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Investigation
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E&C/IV: PO

DATE: February 29, 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
Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel
Flat Products from India

I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that certain cold-rolled steel flat products (“CRS”) 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 July 28, 2015, the Department received antidumping duty (“AD”) petitions covering imports of CRS from India,¹ which were filed in proper form on behalf of United States Steel Corporation, Nucor Corporation, ArcelorMittal USA LLC, AK Steel Corporation, and Steel Dynamics, Inc., (collectively “Petitioners”). The Department initiated this investigation on August 17, 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 CRS from India during the period of investigation (“POI”) under the Harmonized Tariff Schedule of

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom, dated July 28, 2015 (“Petitions”).

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”).



the United States (“HTSUS”) subheadings listed in the scope of the investigation.³ On August 24, 2015, the Department released CBP import data to interested parties.⁴ On September 2, 2015, Duferco S.A. (“Duferco”) submitted comments on the Department’s selection of respondents.⁵

The Department selected JSW Steel Limited (“JSWSL”) as the sole mandatory respondent for this investigation,⁶ and, on September 18, 2015, issued an AD questionnaire to JSWSL.⁷ In October 2015, JSWSL and JSW Coated Products Limited (“JSCPL”) (collectively “JSW”)⁸ submitted timely consolidated responses to the Department’s AD questionnaire. From October 2015 through February 2016, we issued supplemental questionnaires to, and received responses to those questionnaires from, JSW.

Additionally, in the Initiation Notice, the Department notified parties of the opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of CRS to be reported in response to the Department’s AD questionnaire.⁹ From September through December 2015, the following interested parties submitted comments on the scope of the investigation: Caparo Precision Strip, Ltd.; Sumitomo Corporation of America; POSCO; Hitachi Metals America, Ltd.; Electrolux Home Products, Inc.; Electrolux Home Care Products, Inc.; Nippon Steel & Sumitomo Metal Corporation; Nissan North America, Inc.; the Ministry of Economic Development of the Russian Federation; JFE Steel Corporation; and Ameri-Source Specialty Products, Inc. On September 18, 2015, December 1, 2015, and January 6, 2016, Petitioners submitted rebuttal comments in response to the scope comments of each of the parties listed above.

On September 9, 2015, Petitioners, Caparo Precision Strip, Ltd., Tata Steel UK Ltd., and Tata Steel IJmuiden BV, respondents in the companion AD investigations of cold-rolled steel, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On September 16, 2015, Petitioners rebutted the product characteristic comments filed by Caparo Precision Strip, Ltd. and Tata Steel UK Ltd. In addition, on September 16, 2015, JSW and Usinas Siderurgicas de Minas Gerais — Usiminas S.A, a respondent in the companion AD investigation of CRS from Brazil, rebutted the product characteristic comments filed by Petitioners.

³ Id., 80 FR 51203.

⁴ See Memorandum to the File from Erin Kearney, International Trade Analyst, Office IV, AD/CVD Operations, Re: “Certain Cold-Rolled Steel Flat Products from India: Customs Data for Respondent Selection,” dated August 24, 2015.

⁵ See Letter from Duferco, “Certain Cold-Rolled Steel Flat Products from India: Duferco S.A. Comments on CBP Data,” dated September 2, 2015.

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, from Erin Kearney, International Trade Compliance Analyst, Office IV, Antidumping and Countervailing Duty Operations, Re: “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Respondent Selection,” dated September 17, 2015.

⁷ See Letter to JSW Steel Limited, dated September 18, 2015.

⁸ See infra “Affiliation and Collapsing” for a discussion on collapsing.

⁹ See Initiation Notice, 80 FR at 51199.

On September 10, 2015, the U.S. International Trade Commission (“ITC”) 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 CRS from India.¹⁰

On November 30, 2015, the Department published a notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).¹¹ On January 27, 2016, the Department tolled all administrative deadlines as a result of the government closure due to Snowstorm “Jonas.”¹² As a result of the 50-day postponement and the subsequent four day tolling due to the snowstorm, the revised deadline for the preliminary determination in this investigation is now February 29, 2016.

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

III. PERIOD OF INVESTIGATION

The POI is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2015.¹³

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“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 of 4.75 mm or more and 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:

(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 forth above, and

¹⁰ See Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom, 80 FR 55872 (September 17, 2015).

¹¹ See Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 74764 (November 30, 2015).

¹² See Memorandum from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, to the Record, Re: “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm ‘Jonas,’” dated January 27, 2016.

¹³ See 19 CFR 351.204(b)(1).

(2) where the width and thickness vary for a specific product (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 of 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; and (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
- 1.50 percent of aluminum, 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 as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). 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. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled 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 investigation if performed in the country of manufacture of the cold-rolled 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:

- Ball bearing steels;¹⁴
- Tool steels;¹⁵
- Silico-manganese steel;¹⁶
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.¹⁷
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.¹⁸

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500,

¹⁴ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

¹⁵ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹⁶ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

¹⁷ Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances, 79 FR 42,501, 42,503 (July 22, 2014). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.”

¹⁸ Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders, 79 FR 71,741, 71,741-42 (Dec. 3, 2014). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (i.e., the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (i.e., parallel to) the rolling direction of the sheet (i.e., B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

V. 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.

JSW is the only respondent in this investigation for which the Department calculated a company-specific rate and its rate is not zero or de minimis, and its rate is not determined entirely under section 776 of the Act. Accordingly, for purposes of determining the “all-others” rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for JSW as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.

VI. 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, five percent or more of the outstanding voting stock or shares of any organization and such organization. Section 771(33)(G) of the Act further provides that any person who controls any other person and such other person are affiliated. 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. The Department’s regulations at 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.¹⁹

For the reasons set forth in the Preliminary Affiliation and Collapsing Memorandum, which we incorporated by reference herein, we preliminarily determine that JSWSL and JSCPL are affiliated pursuant to sections 771(33)(E) and (G) of the Act,²⁰ that both produced the

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

²⁰ For further discussion of this issue, see Memorandum to Abdelali Elouaradia, Director, Office IV, from Patrick O’Connor, International Trade Analyst, Office IV, through Howard Smith, Program Manager, Office IV

merchandise under consideration during the POI, and that there is a significant potential for manipulation of prices and production because of: 1) the level of common ownership; 2) overlapping board members; and 3) intertwined operations.²¹ Based on the totality of the circumstances and in accordance with 19 CFR 351.401(f) and the Department's practice,²² we are collapsing JSWSL and JSCPL for the purposes of this preliminary determination.²³

VII. 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's sales of the subject merchandise to the United States were made at less than normal value ("NV"), the Department compared the export prices ("EPs") of those sales to NV as described in the "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 constructed export prices ("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 NVs with the EPs (or CEPs) of individual sales (i.e., the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department 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.²⁴ 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.

"Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: JSW Preliminary Affiliation and Collapsing Memorandum" ("JSW Preliminary Affiliation and Collapsing Memorandum"), dated concurrently with this preliminary determination.

²¹ See JSW Preliminary Affiliation and Collapsing Memorandum.

²² 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.

²³ See JSW Preliminary Affiliation and Collapsing Memorandum.

²⁴ 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) ("Welded Line Pipe").

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs 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 consolidated customer codes reported by JSW.²⁵ Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or in the 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 in 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 in 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,

²⁵ See Letter from JSW, Re: “Cold-Rolled Steel Flat Products from India: Third Supplemental Section A Response of JSW Steel Ltd.,” dated February 16, 2016 (“Third Supplemental A Response”) at 14-15, where JSW clarifies that for a certain customer, JSW deals with one trade representative in India, rather than the overseas traders.

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

Based on the results of the differential pricing analysis, the Department preliminarily finds that 91.35 percent of the value of U.S. sales passes the Cohen's *d* test,²⁶ which confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods and supports the consideration of an alternative comparison method. However, 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 the alternative average-to-transaction method applied to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for JSW.

VIII. 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 of the foreign like product, the Secretary normally will use the date of the sales invoice, as recorded in the exporter or producer's records kept in the

²⁶ See Memorandum to the File from Patrick O'Connor, "Preliminary Determination Calculation for JSW in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from India," dated concurrently with this memorandum ("JSW Preliminary Analysis Memorandum").

ordinary course of business. Additionally, the Secretary may use a date other than the date of the sales invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer established the material terms of sale.²⁷

JSW reported that for all sales, material terms of sale can change up to the sales invoice date.²⁸ For all sales, JSW reported invoice date as the date of sale.²⁹ In instances where the shipment date preceded invoice date, consistent with Department practice,³⁰ we used shipment date as the date of sale.

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by JSW in India during the POI that fit the description in the “Scope of the Investigation” section of this notice to be foreign like products for purposes of determining appropriate comparisons to subject merchandise sold in the United States. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no home market sales made in the ordinary course of trade of merchandise identical to that sold in the United States, 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 to subject merchandise based on the physical characteristics reported by JSW in the following order of importance: painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, and heat treatment.

X. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for JSW’s U.S. sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record.

We based EP on the price of packed subject merchandise sold to the first unaffiliated purchaser in the United States. We made deductions from the gross unit sales price for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which include, where appropriate, the following expenses: foreign inland insurance, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties and U.S. inland freight.

²⁷ 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.”).

²⁸ See Section A Response at 21, see also Sections B Response at 19, and Section C Response at 16.

²⁹ See Section A Response at 21-23; see also Section C Response at 16.

³⁰ See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

JSW requested a duty drawback adjustment.³¹ Section 772(c)(1)(B) of the Act states that the price used to establish EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or 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 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.³² The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second prong is that the company must demonstrate that there were sufficient imports of materials to account for the duty drawback or exemption granted for the export of the manufactured product.³³

We preliminarily determine to grant a duty drawback adjustment to JSW because it has satisfied the criteria described above for the Duty Drawback Program (“DDP”). Although Petitioners argue that, for JSW, there should be no adjustments to U.S. price for a duty drawback adjustment,³⁴ we preliminarily find that JSW provided the rules from the Indian government describing the program and the schedule of rates for exported goods.³⁵ Additionally, JSW identified the raw materials on which it paid an import duty, and provided worksheets: (1) detailing how it calculated the duty drawback on a transaction-specific basis; (2) linking the raw materials to production of merchandise under consideration, and (3) demonstrating that it imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales.³⁶ Based on JSW’s satisfaction of the two-prong test, we preliminary determine to make a duty drawback adjustment to U.S. price pursuant to section 772(c)(1)(B) of the Act.

However, the record shows that JSW obtained some of its inputs both from foreign and domestic sources. The portion of inputs that are domestically sourced were not imported and thus, not subject to duties. Under the Department’s current practice, we would normally divide the amount of the duty forgiven or rebated for the year by the value of exports subject to the duty drawback for the year to derive the adjustment to U.S. price. However, the Department has realized that in situations in which the inputs are obtained 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 of an input is an average

³¹ See Section C Response, at 38-40.

³² See Saha Thai Steel Pipe (Public) Co. v. United States, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (“Saha Thai”).

³³ 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.

³⁴ See Letter from Petitioners, Re: “Cold-Rolled Steel Flat Products from India: Comments on JSW Sections A-C Responses,” dated November 20, 2015; see also Letter from Petitioners, “Cold Rolled Steel Flat Products from India: Comments on JSW Supplemental B-C,” dated January 27, 2016 (“Petitioners’ Comments on Sections B and C”) at 10. See also, Letter from Petitioners, Re: “Cold-Rolled Steel Flat Products from India: Petitioners’ Pre-Preliminary Comments,” dated February 2, 2016 at 6.

³⁵ See Section C Response at 35-36 and Exhibit C-7.

³⁶ Id.; see also Letter from JSW, Re: “Cold-Rolled Steel Flat Products from India: Second Supplemental Sections B and C Responses of JSW Steel Ltd.,” dated February 4, 2016 at 16-22 and Exhibit C-18.

of the cost of both the foreign sourced inputs, which include the duties, and the domestic sourced inputs, on which no duties were imposed. Additionally, when the inputs are from both foreign and domestic sources, home market prices may no longer be assumed to account for the full duty. Adjusting EP 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 than reflected in the NV, creating an imbalance.

The duty drawback adjustment to U.S. price 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.”³⁷ In other words, home market sales prices and cost of production (“COP”) are import duty “inclusive,” while export market sales prices are import duty “exclusive.” In Saha Thai, the Court of Appeals Federal Circuit (“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.³⁸

Thus, the CAFC recognized that 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 because the inputs have been both 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, we have taken 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.”³⁹ Specifically, we will make an upward adjustment to U.S. price 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.⁴⁰ This ensures that the amount added to both sides of the dumping calculations is equal, i.e., duty neutral.

³⁷ See Saha Thai, 635 F.3d at 1339.

³⁸ Id.

³⁹ See Section 772(c)(1)(B) of the Act.

⁴⁰ See Certain Corrosion-Resistant Steel Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 63 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 15.

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, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act. We have added this per unit amount to the U.S. price.⁴¹

XI. 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.

We have determined that the aggregate volume of JSW's home market sales of the foreign like product is 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 in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included JSW's sales to affiliated parties for purposes of determining home market viability.⁴²

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.⁴³ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from its margin analysis because it considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁴⁴

⁴¹ 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.

⁴² 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).

⁴³ See 19 CFR 351.403(c).

⁴⁴ 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)).

JSW reported that the value of its home market sales to affiliated parties exceeded five percent of total value of its home market sales;⁴⁵ however, JSW reported that pricing to affiliates is consistent with pricing policies for unaffiliated customers in the home market.⁴⁶ 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 determine that sales made to the affiliated party were at made at arm's length.⁴⁷ Sales to affiliated parties in the home market that were not made at arm's-length prices are excluded from our analysis because we consider these sales to be outside of the ordinary course of trade.⁴⁸

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 U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵⁰ In order to determine whether the comparison market sales are at different stages in the marketing process than 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 sales prices),⁵¹ 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.⁵²

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

⁴⁵ See Letter from JSW to the Department, Re: Cold-Rolled Steel Flat Products from India: Supplemental Sections B and C Responses of JSW Steel Ltd." dated December 31, 2015 ("Supplemental B and C Response") at 5.

⁴⁶ See Supplemental B and C Response at 5 and Exhibit B-20; see also Section A Response at 29.

⁴⁷ 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 NV calculation).

⁴⁸ See 19 CFR 351.102(b).

⁴⁹ See 19 CFR 351.412(c)(2).

⁵⁰ 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").

⁵¹ Where NV is based on constructed value ("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).

⁵² See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

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.⁵³

JSW made home market sales through four channels of distribution: 1) direct sales to original equipment manufacturers (“OEMs”); 2) branch sales to OEM customers and traders; 3) direct sales to traders; and 4) online auction sales.⁵⁴ JSW reported a single home market LOT.⁵⁵ JSW’s home market selling activities can be generally grouped into four selling functions: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.⁵⁶ We found that aside from auction sales, the selling activities performed by JSW in the home market channels do not significantly differ.⁵⁷ However, for online auction sales, which consist of non-prime or slow-moving merchandise, JSW reported no selling activities other than placing the goods on the auction portal, processing and collecting payment from the auction winner, and arranging shipment to the auction winner.⁵⁸ This compares to the sales through the other three channels of distribution which involved numerous selling activities undertaken at a moderate to high level of intensity.⁵⁹ Accordingly, we determine that there are two LOTs in the home market. One LOT consists of direct sales to OEMs, branch sales to OEMs and traders, and direct sales to traders; and the other LOT consists of online auction sales.

With respect to the U.S. market, JSW reported that it sold subject merchandise through two channels of distribution, direct sales to traders and direct sales OEM customers.⁶⁰ JSW stated that although it has two channels of distribution for its U.S. sales, the selling activities and intensity of selling activities in each of the channels are the same; thus JSW reported a single LOT for its U.S. sales.⁶¹ We have found no evidence that the selling activities to traders and OEM customers in the U.S. differ and thus have determined that JSW’s sales to the U.S. market are at the same LOT.

We compared the LOTs in the home market to the LOT in the U.S. market and found the LOT in the U.S. market to be comparable to the home market LOT consisting of direct sales to traders and OEM customers and sales to traders and OEM customers through branches. While the level of intensity of selling activities in the home market LOT involving direct sales to traders and OEM customers and sales to traders and OEM customers through branches is at times higher than the level of intensity of selling activities in the U.S. LOT, the types of selling activities undertaken in the two LOTs (e.g., sales forecasting, inventory maintenance, technical assistance, market research, sales/marketing support) are typically the same.⁶² Further, the types of

⁵³ See, e.g., Orange Juice from Brazil, at Comment 7.

⁵⁴ See Section A Response at 15-17.

⁵⁵ See Section A Response at 15-18, and Exhibit A-7; see also JSW Preliminary Analysis Memorandum for a business proprietary discussion of JSW’s channels of distribution.

⁵⁶ See Section A Response at 15-17 and Exhibit A-7; see also Supplemental B and C Response at 9; see also JSW Preliminary Analysis Memorandum for a business proprietary discussion of JSW’s channels of distribution.

⁵⁷ See JSW Preliminary Analysis Memorandum for a business proprietary discussion of JSW’s channels of distribution.

⁵⁸ See Section A Response at 24 and Exhibit A-7.

⁵⁹ See id. at 23-24 and Exhibit A-7.

⁶⁰ See id. at 17 – 18.

⁶¹ See id. at 19 and Supplemental B and C Response at 4.

⁶² See Supplemental A Response at Exhibit A-7; see also JSW Preliminary Analysis Memorandum.

customers in these two LOTs are identical.⁶³ JSW acknowledged that it engages in few selling activities for home market auction sales, aside from those activities associated with its prior attempts to sell the merchandise through one of the other three home market channels of trade before placing the merchandise up for auction.⁶⁴ Because these sales are made through the auction channel of trade, rather than the other channels of trade identified in the home market, we have not attributed the selling activities performed while attempting to sell the merchandise in the other channels of trade to the home market auction channel of trade. Lastly, JSW has acknowledged that its auction sales process is a less intense selling process than the sales process for U.S. sales.⁶⁵ Therefore, we have determined that JSW's home market auction sales are at a different LOT than the U.S. LOT. For the reasons stated above, we find that all home market sales made to OEM customers and traders, whether direct or through a branch, (i.e., home market channels one through three) are at the same LOT as the LOT for U.S. sales and because we were able to match all U.S. sales to home market sales at a comparable LOT, no LOT adjustment is warranted.

D. *COP Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and countervailing duty ("CVD") law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than the COP.⁶⁶ 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 in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁶⁷ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁶⁸ Accordingly, the Department requested this information from JSW.⁶⁹ We examined JSW'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 the costs of materials and fabrication for the foreign like product, plus amounts for general and

⁶³ See Section A Response at 15-18; see also Section B Response at 17; see also Section C Response at 14

⁶⁴ See JSW's February 16, 2016 Response at 7

⁶⁵ Id.

⁶⁶ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

⁶⁷ 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").

⁶⁸ Id., 80 FR at 46794-95.

⁶⁹ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

administrative expenses (“G&A”) and interest expenses.⁷⁰ We relied on the COP data submitted by JSW.

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 and used sales prices that were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent’s comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in “substantial quantities.” Where 20 percent or more of a respondent’s sales of a given product are at prices less than the COP, we disregard the below-cost sales 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 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, we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in India. 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 for circumstances of sale (imputed credit expenses and other

⁷⁰ See “Test of Comparison Market Sales Prices” section, below, for treatment of home market selling expenses.

direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410. When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we 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.⁷¹

XII. 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.

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

Pursuant to section 772(c)(1)(C) of the Act, we made adjustments for countervailable export subsidies in determining cash deposit rates. These adjustments will be applied to the estimated weighted-average dumping margin calculated for JSW and to the “all-others” rate in the accompanying Federal Register notice to determine the cash deposit rates.

As indicated above, the Department has increased U.S. price to account for a duty drawback program used by JSW, in accordance with section 772(c)(1)(B) of the Act. This program was also found to be countervailable in the companion CVD investigation, and the benefit was calculated as the full amount of the duty drawback.⁷² 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 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.”⁷³ 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 JSW, as described below.

In the preliminary determination for the companion CVD investigation, we calculated an aggregated export subsidies rate of 3.56 percent for JSW, which is attributable to two separate export subsidy programs: the DDP and the Export Promotion of Capital Goods Scheme. In the instant investigation, we are adjusting the offset for the countervailed DDP program to reflect the amount of the AD duty drawback adjustment granted for the same DDP program under section

⁷¹ See 19 CFR 351.411(b).

⁷² See 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 9-10.

⁷³ See Saha Thai, 635 F.3d at 1339.

772(c)(1)(B) of the Act to avoid accounting for the impact of this program on JSW's dumping margin twice. This adjustment, 1.64 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.⁷⁴ Accordingly, the adjusted export subsidy offset is equal to 1.92 percent. This represents the aggregated export subsidies rate calculated for JSW of 3.56 percent, calculated in the companion CVD investigation, less a deduction from the DDP export subsidy rate of 1.64 percentage points. Thus, JSW's adjusted cash deposit rate equals 4.86 percent.

XIV. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.


XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 FEBRUARY 2016

Date

⁷⁴ 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) and accompanying Issues and Decision Memorandum at page 16.