A-533-865
Investigation
07/01/2014 - 06/30/2015
Public Document
ITA/E&C/Office IV: PO

July 20, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

CASE: Certain Cold-Rolled Steel Flat Products from India

SUBJECT: Issues and Decision Memorandum for the Final Determination of Sales at Less-Than-Fair-Value

---

SUMMARY

The Department of Commerce ("the Department") finds that certain cold-rolled steel flat products ("cold-rolled 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 735 of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is July 1, 2014, through June 30, 2015.

After analyzing the comments submitted by interested parties, we made certain changes to the dumping margin calculations for the mandatory respondent, JSW Steel Limited ("JSWSL") and JSW Coated Products Limited ("JSWCPL") (collectively, "JSW"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

Comment 1: Duty Drawback Program
Comment 2: Date of Sale
Comment 3: Quality Characteristics
Comment 4: Advertising Expenses
Comment 5: Overall Cost Reconciliation
Comment 6: Affiliated Raw Material Purchases
Comment 7: General and Administrative Expenses

BACKGROUND

The following events have taken place since the Department published the *Preliminary Determination* in this investigation on March 7, 2016.[1]

Between March 2, 2016 and March 11, 2016 the Department verified the cost of production information provided by JSW. Between March 14, 2016 and March 18, 2016, the Department verified the sales information provided by JSW.[2]

On May 18, 2016, Steel Dynamics, Inc. ("Petitioners") and JSW submitted case briefs.[3] On May 23, 2016, Petitioners and JSW submitted rebuttal briefs.[4] On June 1, 2016, Petitioners submitted briefs regarding cost of production issues, and on June 6, 2016, JSW submitted a rebuttal brief concerning cost of production issues.[5] No party submitted a request for a hearing.

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

[1] *See Certain Cold-Rolled Steel Flat Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 11741 (March 7, 2016) ("*Preliminary Determination*"), and accompanying Preliminary Issues and Decision Memorandum ("PDM").

[2] *See* Memorandum to the File from Ji Young Oh, Senior Accountant, through Peter Scholl, Lead Accountant, and Neal M. Halper, Office Director, regarding "Verification of the Cost Response of JSW Steel Limited and JSW Steel Coated Products Limited in the Antidumping Duty Investigation of Cold-Rolled Steel Flat Products from India," (May 24, 2016) ("Cost Verification Report"); *see also* Memorandum to the File, from Jeffrey Pederson, Patrick O'Connor, and Aleksandras Nakutis, AD/CVD Operations, Office IV, to the File "Verification of the Sales Information Submitted by JSW Steel Limited in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from India," (April 21, 2016) ("Sales Verification Report").

[3] *See* Letter from Petitioners to the Secretary of Commerce, "Cold Rolled Steel Flat Products from India: Case Brief," dated May 18, 2016 ("Petitioner's Brief"); *see also* Letter from JSW to the Secretary of Commerce, "Cold-Rolled Steel Flat Products from India: AD Investigation – Case Brief of JSW Steel Ltd. (Sales Issues)," dated May 18, 2016 ("JSW Brief").

[4] *See* Letter from Petitioners to the Secretary of Commerce "Cold Rolled Steel Products From India: Case Brief," dated May 23, 2016 ("Petitioner's Rebuttal Brief"); *see also* Letter from JSW to the Secretary of Commerce "Cold-Rolled Steel Flat Products from India: AD Investigation – Rebuttal Brief of JSW Steel Ltd. (Sales Issues)," dated May 23, 2016 ("JSW Rebuttal Brief").

[5] *See* Letter from Petitioners to the Secretary of Commerce, "Cold Rolled Steel Flat Products from India: Case Brief on Cost Issues," dated June 1, 2016 ("Petitioner's Brief on Cost Issues"); *see also* Letter from JSW to the Secretary of Commerce, "Cold-Rolled Steel Flat Products from India: AD Investigation – Rebuttal Brief of JSW Steel Ltd. (Cost Issues)," dated June 6, 2016 ("JSW Rebuttal Brief on Cost Issues").

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
> (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;[6]
- Tool steels;[7]
- Silico-manganese steel;[8]
- 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.[9]
- 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.[10]

[6] 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.

[7] 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.

[8] 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.

[9] *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 42501, 42503 (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."

[10] *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 71741, 71741-42 (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

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, 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.

DISCUSSION OF THE ISSUES

Comment 1: Duty Drawback Program

JSW's Argument

- In the *Preliminary Determination*, the Department improperly discounted the amount of duty drawback credit which JSW actually received and for which it is being assessed a countervailing duty levy. The Department verified that JSW received a duty drawback credit in the amounts reported in the U.S. sales files, yet the Department did not adjust the U.S. price to reflect the actual and verified amount of duty drawback credit that JSW received with respect to its U.S. exports. The Department should not determine what JSW *should* have received as a duty drawback credit, rather the Department should determine whether a duty drawback credit was received and adjust JSW's U.S. prices by the actual credit it received on its U.S. sales.
- Under its own practice, the Department is required to adjust U.S. price by the amount of duty drawback the company received on account of the exportation of the subject merchandise to the United States. In *Corrosion Resistant Steel from Korea*,[11] the Department stated that in order to receive a duty drawback adjustment, a respondent must meet its two-prong test. Specifically, a respondent must demonstrate: (1) that the import duty and its rebate or exemption can be directly linked to and dependent upon one another, and (2) that the respondent had sufficient imports of the imported material to

---

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."

[11] *See Certain Corrosion Resistant Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006) (*Corrosion Resistant Steel from Korea*), and accompanying Issues and Decision Memorandum at Comment 2.

account for the duty drawback exemption granted for the export of the manufactured product. In this instance, even though JSW qualifies for the duty drawback adjustment, the Department has departed from its normal practice (*i.e.*, dividing the total amount of duty forgiven or rebated during the year by exports subject to the duty drawback for the year) by stating that in situations in which inputs are sourced from both domestic and foreign sources, this calculation results in an imbalance in the dumping calculations.

- The Department is inserting itself as the Indian government in seeking to correctly administer the drawback program by adjusting the rate at a different amount than that actually received. In 2005, the Department solicited opinions from the trade community about how to adjust duty drawback for domestically sourced and imported material used in the production of subject merchandise. As a result of this process, the Department did not change its normal practice of adjusting the export price by the amount of import duty actually rebated,[12] and there is no reason to depart from normal practice now.
- The Court of International Trade ("CIT") has held that the statute does not require a respondent to prove that it paid duty on imported inputs used in the production of foreign like product sold in the domestic market to qualify for a duty drawback adjustment.[13] Specifically, in *Wheatland Tube*, the CIT held that the Act "allows for a full upward adjustment to export price for the duties which have not been collected."
- In *Avesta Sheffield*,[14] the CIT rejected the same type of 'balancing' analysis that the Department used in the *Preliminary Determination*. Specifically, the CIT held that "there is no requirement that the Department match overall rebates to overall duties to achieve balanced numbers on both sides of the comparison. The Statute allows for a full upward adjustment to U.S. price for duties which have been rebated."
- In addition, in *LWR from Turkey*, the Department stated that "there is no basis for the petitioners' argument that the Department should not make a duty drawback adjustment, unless it determines that the cost of products sold in the home market includes duties on imported raw materials… The statute provides for the adjustment without reference to whether products sold in the home market are made with imported raw materials."[15] In this instance, JSW's U.S. price should be adjusted to reflect the full amount of duty drawback credit that JSW was granted, regardless of whether the Department thinks it might have been good policy to grant the credit.
- In the parallel countervailing duty ("CVD") proceeding, the Department proposed to countervail the full amount of the duty drawback credit received with respect to JSW's U.S. sales.[16] If full drawback is recognized in the CVD investigation, the full drawback must be similarly recognized in the AD investigation.

---

[12] *See Duty Drawback Practice in Antidumping Proceedings*, 70 FR 37764, June 30, 2005,

[13] *See Wheatland Tube Co., v. United States*, 414 F. Supp. 2d 1271. 1287-1288 (Ct. Int'l. Trade 2006) ("*Wheatland Tube*"); see also Allied Tube & Conduit Corp. v. United States, 374 F. Supp. 2d 1257, 1261 (Ct. Int'l. Trade 2005).

[14] *See Avesta Sheffield, Inc. v. United States*, 838 F. Supp. 608, 612 (Ct. Int'l. Trade 1993) ("*Avesta Sheffield*").

[15] *See Light-Walled Rectangular Pipe and Tube from Turkey*, 69 FR 53675 (September 2, 2004) ("*LWR from Turkey*") and accompanying Issues and Decision Memorandum at Comment 1.

[16] *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 Decision Memorandum at 9-10.

Petitioners' Argument

- The record shows that JSW did not have sufficient imports of the imported material to account for the duty drawback exemption or exemption granted for the export of manufactured product. In *Maverick*, the CIT upheld the Department's decision to not grant the respondent a duty drawback adjustment because the respondent admitted that none of the inputs for which duties were exempted were used, or capable of being used in the production of subject merchandise.[17] In this case, JSW has not demonstrated, and there is no information in the verification report to support finding, that JSW had sufficient imports of the imported material to account for the duty drawback. Thus, JSW does not qualify for the drawback adjustment.
- There is no information in the verification report or exhibits that demonstrates that the import duty and its rebate are directly linked to and dependent upon one another, and it is dubious that the duty drawback scheme passes either prong of the test. For the final determination, JSW should not receive any duty drawback adjustment.
- If the Department continues to grant JSW a duty drawback adjustment, the amount of duties paid should be allocated over all of JSW's steel production, rather than one of JSW plant's production.

Department's Position:

For this final determination, we continue to find that JSW has satisfied the Department's criteria to qualify for an adjustment for the Duty Drawback Program ("DDP"). 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. Specifically, we require that the company meet our "two-pronged" test in order for this adjustment to be made.[18] The first element is that the import duty and its corresponding rebate 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 for the export of the manufactured product.[19] In the *Preliminary Determination*, we found that JSW had fulfilled these two criteria and preliminarily granted JSW a duty drawback adjustment. Specifically, we preliminarily found that JSW provided rules from the Government of India ("GOI") describing the duty drawback program and the schedule of rates for exported goods, and 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.[20] Despite Petitioners' assertion that JSW did not have sufficient imports of raw materials subject to the DDP adjustment, at verification, we reviewed JSW's purchases of materials subject to the DDP adjustment and noted that the imported quantities were not insufficient.[21] Despite Petitioners'

[17] *See Maverick Tube Corporation v. United States*, Slip Op. 16-46, at 16 (Ct. Int'l. Trade May 10, 2016).
[18] *See Saha Thai Steel Pipe (Pub.) Co. v. United States*, 635 F.3d 1335 at 1339 (Fed. Cir. 2011) ("*Saha Thai*") at 1340-41.
[19] *Id*.
[20] *See* PDM at 10-13.
[21] *See* Cost Verification Report at 20.

assertion that JSW has not satisfied either prong of this test, Petitioners have not pointed to any evidence that supports their claim that JSW should not receive a duty drawback adjustment.

A duty drawback adjustment to export price ("EP") 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."[22] In other words, home market sales prices and cost of production ("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 imbalance in the comparison of EP with normal value ("NV"). Thus, it is incumbent on the Department to ensure that the comparison of EP with NV is undertaken on a duty neutral basis.[23] Accordingly, when warranted, the Department will make the duty drawback adjustment to EP 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 its historical practice of 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 a duty neutral comparison of EP and NV.

In calculating the duty drawback adjustment for this final determination, we disagree with JSW that the statute requires the Department to accept the full adjustment claimed by the respondent.[24] As we explained in the *Preliminary Determination*, applying a duty drawback adjustment based solely on respondent's claimed adjustment, without consideration of import duties included in respondent's cost of materials, may result in an imbalance in the comparison of EP 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 side of the comparison, adjusting U.S. sales prices for the full measure of the import duty which has been refunded, as advocated by JSW, 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 import duties, as well as a larger per-unit duty drawback adjustment to EP, 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

[22] *See Saha Thai* at 1339.
[23] *Id.*, at 1340-41.
[24] *See* JSW Cost Verification Report at 20.

imbedded in the cost of producing the merchandise is the duty cost "reflected in NV,"[25] whether NV is based on home market prices or constructed value.

We believe this approach is reasonable, particularly when we consider other alternative scenarios. For example, one could consider that the imported raw material inputs were first consumed in the exported merchandise and the producer could seek to claim a duty drawback on the re-exportation of the finished products made from the imported inputs. Under this reasoning, the domestically purchased inputs that are not subject to duty would be consumed in the domestically sold merchandise. However, if the imported raw materials are assumed to be consumed in the exported merchandise and the domestically purchased raw materials were assumed 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 U.S. Court of Appeals for the Federal Circuit's ("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.

On the other hand, if the imported inputs are assumed to be consumed first in the products sold domestically, creating an import duty inclusive NV, there would still be no justification for a duty drawback claim because a precondition for duty drawback is the use of the input in producing, and subsequent re-exportation of the input as part of another good and the collection of the rebate. It would be inappropriate to claim a duty drawback for exporting a finished product made from the imported input while simultaneously claiming the same input was consumed in a domestically sold product.

The better analytical approach is premised on imported raw materials and domestically sourced raw materials consumed proportionally between the merchandise sold in the domestic market and exported. Under this approach, both the U.S. price and NV will be import duty inclusive on a proportional basis. Accordingly in order to accurately determine an adjustment for "the amount of any 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,"[26] the Department has made an upward adjustment to EP based on the per-unit amount of the import duty included in the COP for each CONNUM.

Citing *Avesta Sheffield*, JSW claims that the CIT held that the statute provides for a duty drawback adjustment without finding that the home market sales price is reflective of duties, and that there is no requirement that the Department match overall rebates to overall duties to achieve balanced numbers on both sides of the comparison, which warrants a full adjustment. We disagree. More recently, in *Saha Thai*, the CAFC stated:

> The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty drawback is granted only for exported inputs,

[25] *See Saha Thai*, 635 F.3d at 1342.
[26] *See* Section 772(c)(1)(B) of the Act.

> 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.[27]

Thus, the CAFC recognized that the purpose of the duty drawback adjustment is to create a comparison of EP 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 in a duty-neutral comparison. The CAFC decision in *Saha Thai* affirmed the Department's adjustment to costs to remedy a distortion caused by an increase to a duty-exclusive U.S. price compared to a duty-inclusive NV based on a COP that is duty-exclusive."[28] 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.[29] The court found that we reasonably made an imputed adjustment for import duties to COP, against Saha Thai's complaint that these costs were not recorded in its books and records, to preserve the equity of the comparison of NV with U.S. price.[30]

Moreover, to JSW's point, we note that section 772(c)(1)(B) of the Act states that the EP 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." 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.[31]

We also disagree with JSW that the Department's previous statements on its methodology preclude the approach used 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 duty drawback, while taking into account certain distortions (see above). While the Department did not change its practice of adjusting the export price by the amount of import duty actually rebated in 2005,[32] the Department is entitled to change its practices and methodology when needed.[33] Further, in *Saha Thai*, the court also recognized the Departments discretion in modifying its own practices. 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 in the *Preliminary Determination*.

---

[27] *See Saha Thai*, 635 F.3d at 1338.
[28] *Id*., at 1342.
[29] *Id*., at 1344.
[30] *Id*.
[31] *See, e.g., Union Steel v. United States*, 823 F. Supp. 2d 1346, 1358 (Ct. Int'l. Trade 2012) (holding that "because the statute is silent, it is within Commerce's discretion to adopt a new reasonable methodology ….").
[32] *See Duty Drawback Practice in Antidumping Proceedings*, 70 FR 37764, June 30, 2005.
[33] *See, e.g., Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

We note that the criteria for the duty drawback adjustment are different between CVD proceedings and AD proceedings. For the CVD cold-rolled steel investigation, the Department preliminarily determined that the GOI did not provide documentation supporting its claim that its duty drawback program system is reasonable or effective in confirming which inputs are consumed in the production of the exported products, and in what amounts. Thus under 19 CFR 351.519(a)(4), the Department found that the entire amount of the import duty rebate earned during the POI constitutes a benefit. Hence, for that proceeding, the Department calculated the subsidy rate using the value of all DDB duty rebates that JSWSL and JSCPL earned on export sales during the POI, and dividing that benefit by the companies' total exports during the POI.

However, in the *Preliminary Determination*, we noted that the home market sales prices and COP are import duty inclusive, while export market sales prices are import duty exclusive.[34] We also noted that the CAFC recognized that the duty drawback adjustment is intended to prevent dumping margins from being created or affected by the rebate of import duties on inputs used in the production of exported merchandise. However, in circumstances such as those present in this investigation, 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. Thus, we took 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."[35] Making an upward adjustment to the U.S. price based on the amount of the duty imposed on the input and rebated on the export of the subject merchandise by properly allocating the amount rebated to all production for the relevant period based on the cost of inputs during the POI[36] ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral.

Citing *LWR from Turkey*, JSW argues that its U.S. price should be adjusted to reflect the full amount of duty drawback credit that JSW was granted, regardless of whether the Department thinks it might have been good policy to grant the credit.[37] We note that this argument is misplaced. In making that determination, the Department stated that it would not establish a third prong to its duty drawback test which would require examination of the relative usage of imported materials in export and home market sales. That case does not specifically speak to whether the Department can adjust a respondent's duty drawback adjustment based on the total duties that a respondent paid, as we have done here.

JSW has not provided any compelling reason to adjust for the full duty drawback amount pursuant to Section 772(C)(1)(B) of the Act in light of the fact that the Department proposed to countervail the full amount of duty drawback credit received with respect to JSW's U.S. sales in the CVD proceeding. This duty drawback statutory provision does not contemplate adjustments

[34] *See* PDM at 12.
[35] *See* section 772(c)(1)(B) of the Act.
[36] *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.
[37] *See LWR from Turkey* and accompanying Issues and Decision Memorandum at Comment 1.

based on a companion countervailing duty investigation. In addition, the CVD investigation covers a different POI, covers different producers and exporters, and the facts on the record of that proceeding are different than those on the record of the instant proceeding. Therefore, we will not grant the full duty drawback adjustment solely because the Department proposed to countervail the full amount of duty drawback credit received with respect to JSW's U.S. sales in the CVD investigation.

In addition, we disagree with JSW's claim that because the full amount of duty drawback was found to be countervailable in the companion CVD investigation, we must grant the full amount of duty drawback in this AD investigation. Under 19 CFR 351.519, the Department must follow very detailed criteria for determining when and to what extent duty drawback is countervailable. However, neither the Act nor the regulations provide guidance for when duty drawback should be added to U.S. price. Therefore, neither the Act nor the regulations necessitate that the Department use the identical test in LTFV and CVD investigations. In fact, in a CVD investigation, the focus under 19 CFR 351.519 is on the government and the government's system and procedures to track duty drawback. The government is not a respondent in a LTFV investigation, where the focus is on the company's cost and pricing behavior. Therefore, for this final determination, we are basing the duty drawback adjustment solely on information in the record of this LTFV investigation.

Further, we disagree with Petitioners' argument that if we continue to grant JSW a duty drawback adjustment, we should allot the amount of duties paid over all of JSW's steel production, rather than one plant's production. JSW has explained that JSCPL did not use any of the raw materials subject to the DDP adjustment in the production of cold-rolled steel because JSCPL primarily purchases hot-rolled steel from JSWSL directly in order to make coated cold-rolled steel products.[38] Because JSCPL had no imports of raw materials and no sales to the United States during the POI, it is inappropriate to allocate the import duty percentage of iron ore, coal and coke, limestone, and ferroalloy over all of JSW's steel production because JSCPL does not use these in its own production.

Lastly, although JSW claims that the Department verified the amounts JSW reported in the U.S. sales database for duty drawback, the Verification Report does not address these amounts. As noted above, the Department is relying on the duties imbedded in JSW's COP to calculate the drawback adjustment. For the above reasons, we will continue to calculate the duty drawback adjustment in the final determination in the same manner as was used in the *Preliminary Determination.*

[38] *See* Letter from JSW to the Department, Re: "Cold-Rolled Steel Flat Products from India: Sections B, C, and D Responses of JSW Steel Ltd," dated November 15, 2015, Section D: Cost of Production and Constructed Value at 4-5. *See also* 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 at 22.

Comment 2: Date of Sale

Petitioners' Argument

- Although the Department used invoice date as the date of sale in the *Preliminary Determination*, JSW has not demonstrated that there were material changes to the terms of sale between the last sales contract date and the issuance of the commercial invoice. The Department has given JSW ample opportunity to demonstrate instances in which the material terms of sale have changed for U.S. sales between the sales contract date and the invoice date and the date of shipment, but JSW has not provided this evidence. Further, it is the Department's practice to examine the date of the last contract to determine whether there have been changes to the material terms of sale between that date and the shipment date.[39]
- In the *Hot-Rolled Steel from Thailand Investigation*,[40] the Department established that "any differences between the quantity ordered and the quantity shipped which fall within the tolerance specified by the entire contract do not constitute changes in the material terms of sale." Further, the Department has established that any change in the quantity of the transaction between the time of the last contract date and the time of shipment that do not exceed the permitted tolerances does not constitute a change in the material terms of sale that would warrant moving the date of sale to a later date. Here, JSW has only demonstrated changes in the terms of sale that were within the permissible tolerances of the sales contracts, so it has not demonstrated that the date of sale should be the invoice date rather than the sales contract date.
- At verification, the Department found that when there are any changes to the terms of the sales contract, JSW issues new pro-forma invoices reflecting the new sales contract. Any change in quantity between the time of the last contract date and the time of shipment that does not exceed the permitted tolerances does not constitute a change to the material terms of sale that would warrant moving the date of sale to a later date.
- The Department did not gather sufficient evidence at verification to warrant using invoice date as the date of sale. Prior to this final determination, the Department should request that JSW provide information regarding its contract sales and a new U.S. sales database which includes the universe of sales that fall within the POI using contract dates as the date of sale.
- If the Department does not request a new version of JSW's sales databases based on contract date, it should, as neutral facts available, subtract the average number of days between the last contract date and the shipment date to derive the sale date.

JSW's Argument

- JSW properly reported its sales during the POI based on invoice date as the date of sale. JSW has consistently reported that its policy is to allow occasional customer-requested amendments and modifications to orders, if the request can be accommodated and the

[39] *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 69 FR 19388 (April 13, 2004) ("*Hot-Rolled Steel from Thailand AR*") and accompanying Issues and Decision Memorandum at Comment 4.
[40] *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 49622 (September 28, 2001) (*Hot-Rolled Steel from Thailand Investigation*), and accompanying Issues and Decision Memorandum at Comment 9.

product has not already been produced or shipped. The Department has also verified several examples, and accompanying documentation (showing the amended sales terms), of U.S., third-country, and home market sales where the quantity and/or price changed after the initial agreement on the sales terms.

- Although Petitioners contend that the demonstrated changes in quantity were within the permissible tolerance of the sales contracts, the Department verified specific examples in which the change in the quantity of merchandise was beyond the tolerances identified in the pro forma invoice.
- Petitioners argue that even if amendments to orders have been demonstrated, the date of the last sales order amendment should be the sales contract date because the terms on the invoice always match those in the last amended order. Petitioners are essentially arguing that an amended sales order itself establishes a new sales order, and that because the amended sales order is reflected on the invoice, no amendments to orders are allowed. The fact is that the material terms of sale can change after any given sales contract is issued.
- The Department carefully investigated and verified the fact that JSW and its customers have not irrevocably established the material terms of sale at the time of the sales contract. There is no reason to issue a new questionnaire to collect new sales databases or to impose an adjustment to the date of sale. The Department should continue to follow its normal practice and use invoice date as date of sale for the final determination.

Department's Position:

We agree with JSW. In the *Preliminary Determination*, we used the invoice date as the date of sale for JSW in the home market and the earlier of invoice date or shipment date as the date of sale for the U.S. market.[41] Because the record evidence does not demonstrate that the sales contract 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 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

[41] *See* Memorandum from Patrick O'Connor, International Trade Compliance Analyst, through Howard Smith, Program Manager, to the File, Re "Preliminary Determination Calculation for JSW in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from India," dated February 29, 2016 at 3-4.

> 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.[42]

The courts have recognized the regulatory presumption of the invoice date as the date of sale.[43]

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 an earlier date and invoice date; rather, the burden is on the party seeking to establish a date of sale other than invoice date to "satisfy" the Department that an alternate date is more appropriate.[44] In this proceeding, Petitioners argue that the date of sale should be based on the sales contract date, but they have not presented satisfactory evidence that the material terms of sale are established on a date other than the date of the invoice (*e.g.*, the sales contract date). Relying on the *Hot-Rolled Steel from Thailand AR*, Petitioners contend that it is the Department's practice to examine the date of the last contract to determine whether there have been changes to the material terms of sale between that date and the shipment date. They then state that there is no evidence of such changes here. However, the courts have held that "{t}he question is could the terms be changed, or were they fixed at the time of the initial order," and where there is evidence "that the terms could be changed and were changed in some instances," there is "no reason for Commerce to abandon its presumption" of the use of invoice date as the appropriate date of sale.[45] At verification, the Department reviewed, and obtained samples of documentation related to, multiple sales for which the material terms changed prior to the issuance of the invoice.[46] The fact that the sales terms did change after the initial contract date, and at times there were multiple

---

[42] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27348-27349 (May 19, 1997)
[43] *See, e.g., Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087 (CIT 2001).
[44] *See Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001)
[45] *See Thai Pineapple Canning Industry Corp., Ltd., and Mitsubishi International Corp. v. United States*, Slip Op. 00-17 (February 10, 2000) ("*TPC v. United States*") at 6; *see also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From Malaysia*, 65 FR 81825 (December 27, 2000) and Issues and Decision Memorandum at Comment 2, stating: "Although {the respondent} emphasizes that order confirmation/contract date is the date on which the material terms of sale are established, the Department ascertained at verification that changes and adjustments were made to a significant portion of U.K. sales after the order confirmation/contract date, including changes in price and terms… Such changes and adjustments suggest that the material terms of sale for sales to the U.K. market are not necessarily established at confirmation/contract date, but rather remain alterable by the parties.
[46] *See* Sales Verification Report at 8-11 and Exhibits 5, 9 and 33.

revisions to the terms of the contracts, indicates that even after the last revision to the contract there was an expectation that the terms of sale could change. Hence, the record shows that the sales terms remained negotiable, even after the date of the last contract revision, and were not finally established until the sale was invoiced.

We disagree with Petitioners' claim that JSW only demonstrated changes in the terms of sale that were within the permissible tolerances of the sales contracts, so it has not demonstrated that the date of sale should be the invoice date rather than the sales contract date. In *Stainless Steel Sheet and Strip in Coils from Taiwan*, the Department noted that even if quantity changes were rare, the CIT stated that "the existence of ...one sale beyond contractual tolerance levels suggests sufficient possibility of changes in material terms of sale."[47] At verification, the Department reviewed multiple sales where the quantity changed beyond contractual tolerance levels.[48]

Furthermore, we disagree with Petitioners' claim that the Department did not gather sufficient evidence at verification to warrant using invoice date as the date of sale. As noted above, this argument incorrectly assumes that the Department has to gather evidence to support its regulatory presumption for invoice date. In any event, the Department's verifiers reviewed documentation for multiple sales which indicated that the terms of sale can, and did, change up until the product was shipped.[49] Because of the large number of documents typically examined during the course of verification, the Department does not necessarily take all documents reviewed as verification 'exhibits.' Rather, the Department only takes copies of representative or particularly significant documents.[50] Such was the case here.

In light of the foregoing, we have continued to use the invoice date as the date of sale for JSW in the home market and the earlier of invoice date or shipment date as the date of sale for the U.S. market consistent with our regulation and practice.[51]

Comment 3: Quality Characteristics

Petitioners' Argument

- It appears that JSW incorrectly reported the quality characteristic in its sales control numbers (CONNUM). While JSW claimed that it reported the quality CONNUM characteristic based on the end use of the product found on technical delivery conditions ("TDC") forms, the documents collected at verification do not support this claim.

[47] *See Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 4 (*citing Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1091 (January 18, 2001)).
[48] See Verification Report at 12.
[49] *See* Sales Verification Report at 11-12 and Sales Verification Exhibit 5.
[50] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15444, March 31, 1999, and accompanying Issues and Decision Memorandum at Comment 2.
[51] *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.

- At verification, the Department collected documentation related to this issue for two home market and two U.S. sales, and the documentation does not support finding that JSW selected the quality CONNUM characteristic based on the end use listed on the TDC forms associated with those sales. In fact, JSW has not demonstrated any consistent correlation between the quality CONNUM characteristic reported in its databases and the documents that it provided in its submissions or that were collected at verification. For example, for certain sales for which the Department collected relevant documentation at verification, the TDC forms list the same end use; however JSW reported different quality CONNUM characteristics for those sales in its sales databases.
- The main distinguishing characteristic for quality in cold-rolled steel is Rockwell B hardness, which depends on the severity of the forming or bending applications to which the end user will use the steel. The main indicator of this hardness, where there is no other indication of the Rockwell B hardness, is the carbon content of the steel. Based on carbon content, JSW improperly reported the quality CONNUM characteristic for some of its sales of cold-rolled steel.[52]
- To allow JSW to assign quality CONNUM characteristic without reference to any source, other than the TDCs, is to invite gross manipulation of the sales database. While it is too late for the Department to do anything about this reporting issue for this investigation, the Department should instruct JSW, for any future antidumping duty reviews, to adhere to the specifications set forth in its sales documents when reporting the quality characteristic in CONNUMs. The quality characteristic reported by JSW can then be cross-checked with mill certificates or TDC forms that identify the carbon content.

JSW's Argument

- JSW properly reported its product characteristics, including the quality of the products. At verification, the Department examined more sales traces than those noted by Petitioners, and carefully considered how JSW reported its product characteristics, including the quality characteristic.
- The Department collected and reviewed information related to the logic employed by JSW's engineers in assigning CONNUMs to JSW's products based on particular product specifications. The Department confirmed that JSW extracted its product characteristics from the TDCs which are used in the ordinary course of business to define, and in producing, each of JSW's products. Thus, at verification, the Department confirmed that JSW's reported product characteristics accurately reflected the quality characteristics in the TDCs.
- Petitioners cannot deny that the TDCs are the basis for assigning CONNUM characteristics, nor can they demonstrate that JSW did not comply with the Department's questionnaire instructions, with respect to all CONNUM characteristics, including the quality characteristic. JSW's TDCs have been in place for many years and are essential to its production during the ordinary course of business. The TDCs were not devised for this investigation and cannot be modified or manipulated. Hence, JSW is not

[52] *See* Memorandum from Patrick O'Connor to the File, Re: "Proprietary Information for Final Results of Cold-Rolled Steel Investigation," dated concurrently with this Memorandum, ("BPI Memorandum") at Comment 1.

manipulating its sales databases by misreporting TDC information related to the quality characteristic.

Department's Position:

We agree with JSW. At verification, the Department's verifiers specifically examined the methodology that JSW employed in reporting its CONNUM characteristics, including the quality characteristic.[53] The verifiers discussed this matter with company officials who explained that they understand steel quality to correspond to the end-use for which the product has been engineered, and not Rockwell B hardness or carbon content.[54] Company officials indicated that steel made to certain ASTM or BIS standards can have several types of end use, depending on the customer's demands, and they demonstrated that any given BIS or ASTM specification can apply to steel with numerous end uses, and thus numerous qualities.[55] We examined sales documentation, including invoices, packing lists, sales orders, and TDC forms, and observed that the records were consistent with the methodology that JSW used in reporting, and the code reported for, the quality characteristic.[56] Even though Petitioners contend that there are certain discrepancies in which the end use noted in JSW's TDC forms does not match the quality characteristic reported in its databases, other information in the TDC forms supports that JSW reported quality characteristics accurately in its databases.[57]

Finally, we note that Petitioners did not advocate taking any specific action regarding this matter in this investigation, but requested that the Department instruct JSW to adhere to the specifications set forth in its sales documents when setting its quality characteristic in the first administrative review. If this investigation results in an AD order and Petitioners have concerns regarding the proper methodology for reporting the quality CONNUM characteristics in any future administrative review, the Department will consider any properly filed comments regarding this matter in the segment of the proceeding in which the comments are filed.

Comment 4: Advertising Expenses

Petitioners' Argument

- Although JSW claims that some of its home market advertising expenses are direct selling expenses because they are either 'promotion to JSW's customers' customers or are 'general brand promotion expenses,' JSW has not demonstrated that these advertising expenses are direct selling expenses.
- Although these direct selling expenses include sports and other sponsorships, JSW has not explained how these events promote JSW's merchandise to its customers' customers.

[53] *See* Sales Verification Report at 23-24 and Sales Verification Exhibit 23.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *See* Sales Verification Report at 23-24 and Sales Verification Exhibit 17. *See also* BPI Memorandum at Comment 2.

- In *Live Swine from Canada*,[58] the Department found that general brand promotion expenses are not allowed as direct selling expenses. Further, JSW has not demonstrated how its advertising expenses apply to the customers of JSW's customers. Therefore, the Department should not make a direct selling expense adjustment to JSW's home market sales prices for advertising expenses for the final determination.

JSW's Argument

- In *Antifriction Bearings*, the Department noted that its policy is to consider advertising expenses as direct expenses if they are "directed to the ultimate consumer of the merchandise rather than the respondent's direct customer." The majority of JSW's direct advertising expenses that the Department verified involve advertising expenses aimed at the downstream purchasers of JSW's merchandise.[59] JSW's downstream promotional advertising, which is separate from its normal marketing and advertising expenses, which it reported as part of its indirect selling expenses, is aimed at its customers' customers, and thus is properly categorized as a direct selling expense.
- Although Petitioners claim that JSW's sports and other sponsorships are not direct selling expenses, all major companies recognize the value of sponsorships of sports personalities or events to promote brand awareness to the ultimate customer, to whom the company itself does not directly sell. In *Pasta from Italy*, the Department found sponsorships of sports teams to constitute direct advertising. Moreover, according to the Department, "banners shown at sports events and television publicity are typically considered by the Department to be advertising directed at the customer's customer."[60]
- JSW's sponsorship of athletes and trade show events constitutes direct advertising targeted towards the customers of JSW's customers. The Department confirmed the accuracy of JSW's reported direct advertising expenses at verification, and thus it should continue to treat these advertising expenses as direct expenses for the final determination.

Department's Position:

We agree with Petitioners. JSW has not provided sufficient evidence that these branding and advertising expenses are direct selling expenses. The Department's practice is to treat advertising expenses directed towards a customer's customer as direct expenses. In *Antifriction Bearings*, the Department explained that "for advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondents' customer; that is, it must be shown to be directed toward the customer's customer." While JSW claimed that these advertising expenses are aimed at potential downstream customers of JSW's steel products (such as advertising aimed at engineers, architects, manufacturing supply managers, or retail customers in the public), with whom JSW is seeking to build brand loyalty and recognition, the documentation reviewed at verification did not demonstrate the nature of these advertising

[58] *See Final Determination of Sales at Less than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005) ("*Live Swine from Canada*") and accompanying Issues and Decision Memorandum at Comment 6.
[59] *See Final Results of Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Various Countries*, 58 FR 39729 (July 26, 1993) ("*Antifriction Bearings*").
[60] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996) ("Pasta from Italy") and Issues and Decision Memorandum at Comment 4.

expenses but, instead, the documentation was primarily used to verify the amount of the expenses. To the extent that the documentation did provide some indication as to the nature of the promotional expenses (*e.g.*, sporting events and other sponsorships, to use JSW's example), we do not believe the facts in this case mirror those in *Pasta from Italy*.

Pasta from Italy involved advertising expenses for banners shown at sports events and television commercials, which the Department considered to be advertising directed at the customer's customer. [61] In that case, the company's logo on a banner or its television commercial promoting a sports team could motivate a downstream consumer to purchase a specific pasta brand. Consumers would not expect to buy specific pasta brands directly from the manufacturers. Rather, they would go to a store or retail outlet that would carry that pasta and purchase it from there. In the instant case, it is unclear how JSW's sponsorships would be able to promote brand loyalty among some of its customers' customers, such as the customers of original equipment manufacturers ("OEMs"), because there is no information to indicate that the customers watching, attending or participating in certain sponsored events would have any knowledge that a metal component of the OEM's product was produced from JSW's steel.

Lastly, these advertising expenses are not specific to cold-rolled steel. As stated in *Antifriction Bearings*, in order for advertising to be considered direct expenses, they must be incurred on products under consideration.[62] JSW has stated that these advertising expenses are "not always specific to cold-rolled steel."[63] Thus, because JSW has not clearly demonstrated that these advertising expenses apply to its customers' customers and because these expenses apply to merchandise that that is not specifically cold-rolled steel, we find that it is not appropriate to treat these expenses as direct selling expenses. Rather, we will include these expenses in JSW's indirect selling expenses.

Comment 5: Overall Cost Reconciliation

Petitioners' Arguments

- The Department should exclude the value of recycled steel scrap and include changes in finished goods inventory in JSW's overall cost reconciliation.

JSW did not rebut this issue.

Department's Position:

We agree with Petitioners. During the POI, JSWSL recycled steel scrap which was generated during the production process.[64] JSWSL assigned the same per-unit value to the generated steel scrap and the recycled steel scrap during the POI. Nevertheless, in its overall cost reconciliation

[61] *See Pasta from Italy* and Issues and Decision Memorandum at Comment 4
[62] *See Antifriction Bearings* at Comment 2, 58 FR 39741.
[63] *See* Letter from JSW to the Department, Re: "Cold-Rolled Steel Flat Products from India: Third Supplemental Section A Response of JSW Steel Ltd.," dated February 16, 2016 at 10-11. ,
[64] *See* Memorandum to the file, "Verification of the Cost Response of JSW Steel Limited and JSW Steel Coated Products Limited in the Antidumping Duty Investigation of Cold-Rolled Steel Flat Products from India," dated May 24, 2016 ("JSW Cost Verification Report") at pages 2 and 11-15.

which reconciled the total costs from its normal books and records to the total reported costs, JSWSL deducted the value of recycled scrap from the reported costs even though this value would have been already reflected in its audited financial statements.[65] Further, JSWSL excluded the changes in finished goods inventory from the overall cost reconciliation.[66] Hence, the reported subject merchandise costs were based on the cost of the products sold instead of the products' cost of production. Thus, as to not double count the value of recycled scrap and to properly include changes in finished goods inventory, we have revised JSW's overall cost reconciliation. After adjusting for the value of recycled steel scrap and changes in finished goods inventory, we noted that there was a difference between the costs from JSW's books and records and the costs reported to the Department. Therefore, we have adjusted the reported costs to account for this difference in the final determination.

Comment 6: Affiliated Raw Material Purchases

Petitioners' Arguments

- The Department should adjust JSW's affiliated raw material purchase prices to reflect arm's length prices.

JSW did not rebut this issue.

Department's Position:

We agree with Petitioners. During the POI, JSWSL purchased a certain raw material input from two affiliated companies.[67] Section 773(f)(2) of the Act, the transaction disregarded rule, applies to transactions that occur directly or indirectly between affiliated parties and provides that the Department may adjust a respondent's reported transfer price where the transfer price from its affiliated parties does not reflect market prices in the market under consideration.[68] We have analyzed JSWSL's affiliated raw material purchase transactions in accordance with section 773(f)(2) of the Act. We compared the price paid to the affiliate to the market price and found that the market price was higher than the affiliated transfer price, hence the transfer price did not reflect an arm's length price.[69] Thus, for the final determination, we adjusted JSWSL's reported costs to reflect arm's length prices for the raw material purchases from one of its affiliated suppliers.

[65] *See* JSW Cost Verification Report at 2 and 11-15.
[66] *Id.*
[67] *See* JSW Cost Verification Report at pages 2 and 23-24.
[68] *See Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014) and accompanying Issus and Decision Memorandum at comment 7.
[69] *See* JSW Cost Verification Report at pages 2 and 23-24.

Comment 7: General and Administrative Expenses

Petitioners' Argument

- The Department's accountants verified JSW in the Certain Corrosion-Resistant Steel Products From India ("CORE") investigation and in the instant investigation simultaneously; however it was only in the instant investigation that the Department noted that sales and marketing employee benefit expenses were reported in the cost response as a general and administrative ("GNA") expense and reported in the sales response as a selling expense. The Department's verifiers did not mention this as a potential issue in their cost verification report for CORE, nor did they identify the same amounts that the Department found to be double-counted in this investigation.
- For this final determination, the Department should use the same GNA ratio for JSW that it used for JSW in the final determination of the CORE investigation.

JSW's Argument

- In the course of the sales verification in the instant investigation, the Department found that certain employee benefits were reported as both indirect selling expenses and GNA expenses. Thus, these benefit expenses would be double counted if the Department relied on the indirect selling expense ratio and GNA ratio as reported.
- Although Petitioners contend that the Department should use the GNA ratio from CORE in the instant investigation, the POIs for the CORE and cold-rolled steel investigations are not the same, and therefore it is inappropriate to use the GNA expenses from CORE in this case. Given that the CORE investigation and the cold-rolled steel investigation are two separate proceedings, with responses prepared by two separate teams, it is not surprising that the two responses treated expense items such as "employee benefit expenses" differently. Accordingly, it is appropriate for the Department to treat these employee benefit expenses as either selling expenses or GNA expenses. For this final determination, the Department should reduce the GNA ratio by the over-reported amount, as prescribed in the Cost Verification Report.

Department's Position:

We agree with JSW. At verification, the Department found that the portion of employee benefits and expenses relating to the sales and marketing employees that was reported as an indirect selling expense in the sales databases was classified in JSW's accounting system as a GNA expense.[70] JSW officials stated at verification that the GNA expenses reported in the cost database included these sales and marketing employee benefit expenses.[71] At the cost verification in this investigation, the Department's verifiers noted the amount of GNA expenses reported to the Department.[72] This is the same amount that the Department determined, at the sales verification, included the sales and marketing employee benefit expenses reported as indirect selling expenses.[73] Thus, these sales and marketing employee benefit expenses were

[70] *See* JSW Sales Verification Report at 35 and Exhibit 38.
[71] *Id.*, at 35.
[72] *See* JSW Cost Verification Report at 2 and 25, and Cost Verification Exhibit 18.
[73] *See* JSW Sales Verification Report at Exhibit 38.

reported as both indirect selling expenses in the sales databases and GNA expenses in the cost database. Because the portion of employee benefits and expenses reported to the Department as indirect selling expenses relates to sales and marketing employee benefits,[74] in calculating JSW's dumping margin it is properly classified as an indirect selling expense, rather than a GNA expense.[75] Therefore, for the final determination in this investigation, we will reduce the GNA ratio by the over-reported indirect selling expenses identified at verification. This decision is based on the facts on the record of this proceeding. While Petitioners note that the Department did not find double-counting of these expenses in the CORE investigation of JSW, Petitioners have not cited any fact on the record of this proceeding that calls into question the double counting described above.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination in the *Federal Register*.

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 JULY 2016
Date

[74] *Id.*, at 35 and Exhibit 38.
[75] *See, e.g.*, Letter from the Department to JSW, Re: "Investigation of Certain Cold-Rolled Steel Flat Products from India: Antidumping Duty Questionnaire," dated September 15, 2015 at I-6 – I-7.