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MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: James Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Corrosion-Resistant Steel
Products from India; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from India. The period of review (POR) is July 1, 2017, through June 30, 2018. The review covers: Atlantis International Services Company Ltd., Uttam Galva Steels (BVI) Limited, Uttam Galva Steels Limited, Uttam Galva Steels, Netherlands B.V., Uttam Value Steels Limited (collectively, Uttam Galva); and JSW Steel Coated Products Ltd. and JSW Steel Ltd. (collectively, JSW), producers/exporters of the subject merchandise.¹ Because Uttam Galva did not respond to Commerce's request for information, we preliminarily find that Uttam Galva failed to provide information within the established deadlines, thereby significantly impeding this review. Further, Uttam Galva failed to cooperate by not acting to the best of its ability with Commerce's request for information. Accordingly, we are preliminarily assigning a margin to Uttam Galva based on facts otherwise available with an adverse inference, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). Additionally, we preliminarily determine that JSW had no shipments of subject merchandise to the United States during the POR.

¹ See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (Order).



II. BACKGROUND

On July 3, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on CORE from India.² Pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b)(1), on July 31, 2018, AK Steel Corporation, ArcelorMittal USA LLC, California Steel Industries, Inc., Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners) requested Commerce conduct an administrative review of exports of subject merchandise from JSW and Uttam Galva to the United States during the POR.³ Based on this timely request, on September 10, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of these companies.⁴

Commerce issued the AD questionnaire⁵ to Uttam Galva and received a timely Section A response on October 15, 2018.⁶ On November 2, 2018, Uttam Galva submitted a letter indicating that it would not provide responses to the remaining sections of the questionnaire.⁷ On November 14, 2018, Uttam Galva submitted new factual information to the record under 19 CFR 351.301(c)(5).⁸ The petitioners submitted a request to reject Uttam Galva's filing on November 15, 2018.⁹ Uttam Galva's submission was accepted by Commerce on November 15, 2018.¹⁰ On November 20, 2018, the petitioners submitted comments, and new factual information, in response to the factual information Uttam Galva placed on the record.¹¹

On September 21, 2018, JSW filed a no shipment certification, stating that it had no shipments, exports, sales, or entries of subject merchandise into the United States during the POR.¹² Commerce subsequently received data from U.S. Customs and Border Protection (CBP) confirming JSW's no shipment claims.¹³

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 31121 (July 3, 2018).

³ See Petitioners' Letter, "Request for Administrative Review," dated July 31, 2018.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596, 45597 (September 10, 2018).

⁵ The AD questionnaire was issued to Atlantis International Services Company Ltd., Uttam Galva Steels (BVI) Limited, Uttam Galva Steels Limited, Uttam Galva Steels, Netherlands B.V., and Uttam Value Steels Limited, collectively, based on Commerce's finding in the investigation that these companies were a single entity. See *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329, 35330 (June 2, 2016).

⁶ See Uttam Galva's October 12, 2018, Section A Questionnaire Response (SAQR).

⁷ Commerce received a letter from counsel for Uttam Galva Steels Limited. See Uttam Galva's Letter, "Uttam Galva Steels Limited's Participation in Administrative Review," dated November 2, 2018 (Uttam Galva Letter).

⁸ See Uttam Galva's Letter, "Uttam Galva Steels Limited's Submission of Additional Information," dated November 14, 2018.

⁹ See Petitioners' Letter, "Request to Reject Submission of Factual Information," dated November 15, 2018.

¹⁰ See Memorandum, "Acceptance and Request for Comment on New Factual Information Submitted," dated November 15, 2018.

¹¹ See Petitioners' Letter, "Response to Uttam Galva Submission of Factual Information," dated November 20, 2018.

¹² See JSW's Letter, "No Shipment Certification," dated September 21, 2018 (No Shipment Certification).

¹³ See Memorandum, "No Shipment Certification," dated October 3, 2018 (CBP Confirmation).

III. SCOPE OF THE ORDER

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

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with nonrectangular 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 the *Order* 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 and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels. Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the in-scope corrosion resistant steel.

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

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

The products subject to the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers:

7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the *Order* may also enter under the following HTSUS item numbers:

7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

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

IV. APPLICATION OF FACTS AVAILABLE AND ADVERSE INFERENCES

A. Legal Authority

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner,” Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it

had cooperated fully.”¹⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹⁵

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.

B. Application of Facts Available to Uttam Galva

On September 10, 2018, we issued the AD questionnaire to Uttam Galva and received a timely Section A response on October 15, 2018.¹⁶ However, on November 2, 2018, Uttam Galva submitted a letter stating that it would not provide responses to the remaining sections of the questionnaire.¹⁷ Uttam Galva did not respond to Sections B, C, or D of the AD questionnaire.

As noted above, Uttam Galva failed to respond to Commerce’s AD questionnaire in this administrative review. Thus, Uttam Galva failed to provide the requested information necessary for Commerce to calculate a dumping margin for it in this administrative review. Consequently, we preliminarily find that Uttam Galva withheld information requested by Commerce and failed to provide information by the specified deadlines, within the meaning of sections 776(a)(2)(A), (B) of the Act. Further, Uttam Galva significantly impeded this proceeding within the meaning of section 776(a)(2)(C) of the Act. Because Uttam Galva failed to submit its responses to sections B, C, and D of the AD questionnaire within the established deadlines for its submission, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we relied upon the facts otherwise available in determining the preliminary dumping margin for Uttam Galva.

C. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In applying adverse inferences, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. In addition, the SAA explains that Commerce may employ an adverse

¹⁴ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

¹⁵ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (*Nippon Steel*); see also *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

¹⁶ See SAQR.

¹⁷ See Uttam Galva Letter.

inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁸

By submitting a letter stating that it would not provide any additional questionnaire responses, outside of the Section A response, Uttam Galva elected not to file its response to Sections B, C, and D of the AD questionnaire. As a result, Uttam Galva did not provide the necessary information for Commerce to calculate an individual AD margin in this review. Accordingly, we preliminarily determine that Uttam Galva failed to cooperate to the best of its ability in providing the necessary information for Commerce to conduct this administrative review.¹⁹ Therefore, and pursuant to section 776(b) of the Act, we preliminarily determine that the application of adverse inferences is appropriate in selecting from among the facts available to determine Uttam Galva’s dumping margin.

D. Selection and Corroboration of AFA Rate

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.²⁰ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²¹ Specifically, Commerce’s practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).²² Further, under sections 776(d)(1) and (2) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. Additionally, under section 776(d)(3) of the Act, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. Because the only individually calculated dumping margin in the history of the proceeding is the rate to which Uttam Galva is currently subject, we find that this rate is not sufficient to induce cooperation. The highest dumping margin in the history of the proceeding is the margin alleged

¹⁸ See SAA at 870; see also e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (where Commerce applied total AFA because the respondent failed to respond to the questionnaire); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (clarifying that the “best of its ability” standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries).

²⁰ See 19 CFR 351.308(c).

²¹ See SAA at 870.

²² See *Glycine from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT 2009) (“Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.”)

in the petition, 71.09 percent.²³ Thus, we have selected the highest dumping margin alleged in the petition as the AFA rate applicable to Uttam Galva in this administrative review. Accordingly, because the AFA rate applied to Uttam Galva is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable, pursuant to section 776(c) of the Act.

Section 776(c) of the Act provides that where Commerce relies on secondary information rather than information obtained during the course of a review, it must corroborate that information using independent sources that are reasonably at its disposal. The AFA rate that Commerce has selected is from the petition and is, thus, secondary information subject to the corroboration requirement. The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.²⁴ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.²⁵

As is Commerce’s practice, during the less-than-fair-value investigation pre-initiation analysis, we examined: (1) the information used as the basis for export price and normal value in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided in the petition.²⁶ We determine that the highest petition margin of 71.09 percent is reliable, where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition as reflected in the Initiation Checklist from the investigation.²⁷ In addition, we obtained no other information that would cause us to question the validity of the information supporting the relevance or reliability of the petition rate. Accordingly, we consider the margin of 71.09 percent to be reliable and relevant for purposes of assigning an AFA rate to Uttam Galva in this administrative review.

In sum, Commerce corroborated the AFA rate of 71.09 percent to the extent practicable within the meaning of section 776(c) of the Act. Thus, we preliminarily assigned this AFA rate to the subject merchandise from Uttam Galva.

²³ See *Certain Corrosion-Resistant Steel Products from Italy, India, the People’s Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015) (*Initiation Notice*).

²⁴ See SAA at 870; see also 19 CFR 351.308(d).

²⁵ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*Tapered Roller Bearings Preliminary Results*), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²⁶ See *Tapered Roller Bearings Preliminary Results* at 57392.

²⁷ See *Initiation Notice* at 37233; see also *Petitioners’ Response* at 19.

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

During the review, JSW timely filed a no shipment claim.²⁸ In response to Commerce's query, CBP did not provide any evidence that contradicted JSW's claim of no shipments.²⁹ Because the evidence on the record indicates that JSW did not export subject merchandise to the United States during the POR, we preliminarily determine that JSW had no shipments during the POR. Consistent with our practice, we will complete the review with respect to JSW and issue appropriate instructions to CBP based on the final results of this review.

VI. CONCLUSION

We recommend applying the above methodology for these preliminary results of review.

☒

Agree

☐

Disagree

12/21/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

performing the duties of Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

²⁸ See No Shipment Certification.

²⁹ See CBP Confirmation.