Analysis Memorandum") at 3.

³⁹ See Memorandum to the File from Ryan Mullen, "Preliminary Determination Calculation for JSW in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India", dated December 21, 2015 ("Uttam Galva Preliminary Analysis Memorandum") at 3.

business. 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.⁴⁰

JSW and Uttam Galva reported the date of invoice as the date of sale for all home market and U.S. sales.⁴¹ In this case, Uttam Galva reported that the invoice date best represents the date of sale for both home market and U.S. sales because, at that point, the material terms of the sale cannot be altered.⁴² Accordingly, for Uttam Galva, we used the invoice date as the date of sale for purposes of this preliminary determination.

JSW also reported that for home market sales, material terms of sale can change up to the point of invoice date,⁴³ however, for U.S. sales, all sales are made to order and the material terms can change up to the point the product is shipped.⁴⁴ For JSW, we used the date of invoice as the date of sale for the home market and the date of shipment as the date of sale for the U.S. market.

X. PRODUCT COMPARISONS

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

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: type, reduction process, clad material/coating metal, metallic coating weight, metallic coating process, quality, yield strength, nominal thickness, nominal width, and form. For JSW’s and Uttam Galva’s respective sales of corrosion-resistant steel in the United States, the reported control number (“CONNUM”) identifies the characteristics of corrosion-resistant steel, as exported by JSW and Uttam Galva, respectively.

Neither JSW nor Uttam Galva reported sales of non-prime corrosion-resistant steel to the United States, but both respondents stated that they respectively sold non-prime corrosion-resistant

⁴⁰ See 19 CFR 351.401(i); 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.”).

⁴¹ See, e.g., Letter to the Secretary of Commerce from JSW, “JSW’s Section A Response” at A-21, dated August 31, 2015 (“JSW’s SAQR”); see also Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva’s Section A Response” at 22, dated August 31, 2015 (“Uttam Galva’s SAQR”).

⁴² See Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva’s Supplemental Section C Response” at 5-6, dated November 2, 2015 (Uttam Galva’s Supp SCQR).

⁴³ See JSW’s SAQR at A-21, see also Letter to the Secretary of Commerce from JSW, “JSW’s Third Sections B& C Supplemental Response” at 5, dated November 29, 2015.

⁴⁴ *Id.*, at 12-14.

steel in the home market. According to JSW, an internal quality grade is assigned to production by the quality assurance department, and production is designated as non-prime if it has one or more physical defects.⁴⁵ According to Uttam Galva, non-prime merchandise can include production that does not conform to standard specifications or customer specifications.⁴⁶ For the preliminary determination we are including JSW and Uttam Galva's non-prime sales.

XI. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for JSW's and certain of Uttam Galva's U.S. sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(b) of the Act, for the remainder of Uttam Galva's U.S. sales, we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Uttam Galva, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

JSW

We based EP on a packed price to the first unaffiliated purchaser in the United States. For certain sales that JSW reported as samples, the Department is treating these sales as sample sales because JSW provided the samples to the respective customers and did not receive payment for these samples.⁴⁷ Accordingly, the Department finds that these sample sales are not a "sale" since no "consideration" was provided and should not be included in calculating EP in the U.S. market.⁴⁸ The Department also made adjustments for billing adjustments, credit expenses, bank charges, inventory carrying costs in the country of manufacture, commissions, and indirect selling expenses incurred in the country of manufacture, as appropriate. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, and U.S. inland freight.

JSW requested a duty drawback adjustment for the duty drawback program.⁴⁹ Section 772(c)(1)(B) of the Act states that EP and CEP shall be increased by "the amount of any import duties imposed by the country of exportation...which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties

⁴⁵ See Letter to the Secretary of Commerce from JSW, "JSW's Section B Response," dated September 29, 2015, ("JSW SBQR") at 11.

⁴⁶ See Letter to the Secretary of Commerce from Uttam Galva, "Uttam Galva Steels Limited's Third Supplemental Sections B and C Questionnaire Response" at 1-2, dated December 2, 2015, ("Uttam Galva 3rd BC Supplemental").

⁴⁷ See Letter to the Secretary of Commerce from JSW, "JSW's Supplemental Section B Questionnaire Response", dated October 26, 2015, at 17-18 and Exhibit B-34.

⁴⁸ See *NSK Ltd. And NSK Corp. v. United States*, 115 F.3d 965, 975 (CIT 1997) (because NSK's samples did not constitute "sales" they should not have been included in calculating United States price); *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 73 FR 55036 (September 24, 2008) and accompanying Issues and Decision Memorandum at Comment 7.

⁴⁹ See Letter to the Secretary of Commerce from JSW, "JSW's Section C Response", dated September 29, 2015, ("JSW SCQR") at 38-40.

imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to EP.⁵⁰ The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.⁵¹

In this investigation, the Department preliminarily determines it will grant a duty drawback adjustment for JSW because it has satisfied the criteria described above for one duty program: the Duty Drawback Scheme (“DDS”). Although Petitioners argue that JSW had not satisfied the two-prong criteria for a duty drawback adjustment⁵², we preliminarily find JSW provided the rules from the Indian government describing the program and the schedule of rates for exported goods.⁵³ Additionally, JSW identified the raw materials imported for which it paid an import duty, worksheets detailing how it calculated the duty drawback on a transaction-specific basis, as well as worksheets linking the raw materials to production of merchandise under consideration, and worksheets demonstrating the companies imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales.⁵⁴

Based on JSW’s satisfaction of the two-prong test, we preliminarily determine to grant a duty drawback adjustment to EP and CEP pursuant to 772(c)(1)(B) of the Act.⁵⁵ The record shows that JSW sources some of its inputs both from foreign and domestic sources. The portion of inputs that are domestically sourced contain no duties because they were not imported and thus, not subject to duties. Under the Department’s current practice, the Department would normally take the amount of the duty forgiven or rebated for the year and divide it by the exports subject to the duty drawback for the year to arrive at an amount by which to adjust EP or CEP. However, the Department has realized that in situations in which the inputs are sourced from both domestic and foreign sources, such a calculation results in an imbalance in the dumping calculations.

The imbalance is the result of different aspects of the calculation as it is currently performed. First, on the NV side of the dumping equation, the annual average cost for an input is an average cost of both the foreign sourced input which includes the duties and domestic sourced inputs on which no duties were imposed. Additionally, when the inputs are from both foreign and domestic sources, the home market price may no longer be assumed to be accounting for the full duty.

⁵⁰ See Saha Thai Steel Pipe (Public) Co. v. United States, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (“Saha Thai”).

⁵¹ See id.; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

⁵² See Letter from Petitioners, “Certain Corrosion-Resistant Steel Products from India: Petitioners’ Pre-Preliminary Comments Regarding JSW,” dated December 15, 2015.

⁵³ See JSW SCQR at 39-40 and Exhibit 9.

⁵⁴ Id. and JSW 3rd BCQR at 8-11 and Exhibit 29.

⁵⁵ 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 Issues and Decisions Memorandum at Comment 1; and Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments: 2013-2014, 80 FR 76674 (December 10, 2015), and accompanying Issues and Decision Memorandum at Comment 1.

Adjusting EP/CEP for the full amount of duties imposed which are rebated or not collected on export sales when some of the same inputs are domestically sourced, results in a larger adjustment to the EP/CEP than reflected in the NV, creating an imbalance.

A duty drawback adjustment to EP and CEP is based on the principle that the “goods sold in the exporter’s domestic market are subject to import duties while exported goods are not.”⁵⁶ In other words, home market sales prices and cost of production are import duty “inclusive,” while export market sales prices are import duty “exclusive.” In Saha Thai, the CAFC stated:

The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty draw-back is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.⁵⁷

Thus, the CAFC recognized the duty drawback adjustment is intended to prevent dumping margins from being created or affected by the rebate or exemption of import duties on inputs used in the production of exported merchandise. However, in circumstances such as those present here, a distortion in the dumping margin is caused by providing a duty drawback adjustment based solely on what would have been collected on export sales of subject merchandise when the inputs have been imported and domestically sourced. In other words, not all home market sales prices can be presumed to reflect an increase because of import duties paid.

Accordingly, the Department determines to take these distortions into account in order to accurately determine an adjustment for “the amount of import duties imposed . . . which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” Section 772(c)(1)(B) of the Act. Specifically, the Department will make an upward adjustment to EP and CEP based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI. This ensures that the amount added to both sides of the dumping calculations is equal, i.e., duty neutral.

Thus, based on the facts of this investigation, the Department believes that the import duty costs, based on the consumption of imported inputs during the POI, including imputed duty costs on export sales, properly accounts for the amount of duties imposed, as required by 772(c)(1)(B) of the Act. We have added this per unit amount to the U.S. price.⁵⁸

⁵⁶ See Saha Thai, 635 F.3d at 1339.

⁵⁷ Id.

⁵⁸ See Memorandum to Neal M. Halper, Director, Office of Accounting, from Lavonne Clark, Senior Accountant “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – JSW Steel Limited and JSW Coated Products Limited” dated concurrently with this memorandum.

Uttam Galva

Uttam Galva reported EP sales to unaffiliated distributors and trading companies during the POI. Accordingly, we based EP on a packed price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland insurance, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty.

In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under consideration is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Uttam Galva classified some of its sales of merchandise under consideration to the United States as CEP sales because all such sales were invoiced and sold by Uttam Galva's U.S. affiliate, Uttam NA, either as direct mill sales or from inventory maintained at U.S. warehouses.⁵⁹ We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.⁶⁰

Uttam Galva requested a duty drawback adjustment for three duty programs: the Duty Drawback Scheme ("DDS"), Advance Authorization Program ("AAP"), and Duty Free Import Authorization ("DFIA").⁶¹ As explained above for JSW, under section 772(c)(1)(B) of the Act, the Department will increase the starting price by the duty drawback if the exporter or producer meets the Department's criteria. Although Petitioners argue that Uttam Galva had not satisfied the two-prong criteria for a duty drawback adjustment⁶², in this case the Department preliminarily determines it will grant a duty drawback adjustment for Uttam Galva because Uttam Galva has satisfied the Department's "two-pronged" test for the adjustment. Specifically, Uttam Galva has provided the rules from the Indian government describing the program and the schedule of rates for exported goods,⁶³ as well as licenses for the AAP and DFIA programs.⁶⁴ Additionally, Uttam Galva identified the raw materials imported for which it paid an import duty,⁶⁵ worksheets detailing how it calculated the duty drawback on a transaction specific

⁵⁹ See, e.g., Uttam Galva SCQR at C-36.

⁶⁰ For further discussion, see Memorandum to the File, From Ryan Mullen, International Trade Compliance Analyst, "Certain Corrosion-Resistant Steel Products from India: Calculation of Uttam Galva's Rate in Preliminary Determination," dated concurrently with this preliminary determination.

⁶¹ See Uttam Galva 3rd BC Supplemental at 8-10.

⁶² See Letter from Petitioners, "Certain Corrosion-Resistant Steel Products from India: Petitioners' Pre-Preliminary Comments Regarding Uttam Galva," dated December 9, 2015.

⁶³ Id. at Exhibit S3-10.

⁶⁴ Id. at Exhibits 3S-6 and 3S-7.

⁶⁵ Id. at Exhibits 3S-6, 3S-7, and 3S-8.

basis,⁶⁶ as well as worksheets linking the raw materials to production of merchandise under consideration,⁶⁷ and shipping documents referencing the DDS and AAP and DFIA licenses.⁶⁸ As described above for JSW, to calculate the amount of import duties imposed, as required by section 772(c)(1)(B) of the Act, we preliminarily have applied a duty drawback adjustment to EP and CEP equal to the amount of import duty cost incurred for the DDS and the exempted duties from the AAP and DFIA in Uttam Galva's cost of production.⁶⁹

XII. NORMAL VALUE

A. *Comparison Market Viability*

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

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for JSW and Uttam Galva was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for JSW and Uttam Galva, in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included JSW's and Uttam Galva's sales to affiliated parties for purposes of determining home market viability.⁷⁰

B. *Affiliated Party Transactions and Arm's-Length Test*

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁷¹ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ See Memorandum to Neal M. Halper, Director, Office of Accounting, from Angie Sepúlveda, Senior Accountant "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Uttam Galva Steels Limited" dated concurrently with this memorandum.

⁷⁰ See Certain Oil Country Tubular Goods From Saudi Arabia: Final Determination of Sales at Less Than Fair Value, 79 FR 41986 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).

⁷¹ See 19 CFR 351.403(c).

Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁷²

JSW and Uttam Galva reported that they had a small volume of sales of merchandise under consideration to affiliated parties in the home market during the POI.⁷³ Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length.⁷⁴ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.⁷⁵

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁷⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷⁷ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁷⁸ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁷⁹

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in

⁷² See China Steel Corp. v. United States, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 55352, 55355 (September 7, 2011)).

⁷³ See JSW SBQR at 7, and Uttam Galva SBQR at B-7.

⁷⁴ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value calculation).

⁷⁵ See 19 CFR 351.102(b).

⁷⁶ See 19 CFR 351.412(c)(2).

⁷⁷ *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 ("Orange Juice from Brazil").

⁷⁸ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁷⁹ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁸⁰

JSW

JSW reported that its home market sales were made through four channels of distribution: 1) directly to original equipment manufacturers (“OEM”); 2) branch/consignment sales; 3) directly to customers; and 4) through a website.⁸¹ JSW reported that these four channels in the home market constitute one LOT.⁸² Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. JSW reported its selling functions for sales to its home market customers.⁸³ In examining JSW’s questionnaire responses and the home market sales database, the Department finds that the selling activities performed by JSW for its customers in the home market in all channels do not significantly differ.⁸⁴ Accordingly, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, JSW reported it sold the merchandise through one channel of distribution, direct to traders and OEM customers,⁸⁵ thus JSW reported a single LOT for its U.S. sales.⁸⁶ The selling functions chart submitted by JSW shows that the selling activities are at the same or a similar level of intensity in both the U.S. and home market.⁸⁷ Therefore, we preliminarily find that, during the POI, JSW sold merchandise under consideration and foreign like product at the same LOT. Accordingly, all comparisons of EP to NV are at the same LOT, and a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

⁸⁰ See, e.g., Orange Juice from Brazil, at Comment 7.

⁸¹ See JSW SAQR at 15-18.

⁸² See JSW SBQR at 30.

⁸³ See JSW SAQR at 15-18, and Exhibit A-7; see JSW Supplemental Section A Response, at 10, submitted October 2, 2015; see also JSW Preliminary Analysis Memorandum for a business proprietary discussion of JSW’s channels of distribution.

⁸⁴ See JSW Preliminary Analysis Memorandum for a business proprietary discussion of JSW’s channels of distribution.

⁸⁵ See JSW SAQR at 15-18.

⁸⁶ See JSW SCQR at 28.

⁸⁷ See JSW SAQR at 15-18, and Exhibit A-7.

Uttam Galva

Uttam Galva reported that its home market sales were made through two channels of distribution: directly to original equipment manufacturers and traders.⁸⁸ Uttam Galva reported that these two channels in the home market constitute one LOT.⁸⁹ Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Uttam Galva reported its selling functions for sales to its home market customers.⁹⁰ In examining Uttam Galva's questionnaire responses and the home market sales database, the Department finds that the selling activities performed by Uttam Galva for its customers in the home market in all channels do not significantly differ.⁹¹ Accordingly, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, Uttam Galva reported that it sold the merchandise through three channels of distribution. First, Uttam Galva sold subject merchandise directly to unaffiliated customers. Second, Uttam Galva sold merchandise to its U.S. affiliate, Uttam NA, and the goods were then sold to unaffiliated distributors and wholesalers.⁹² Third, the goods were shipped directly to unaffiliated U.S. customers, while the shipping documents were routed through affiliated resellers.⁹³

As for the U.S. LOT for the first and third channels (direct sales to unaffiliated customers and sales to affiliated resellers, respectively), Uttam Galva reported that it performed the following selling functions for its sales to the United States: sales forecasting, strategic/economic planning, sales promotion, packing, order input/processing, technical assistance, after-sales services, and freight and delivery.⁹⁴ Because Uttam Galva performed the same selling functions at the same relative level of intensity for its U.S. sales in its first and third channels, we find that the differences between these channels are too insignificant to warrant two different LOTs. Thus, we determine that Uttam Galva's sales through its first and third channels are at the same LOT. Further, based on the selling function categories noted above, we find that with respect to the first and third channels, Uttam Galva performed sales and marketing freight and delivery services, freight and delivery arrangements, and technical support for U.S. sales.

⁸⁸ See Uttam Galva SAQR at 16.

⁸⁹ Id.

⁹⁰ Id., at 18.

⁹¹ See Uttam Galva Preliminary Analysis Memorandum for a business proprietary discussion of Uttam Galva's channels of distribution.

⁹² Id.

⁹³ Id.

⁹⁴ See Uttam Galva SAQR at Exhibit A-10.

We compared the first and third channel LOTs to the home market LOT and found that the selling functions Uttam Galva performed for its home market customers are virtually the same as those performed for its U.S. customers at the same relative level of intensity. The only difference is that Uttam Galva provides some engineering and advertising services for home market customers that it does not provide to U.S. customers. This difference is not sufficient to determine that Uttam's LOT for its first and third channels of distribution in the U.S. market is different from the home market LOT. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the home market during the POI were made at the same LOT as Uttam Galva's U.S. sales through the first and third distribution channels (direct sales to unaffiliated customers and sales to affiliated resellers, respectively). Consequently, we treated the first and third distribution channel LOT at the same LOT as home market sales, and preliminarily determine that no LOT adjustment is warranted.

With respect to the U.S. LOT for the second channel of distribution (CEP sales through its U.S. affiliate Uttam NA), Uttam Galva reported that it performed the following selling functions for its sales to the United States: packing, technical assistance, after-sales services, and freight and delivery.⁹⁵ In addition, for the second channel, Uttam Galva performed sales and marketing freight and delivery services, and technical support for U.S. sales. Thus, Uttam Galva performed selling functions in only three of the four categories described above for the second channel. Moreover, Uttam Galva performed four fewer selling functions in the second channel as in the first and third channels. Because Uttam Galva provided notably fewer selling functions in the second channel than it did in the first and third channels, we determine the second channel of distribution to be at another, less advanced LOT than the first and third channels.

We also compared the CEP LOT to the home market LOT and found that the selling functions Uttam performed for its home market customers are at a more advanced stage of distribution than those performed for its U.S. customers in that channel of trade. That is, while the selling functions performed in both channels are of the same intensity, there is a broader range and number of selling functions performed for home market sales than for CEP sales through the second channel.⁹⁶ Therefore, based on the totality of the facts and circumstances, we preliminarily determine that home market sales during the POI were made at a different LOT than CEP sales. Because Uttam Galva's home market LOT is at a more advanced stage of distribution than its CEP LOT, and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.⁹⁷ The 2015 law does not specify dates of

⁹⁵ *Id.*

⁹⁶ These selling functions which are performed for sales in the home market but not for Uttam Galva's U.S. CEP sales include sales forecasting, strategic/economic planning, advertising, sales promotion, direction of sales personnel, sales/marketing support, and market research.

⁹⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

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.⁹⁸ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent companies in all AD proceedings.⁹⁹ Accordingly, the Department requested this information from JSW and Uttam Galva.¹⁰⁰ We examined JSW and Uttam Galva's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A") and interest expenses.¹⁰¹

We relied on the COP data submitted by JSW and Uttam Galva, except as follows:¹⁰²

- We adjusted Uttam Galva's reported TOTCOM for inputs in accordance with the major input rule at section 773(f)(3) of the Act.
- We revised Uttam Galva's reported G&A expenses to exclude an income offset related to costs incurred prior to the POI.
- We revised Uttam Galva's financial expense reported in the cost file to reflect the calculated financial expense rate.
- We revised Uttam Galva's exempted import duty cost calculation to base the calculation on direct materials cost.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

⁹⁸ 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).

⁹⁹ Id., 80 FR at 46794-95.

¹⁰⁰ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

¹⁰¹ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

¹⁰² See Memorandum to Neal M. Halper, Director, Office of Accounting, from Angie Sepúlveda, Senior Accountant "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Uttam Galva Steels Limited" dated concurrently with this memorandum.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of JSW's and Uttam Galva's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

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

For those comparison products for which there were an appropriate number of sales at prices above the COP for JSW and Uttam Galva, we based NV on comparison market prices. We calculated NV based on packed, ex-factory or delivered prices to unaffiliated customers in India.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.¹⁰³

JSW

The Department calculated NV based on delivered or ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and

¹⁰³ See 19 CFR 351.411(b).

773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410. Uttam Galva

The Department calculated NV based on delivered or ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

XIII. CURRENCY CONVERSION

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

XIV. 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 made adjustments for countervailable export subsidies for JSW, Uttam Galva and the “all-others” rate. These adjustments will be applied to the estimated weighted-average dumping margins calculated for each respondent, and for the “all-others” rate, which are reflected in the accompanying Federal Register notice.

Regarding the duty drawback programs, Petitioners state that the Department’s finding that such programs are countervailable has a direct impact on the duty drawback adjustment for this proceeding.¹⁰⁴ As indicated above, the Department has increased U.S. price to account for certain duty drawback programs used by the respondents, in accordance with section 772(c)(1)(B) of the Act. These programs were also found countervailable as export subsidies in the companion CVD investigation, and the benefit was calculated as the full amount of the duty drawback.¹⁰⁵ Section 772(c)(1)(C) of the Act directs the Department to increase EP or CEP by the amount of the countervailing duty “imposed” on the subject merchandise “to offset an export subsidy.” The basic theory underlying this provision is that in parallel AD and CVD proceedings, if the Department finds that a respondent received the benefits of an export subsidy program, it is presumed the subsidy contributed to lower-priced sales of subject merchandise in the United States market. Thus, the subsidy and dumping are presumed to be related, and the imposition of duties against both would in effect be imposing two duties against the same situation. However, under the circumstances of this case, the Department has made an adjustment to U.S. price

¹⁰⁴ See Letter from Petitioners, “Certain Corrosion-Resistant Steel Products from India: Petitioners’ Pre-Preliminary Comments Regarding Uttam Galva,” dated December 9, 2015.

¹⁰⁵ See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Preliminary Affirmative Determination, 80 FR 68854 (Nov. 6, 2015) and accompanying Preliminary Decision Memorandum at 9-14.

pursuant to section 772(c)(1)(B) of the Act, to increase U.S. price “to the level it likely would be absent the duty drawback.”¹⁰⁶ Accordingly, under these circumstances, and consistent with the purpose of the Act, we are adjusting the duty drawback portion of the export subsidy offset for each respondent, as described below.

For JSW, in the preliminary determination for the companion CVD investigation, we preliminarily calculated an aggregated export subsidies rate of 2.84 percent, of which 1.86 percent is attributable to the DDS program. In the instant investigation, we are adjusting the offset for the countervailed DDS program to reflect the amount of the AD duty drawback adjustment granted for the same DDS program under section 772(c)(1)(B) of the Act to avoid accounting for the impact of this program on JSW’s dumping margin twice. This adjustment, 0.11 percent, is calculated as the difference in the estimated weighted-average dumping margins calculated with and without the adjustment for duty drawback being made to JSW’s reported U.S. selling prices.¹⁰⁷ Accordingly, the export subsidy offset, 2.73 percent, represents the aggregated export subsidies rate calculated for JSW plus the downward adjustment of 0.11 percent to the total duty drawback export subsidy rate, resulting in an adjusted cash deposit rate of 3.91 percent.

For Uttam Galva, in the preliminary determination for the companion CVD investigation, we preliminarily calculated an aggregated export subsidies rate of 7.80 percent, of which 7.34 percent is attributable to three duty drawback programs: DDS, AAP, and DFIA. In the instant investigation, we are adjusting the offset for the three countervailed duty drawback programs to reflect the amount of the AD duty drawback adjustment granted for the same programs under section 772(c)(1)(B) of the Act to avoid accounting for the impact of these programs on Uttam Galva’s dumping margin twice. This adjustment, 3.61 percent, is calculated as the difference in the estimated weighted-average dumping margins calculated with and without the adjustment for duty drawback being made to Uttam Galva’s reported U.S. selling prices.¹⁰⁸ Accordingly, the export subsidy offset, 3.96 percent, represents the aggregated export subsidies rate calculated for Uttam Galva plus the downward adjustment of 3.96 percent to the total duty drawback export subsidy rate, resulting in an adjusted cash deposit rate of 2.96 percent.

Finally, to calculate the cash deposit rate for all-other producers and exporters, we are deducting from the “all-others” estimated weighted-average dumping margin 3.66 percent, which represents the simple average of the export subsidies offsets utilized for JSW and Uttam Galva, as described above, resulting in an adjusted cash deposit rate of 3.11 percent.


¹⁰⁶ See Saha Thai, 635 F.ed at 1339.

¹⁰⁷ See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods From India, 79 FR 41981 (July 18, 2014) (India OCTG), and accompanying Issues and Decision Memorandum at page 16.

¹⁰⁸ See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods From India, 79 FR 41981 (July 18, 2014) (India OCTG), and accompanying Issues and Decision Memorandum at page 16.


XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 DECEMBER 2015

Date