




A-533-863  
Investigation  
**Public Document**  
E&C/V: KJA/RMM/JMW

May 24, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Determination of  
the Antidumping Duty Investigation of Certain Corrosion-  
Resistant Steel Products from India

## I. SUMMARY

The Department of Commerce ("Department") determines that certain corrosion-resistant steel products ("corrosion-resistant steel") from India is being, or is likely to be, sold in the United States at less-than-fair-value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification,<sup>1</sup> we made certain changes to the margin calculations for the mandatory respondents, JSW<sup>2</sup> and Uttam Galva<sup>3</sup> (collectively,

<sup>1</sup> See Memorandum to the File, through Neal Halper, Office Director, and Peter Scholl, Lead Accountant, from Ji Young Oh, Senior Accountant, "Verification of the Cost Response of JSW Steel Limited and JSW Steel Coated Products Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Flat Products from India" ("JSW Cost Verification Report") (April 7, 2016); Memorandum to the File, through Neal Halper, Office Director, and Peter Scholl, Lead Accountant, from Alma Sepulveda, Senior Accountant, and Laurens van Houten, Senior Accountant, "Verification of the Cost Response of Uttam Galva Steels Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Flat Products from India" (March 23, 2016) ("Uttam Galva Cost Verification Report"); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Kabir Archuleta, Senior International Trade Analyst, Ryan Mullen, International Trade Analyst, and Jessica Weeks, International Trade Analyst, "Verification of JSW Steel Ltd. and JSW Coated Steel Products in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel from India" (April 7, 2016) ("JSW Verification Report"); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, "Verification of Home Market and U.S. Sales of Uttam Galva Steels Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (April 7, 2016); and Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, "Verification of U.S. Sales of Uttam Galva North America in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (April 7, 2016).

<sup>2</sup> We refer to JSW Steel Ltd. ("JSWSL") and its wholly-owned affiliate JSW Steel Coated Products Limited ("JSCPL") collectively as "JSW."



“respondents”). The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying Federal Register notice.

## II. BACKGROUND

On January 4, 2016, the Department published the Preliminary Determination of this antidumping duty (“AD”) investigation.<sup>4</sup> During January, February and March 2016, the Department verified the sales and cost data reported by respondents, respectively, pursuant to section 782(i) of the Act.

In April 2016, the Department requested and received revised databases from JSW<sup>5</sup> and Uttam Galva.<sup>6</sup> Also in April 2016, Petitioners,<sup>7</sup> JSW, and Uttam Galva submitted case briefs<sup>8</sup> and rebuttal briefs.<sup>9</sup> On May 4, 2016, the Department held a public hearing on this AD investigation.

Subsequent to the Preliminary Determination, the Department received comments regarding the scope of the investigation. On February 9, 2016, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc. (collectively “Baosteel”) submitted scope comments on the Department’s preliminary scope determination regarding its prior requested scope exclusion for certain hot dipped galvanized steel products.<sup>10</sup> On February 16, 2016, Petitioners submitted their scope rebuttal in support of the Department’s preliminary scope decision.<sup>11</sup> On March 29, 2016, the Department rejected an improper filing of scope exclusion request by a Wisconsin-based importer, AmeriLux International Co., Ltd. (“AmeriLux International”) and filed our rejection letter and e-mail correspondence memo on the record of this investigation.<sup>12</sup> Based on the

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<sup>3</sup> We refer to Uttam Galva Steels Ltd. and Uttam Value Steels Limited (“UVSL”) and affiliates collectively as “Uttam Galva.”

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

<sup>5</sup> See Letter to the Secretary of Commerce from JSW, “Response to the Department’s Request for Submission of Updated Databases” (April 11, 2016).

<sup>6</sup> See Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva Steels Limited’s Revised Databases Submission” (April 7, 2016).

<sup>7</sup> Petitioners are United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc.

<sup>8</sup> See Letter to the Secretary of Commerce from Petitioners, “Case Brief of Petitioners” (April 18, 2016); Letter to the Secretary of Commerce from JSW, “JSW’s Resubmitted Case Brief” (April 21, 2016); and Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva Steels Limited’s Case Brief” (April 19, 2016).

<sup>9</sup> See Letter to the Secretary of Commerce from Petitioners, “Petitioners’ Rebuttal Brief” (April 25, 2016); Letter to the Secretary of Commerce from JSW, “JSW’s Rebuttal Brief” (April 25, 2016); and Letter to the Secretary of Commerce from Uttam Galva, “Uttam Galva Steels Limited’s Rebuttal Brief” (April 25, 2016).

<sup>10</sup> See Letter from Baosteel, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Post Preliminary Comments on Scope,” dated February 9, 2016. See also Scope Correction Notice.

<sup>11</sup> See Letter from Petitioners, entitled, “Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Petitioners’ Scope Rebuttal Brief,” dated February 16, 2016 (“Petitioners’ Scope Rebuttal”).

<sup>12</sup> See Letter to AmeriLux International, “Antidumping and Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea and Taiwan: Rejection of AmeriLux International’s November 30, 2015, Scope Exclusion Request,” dated March 29,

reasons provided in the rejection letter, the Department is not considering the AmeriLux International's comments for the final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum, which is incorporated by and hereby adopted by this final determination.<sup>13</sup>

We have conducted this investigation in accordance with section 733(b) of the Act.

### III. PERIOD OF INVESTIGATION

The period of investigation ("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.<sup>14</sup>

### IV. MARGIN CALCULATIONS

For JSW, the Department calculated export price ("EP") and normal value ("NV") using the same methodology stated in the Preliminary Determination.<sup>15</sup> Further, we made the following changes to our calculations based on findings at verification and our analysis of case and rebuttal briefs:<sup>16</sup>

1. We relied on the revised home market sales, U.S. sales, and cost of production ("COP") databases.
2. We revised our calculation of JSW's duty drawback.
3. We used JSW's reported forward currency exchange contract rates.
4. We revised our treatment of JSW's reported royalties.
5. We revised JSW's reported royalties, bank charges, and indirect selling expenses.
6. We revised JSW's reported domestic brokerage and handling on certain U.S. sales.
7. We recalculated JSW's home market inventory carrying costs and U.S. credit expense due to changes resulting from JSW's minor corrections.
8. We used the POI average raw material costs to calculate JSW's cost of manufacturing.
9. We applied JSW's reported general and administrative expense ratio to the revised total cost of manufacturing which reflects the POI average raw material costs.

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2016. See also Memorandum to the File, "Email Correspondence Regarding Scope Exclusion," filed concurrently with the rejection letter.

<sup>13</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice ("Final Scope Decision Memorandum").

<sup>14</sup> See 19 CFR 351.204(b)(1).

<sup>15</sup> See Preliminary Determination.

<sup>16</sup> See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, through Catherine Bertrand, Program Manager, Office V, "Final Determination Calculation for JSW Steel Limited and JSW Coated Products Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" ("JSW Final Determination Calculation") (May 24, 2016) ) and Memorandum to Neal Halper, Director, Office of Accounting, from Ji Young Oh, Senior Accountant, through Peter Scholl, Lead Accountant, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – JSW Steel Limited and JSW Coated Products Limited." (May 24, 2016).

10. We applied JSW's reported financial expense ratio to the revised total cost of manufacturing which reflects the POI average raw material costs.

For Uttam Galva, the Department calculated EP, constructed export price ("CEP"), and NV using the same methodology stated in the Preliminary Determination.<sup>17</sup> Further, we made the following changes to our calculations based on findings at verification and our analysis of case and rebuttal briefs:<sup>18</sup>

1. The Department relied on the revised home market sales, U.S. sales, and COP databases.
2. We made corrections to the order of product characteristics, and the currency treatment of inventory carrying costs incurred in the United States and indirect selling expenses incurred in the country of manufacture based on ministerial error allegations raised by Uttam Galva.
3. We revised the yield strength product characteristic for a particular invoice.
4. We revised Uttam Galva's reported zinc costs.
5. We revised the calculation of duty drawback.
6. We adjusted UVSL's reported total manufacturing costs.
7. We revised UVSL's general and administrative expenses.
8. We revised UVSL's per-unit financial expense.

## **V. COMPARISONS TO FAIR VALUE**

In the Preliminary Determination, the Department applied a differential pricing analysis for determining whether application of the average-to-transaction method is appropriate to calculate JSW's and Uttam Galva's weighted-average dumping margin, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act. We preliminarily applied the average-to-average ("A-to-A") method for all U.S. sales to calculate the weighted-average dumping margins for JSW and Uttam Galva. For this final determination, based on results of the differential pricing analysis, for JSW we are applying the alternative average-to-transaction ("A-to-T") method to all of JSW's U.S. sales, and for Uttam Galva we are continuing to apply the A-to-A method to Uttam Galva's U.S. sales. The change in our comparison method for JSW is due to changes in JSW's margin program, as noted above, which are based on our verification findings and analysis of case and rebuttal briefs, as discussed below.

For JSW, based on the results of the differential pricing analysis, the Department finds that 76.23 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>19</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated

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<sup>17</sup> See Preliminary Determination.

<sup>18</sup> See Memorandum to the File from Ryan Mullen, International Trade Analyst, through Catherine Bertrand, Program Manager, Office V, "Final Determination Calculation for Uttam Galva Steels Ltd. in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" ("Uttam Galva Final Determination Calculation") (May 24, 2016) and Memorandum to Neal M. Halper, Director, Office of Accounting, from Angie Sepulveda, Senior Accountant, through Peter Scholl, Lead Accountant, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Uttam Galva Steels Limited," (May 24, 2016).

<sup>19</sup> See JSW Final Determination Calculation.

using the A-to-A method and the weighted-average dumping calculated using an alternative comparison method based on applying the A-to-T method to all U.S. sales. Thus, for this final determination, the Department is applying the A-to-T method to all U.S. sales to calculate the weighted-average dumping margin for JSW.

For Uttam Galva, based on the results of the differential pricing analysis, the Department finds that 62.48 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>20</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department 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 those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this final determination, the Department is applying the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for Uttam Galva.

## **VI. LIST OF COMMENTS**

Comment 1: Duty Drawback  
Comment 2: Date of Sale  
Comment 3: Revision of Uttam Galva's Yield Strength Product Characteristics  
Comment 4: JSW's Sales Below Cost  
Comment 5: Export Subsidy Offset Deduction for Duty Drawback Subsidy Rates  
Comment 6: JSW's Forward Exchange Rate Contracts  
Comment 7: Treatment of JSW's Domestic Brokerage and Handling  
Comment 8: Adjustments for JSW Verification Findings  
Comment 9: JSW's POI Material Costs  
Comment 10: Uttam Galva's Cost of Production Minor Corrections  
Comment 11: JSW Royalty Expense  
Comment 12: Ministerial Errors  
Comment 13: Uttam Galva's Differential Pricing Analysis

## **VII. DISCUSSION OF COMMENTS**

### **Comment 1: Duty Drawback**

#### **Uttam Galva's Comments:**

- The statute requires a full upward adjustment to EP or CEP for duties that have not been collected by reason of the exportation of subject merchandise to the United States.
- The Department calculated Uttam Galva's duty drawback adjustment using a new methodology that is contrary to the statute; in this instance, Uttam Galva would be better off had it not requested an adjustment for the exempted import duties.

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<sup>20</sup> See Uttam Galva Final Determination Calculation.

- The Department inappropriately replaced the reported actual duty exemption amounts with a calculated duty exemption figure by allocating all of Uttam Galva's exempted import duties over total production.
- Although Uttam Galva reported a per-unit exempted duty cost that was verified, the Department's adjustment to Uttam Galva's direct material costs resulted in an increase in the amount of exempted import duties allocated to the cost of production.
- The Department's adjustment was based on the invalid assumption that home market selling prices are duty inclusive, and resulted in a reduced amount being added to U.S. price, which is inconsistent with the statute. The Department also allocated part of the adjustment to home market sales, which is not allowed by the statute.
- Uttam Galva's reported costs already include an imputed exempt duty cost, consistent with Saha Thai.<sup>21</sup>
- The Department should recalculate the duty drawback adjustment to U.S. price in a manner consistent with the statute, and should use either Uttam Galva's original reported cost adjustment or its revised cost allocation factor to calculate the proper cost adjustment.
- The change in implementing duty drawback has, in effect, rewritten the law, and the Department is bound by the Administrative Procedures Act's ("APA") notice and comment rulemaking requirement before implementing such a fundamental change.

#### **JSW's Comments:**

- The Department's regulations require that the starting price for EP be increased by the full amount of any import duties which have been rebated.
- The courts have held that the statute does not require an inquiry into whether prices in the home market include duties paid for inputs, and that the statute provides for a full upward adjustment to U.S. price for duties that have been rebated.
- The Department has stated that respondents are not required to demonstrate that the price of products in the home market includes duties on imported raw materials and that, even where materials are sourced domestically and no import duties are paid, an addition to U.S. price equal to the import duty is still appropriate.
- The Department should use JSW's reported duty drawback rebate in the margin calculation.
- At a minimum, the Department should use the revised data submitted by JSW after the Preliminary Determination and verified by the Department.

#### **Petitioners' Comments:**

- The new duty drawback adjustment used by the Department corrects historical abuse.
- Neither the statute nor the courts proscribe a methodology for this adjustment. 19 CFR 351.401(g) instructs the Department only to adopt an allocation method that avoids distortions.
- Although Uttam Galva argues that its margin would have been lower if it had not been granted a drawback adjustment, the statute does not allow a respondent to opt out of reporting duty drawback.

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<sup>21</sup> Saha Thai Steel Pipe (Pub.) Co. v. United States, 635 F.3d 1335 (Fed. Cir. 2011) ("Saha Thai").

- Although Uttam Galva is correct that the duty drawback adjustment to U.S. price logically leads to a lower margin, Uttam Galva failed to consider the corresponding adjustment to the cost of production. This cost adjustment both alters the weighted-average normal value at a control number (“CONNUM”) level and shrinks the pool of CONNUMs available as potential matches, which leads to unpredictable results.
- The courts have upheld the practice of adjusting both U.S. price and cost of production, and the Department is not required to use different allocation bases for each side.
- The Department should not accept Uttam Galva’s suggested adjustments because the numerator and denominator offered are on a different basis than the one used for the Preliminary Determination.
- The courts have held that a change in calculation methodology does not necessitate notice and comment rulemaking.
- For JSW, the Department should calculate a single drawback ratio to be applied to all observations.

**Department Position:** In determining whether an adjustment for duty drawback should be made, first we look for a reasonable link between the duties imposed and those rebated or exempted. Specifically, we require that the company meet our “two-pronged” test in order for this adjustment to be made.<sup>22</sup> The first element is that the import duty and its corresponding 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 amount of import duty refunded or exempted for the export of the manufactured product.<sup>23</sup> We find that JSW has satisfied these criteria for one duty program: the Duty Drawback Scheme (“DDS”). For Uttam Galva, we find that it has met the criteria for three duty programs: the DDS, Advance Authorization Program, and Duty Free Import Authorization.

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.”<sup>24</sup> In other words, home market sales prices and COP may be import duty “inclusive,” while U.S. (and third-country) export sales prices are import duty “exclusive.” Therefore, this inconsistency in whether prices or costs are import duty exclusive or inclusive will result in an inequity in the comparison of EP or CEP with fair value or NV. Thus, it is incumbent on the Department to ensure that the comparison of EP or CEP with fair value or NV is undertaken on an equitable duty neutral basis.<sup>25</sup> In order to do so, when warranted, the Department must make the duty drawback adjustment to EP or CEP in a manner that will render this comparison duty neutral. In the Preliminary Determination, as a result of the facts of this investigation, the Department determined that following the Department’s historical practice in applying the duty drawback adjustment (i.e., generally accepting the claimed duty drawback adjustment reported by the respondent) would not result in the desired import duty neutrality resulting in an equitable comparison of EP or CEP and NV.

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<sup>22</sup> See Saha Thai, 635 F.3d at 1340-41.

<sup>23</sup> Id.

<sup>24</sup> Id. at 1339.

<sup>25</sup> Id. at 1340-41.

In calculating the duty drawback adjustment for this final determination, we disagree with JSW and Uttam Galva that the statute requires the Department to accept the adjustment claimed by the respondents.<sup>26</sup> As we explained in the Preliminary Determination, the application of the duty drawback adjustment which simply accepts a respondent's claimed adjustment for duty drawback with no consideration of what import duties are included in the respondent's costs of materials may result in an imbalance in the comparison of EP or CEP with NV. For example, this inequity may be created because a producer sources a material input from both domestic and foreign suppliers. In this situation, on the NV side of the comparison, the annual average cost for the input is the average cost of both the foreign sourced input, which incurs import duties, and the domestic sourced input on which no duties were imposed. As such, a full measure of the claimed duty drawback adjustment cannot be presumed to be present in COP or reflected in the NV of the foreign like product. On the EP or CEP side of the comparison, adjusting U.S. sales prices for the full measure of the import duty which has been refunded or exempted, as advocated by the respondents, assumes that the exported products were produced solely from foreign sourced, and thus import duty inclusive, inputs. This will result in a larger amount of refunded or exempted import duties, as well as a larger per unit duty drawback adjustment to the EP or CEP, than the per unit duty cost, reflected in the product's COP, therefore creating an imbalance.

The amount of the duty drawback adjustment should be determined based on the import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration. That is, we assume for dumping purposes, that imported raw material and the domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported. The average import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration is the only amount of duty that can reasonably be reflected in the NV of the subject merchandise. The average import duty cost imbedded in the cost of producing the merchandise is the duty cost "reflected in NV,"<sup>27</sup> whether NV is based on home market prices or constructed value.

A reasonable question that follows is why, then, is the average duty imbedded in the cost of producing the merchandise under consideration the only reasonable amount of import duty that the Department can assume to be reflected in the NV? The natural inclination is to first think that the imported raw material inputs were first consumed in the exported merchandise, as the producer would seek to claim a duty drawback on the re-exportation of the imported inputs. Under this reasoning, the domestically purchased inputs not subject to duty would thus be consumed in the domestically sold merchandise. However, if the imported raw materials are assumed to be consumed in the exported merchandise and the domestic purchased raw materials were presumed to be consumed in the domestically sold merchandise, no duty drawback adjustment can be justified, as the NV would no longer reflect the import duty as the CAFC presumed in Saha Thai. The duty exclusive U.S. price would then be able to be matched directly with the duty exclusive NV with no adjustment for duty drawback.

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<sup>26</sup> See JSW Cost Verification Report and Uttam Galva Cost Verification Report.

<sup>27</sup> See Saha Thai, 635 F.3d at 1342.



Conversely, if the imported inputs are presumed to be consumed first in the products sold domestically, thus creating an import duty inclusive NV, then there would still be no justification for a duty drawback claim, as a precondition of a duty drawback is the consumption and subsequent re-exportation as part of another good and the collection of the rebate. It would be inappropriate to claim a duty drawback for re-exporting the imported input while simultaneously claiming the same input was consumed in a domestically sold product. Therefore, the only reasonable assumption is that the imported raw materials and domestically sourced raw materials are consumed proportionally between the corresponding domestic sales and export sales, as then both the U.S. price and NV will be import duty inclusive.

Accordingly 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,”<sup>28</sup> the Department has made an upward adjustment to EP and CEP based on the per unit amount of the import duty cost included in the COP for each CONNUM. These adjustments for duty drawback and import duty cost are described below.

JSW and Uttam Galva claim that the U.S. Court of Appeals for the Federal Circuit’s (“CAFC”) decision in Saha Thai supports their claim for a full adjustment. We disagree. The CAFC stated in Saha Thai:

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 drawback 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.<sup>29</sup>

Thus, the CAFC recognized that the purpose of the duty drawback adjustment is to create a comparison of EP or CEP with NV that is duty-neutral such that the amount included in both sides of this comparison is equitable and the weighted-average dumping margin is not distorted because of the inclusion or exclusion of import duties. In accordance with Saha Thai, the Department’s approach in this investigation results is a duty-neutral comparison. The CAFC decision in Saha Thai affirmed the Department’s adjustment to costs to remedy the distortion caused by a comparison of a duty-inclusive U.S. price to duty-inclusive NV based on constructed value.<sup>30</sup> In Saha Thai, we made an adjustment for duty drawback to Saha Thai’s reported U.S. sale prices, and also made a corresponding “imputed” adjustment to COP for exempted import duties which were never collected because Saha Thai’s production and exportation of subject merchandise was located in a duty-free zone exempt from import duties.<sup>31</sup> The court found that we reasonably made an imputed adjustment for import duties to COP, against Saha Thai’s

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<sup>28</sup> See Section 772(c) (1)(B) of the Act.

<sup>29</sup> See Saha Thai, 635 F.3d at 1339.

<sup>30</sup> Id. at 1342.

<sup>31</sup> Id. at 1344.

complaint that these costs were not recorded in its books and records, to preserve the equity for the comparison of NV with U.S. price.<sup>32</sup>

Section 772(c)(1)(B) of the Act states that the EP or 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.” We agree with Petitioners that the statute does not specify a particular methodology for making a duty drawback adjustment. When the statute is silent, the Department has the discretion to formulate a reasonable methodology to best ensure a duty neutral dumping margin.<sup>33</sup>

In the Preliminary Determination, because the Department did not have the necessary information on the record for Uttam Galva, we estimated, based on record evidence available at that time, the amount of exempted import duties applicable to the cost of manufacturing the merchandise under consideration. Subsequent to our Preliminary Determination, we received revised data from Uttam Galva that allow for a CONNUM-specific adjustment for duty drawback. The result is a CONNUM-specific adjustment for duty drawback that can be added to the U.S. price and an imputed adjustment for exempted import duties to the cost side of the equation. We agree, in part, with Uttam Galva that rather than use estimated duties, we should use the CONNUM-specific data submitted by Uttam Galva for the final determination.<sup>34</sup>

We disagree with Uttam Galva that the Department should rely on the exempted duty cost percentages submitted in the third Section D supplemental questionnaire response, because these percentages are based on the total value of input-specific exempted duties reported as an addition to U.S. price and, as such, do not account for the total duty exemptions during the POI.

Further, we disagree with Uttam Galva that the Department should replace the amount reported in the revised duty drawback field calculated in the Preliminary Determination with Uttam Galva’s actual duties reported in the U.S. sales data under the advance authorization program (“DEEC”), duty free import authorization (“DFIAU”) and DEEC/DFIAU fields. Based on the record evidence of this investigation, the Department finds 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.<sup>35</sup>

We also disagree with JSW that the Department’s previous statements on its methodology require its continued use in this investigation. As explained in the Preliminary Determination, the Department calculates the drawback adjustment based on case-specific facts. This approach has not changed, and was reiterated in Saha Thai, where the Department utilized investigation-specific information to calculate the allocation of the final duty drawback determination, while

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<sup>32</sup> Id.

<sup>33</sup> See e.g., Union Steel v. United States, 823 F. Supp.2d 1346, 1358 (CIT 2012) (holding that “because the statute is silent, it is within Commerce’s discretion to adopt a new reasonable methodology ....”).

<sup>34</sup> See Uttam Galva Cost Calculation Memo.

<sup>35</sup> See Preliminary Determination and accompanying Preliminary Decision Memorandum (“Preliminary Decision Memo”) at 13-17.

taking into account certain distortions (see above). Similarly, in this instant investigation, the Department is taking a case-specific approach in applying the duty drawback adjustment, for the reasons aforementioned. Therefore, for this final determination, we find that record information allows the Department to calculate a CONNUM-specific duty drawback adjustment in the manner described above.

Uttam Galva claims that it would be better off had it not requested an adjustment for the exempted import duties. The Department agrees with Petitioners that the statute does not allow parties to refuse to report the duty drawback adjustment, whether refunded or exempted; thus, Uttam Galva did not have a choice in whether or not to report information regarding duty drawback claims during the POI. Therefore, a comparison of margin calculation results with and without claiming a duty drawback adjustment is a moot point.

Moreover, as the Department has replaced the duty drawback amounts with CONNUM-specific duty costs reported in the cost file, Petitioners' argument for JSW that we should apply a single rate to all sales observations is moot.

Finally, the Department disagrees with Uttam Galva that a change in methodology requires a rulemaking procedure under the APA. As we stated in the Preliminary Determination, the Department is making the duty drawback adjustment based on the facts of this investigation on a case-by-case basis.<sup>36</sup> The respondents and all other parties in this investigation have been provided with the same due process as in any other proceeding before the agency (e.g., submission of factual information, opportunity for a hearing, submission of written argument in case briefs, and submission of rebuttal argument in rebuttal briefs, etc.). Further, the Department's previous calculation methodology is not a "rule" under the APA, but a practice. The Department's approach in this investigation with respect to the duty drawback adjustment is a case-specific refinement of its practice, and is thus not subject to the APA's notice-and-rulemaking procedures, because those procedures do not apply to "interpretative rules, general statements of policy or procedure, or practice."<sup>37</sup> The Court also has found that the "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings.<sup>38</sup>

## **Comment 2: Date of Sale**

### **Petitioners Comments:**

- The Uttam Galva CEP verification report refers to an example in which Uttam Galva claims the terms of sale materially changed between a sales order and invoice.

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<sup>36</sup> See Preliminary Decision Memo at 15.

<sup>37</sup> See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 2 (citing 5 U.S.C 553(b)(3)(A)).

<sup>38</sup> See also Jiaxing Brothers Fastener Co., Ltd. v. United States, 961 F. Supp. 2d 1323, 1330-31 (Ct. Int'l Trade 2014); GSA, S.R.L. v. United States, 77 F. Supp. 2d 1349, 1359 (CIT 1999) (citing SAA at 892) ("Antidumping and countervailing proceedings ... are investigatory in nature.").

- For both respondents, the record demonstrates that in most cases the material terms of sale are established at a different point than the invoice.
- JSW's databases include dates of purchase order and sales order dates, and include all sales that would be within the POI regardless of which date is used for date of sale. The Department should use the sales order date as the date of sale for JSW.
- Because Uttam Galva did not provide the dates of the purchase order and sales order, the Department should use facts available and subtract an estimated number of days from Uttam Galva's date of sale for U.S. sales, conservatively using existing record information.

**JSW's Comments:**

- As reported by JSW and verified by the Department, changes in quantity, price or product mix are not permitted after issuance of invoices but can be changed by mutual agreement after the order is placed and up to the point where the product is invoiced and shipped.
- The Department verified documentation related to a change in the product mix initially ordered by the customer and JSW provided numerous examples of such changes that had occurred before the invoice date.
- The record demonstrates that the material terms can change after any given sales contract and are not irrevocably established by the sales contract.
- The Department should follow its normal practice and use the invoice date as the date of sale for all of JSW's sales during the POI.

**Uttam Galva's Comments:**

- Petitioners agree that Uttam Galva did change the terms of sale and issued a revised sales order, thus proving that sales orders are nonbinding and can be changed.
- Under Petitioners' theory a company could have 99 percent of its sales orders revised multiple times and invoice date would still not be the date of sale.
- The material terms of sale are not fixed and can be changed up until the sales invoices are issued.
- At verification, Uttam Galva North America presented five examples of sales where the terms of sale changed prior to the invoice date.

**Department's Position:** In the Preliminary Determination we used the invoice date as the date of sale for both respondents in the home market.<sup>39</sup> Because the record evidence does not demonstrate that the sales order date better reflects the date on which the material terms of sale are finally established, we are making no changes from our Preliminary Determination with respect to the appropriate date of sale for this final determination.

Under 19 CFR 351.401(i), the Department "normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business" to determine the date of sale. While the regulation continues that the Department "may use a date other than the date

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<sup>39</sup> See Preliminary Decision Memo at 12.

of invoice if {it} is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale,” the Department has made clear that this provision is not intended to supplant the use of the invoice date as the “default” date of sale. In adopting the regulation, the Department explained that:

{A}s a matter of commercial reality, the date on which the terms of a sale are first agreed is not necessarily the date on which those terms are finally established. In the Department’s experience, price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced... The Department also has found that in many industries, even though a buyer and seller may initially agree on the terms of a sale, those terms remain negotiable and are not finally established until the sale is invoiced. Thus, the date on which the buyer and seller appear to agree on the terms of a sale is not necessarily the date on which the terms of sale actually are established...

If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice. However, the Department emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly “established” in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.<sup>40</sup>

The courts have recognized the regulatory presumption of the invoice date as the date of sale.<sup>41</sup> Accordingly, the Department has continued to rely on the invoice date as the date of sale in the absence of satisfactory evidence that the material terms of sale are firmly established on a different date,<sup>42</sup> or the earlier of either the shipment date or the invoice date when such dates reflect more appropriately the date on which the material terms of the sale are established.<sup>43</sup>

The presumption of invoice date as the date of sale does not obligate a respondent to provide a comprehensive analysis to demonstrate changes in the terms of sale between purchase order and invoice; rather, the burden is on the party seeking to establish a date of sale other than invoice

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<sup>40</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27348-27349 (May 19, 1997).

<sup>41</sup> See, e.g., Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087 (CIT 2001).

<sup>42</sup> See, e.g., 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value, 74 FR 10543 (March 11, 2009) and accompanying Issues and Decision Memorandum at Comment 1; Lightweight Thermal Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 11; Stainless Steel Bar from Germany: Final Results of New Shipper Review, 72 FR 39059 (July 17, 2007) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>43</sup> See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007) and accompanying Issues and Decision Memorandum at Comment 4; Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 71357 (December 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

date to “satisfy” the Department that an alternate date is more appropriate.<sup>44</sup> In this proceeding, Petitioners argue that the date of sale should be based on the sales order, but have not presented satisfactory evidence that the material terms of sale are established on a date other than the date of invoice. Specifically, for Uttam Galva’s U.S. sales, we used the invoice date as the date of sale because Uttam Galva demonstrated that there could be changes to a sale after shipment from India but before the issuance of the invoice.<sup>45</sup> For JSW’s U.S. sales, we used the date of shipment because JSW demonstrated that the material terms can change up until the point that the product is shipped.<sup>46</sup>

Finally, we disagree with Petitioners’ argument that the Department should use facts available for Uttam Galva’s date of sale for U.S. sales because, as discussed above, Uttam Galva demonstrated that there could be changes to the terms of sales before the issuance of the invoice. Therefore, it is unnecessary to utilize an estimated date of sale.

### **Comment 3: Revision of Uttam Galva’s Yield Strength Product Characteristics**

#### **Petitioners’ Comments:**

- Uttam Galva unilaterally submitted a new home market database one business day before the Preliminary Determination that changed the CONNUMs for many home market observations.
- These changes resulted in a reduction in the margin and also caused a drop in the average foreign unit price in dollars (“FUPDOL”).
- For some of these yield strength specifications, Uttam Galva reported maximum yield strengths instead of the minimum yield strengths requested by the Department.
- During verification, the Department collected only one mill test certificate for specifications for which Uttam Galva modified its reported yield strength. This certificate showed that the actual yield strength for that product exceeded the maximum yield strength for the reported specification.
- The Department should change the home market margin program to revert Uttam Galva’s changes to the yield strength specifications.

#### **Uttam Galva’s Comments:**

- The Department’s questionnaire requested the minimum yield strength per the specification and grade of steel, not the actual yield strength as per the mill certificate.
- For Indian specifications where only the maximum yield strength was provided for in the specification, Uttam Galva equated the Indian specification and grade to an ASTM specification and grade where a minimum yield strength was noted in the ASTM standard.

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<sup>44</sup> See Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

<sup>45</sup> See, e.g., Letter to the Secretary of Commerce from Uttam Galva “Uttam Galva Steels Limited’s Supplemental Section C Questionnaire Response” (November 2, 2015) at 5-6 and Exhibit SC-4A; Letter to the Secretary of Commerce from Uttam Galva “Uttam Galva Steels Limited’s Third Supplemental Sections B and C Questionnaire Response” (December 2, 2015) at 6-7 and Exhibit 3S-4.

<sup>46</sup> See Preliminary Decision Memo at 12. See also JSW Verification Report at 7 (“Company officials stated that if a regular customer placed an order of a product that was frequently sold, the order was completed but not yet dispatched, and the customer decided to reduce the order by half, JSW would allow such a change.”).

- During verification, Uttam Galva's technical quality experts explained their efforts to equate the Indian and ASTM specifications. Apart from two issues, the Department did not find any discrepancies with Uttam Galva's reported product characteristics.

**Department Position:** In a supplemental Section D response, Uttam Galva described difficulties in reporting yield strength where no minimum was provided in the product specification, presented its methodology for equating the Indian standard kept in its production system with the corresponding ASTM standard, and submitted revised sales and cost databases reflective of this information. Because the revised sales and costs databases were submitted in close proximity to the Preliminary Determination, we did not consider them for our Preliminary Determination.

During verification, in which the Department confirmed the accuracy of the revised databases, we reviewed the methodology used by Uttam Galva to convert Indian standards to ASTM standards and found it consistent with Uttam Galva's production data kept in the normal course of business. Although Petitioners claim that the revised databases affect the dumping margin and the average FUPDOL, Petitioners have not substantiated this claim, nor have we found any reason to reach this conclusion. While Petitioners identified only one mill test certificate for one sale where the yield strength exceeded the maximum of the standard recorded in Uttam Galva's production system, the changes requested by Petitioners affect many of the home market observations and CONNUMs. In addition, the Department verified the reported yield strength for the other sales examined at verification and did not find additional errors.

For this final determination, we are relying on Uttam Galva's revised home market and U.S. sales databases, inclusive of minor corrections presented or otherwise found during verification, as this is the information that the Department verified. We are, however, revising the yield strength physical characteristic for the one invoice noted by Petitioner because the mill test certificate reflects a higher maximum yield strength than the standard used by Uttam Galva to equate to the ASTM standard. While we will not implement Petitioners' suggested correction, because the record does not support a finding of widespread inaccuracies, we are advising interested parties that we intend to scrutinize the accuracy of respondents' reporting methodology for yield strength in future administrative reviews should this investigation result in an order.

#### **Comment 4: JSW's Sales Below Cost**

##### **JSW's Comments:**

- On July 23, 2015, the Department issued sections A-C of the AD questionnaire, stating that "{y}ou are not requested to respond now to section D. . . {h}owever, if the petitioner alleges that your sales in the home or third-country market are at prices below the cost of production. . . we may request that you respond to section D at a later {date}."
- At no point in this investigation was there an allegation that Indian producers were selling below cost and no valid obligation for JSW to submit a response to the Section D questionnaire.

- The only reason JSW was compelled to respond to the Section D questionnaire was 1) the entry into effect of the Trade Preferences Extension Act of 2015 (“TPEA”); and 2) the delayed issuance of final product characteristics in this investigation.
- The 2015 Act applied to proceedings in which the complete initial questionnaire had not been issued as of August 6, 2015.
- The product characteristics in the Indian investigation were inexplicably issued on the exact same day as the effective date of the 2015 Act, August 6, 2016.
- The Department’s delay in issuing the product characteristics calls into question the Department’s duty to remain impartial and the CIT has ruled against the sales below cost test in similar situations.<sup>47</sup>
- The Department should calculate JSW’s margin without regard to the cost test.

**Petitioners’ Comments:**

- When a petition does not include a cost allegation, it is standard practice for petitioners to file one within 20 days after the initial questionnaire response.
- But for the enactment of the 2015 Act, Petitioners would have filed a cost allegation in this investigation and the Department would have initiated a cost investigation.
- Given the results of the Preliminary Determination, the standard analysis for cost allegations would have resulted in the Department initiating an investigation of JSW’s cost of production.
- The Department followed its rules in requiring JSW to submit a Section D response.

**Department Position:** The Department disagrees with JSW that it should not have issued Section D of the AD questionnaire to the respondents. On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department’s requests for information on sales at less than COP.<sup>48</sup> The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.<sup>49</sup> Specifically, the Department stated that it will request constructed value and cost of production information from respondent companies in all AD proceedings . . . in which the complete initial questionnaire has not been issued as of August 6, 2015.”<sup>50</sup>

Thus, 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 COP information from respondent companies in all AD proceedings. Accordingly, the Department requested this information from JSW and Uttam Galva.

<sup>47</sup> Citing to FAG Italia S.p.A. v. United States, 110 F.Supp.2d 1055, 1061 (Ct. Int’l Trade 2000) (“FAG Italia”).

<sup>48</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

<sup>49</sup> 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, 46794 (August 6, 2015).

<sup>50</sup> Id.



As JSW itself acknowledges, the Department issued the product characteristic fields of its Sections B and C questionnaires on August 6, 2016. Until the issuance of the product characteristic fields, the Department made clear that the initial questionnaire was not complete.<sup>51</sup> JSW alleges that the issuance of the final product characteristics was somehow delayed in order for the Department to conduct an investigation of sales-below-cost under TPEA. This claim is unfounded. Further, though the product characteristics were initially issued in the India investigation on August 6, 2015, those characteristics underwent subsequent revisions for all companion cases on August 14, 2015, and August 18, 2015.<sup>52</sup> Thus, the final product characteristics in these investigations were not ultimately issued until August 18, 2015, well after the August 6, 2015, date established by the TPEA. Therefore, the provisions of the 2015 Act apply to this investigation and respondents were obligated to submit a Section D response.

Although JSW claims that the situation in FAG Italia “is identical here,” the facts of that case are readily distinguishable. In FAG Italia, the Department self-initiated a sales-below-cost investigation under the premise that it had reasonable grounds to suspect that sales of the foreign like product had been made at prices below the cost of production, which was subsequently found to be incorrect.<sup>53</sup> The Department then allowed an interested party to submit an allegation after the regulatory deadline, which the CIT deemed as a failure to remain impartial.<sup>54</sup> In this case, the Department followed its interpretative rule and requested a Section D response from JSW on August 6, 2015<sup>55</sup> in accordance with the TPEA, just as it has for other proceedings where the complete initial questionnaire was not issued as of August 6, 2015. Accordingly, we are continuing to calculate JSW’s AD margin with regard to the below-cost sales test for this final determination.

## **Comment 5: Export Subsidy Offset Deduction for Duty Drawback Subsidy Rates**

### **Uttam Galva’s Comments:**

- The Department should follow its “normal” methodology by allowing for a full export subsidy offset adjustment to the AD rate.

### **Petitioners’ Comments:**

- The Department should continue to employ the methodology utilized in the Preliminary Determination. In the Preliminary Determination, the Department deducted from the

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<sup>51</sup> See Letter to JSW from Catherine Bertrand, Program Manager, Office V regarding AD questionnaire (July 23, 2015) (“AD Questionnaire”) (“Please note that the CONNUMs for Sections B and C are currently pending and will be provided to you shortly. We will establish the due dates for those sections at that time.”).

<sup>52</sup> See Memo to the File from Alexis Polovina, Senior International Trade Analyst, Office V “Product Characteristics on Antidumping Duty Investigations of Certain Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan” (August 14, 2015); Memo to the File from Alexis Polovina, Senior International Trade Analyst, Office V “Product Characteristics on Antidumping Duty Investigations of Certain Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan” (August 18, 2015).

<sup>53</sup> See FAG Italia, 110 F.Supp.2d at 1058-59.

<sup>54</sup> Id. at 1061.

<sup>55</sup> See Letter to All Interested Parties from Catherine Bertrand, Program Manager, Office V, “Product Characteristics for the Antidumping Investigation of Certain Corrosion-Resistant Steel Products from India” (August 6, 2015).

export subsidy offset the difference in the AD margin with and without the duty drawback adjustment to account for the fact that we countervailed these duty drawback export subsidy programs in the companion countervailing duty (“CVD”) investigation.

**Department Position:** Section 772(c)(1)(C) of the Act states that the Department shall increase EP or CEP by the amount of CVD duties imposed on export subsidy programs in companion investigations. In companion AD/CVD investigations, the finding of benefits of an export subsidy program in the CVD proceeding presumes that the subsidy contributed to lower-priced sales of subject merchandise to the U.S. market in the AD proceeding. Thus, the subsidy and the dumping are presumed to be related, and imposing duties against both would impose two duties against the same situation. Section 772(c)(1)(B) of the Act also provides for an increase to EP or CEP for “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 the preliminary determination of the companion CVD investigation,<sup>56</sup> we countervailed, as export contingent, the same duty drawback programs claimed for adjustment by JSW and Uttam Galva under section 772(c)(1)(B) of the Act. For our Preliminary Determination, we found that, based on the presumption noted above, simultaneously providing a duty drawback adjustment in the AD investigation while simultaneously deducting the duty drawback subsidy rates as part of the export subsidy offset would equate to “double counting” for duty drawback in the AD margin calculation. As such, for the Preliminary Determination, we adjusted the export subsidy offset to counteract this “double counting” of duty drawback, consistent with our methodology in India OCTG.<sup>57</sup> That methodology is to deduct from the export subsidy offset the difference between the AD margin inclusive of the duty drawback adjustment and the AD margin exclusive of the duty drawback adjustment.

For the final determination in the companion CVD investigation, the Department is finding countervailable the same duty drawback programs as export contingent.<sup>58</sup> As the facts on the record of this investigation have not changed since the Preliminary Determination, we continue to apply our methodology from India OCTG and the Preliminary Determination in this final determination.

## **Comment 6: JSW’s Forward Exchange Rate Contracts**

### **JSW’s Comments:**

- JSW hedged the exchange rate for most of its U.S. sales under forward contracts.

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<sup>56</sup> See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination, 80 FR 68854 (November 6, 2015) and accompanying Preliminary Decision Memorandum.

<sup>57</sup> 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.

<sup>58</sup> See Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India and accompanying Issues and Decision Memorandum, dated concurrently with this memorandum.

- In the Preliminary Determination the Department used Federal Reserve Bank exchange rates for JSW's sales.
- The Department verified and linked JSW's forward contracts to specific sales.
- 19 CFR 351.415(b) and Policy Bulletin 96-1 provide that the Department will use the specified exchange rate to convert foreign currency if a currency transaction on forward markets is directly linked to an export sale under consideration.
- JSW fully substantiated and linked the use of forward exchange contracts to specific sales and provided those rates to the Department.
- The Department should calculate JSW's margin using the forward exchange rates reported.

**Petitioners' Comments:**

- The Preamble notes that forward currency transactions usually involve a fee that should be accounted for in using forward exchange rates.
- The Department should not use JSW's forward contract exchange contracts unless it also takes fees into account when calculating the U.S. price.

**Department's Position:** The Department agrees with JSW that we should use its reported forward contract exchange rates in calculating JSW's margin for this final determination. Although JSW first brought forward this argument in its ministerial error comments,<sup>59</sup> the Department determined at the time that the allegation did not meet the criteria for ministerial errors pursuant to 19 CFR 351.224(f).<sup>60</sup> However, we noted that interested parties would have the opportunity to address our preliminary finding in case briefs prior to the final determination.<sup>61</sup>

Section 773A of the Act states that "if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency." At verification, Department verifiers were able to tie specific U.S. sales to the applicable forward contracts and JSW's accounting records.<sup>62</sup> Although Petitioners point out that forward currency transactions usually involve fees and the Department addressed such fees in the Preamble,<sup>63</sup> the record demonstrates that such fees have been accounted for in JSW's reported data.<sup>64</sup> Accordingly, we are using JSW's reported forward contract exchange rates for this final determination.

<sup>59</sup> See Letter to the Secretary of Commerce from JSW "Corrosion-Resistant Carbon Steel Flat Products From India: JSW's Ministerial Error Comments" (December 30, 2015).

<sup>60</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James Doyle, Director, Office V "Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Allegation of Significant Ministerial Errors in the Preliminary Determination" (January 15, 2016).

<sup>61</sup> Id.

<sup>62</sup> See, e.g., JSW Verification Report at 23-24.

<sup>63</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27376 (May 19, 1997) ("Preamble").

<sup>64</sup> See JSW Verification Report at 23-24 and Verification Exhibit 48; see also See "Public Hearing in the Matter of: the Investigation of the Antidumping Duty Order of Certain Corrosion Resistant Steel Products from India" (May 11, 2016) at 45 ("Those expenses associated with those contracts were reported in our bank charge U-field. So we

## **Comment 7: Treatment of JSW's Domestic Brokerage and Handling**

### **JSW's Comments:**

- The final margin calculation should account for the Department's finding at verification affecting the reported domestic brokerage and handling expense for certain container shipments.

### **Petitioners' Comments:**

- JSW's final margin calculation should reflect the difference in domestic brokerage and handling for certain invoice numbers that were not break bulk<sup>65</sup> but were container shipments, as noted in the verification report.

**Department Position:** We agree with both JSW and Petitioners that the final margin calculation should reflect the difference in the domestic brokerage and handling amount for the affected sales noted in the verification report.<sup>66</sup> Accordingly, we will correct JSW's reported domestic brokerage and handling expense for certain invoice numbers in the final margin calculation.

## **Comment 8: Adjustments for JSW Verification Findings**

### **JSW's Comments:**

- The Department should make corrections to JSW's reported royalties ("ROYALH"), bank charges ("BANKCHARH"), and indirect selling expenses ("INDIRS1H") based on the Department's findings at verification.

### **Petitioners' Comments:**

- The ROYALH, BANKCHARH, and INDIRS1H/2H expenses should be corrected for the final margin run program to account for the Department's findings at verification.

**Department Position:** We agree with both JSW and Petitioners that the expenses should be corrected for the final margin run program. At verification, we found that JSWSL allocated certain expenses using a nine-month period of sales quantity as the denominator, instead of a twelve-month period. We verified the expenses based on the correct allocation.<sup>67</sup> Accordingly, we will correct JSW's reported expenses for ROYALH, BANKCHARH, and INDIRS1H in the final margin calculation.

## **Comment 9: JSW's POI Material Costs**

### **JSW's Comments:**

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reported both the expense, as well as the actual used exchange rates.").

<sup>65</sup> Merriam Webster Dictionary defines "break bulk" as "of or relating to materials shipped in conventional individual packages and not containerized." <http://www.merriam-webster.com/dictionary/break%E2%80%93bulk>

<sup>66</sup> See JSW Verification Report at Verification Issues and XI Other Adjustments and Expenses, Royalties Expense.

<sup>67</sup> *Id.* at Other Adjustments and Expenses, Bank Charges, Royalties Expense, and Indirect Selling Expenses.

- JSW used two different methodologies to calculate the reported raw material costs: the POI-average raw material costs and the quarterly-based POI raw material costs.
- If the Department continues to use JSW's reported cost data, the Department should use the POI-average raw material costs, rather than the quarterly-based POI raw material costs for the final determination.

**Department Position:** We agree with JSW. The Department's normal practice for calculating the cost of manufacture of subject merchandise is based on the annual weighted average production cost for the POI (or POR). As such, for the final determination, we used the POI average raw material costs for the final determination.

#### **Comment 10: Uttam Galva's Cost of Production Minor Corrections**

##### **Uttam Galva's Comments:**

- For the final determination, the Department should accept the two minor corrections that Uttam Galva presented at the cost verification.
- The Department should rely on the "uttamcp03m\_f" COP database submitted in the 2SDQR<sup>68</sup> and the exempted duty cost calculation submitted in the 3SDQR<sup>69</sup>.
- The Department should revise Uttam Galva's reported zinc costs to reflect the correction to the zinc consumption value presented at the cost verification.
- The Department can use the SAS language provided by Uttam Galva to apply these changes.

##### **Petitioners' Comments:**

- Uttam Galva uses minor cost of production corrections in an attempt to gain a de minimis margin.
- The Department should not rely on the exempted duty cost calculation included in the minor corrections because it is the same exempted duty cost calculation Uttam Galva proposes at Comment 1 above.

**Department Position:** We agree with Uttam Galva in part. In reference to the first minor correction, as discussed in the cost verification report,<sup>70</sup> in the 3SDQR Uttam Galva submitted the "uttamcp04m\_f" cost file which included a revised input-specific exempted duty cost reported in two separate fields. In creating the "uttamcp04m\_f" cost file Uttam Galva did not use the final version of the "uttamcp03m\_f" cost file. Therefore, we cannot rely on the costs as reported in the "uttamcp04m\_f" cost file. As such, for the final determination, we have relied on the "uttamcp03m\_f" cost file submitted in the 2SDQR. See Comment 1 above, for the discussion on the exempted duty cost calculation.

In reference to the second minor correction, as discussed in the cost verification report,<sup>71</sup> in calculating the reported zinc costs Uttam Galva used a total zinc consumption value that included

<sup>68</sup> See Uttam Galva's second supplemental section D questionnaire response dated December 18, 2015 ("2SDQR").

<sup>69</sup> See Uttam Galva's third supplemental section D questionnaire response dated December 30, 2015 ("3SDQR") at pages 3-4 and Exhibit 3SD-3.

<sup>70</sup> See Uttam Galva Cost Verification Report at page 2.

<sup>71</sup> Id. at 2-3.

sales of zinc. Therefore, the zinc allocation rate was overstated. As such, for the final determination, we have revised Uttam Galva's reported zinc costs to reflect the correct zinc consumption value.

### **Comment 11: JSW Royalty Expense**

#### **JSW's Arguments:**

- Royalties that are a function of a respondent's sales turnover should be treated as a direct expense.

#### **Petitioners' Rebuttal:**

- Based on JSW's description of this expense and the Department's treatment of royalty expense during the December 21, 2015 Preliminary Determination Calculation for JSW memorandum, royalty expense should be treated as an indirect selling expense

**Department Position:** We agree with JSW that its royalty expense should be treated as a direct selling expense. The Department's practice is to treat royalty expenses that are directly related to the sales under consideration as direct selling expenses, whereas royalty expenses such as a flat-fee payment at the beginning of the year independent of the actual volume of sales would be considered indirect selling expenses.<sup>72</sup> Notably, Section B of the AD questionnaire lists royalties under direct selling expenses.<sup>73</sup> The Glossary at Appendix I of the AD questionnaire states that "{d}irect expenses are typically variable expenses that are incurred as a direct and unavoidable consequence of the sale (i.e., in the absence of the sale these expenses would not be incurred)" while "{i}ndirect expenses are fixed expenses that are incurred whether or not a sale is made."<sup>74</sup> JSW reported, and the Department observed at verification that the nature of its royalty expenses fall in the former category. Accordingly, in this case we will treat royalty expense as a direct selling expense for this final determination.

### **Comment 12: Ministerial Errors**

#### **Uttam Galva's Comments:**

- In its January 15, 2016, ministerial error memorandum, the Department identified three ministerial errors in the Preliminary Determination that it would correct in the final determination. The Department should make these corrections in its final determination programs.

**Department Position:** The Department stated in its ministerial error memorandum<sup>75</sup> that the treatment of Uttam Galva's sold but not produced CONNUMs, its order of product

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<sup>72</sup> See, e.g., Enforcement and Compliance Antidumping Manual, Chapter 08: Normal Value.

<sup>73</sup> See, e.g., Letter to the Secretary of Commerce from JSW "Sections B and C Questionnaire Response" (September 29, 2016) at B-36 ("Report only direct expenses in Fields 28 through 37" and B-41 ("FIELD NUMBER 36.0: Royalties").

<sup>74</sup> See, e.g., AD Questionnaire at Appendix I.

<sup>75</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, "Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Allegation of

characteristics, and the currency treatment of inventory carrying costs incurred in the US and indirect selling expenses incurred in the country of manufacture constitute ministerial errors that should be corrected at the final determination. Therefore, we are correcting the above ministerial errors as discussed in our ministerial error memorandum.

### **Comment 13: Uttam Galva's Differential Pricing Analysis**

#### **Uttam Galva's Comments**

- In the Preliminary Determination, the Department found that 55.36 percent of Uttam Galva's U.S. sales passed the Cohen's *d* test, but calculated the company's dumping margin using the A-to-A methodology rather than the average-to-mixed alternative methodology because it found there was no meaningful difference in the margin calculated under the two methodologies. Should the results of the differential pricing analysis change, the Department should continue to use the A-to-A methodology because the alternative methodology is excessively punitive in nature and has no justification in law.

#### **Petitioners' Comments**

- The Department should continue to apply the analysis that it has applied in other proceedings.

**Department Position:** The comments on our differential pricing methodology are not relevant to this final determination because the Department has used the standard average-to-average method to calculate Uttam Galva's weighted-average dumping margin.

## **VIII. NEGATIVE FINDING OF CRITICAL CIRCUMSTANCES**

On July 23, 2015, Petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise from all five countries under investigation.<sup>76</sup> On November 5, 2015, the Department issued its preliminary critical circumstances determinations for all five countries.<sup>77</sup> Pursuant to this determination, the Department determined that critical circumstances did not exist for imports of subject merchandise from JSW, Uttam Galva, and "all-others."<sup>78</sup>

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the

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Significant Ministerial Errors in the Preliminary Determination" (January 15, 2016).

<sup>76</sup> 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).

<sup>77</sup> 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, 80 FR 68504 (November 5, 2015).

<sup>78</sup> Id.

subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the “relatively short period” of time may be considered “massive.”

19 CFR 351.206(i) defines “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date on which the petition is filed) and ending at least three months later (*i.e.*, the comparison period). The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

As explained in the Preliminary Determinations of Critical Circumstances, the Department previously has not imposed an AD order on the merchandise under consideration and the Department is not aware of any AD orders on corrosion-resistant steel from India in another country.<sup>79</sup> Therefore, we found no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.<sup>80</sup>

Turning to section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.<sup>81</sup> The final dumping margins we calculated of 4.44 percent for JSW and 3.05 percent for Uttam Galva do not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for EP sales and 15 percent for CEP sales). Therefore, we determine that there is insufficient evidence to find that importers knew or should have known that the exporters were selling the merchandise under consideration at LTFV in accordance with section 733(e)(1)(A)(ii) of the Act.<sup>82</sup> Further, as stated in the Preliminary

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<sup>79</sup> Id. at 68506.

<sup>80</sup> Id.

<sup>81</sup> See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005).

<sup>82</sup> See, e.g., Certain Oil Country Tubular Goods From the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 10484, 10485-86 (February 25, 2014), unchanged for one respondent in Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part, 79 FR 41971 (July 18, 2014) and accompanying Issues and Decision Memorandum at 4-5 (“Because the Department calculated a de minimis rate for Borusan, we find that there is not a sufficient basis pursuant to section 735(a)(3)(A)(ii) of the Act to find that importers should have known that Borusan was selling the merchandise under consideration at LTFV, leading us to determine that critical circumstances do not exist for Borusan.”); Grain-Oriented Electrical Steel From the Czech Republic: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 26717 (May 9, 2014), unchanged for one respondent and companies covered by the all-others rate in Grain-Oriented Electrical Steel From the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical



Determinations of Critical Circumstances, our practice with respect to companies subject to the “all-others” rate is to base our critical circumstances analysis on the experience of the investigated companies.<sup>83</sup> Therefore, the record does not support imputing importer knowledge of sales at LTFV to imports of exporters subject to the “all-others” rate.

Because the statutory criteria of section 733(e)(1)(A) of the Act have not been satisfied, we did not examine whether imports from JSW, Uttam Galva, or from all other companies were massive over a relatively short period pursuant to section 733(e)(1)(B) of the Act. Accordingly, we find that the statutory criteria necessary for determining affirmative critical circumstances have not been met and, therefore, we determine that critical circumstances do not exist for imports of corrosion-resistant steel from India.

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Circumstances, 79 FR 58324, 58325 (September 29, 2014) (“For AMFM and the companies covered by the all others rate, we made no changes to our critical circumstances analysis announced in the Preliminary Determination...”).

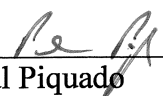
<sup>83</sup> See Preliminary Determinations of Critical Circumstances, 80 FR at 68506.

## Conclusion

We recommend applying the above methodology for this final determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

24 MAY 2016  
\_\_\_\_\_  
(Date)