A-588-874
Administrative Review
POR: 10/1/2018 – 9/30/2019
Public Document
E&C/Office VII: JJZ

August 20, 2021

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Hot-Rolled Steel Flat Products from Japan; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments of interested parties in the 2018-2019 administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from Japan. As a result of our analysis, we did not make changes to the *Preliminary Results*.[1] We continue to find that mandatory respondents Nippon Steel Corporation (NSC) and Tokyo Steel Manufacturing Co., Ltd. (Tokyo Steel) each made sales of subject merchandise at prices below normal value (NV) during the period of review (POR), October 1, 2018, through September 30, 2019.

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 from parties:

List of the Issues

Comment 1: Whether Commerce Should Deduct Section 232 Duties from U.S. Price
Comment 2: Whether Commerce Should Apply Adverse Facts Available to NSC's Home Market Sales made to Certain Affiliated Customers
Comment 3: Whether Commerce Should Apply Differential Pricing Methodology with Zeroing Negative Margins for Sales that Pass Commerce's Differential Pricing Test

[1] *See Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 86 FR 10920 (February 23, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 4: Whether Commerce Should Include Certain Separately Invoiced U.S. Revenue Fields in Calculating the Net U.S. Price
Comment 5: Whether Commerce Should Make Certain Adjustments to NSC's Reported G&A Expenses

II. BACKGROUND

On February 23, 2021, Commerce published the *Preliminary Results* and provided interested parties an opportunity to comment.[2] Between March 25 and April 1, 2021, Commerce received timely filed briefs and rebuttal briefs from the petitioners[3] and NSC.[4] On March 25, 2021, Commerce received a hearing request from NSC.[5] On July 2, 2021, NSC withdrew its hearing request.[6] On April 14, 2021, we extended the deadline for the final results.[7] The deadline for the final results of this review is August 20, 2021.

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. SCOPE OF THE ORDER

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and 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 thickness, and 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 of 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 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:

[2] *See Preliminary Results*.
[3] The petitioners consist of AK Steel Corporation; ArcelorMittal USA LLC; Nucor Corporation; SSAB Enterprises, LLC; Steel Dynamic, Inc.; and United States Steel Corporation.
[4] *See* Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from Japan: Case Brief," dated March 25, 2021; *see also* NSC's Letter, "Certain Hot-Rolled Steel Flat Products from Japan: NSC's Case Brief," dated March 25, 2021 (NSC's Case Brief); Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from Japan: Petitioner's Rebuttal Brief," dated April 1, 2021 (Petitioners' Rebuttal Brief); NSC's Letter, "Certain Hot-Rolled Steel Flat Products from Japan: NSC's Rebuttal Brief," dated April 1, 2021.
[5] *See* NSC's Letter, "Certain Hot-Rolled Steel Flat Products from Japan: NSC's Hearing Request," dated March 25, 2021.
[6] *See* NSC's Letter, "Certain Hot-Rolled Steel Flat Products from Japan: Withdrawal of NSC's Hearing Request," July 2, 2021.
[7] *See* Memorandum, "Certain Hot-Rolled Steel Products from Japan: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2018-2019," dated April 14, 2021.

(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 unless the resulting measurement makes the product covered by the existing antidumping[8] or countervailing duty[9] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), 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 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, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, 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, the substrate for 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,

[8] *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

[9] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains 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 hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, 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 hot-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 order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;[10]
- Ball bearing steels;[11]
- Tool steels;[12] and
- Silico-manganese steels;[13]

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060,

[10] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[11] 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.

[12] 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.

[13] 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.

7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

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

IV. APPLICATION OF PARTIAL FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

A. Legal Framework

1) Application of Facts Available

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: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Finally, where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency.

2) 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 (*i.e.*, adverse facts available (AFA)).[14] In doing so, and under section 776(b)(1)(B) of the Act, 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.

[14] *See* 19 CFR 351.308(a); *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (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."[15] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[16] It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[17]

B. NSC's Unreported Home Market Affiliates' Downstream Resales

As discussed in Comment 2 below, Commerce asked NSC in the initial and supplemental questionnaire to provide the downstream sales for its sales to affiliated parties. NSC failed to submit the required home market affiliated companies' resale data for certain affiliates. As a result, we find that necessary information is missing from the record because NSC did not provide all the requested home market price information that was necessary to calculate comparison market price and dumping margins. Accordingly, pursuant to sections 776(a)(1) and (2)(A) of the Act, we are relying upon facts otherwise available with respect to NSC's certain unreported home market affiliates' downstream sales.

Because NSC has not provided all the required home market affiliated company downstream resales, Commerce is unable to further assess or analyze these sales. As discussed in detail in Comment 2 below, we find that NSC failed to cooperate by not acting to the best of its ability to comply with the request for information regarding the reporting of these affiliated companies' home market resales, which prevents Commerce from having all relevant home market sales prices and, therefore, from calculating an accurate dumping margin.

Accordingly, Commerce finds that NSC failed to cooperate to the best of its ability to comply with a request for information by Commerce. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce finds it is appropriate to use an adverse inference when selecting from among the facts otherwise available. Because NSC did not report home market prices for all of its affiliates' downstream resales, as AFA, we are applying the highest unaffiliated home market price of the commonly sold CONNUMs to the unreported downstream sales at issue.

---

[15] *See* SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; *see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).
[16] *See, e.g., Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *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); and *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296 (May 19, 1997).
[17] *See, e.g., Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying PDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

V. FINAL DETERMINATION OF NO SHIPMENTS

Honda Trading Canada, Inc. (Honda), Panasonic Corporation (Panasonic), and Mitsui & CO., Ltd. (Mitsui) claimed no shipments during the POR. U.S. Customs and Border Protection (CBP) confirmed Honda, Panasonic and Mitsui had no shipments.[18] Therefore, in the *Preliminary Results*, we noted we would issue appropriate instructions to CBP based on final results of the review.[19] We received no comments from parties with respect to these companies' no shipment claim. Therefore, for the final results we continue to find Honda, Panasonic and Mitsui had no shipments of subject merchandise to the United States during the POR.

VI. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of comments received from parties, we did not make changes to NSC and Tokyo Steel's calculations from the *Preliminary Results*.

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Deduct Section 232 Duties from U.S. Price

NSC's Case Brief

- Section 232 duties on steel imports are more similar to antidumping and section 201 duties, which Commerce does not consider to be "United States import duties" for purposes of 772(c)(2)(A) of the Act, than to ordinary customs duties.[20]
- Section 232 duties are more similar to AD and section 201 duties than to ordinary customs duties because: (1) the section 232 duties on steel imports serve a special remedial purpose similar to AD and section 201 duties; (2) the section 232 duties on steel imports are temporary in nature; and (3) deducting these section 232 duties from U.S. price imposes an impermissible double remedy.[21]
- Treating these section 232 duties as ordinary customs duties would be inconsistent with the United States' World Trade Organization (WTO) obligations. In particular, Commerce's treatment of these section 232 duties as ordinary customs duties would impose duties on NSC's merchandise in excess of the bound rate in the United States' Schedule of Concessions and, therefore, would be inconsistent with Articles II:1(a) and (b) of the General Agreement on Tariffs and Trade 1994.[22]
- Given that Commerce and the President viewed the section 232 duties on steel imports as an alternative means to remedy injury to the domestic industry, equivalent to special duties like AD and section 201 duties, these particular section 232 duties cannot be considered "separate and apart" from those provisions as Commerce now claims.

[18] *See* Memorandum, "Certain Hot-Rolled Steel Flat Products from Japan; No Shipment Inquiry for Honda Trading Canada, Inc. during the period 10/01/2018 through 09/30/2019," dated February 19, 2021; "Certain Hot-Rolled Steel Flat Products from Japan; No Shipment Inquiries for Mitsui & Co., Ltd. and the Panasonic Corporation During the Period 10/01/2018 through 09/30/2019," dated February 24, 2021.
[19] *See Preliminary Results* PDM at 7.
[20] *See* NSC's Case Brief at 1.
[21] *Id*.
[22] *Id*. at 2.

Rather, it is clear that they serve a remedial purpose similar to AD and section 201 duties.[23]

- Like AD and section 201 duties, section 232 duties provide only temporary relief from the injurious effects of imports, because section 232 duties do not require congressional action to be terminated or modified, while ordinary customs duties are permanent unless modified by Congress.[24] The placement of the section 232 duties in Chapter 99 of the HTSUS provides additional evidence of the special and temporary nature of these duties.[25]
- To assess both a section 232 duty and an AD duty on the same steel imports without regard to the section 232 duty would be to remedy substantially overlapping injuries twice, thereby increasing AD duties and section 232 duties beyond the amounts authorized under U.S. law.[26]

Petitioners' Rebuttal Brief

- Section 232 duties are not imposed as a remedial measure to permit an injured domestic industry to adjust to import competition. Under section 232, Commerce is not directed to determine whether imports are injuring a domestic industry, but rather whether imports are entering "in such quantities or under such circumstances as to threaten to impair the national security."[27]
- Section 232 delegates to the President the discretion to decide both the "nature and duration" of any action taken to adjust imports for national security reasons, and it imposes no limits on the rates of section 232 duties that may be applied or the period of time over which they may stay in effect.[28]
- The Proclamation plainly requires that section 232 duties be treated as ordinary import duties. They are repeatedly referred to as tariffs, duties, and duty rates. They are embodied in the HTSUS under the "ordinary customs duty" treatment section, and the President's section 232 Proclamation makes explicitly clear that section 232 duties are import duties and that antidumping duties shall continue to be imposed.[29]
  As it has done in several other proceedings, Commerce should reject NSC's claim of double counting between section 232 duties and antidumping duties. Commerce is tasked with calculating the antidumping margins, section 232 duties are ordinary customs duties that should be deducted from EP and CEP, just like any other sales adjustment under section 772(c) of the Act.[30]

Commerce's Position: We disagree with NSC's assertions that section 232 duties are special duties similar to section 201 safeguard, AD, or CVD duties. NSC included section 232 duties in the price of subject merchandise sold to unaffiliated customers in the United States; therefore, for the purposes of the final results, we find that section 232 duties are analogous to

[23] *Id*. at 13.
[24] *Id*. at 14.
[25] *Id*. at 15.
[26] *Id*. at 17.
[27] *See* Petitioners' Rebuttal Brief at 18-19.
[28] *Id*. at 20.
[29] *Id*.
[30] *Id*. at 24.

U.S. import duties and are properly deducted from EP pursuant to the statute.[31] In the *Preliminary Results*, we stated that "section 232 duties are not akin to antidumping or section 201 duties."[32] We also explained that section 232 duties should be treated as "United States import duties" for purposes of section 772(c)(2)(A) of the Act – and thereby "U.S. Customs duties," which are deducted from U.S. price.[33]

Commerce considered section 201 duties in *Stainless Steel Wire Rod from Korea* and determined not to deduct section 201 duties from U.S. prices in calculating dumping margins,[34] and this decision was sustained by the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Wheatland Tube*.[35] While NSC cites these decisions and others to support their arguments that section 232 duties should not be deducted, the issues are different as treatment of section 201 duties differs from treatment of section 232 duties.

NSC is incorrect to claim that the CAFC's characterization of section 201 duties in *Wheatland Tube* as temporary duties that are designed to remedy injury to a domestic industry also applies to section 232 duties.[36] Rather, the CAFC's holding in *Wheatland Tube* is based on a close examination of section 201 duties and does not extend to section 232 duties. In other words, *Wheatland Tube* assesses Commerce's interpretation of "United States import duties" and "special dumping duties" in consideration of the function and treatment of section 201 safeguard duties.

As explained in *Circular Welded Pipe and Tube from Turkey*, we find that section 232 duties are not akin to antidumping or section 201 duties. In contrast to NSC's contention that section 232 duties are remedial in nature, we find that section 232 duties are not focused on remedying injury to a domestic industry. The objective of antidumping duties is to "remedy sales by a foreign exporter in the U.S. market at less than fair value" and section 201 duties aim to "remedy the injurious effect on the U.S. industry of significant surge in imports."[37] Moreover, "{c}ountervailing duties remedy unfair competitive advantage that foreign exporters have over domestic producers as a result of foreign countervailable subsidies."[38] As such, these types of duties "are all directed at the same overarching purposes – protecting the bottom line of domestic producers."[39] By contrast, we continue to find that section 232 duties are not focused on remedying injury to a domestic industry.

As noted in the *Preliminary Results*, the text of the Presidential proclamations highlights the

---

[31] *See* section 772(c)(2)(A) of the Act (Commerce is instructed to adjust EP and constructed export price (CEP) "for the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties …").
[32] *See Preliminary Results* PDM at 16.
[33] *Id*. at 17.
[34] *See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (*Stainless Steel Wire Rod from Korea*).
[35] *See Wheatland Tube Co., v. United States*, 495 F. 3d at 1366 (CAFC 2007) (*Wheatland Tube*).
[36] *See* NSC's Case Brief at 8 (citing *Wheatland Tube*, 495 F. 3d at 1361).
[37] *See Wheatland Tube*, 495 F. 3d at 1362; *see also* section 201 of the Trade Act of 1974; section 731(1) of the Act; and Section 232 Duties Memorandum at 8.
[38] *See Wheatland Tube*, 495 F. 3d at 1363.
[39] *Id*. at 1364.

intent of establishing such duties clearly.[40] *Proclamation 9705*, for example, states that it "is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the *national security …*"[41] Commerce noted that the text of section 232 duties of the Trade Expansion Act of 1962 also clearly concerns itself with "the effects on the national security of imports of the article."[42] We note that the Presidential proclamations state that section 232 duties are to be imposed in addition to other duties, unless expressly provided for in the proclamations.[43] The Annex to *Proclamation 9740* refers to section 232 duties as "ordinary" customs duties, and it also states that "{a}ll anti-dumping and countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."[44] We disagree with NSC that treating these section 232 duties as ordinary customs duties would be inconsistent with the United States' WTO obligations. As stated here, Commerce is treating these section 232 duties as ordinary customs duties, as they are imposed in addition to other customs duties, and these are not to be considered as part of the bound rate in the United States' Schedule of Concessions. Notably, there is no express exception in the HTSUS revision in the Annex. In other words, we find that section 232 duties are treated as any other duties. No express reduction to antidumping duties by the amount of the section 232 duties is contained in the *Proclamation 9705*. Had the President intended that antidumping duties be reduced by the amount of section 232 duties imposed, *Proclamation 9705* would have expressed that intent.

NSC argues that deducting section 232 duties from the U.S. price risks imposing a double remedy. However, we find that reducing U.S. EP and CEP by the amount of reported section 232 duties in the context of this administrative review is consistent with section 772(c)(2)(A) of the Act, because it instructs Commerce to adjust EP and CEP for "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties."[45]

Pursuant to section 777(c)(2)(A) of the Act, we find that it is appropriate to deduct this amount from NSC's reported U.S. prices. For these final results, and for the reasons noted above, we

---

[40] *See Proclamation 9711 of March 22, 2018*, 83 FR 13361, 13363 (March 28, 2018) (*Proclamation 9711*) ("In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security"); *see also Proclamation 9740 of April 30, 2018*, 83 FR 20683 (May 7, 2018) (*Proclamation 9740*) (similar); *Proclamation 9759 of May 31, 2018*, 83 FR 25857 (June 5, 2018) (*Proclamation 9759*) (similar); *Proclamation 9772 of August 10, 2018*, 83 FR 40429 (August 15, 2018) (*Proclamation 9722*) (similar); *Proclamation 9777 of August 29, 2018*, 83 FR 45025 (September 4, 2018) (*Proclamation 9777*) (similar); and Section 232 Duties Memorandum at 8.

[41] *See Proclamation 9705*, 83 FR 11627 (emphasis added).

[42] *See* section 232(b)(1)(A) of the Trade Expansion Act of 1962; *see also* section 232(a) of the Trade Expansion Act of 1962 (explaining that "{n}o action shall be taken … to decrease or eliminate duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security.").

[43] *See Proclamation 9705*, 83 FR at 11627; *see also Proclamation 9711*, 83 FR at 13363; *Proclamation 9740*, 83 FR at 20685-87 ("All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."); *Proclamation 9759*, 83 FR at 25857; *Proclamation 9772*, 83 FR at 40403-31; and *Proclamation 9777*, 83 FR at 45025. The proclamations do not expressly provide that section 232 duties receive differential treatment.

[44] *See Proclamation 9740*, 83 FR at 20685-87.

[45] *See* section 772(c)(2)(A) of the Act.

treated NSC's section 232 duties as U.S. import duties by deducting the reported section 232 duties as U.S. import duties to calculate NSC's U.S. Price.

Comment 2: Whether Commerce Should Apply Adverse Facts Available to NSC's Home Market Sales Made to Certain Affiliated Customers

NSC's Case Brief

- NSC cooperated by acting to the best of its ability to comply with Commerce's requests for information from all affiliated customers that did not pass Commerce's arm's length test and for which NSC did not report downstream home-market sales.[46] An examination of NSC's abilities, efforts, and degree of cooperation, indicates that NSC put forth its "maximum efforts" to seek and obtain the information requested by Commerce.[47]
- Certain affiliates did not sell NSC's hot-rolled steel in Japan during the POR. Record evidence indicates that these affiliates had no downstream sales in Japan and therefore there are no gaps in the record to fill with facts available with respect to these companies.[48]
- Commerce's assertion that NSC has the power to convince its affiliated customers to provide downstream sales information is unsupported by substantial evidence on the record; Commerce does not point to any evidence on the record that attempts by NSC to compel these companies to cooperate would have been successful. NSC is prohibited under Japanese law to use commercial threats to compel its affiliated customers to cooperate.[49] The use of commercial threats by NSC to compel its affiliated customers to cooperate would violate the Japanese Antimonopoly Act.[50]
- With small ownership shares of these affiliates and relatively small quantity of sales to these affiliates during the POR, NSC does not have ownership leverage or supplier's leverage such that is could have compelled the companies to provide the requested information. Citing *CORE from Korea*, NSC argues that Commerce should follow its previous decisions in which it determined not to apply AFA against respondents that are unable to compel affiliates' cooperation.[51]
- As NSC was not in a position to compel its affiliated customers to report their downstream sales, and it otherwise did the maximum that it was able to do to comply with Commerce's requests for information, in the final results, Commerce should reverse its finding that NSC failed to cooperate to the best of its ability and should fill in any necessary gaps with facts otherwise available without an adverse inference.[52]
- Citing *Frontseating Service Valves*, *Certain Steel Nails from the United Arab Emirates*, *Certain Hot-Rolled Carbon Steel Flat Products from India*, and *Certain Frozen Warmwater Shrimp from Thailand*, NSC argues that Commerce should fill in any necessary gaps with facts available without an adverse inference, *e.g.*, by using the highest NSC home market product matching CONNUM-specific price for unaffiliated customers. NSC further argues

[46] *See* NSC's Case Brief at 24.
[47] *Id*.
[48] *Id*. at 28.
[49] *Id*. at 29.
[50] *Id*. at 32.
[51] *Id*. at 29 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016) (*CORE from Korea*), and accompanying IDM at Comment 14).
[52] *Id*. at 32.

that Commerce should, at minimum, determine not to apply AFA to the affiliates that did not sell NSC's hot-rolled steel in Japan during the POR.[53]

Petitioners' Rebuttal Brief

- Consistent with its findings in the original investigation, as well as in both the first and second administrative reviews, Commerce's preliminary decision to apply partial AFA on this issue was reasonable and in accordance with the record facts and agency practice. Moreover, the U.S. Court of International Trade (CIT) specifically upheld Commerce's application of AFA to NSC's unreported downstream sales in a prior segment of this proceeding.[54]
- NSC has provided no new argument or evidence to support a different finding in this review. Substantial record evidence supports Commerce's findings that NSC: (1) failed to cooperate to the best of its ability, and (2) was in a position to induce its affiliated resellers to report their downstream sales or, at a minimum, to sell to those resellers at arm's length prices.[55]
- Commerce's application of AFA is consistent with the statute. The CIT and CAFC has routinely upheld Commerce's application of AFA to a respondent who has failed to put forth maximum efforts to obtain necessary information from its affiliates.[56]
- NSC did not put forth maximum efforts to obtain the downstream sales data. There is nothing in the record showing that NSC made any efforts to address its affiliated resellers' concern over the financial and labor burden to manually produce the information or to address its affiliated resellers' alleged inability to access or produce the information in the format requested by Commerce. There is no evidence that NSC exerted any leverage to induce, or attempt to induce, the affiliated resellers to provide their downstream sales. NSC acted only to accept the resellers' repeated excuses of not reporting the requested data.[57]
- NSC is in the position to proactively ensure its affiliated resellers can meet certain baseline recordkeeping requirements before the sale and clearly has the power to avoid selling to these affiliates or to sell to them at arm's length prices to obviate the need for

[53] *Id*. at 32-33 (citing *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying IDM at Comment 12 (*Frontseating Service Valves*); *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 80 FR 32527 (June 9, 2015), and accompanying IDM at Comment 1 (*Certain Steel Nails from the United Arab Emirates*); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 50406 (October 3, 2001), and accompanying IDM at Comment 10 (*Certain Hot-Rolled Carbon Steel Flat Products from India*); *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933 (August 29, 2008), and accompanying IDM at Comments 13 and 14 (*Certain Frozen Warmwater Shrimp from Thailand*)).

[54] *See* Petitioners' Rebuttal Brief at 3 (citing *Nippon Steel & Sumitomo Metal Corp. v. United States*, No. 19-00131, Slip Op. 20-161 (CIT 2020)).

[55] *Id*.

[56] *Id*. at 5 (citing *Hyundai Steel v. United States*, 319 F. Supp. 3d at 1345 (CIT 2018); *Haixing Jingmei Chem. Prod. Sales Co. v. United States*, 357 F. Supp. 3d 1337, 1348-49 (CIT 2018); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841, 845 (CIT 2000); *Kawasaki Steel Corp. v. United States*, 24 CIT 684, 692-93, 110 F. Supp. 2d 1029, 1037 (CIT 2000); *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1233 (CAFC 2014)).

[57] *Id*. at 7.

their downstream sales data altogether. NSC has failed to provide the evidence necessary to distinguish this review from all previous segments of this proceeding. Given the continued potential and incentive for NSC to manipulate its margin, there is no basis for Commerce to reconsider its Court-affirmed position on this issue.[58]

- The record evidence does not support the claim that certain affiliates did not sell NSC's hot-rolled steel in Japan during the POR. The record does not contain a single invoice or any other sales documentation issued by NSC's affiliates to confirm NSC's such claims. Accordingly, Commerce should continue to include these affiliates when applying the partial AFA in its final results.[59]
- Commerce's method of applying AFA is supported by substantial evidence and in accordance with law. The AFA rate chosen by Commerce has an impact on NSC's margin. This is consistent with Commerce's practice in all prior segments of this proceeding.[60]

Commerce's Position: We continue to find that NSC has failed to cooperate to the best of ability.

Similar to the original investigation and the two prior administrative reviews, NSC has raised the issue of whether Commerce can resort to AFA when parties affiliated with the respondent refuse to provide downstream sales when the sales to the affiliates are determined to be not at arm's-length.[61] In this administrative review, Commerce twice requested the downstream sales and NSC did not provide them. Accordingly, in the *Preliminary Results*,[62] we found that the use of facts available is warranted in determining the AD margin for NSC, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act. We also found that NSC did not act to the best of its ability to get the downstream sales information from its affiliates, and thus that AFA are warranted pursuant to section 776(b) of the Act.

In this administrative review, NSC had the choice of selling to affiliates which would cooperate and those that will not. If respondents like NSC are able to make non-arm's length sales to affiliates and those affiliates refuse to provide the downstream sales information, such a respondent would potentially be able to manipulate the dumping calculations by shielding high priced home market sales behind a wall of uncooperative affiliates. Because the respondent has the choice of to whom it sells its products, when it sells to affiliates at prices that are not at arm's length and those affiliates refuse to provide the downstream sales information, Commerce may hold the respondent responsible and make a finding that the respondent did not act to the best of its ability regardless of its attempts to get the data from the uncooperative affiliates. To do otherwise would undermine the margin calculations and permit respondents to sell at least some sales at less than fair value without consequence. Therefore, neutral facts available is not appropriate under these circumstances because the respondent – in making these non-arm's length sales to uncooperative affiliates – has not acted to the best of its ability. Furthermore, the

[58] *Id*. at 9-11.
[59] *Id*. at 12-13.
[60] *Id*. at 13-14.
[61] If the sales by the respondent to the affiliate are not at arm's-length, the price of these sales cannot be used as normal value because the prices are not market prices. As a result, Commerce then needs the downstream sales made by the affiliates to unrelated customers in the home market to use as normal value dumping benchmarks.
[62] *See Preliminary Results* PDM at 9.

affiliated producers are obtaining the foreign like product at less than an arm's-length price, and being in the business of buying and reselling the foreign like product, are aware of the benefit of such a transaction. Accordingly, consistent with our *Preliminary Results*,[63] we continue to find that the use of an adverse inference in selection among the facts available is warranted in determining the AD margin for NSC, pursuant to section 776(b) of the Act.

NSC argued that certain NSC's affiliates did not sell NSC's hot-rolled steel in Japan during the POR, and/or these affiliates had no downstream sales. As shown in NSC's Section B home market sales database, NSC sold hot-rolled steel to these affiliated companies in Japan during the POR. Furthermore, the sale price to these affiliates failed Commerce's arm's-length test. However, NSC did not provide any information with respect to the downstream sales made by these affiliates, much less any sales-specific documentation to support its claim of the hot-rolled steel at issue was not resold in the home market. If the hot-rolled steel at issue were exported, NSC's affiliates could have provided export sales invoice, shipping documentation, and bill of lading to support the export sale claim; if the hot-rolled steel purchased from NSC during the POR was consumed by the affiliate, NSC could also have provided the appropriate inventory and raw material consumption documentation to support its claim. NSC's affiliates did not provide any documentation to corroborate their claims, therefore, the record does not support NSC's contention that these affiliates did not make downstream sales in the home market.

Again, NSC states it is contrary to Japanese law to use commercial threats to induce cooperation. NSC has provided an insufficient explanation as to if and how this law would apply to the current situation. In any event, even if it did apply, Commerce is not directing NSC to violate Japanese law. However, Commerce is finding, under the U.S. AD law, that if NSC makes the choice of structuring its home market sales such that it sells at non-arm's length prices to affiliates who refuse to provide their downstream sales information, Commerce will find it necessary to resort to AFA. Without access to the appropriate home market pricing, which is a fundamental requirement for the accuracy of the dumping calculation, the entire dumping calculation is undermined.

In applying AFA for these unreported sales, NSC again argues that Commerce should use the highest NSC home market product matching CONNUM-specific price for unaffiliated customers. Commerce does not agree because, again, allowing this interpretation of the law would permit NSC to shield higher priced sales in the home market from use in the dumping calculations. Simply requesting that Commerce use the high price it reported for the particular CONNUM at issue does not compensate in any way for the higher downstream prices it may not have reported. To ensure that the selected AFA rate will induce cooperation, we find it appropriate to evaluate a broader pool, *i.e.*, the respondent's entire home market sales, in selecting an AFA rate for these unreported sales. Consistent with the methodology from the *Hot Rolled from Japan Investigation*[64] and the *Preliminary Results*, for the final results we have

[63] *Id*.

[64] *See Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016) (*Hot Rolled from Japan Investigation*), and accompanying IDM.

continued to assign the highest unaffiliated home market price of the commonly sold CONNUMs to the unreported downstream sales at issue.[65]

Comment 3: Whether Commerce Should Apply Differential Pricing Methodology with Zeroing Negative Margins for Sales that Pass Commerce's Differential Pricing Test

NSC's Case Brief

- In the *Preliminary Results*, Commerce applied its differential pricing methodology in calculating the dumping margin for NSC, Commerce determined to apply the mixed alternative method to calculate NSC's weighted-average dumping margin.[66]
- In applying the A-to-T method to those sales identified as passing the Cohen's *d* test, Commerce zeroed the negative comparison results when calculating the weighted-average dumping margin. Commerce disregarded the negative comparison results and counted only the positive comparison results for those sales to which it applied the A-T method.[67]
- Citing the WTO Appellate Body's decision in *US – Washing Machines*,[68] NSC argued that Commerce's foregoing methodology results in numerous violations of its WTO obligations under the Anti-Dumping Agreement and GATT 1994. NSC argued that Commerce's application of its differential pricing methodology to calculate NSC's dumping margin in this review is inconsistent in several respects with Article 2 of the Anti-Dumping Agreement, and also inconsistent with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994.[69]

Petitioners' Rebuttal Brief

- NSC's objections to Commerce's use of its differential pricing analysis are without merit as Commerce has previously considered and rejected these arguments. For its final results, Commerce should continue to reject these arguments in this review, as NSC has provided no new meaningful argument.[70]
- NSC is incorrect that WTO law necessarily prohibits application of the A-T method with zeroing. In *US – Differential Pricing Methodology*, a decision more recent than *US – Washing Machines*, a WTO dispute settlement panel rejected the argument that zeroing with the A-T method is inconsistent with the WTO Antidumping Agreement.[71]
- It is well-established that WTO decisions are without effect under U.S. law "unless and until such {a decision} has been adopted pursuant to the specified statutory scheme."[72] The CAFC has approved the use of the A-T method with zeroing in cases like *Union*

[65] *See* NSC's Preliminary Analysis Memorandum.
[66] *See* NSC's Case Brief at 35.
[67] *Id*. at 36.
[68] *Id*. (citing Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R and Add.1, adopted 26 September 2016 (*US – Washing Machines*)).
[69] *Id*.
[70] *See* Petitioners' Rebuttal Brief at 25.
[71] *Id*. (citing Panel Report, *United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*, WT/DS534/R, adopted April 9, 2019 (*US – Differential Pricing Methodology*)).
[72] *See Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1349 (Fed. Cir. 2005).

Steel v. United States and *U.S. Steel Corp. v. United States*, where it found that zeroing could be used "for combating targeted or masked dumping."[73]

- The use of the Cohen's *d* test in this review is consistent with Commerce's well-established practice, as it appropriately showed a significantly differing pattern of prices among time periods for NSC's sales.[74]
- The CAFC has upheld Commerce's decision to compare A-to-T rates with zeroing to A-to-A rates without zeroing in conducting Commerce's meaningful difference analysis as reasonable and in accordance with the statute.[75] The CAFC explained that "Commerce's decision to compare a zeroed A-to-T rate with a non-zeroed A-to-A rate reasonably achieved the statutory goal of determining whether the A-to-A method could account for targeting."[76]

Commerce's Position: We disagree with NSC that Commerce improperly applied the differential pricing analysis. As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the T-to-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute[77] here is a gap filling exercise properly conducted by Commerce.[78] As explained in the *Preliminary Results*, as well as in various other proceedings,[79] Commerce's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

We note that the CAFC has upheld key aspects of Commerce's differential pricing analysis, including: the application of the "meaningful difference" standard, which compares the

---

[73] *See* Petitioners' Rebuttal Brief at 26 (citing *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1363 (Fed. Cir. 2010); *see also Union Steel v. United States*, 713 F.3d 1101, 1109 (Fed. Cir. 2013); *JBF RAK LLC v. United States*, 790 F.3d 1358, 1365 (Fed. Cir. 2015)).

[74] *See* Petitioners' Rebuttal Brief at 27.

[75] *Id*. (citing *Apex Frozen Foods Priv. Ltd. v. United States*, 862 F.3d 1322, 1331 (Fed. Cir. 2017)).

[76] *Id*. at 1330.

[77] *See Koyo Seiko Co., Ltd. v. United States*, 20 F. 3d 1156, 1159 (CAFC 1994) (*Koyo Seiko Co., Ltd.*) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

[78] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc*., 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous, and an agency's interpretation is reasonable); *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (applying Chevron deference in the context of Commerce's interpretation of section 777A(d)(1) of the Act).

[79] *See, e.g.*, *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 18, 2018) (*OCTG from Korea 15-16 AR*), and accompanying IDM at Comment 8; *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 22970 (May 19, 2017), and accompanying IDM at Comment 4.

calculated weighted-average dumping margins using the A-to-A method without zeroing and an alternative comparison method based on the A-to-T method with zeroing; the reasonableness of Commerce's comparison method in fulfilling the relevant statute's aim; Commerce's use of a "benchmark" to illustrate a meaningful difference; Commerce's justification for applying the A-to-T method to all U.S. sales; Commerce's use of zeroing in applying the A-to-T method; that Congress did not dictate how Commerce should determine if the A-to-A method accounts for "targeted" or masked dumping; that the "meaningful difference" test is reasonable; and that Commerce may consider all sales in its "meaningful difference" analysis and consider all sales when calculating a final rate using the A-to-T method.[80]

The difference in the calculated results specifically reveals the extent of the masked dumping which is being concealed when applying the A-to-A method.[81] The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower-priced U.S. sales, is hidden or masked by higher U.S. prices,[82] such that the A-to-A method would be unable to account for such differences.[83] Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked dumping, Commerce finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked dumping.

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that so-called "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[84] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the

[80] *See Apex Frozen Foods v. United States*, 144 F.Supp.2d 1308, 1320-21 (CIT 2016), affirmed in *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017).
[81] *See Koyo Seiko Co., Ltd.*
[82] *See* SAA at 842.
[83] *See Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) ("{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.").
[84] *See* SAA at 842.

individual U.S. sales[85] remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.[86] The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

1) the normal value is less than all U.S. prices and there is no dumping;

2) the normal value is greater than all U.S. prices and all sales are dumped;

3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[87]

4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;

5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount of dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping, or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e., de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under

[85] These characteristics include items such as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

[86] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing.

[87] As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can Commerce consider the use of an alternative comparison method.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-A/A-to-T method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping with the applied offsets.

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limited circumstances are present (*i.e.*, scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

Further, for each A-to-A comparison result which does not result in the set of circumstances in scenario (5), the "meaningfulness" of the difference in the weighted-average dumping margins between the two comparison methods will be diminished. This is because for these A-to-A comparisons which do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin) but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no "meaningful" difference will thus dilute the significance of other A-to-A comparison results where there is a "meaningful" difference, which the A-to-T method avoids.

Therefore, Commerce finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in NSC's pricing behavior in the U.S. market. Congress's intent of addressing so-called "targeted dumping," when the requirements of section 777A(d)(1)(B) of

the Act are satisfied,[88] would be thwarted if the A-to-T method without zeroing were applied because this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that Commerce finds that the A-to-A method cannot take into account the pattern of prices that differ significantly, *i.e.*, Commerce identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and Commerce demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly.

In this review, Commerce finds that 61.28 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. The results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen's *d* test. Further, Commerce determines that there is meaningful difference between the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using an alternative comparison method. Thus, for the final results, Commerce continues to apply the mixed alternative method for all U.S. sales to calculate the weighted-average dumping margin for NSC.

Comment 4: Whether Commerce Should Include Certain Separately Invoiced U.S. Revenue Fields in Calculating the Net U.S. Price

NSC's Case Brief

- Commerce should include the separately invoiced U.S. revenue fields for extra services in the calculation of net U.S. price for certain sales.[89]
- For some transactions, NSC's U.S. affiliate, Steelscape LLC (Steelscape), issued separate invoices for extra services, which were reported in NSC's U.S. sales database. Commerce did not include these separately invoiced U.S. revenue fields in the calculation of net U.S. price.[90]

Petitioners' Rebuttal Brief

- The revenue Steelscape received for these services should be added to gross price only to the extent that the costs for these extra services are captured in Steelscape's reported further manufacturing costs. However, the nature of these services is unclear.[91]
- The record does not indicate the nature of these services or detail how these services differ from those services that are not considered extra services. It is also not clear where these extra services were performed or why certain transactions include them in the reported gross price while others do not.[92]

[88] *See* SAA at 842-843.
[89] *See* NSC's Case Brief at 47.
[90] *Id.*
[91] *See* Petitioners' Rebuttal Brief at 15-16.
[92] *Id.*

- NSC has not met the burden of proving entitlement to such an adjustment, Commerce should continue to deny these revenue adjustments for the final results.[93]

Commerce's Position: We have made no changes for the final results. In the *Preliminary Results*, Commerce relied on the total revenue as reported by NSC in its Section C sales database.[94] In its initial Section C questionnaire response, NSC stated that its total revenue field included: (1) gross unit price; (2) transportation-related revenue; and (3) revenue for extra services provided by Steelscape.[95] The Steelscape invoices on the record show: (1) gross unit price; (2) any transportation-related revenue; and (3) any revenue for extra services provided by Steelscape.[96] Moreover, the gross amounts on these invoices match the total revenue reported for these sales by NSC in its U.S. sales database. Finally, we note that in its case brief, NSC did not identify any specific U.S. sales where: (1) Steelscape issued separate invoices for transportation-related revenue or services revenue; or (2) the revenue for transportation-related services or extra services were not included in the total revenue that it reported.[97] NSC has not identified in the record a single instance of reported service-related revenue that is not included in its total revenue field. Therefore, we continue to rely on the total revenue as reported by NSC for these final results.

Comment 5: Whether Commerce Should Make Certain Adjustments to NSC's Reported G&A Expenses

We have not made any further adjustments to NSC's reported G&A expenses from the *Preliminary Results*. As the comments involve business proprietary information, the business proprietary discussion of this issue is included in the NSC Final Analysis Memorandum.[98]

[93] *Id*.
[94] *See* NSC's Section C Response Dataset; and NSC Preliminary Results Analysis Memorandum.
[95] NSC stated that "… included in Field TOTALREVU is the total of the amounts included in Fields GRUSUPRU, FRTREVU, FUELREVU, EMBOSSREVU, SLITREVU and CTLREVU, for Steelscape's CEP sales." *See* NSC's Initial Section C Questionnaire Response at C-37. The variables are: (1) Total Revenue (TOTALREVU); (2) Gross Unit Price in the US market (GRUSUPRU); (3) Freight Revenue (FRTREVU); (4) Fuel Revenue (FUELREVU); (5) Embossing Revenue (EMBOSSREVU); (6) Slitting Revenue (SLITREVU); and (7) Cutting to Length Revenue (CTLREVU). The extra services provided by Steelscape are embossing, slitting, and cutting to length.
[96] *See* NSC's Section C response at Exhibits C-12 and C-13.
[97] *See* NSC's Case Brief at 47.
[98] *See* Memorandum, "Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from Japan: Final Results Analysis for Nippon Steel Corporation," dated concurrently with this memorandum (NSC Final Analysis Memorandum).

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

8/20/2021

X 

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations