



A-533-863
Administrative Review
POR: 07/01/2017-06/30/2018
Public Document
E&C/V: TD

DATE: June 3, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on certain corrosion-resistant steel products (CORE) from India.¹ This 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 and/or exporters of the subject merchandise. As a result of this analysis, we made no changes to the *Preliminary Results*.² We continue to find that Uttam Galva failed to cooperate to the best of its ability with Commerce's requests for information and that the use of facts otherwise available with an adverse inference (AFA) is appropriate. We also continue to find that JSW had no shipments during the period of review (POR).

II. LIST OF COMMENTS

Comment: AFA Rate Applied to Uttam Galva

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*).

² See *Certain Corrosion-Resistant Steel Products from India: Preliminary Results of Antidumping Duty Administrative Review*, 84 FR 1061 (February 1, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).



III. BACKGROUND

On February 1, 2019, Commerce published the *Preliminary Results*.³ The POR is July 1, 2017, through June 30, 2018.

On March 4, 2019, Uttam Galva timely filed its case brief regarding Commerce's *Preliminary Results*.⁴ California Steel Industries and Steel Dynamics, Inc. (collectively, the petitioners) timely submitted a rebuttal brief on March 11, 2019.⁵

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁶ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results is now June 3, 2019.

IV. 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

³ *Id.*

⁴ See Uttam Galva's Case Brief, "Uttam Galva Steels Limited's Case Brief," dated March 4, 2019 (Uttam Galva's Brief).

⁵ See Petitioners' Rebuttal Brief, "Rebuttal Brief of California Steel Industries and Steel Dynamics, Inc.," dated March 11, 2019 (Petitioners' Rebuttal Brief).

⁶ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

(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 CORE.

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.

V. DETERMINATION OF NO SHIPMENTS

In the *Preliminary Results*, we found no shipments of subject merchandise from JSW to the United States.⁷ No parties commented on this issue. Therefore, for the final results of this review, we continue to find that JSW had no shipments during the POR.

VI. DISCUSSION OF THE ISSUE

Comment: AFA Rate Applied to Uttam Galva

Uttam Galva’s Case Brief

- Commerce should adjust the rate applied in the Preliminary Results because it was only an alleged rate in the petition and not a rate from a segment of a proceeding.⁸

⁷ See *Preliminary Results*; see also PDM at 2 and 9.

⁸ See Uttam Galva’s Brief at 2.

- The Tariff Act of 1930, as amended (the Act), establishes a preference for margins from segments of the proceeding because the Act does not require corroboration of such margins.⁹
- Commerce may apply the highest margin from any segment of the proceeding when using AFA.¹⁰
- Uttam Galva has provided all of the final calculation memoranda and data files from the investigation. Commerce should use the highest transaction-specific dumping margin from the investigation for Uttam Galva's AFA rate.¹¹
- The use of an alleged dumping margin from the petition is unlawful because the statute only specifically allows for the dumping margin to be selected from a segment of the proceeding.¹²
- The highest transaction-specific margin from the investigation would ensure that Uttam Galva does not obtain a more favorable result by failing to cooperate than if it had fully cooperated, thereby meeting Commerce's policy goals.¹³
- Commerce did not adequately explain how it corroborated the petition rate applied in the Preliminary Results.¹⁴
- The statute allows Commerce to evaluate the situation that resulted in the application of AFA. Here, Uttam Galva complied with the proceeding until it could no longer do so.¹⁵

The Petitioners' Rebuttal Brief

- Commerce selected the appropriate AFA rate when it used the petition rate because, pursuant to section 776(b)(2)(A) of the Act, Commerce may rely on information from the petition in making an adverse inference.¹⁶
- Section 776(d) of the Act allows for the use of any dumping margin from any segment of the proceeding. However, this does not supersede the ability to use AFA sources listed in section 776(b)(2) of the Act.¹⁷
- There is no hierarchy indicated among the source choices cited in section 776(b)(2) of the Act, and, therefore, no preference for choosing a dumping margin from a segment of the proceeding over secondary information.¹⁸
- Commerce thoroughly explained the legal standard for the AFA rate selected.¹⁹

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3-4.

¹² *Id.* at 3.

¹³ *Id.* at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 4.

¹⁶ See Petitioners' Rebuttal Brief at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1.

Commerce's Position:

For purposes of the final results, we continue to select the petition rate of 71.09 percent as the appropriate AFA rate for Uttam Galva.²⁰ Uttam Galva contends that Commerce should adjust the rate applied in the *Preliminary Results*, because it was only an alleged rate in the petition and not a rate from a segment of a proceeding.²¹ We disagree. Section 776(b)(2)(A) of the Act expressly provides that Commerce may rely on information from the petition in determining the dumping margin when relying on AFA.

We also disagree with Uttam Galva's assertion that Commerce did not adequately explain how the petition rate was corroborated. Section 776(c) of the Act requires Commerce to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "[i]nformation 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 concerning the subject merchandise."²² The Statement of Administrative Action (SAA) provides that the term "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.²³ Thus, to corroborate secondary information, Commerce will examine, to the extent practicable, the reliability and relevance of the information used. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics, and customs data, as well as information obtained from interested parties during that particular investigation.²⁴ During the less-than-fair-value investigation, Commerce conducted a thorough examination of the evidence supporting the calculations in the petition. Specifically, as explained in the Initiation Checklist, we spoke directly with the market researcher employed by the petitioners regarding information pertaining to Indian prices, and we received responses to multiple requests for supplemental information from the petitioners regarding Indian CORE product data, in addition to the information in the Petition.²⁵ Accordingly, we find that the petition rate is corroborated to the extent practicable, because it has probative value (*i.e.*, is relevant, because it pertains to previous segment, and is reliable, as confirmed by the initiation checklist), pursuant to section 776(c)(1) of the Act.²⁶

We continue to find that because Uttam Galva did not respond to sections B, C, and D of the antidumping questionnaire, it failed to respond to Commerce's requests for information and impeded this proceeding. We also continue to find that Uttam Galva withheld necessary information and failed to cooperate by acting to the best of its ability. Thus, it is appropriate to continue applying AFA, pursuant to section 776(a) and (b) of the Act. As explained in the

²⁰ 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).

²¹ See Uttam Galva's Case Brief at 1.

²² See Statement of Administrative Action accompanying the URAA, H.R. Rep No. 103-366 at 870 (SAA).

²³ *Id.*

²⁴ *Id.*

²⁵ See Petitioners' Letter, "Response to Uttam Galva Submission of Factual Information," dated November 20, 2018, at attached "AT Investigation Initiation Checklist," dated June 23, 2015 (Initiation Checklist) at 6-7.

²⁶ See, e.g., *Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24737 (May 30, 2018) and accompanying Issues and Decision Memorandum.

Preliminary Results, section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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.²⁷ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Commerce's request for information, or to demonstrate that the information used as AFA reflects an "alleged commercial reality" of the interested party.²⁸

Uttam Galva argues that Commerce should use the highest transaction-specific dumping margin calculated in the investigation of this proceeding.²⁹ We disagree that the rate that Uttam Galva has itself suggested would be the most appropriate AFA rate in this review. Commerce's general practice with respect to the assignment of adverse rates is to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce the respondent to provide the Department with complete and accurate information in a timely manner."³⁰ Selecting a rate that was the result of Uttam Galva's normal selling behavior, and that Uttam Galva itself suggested, would not ensure that the margin is sufficiently adverse to effectuate the statutory purposes of AFA, nor would it ensure that Uttam Galva does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Moreover, we find that the AFA rate suggested by Uttam Galva would not serve as a deterrent to future non-cooperation because that rate did not provide a deterrent to non-cooperation in this review. Accordingly, we continue to find that the petition rate of 71.09 percent effectuates a more appropriate deterrent to future non-cooperation than Uttam Galva's proposed transaction-specific margin.

When a respondent is not cooperative, such as Uttam Galva in this review, Commerce has the discretion to determine that the highest dumping margin from any segment, including a rate alleged in the petition, is the appropriate weighted-average dumping margin to apply as AFA.³¹ Furthermore, there is no requirement that the AFA rate assigned in this review be within the range of margins calculated for the respondent in prior investigations or reviews.³² Commerce's selection of the 71.09 percent rate is sufficiently adverse so as to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated, and is consistent with the purpose of AFA. Therefore, applying the dumping margin suggested by Uttam Galva would be an unwarranted deviation from Commerce's standard practice.

Further, section 776(b)(2) of the Act does not indicate a hierarchy or preference for which source of information Commerce should use when relying upon AFA. Accordingly, we find that no statutory or regulatory preference exists for choosing a dumping margin from a segment of the

²⁷ See PDM at 5.

²⁸ *Id.* at 7.

²⁹ See Uttam Galva's Brief at 4.

³⁰ See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

³¹ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

³² See *KYD, INC. v. United States*, 607 F.3d 760, 765-66 (Fed. Cir. 2010) ("Commerce need not select, as the AFA rate, a rate that represents the typical dumping margin for the industry in question.").

proceeding rather than selecting a dumping margin based upon secondary information. Accordingly, because the petition rate is corroborated to the extent practicable and effectuates the policy of deterring future non-cooperation, we find it is appropriate to continue to select the 71.09 percent petition rate as Uttam Galva's AFA rate for the final results.

VII. 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 results of this review and the final weighted-average dumping margin in the *Federal Register*.



Agree



Disagree

6/3/2019

X  _____

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance