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Investigation
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E&C/VIII: IG

November 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China

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I. SUMMARY

The Department of Commerce ("Department") preliminarily determines that certain carbon and alloy steel cut-to-length plate ("CTL plate") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated dumping margin is shown in the "Preliminary Determination" section of the accompanying Federal Register notice.

II. BACKGROUND

On April 8, 2016, the Department received an antidumping duty ("AD") petition covering imports of CTL plate from the PRC, which was filed in proper order by ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises (collectively, "Petitioners").[1] The Department initiated this investigation on April 28, 2016.[2] In the "Respondent Selection" section of the Initiation Notice, the Department stated that in accordance with our standard practice for respondent selection in cases involving non-market economy ("NME") countries,[3] it intended to issue quantity and value ("Q&V") questionnaires to each potential respondent and base

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[1] See Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey, dated April 8, 2016 ("Petition").

[2] See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair Value Investigations, 81 FR 27089 (May 5, 2016) ("Initiation Notice").

[3] In the Initiation Notice, we stated that the presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. See Initiation Notice at 27093.

respondent selection on the responses received.[4] On April 29, 2016, the Department issued Q&V questionnaires to the 56 exporters/producers named in the Petition[5] and posted our Q&V questionnaire, along with filing instructions, on Enforcement and Compliance's website (http://trade.gov/enforcement/news.asp).

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of CTL plate to be reported in response to the Department's AD questionnaire.[6] The Department received a number of timely scope comments on the record this investigation, as well as on the records of the companion CTL plate investigations involving Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey.[7]

On May 27, 2016, the U.S. International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of CTL plate from the PRC.[8]

On June 2, 2016, one of the Petitioners, i.e., Nucor, and various other interested parties in this and/or the companion AD investigations submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On June 8, 2016, Nucor and various other interested parties filed rebuttal comments.

In August 2016, Petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the Department published a postponement of the preliminary determination until no later than November 4, 2016.[9]

On September 6, 2016, and October 13, 2016, the Department addressed the scope comments placed on the record of this investigation by interested parties.[10] On October 7, 2016, and

[4] Id., at 27095.
[5] See the Department's Memorandum to the File from Ryan Mullen, International Trade Analyst, Office V, regarding, "Quantity and Value Questionnaire," dated May 12, 2016.
[6] See Initiation Notice, 81 FR at 27090-91.
[7] For further discussion of these comments, see Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 6, 2016 ("Preliminary Scope Memorandum"), and Memorandum from Scot Fullerton, Director of AD/CVD Office VI, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs," dated October 13, 2016 ("Additional Preliminary Scope Memorandum").
[8] See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey; Determinations, 81 FR 33705 (May 27, 2016).
[9] See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 81 FR 59185 (August 29, 2016).
[10] See Preliminary Scope Memorandum and Additional Preliminary Scope Memorandum, respectively.

October 18, 2016, Petitioners ArcelorMittal USA LLC and SSAB Enterprises both filed pre-preliminary determination comments, respectively.[11]

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation ("POI") is October 1, 2015, through March 31, 2016. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was April 2016.[12]

IV. SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations,[13] the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage, i.e., scope.[14] Certain interested parties commented on the scope of this investigation as it appeared in the Initiation Notice, as well as on additional language proposed by the Department.[15] For discussion of changes to the scope from that identified in the Initiation Notice, see the "Scope Comments" section of the accompanying Federal Register notice.

V. SELECTION OF RESPONDENTS

Section 777A(c)(l) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. Pursuant to section 777A(c)(2) of the Act, the Department may limits its examination to: (A) a sample of exporters, producers or types of products that the Department determines is statistically valid based on the information available to the Department at the time of selection, or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Department determines can be reasonably examined. In selecting respondents in this AD proceeding, the Department found that, given its limited resources, it was appropriate to select respondents that account for the largest volume of the subject merchandise that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act.

In the Initiation Notice, the Department stated its intent to base respondent selection on the responses to Q&V questionnaires and that the Q&V responses must be submitted by all PRC

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[11] See Petitioner ArcelorMittal USA LLC's Comments re: "ArcelorMittal USA's Pre-Preliminary Comments in the Antidumping Duty Investigation," dated October 7, 2016; and Petitioner SSAB Enterprises' Comments re: "SSAB's Comments in Anticipation of the Preliminary Determination," dated October 18, 2016.
[12] See 19 CFR 351.204(b)(1).
[13] See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) ("Preamble").
[14] See Initiation Notice, 81 FR at 27090.
[15] For a summary of the product coverage comments and rebuttal responses submitted on the record of this investigation, and accompanying discussion and analysis of all comments timely received, see Preliminary Scope Memorandum and Additional Preliminary Scope Memorandum.

exporters/producers no later than May 12, 2016, which was two weeks from the signature date of the notice.[16] Of the 56 companies to which we issued Q&V questionnaires, 33 were successfully delivered,[17] 17 were undeliverable[18], and six were refused by the recipient.[19] On May 11, 2016 and May 12, 2016, Hebei Jingye Cut Deal Co., Ltd. ("Jingye") and Jiangyin Xingcheng Special Steel Works Co., Ltd. ("Jiangyin Special"), respectively, filed timely Q&V questionnaire responses.[20] In its response, Jingye provided the requested Q&V sales chart, which indicated that it had no shipments to the United States during the POI. Without entries during the POI, there is no basis on which we could individually investigate Jingye. Thus, on May 27, 2016, based on the Q&V responses on the record, containing evidence of subject merchandise entries, the Department selected Jiangyin Special for examination as the only responding company with reported entries during the POI.[21]

On May 27, 2016, the Department issued its AD NME questionnaire to Jiangyin Special.[22] Between June and July 2016, Jiangyin Special submitted timely, properly filed questionnaire

[16] See Initiation Notice, 81 FR at 27095.
[17] See Memorandum to the File, from Irene Gorelik, Senior Analyst, re: "Quantity & Value Questionnaire Delivery Confirmation," dated September 15, 2016 ("Q&V Delivery Confirmation"), at Attachment I. The companies to which FedEx successfully delivered the Q&V packages are: (1) Abesteel Co. Ltd., (2) Anshan Iron and Steel (Group) Corp, (3) Anyang Iron and Steel Group Co. Ltd (AISCO), (4) Chongging Iron and Steel (Group) Co. Ltd., (5) Fujian Sangang Minguant Co. Ltd., (6) Guangdong Shaoguan Iron and Steel Co. Ltd., (7) Handan Iron and Steel Group Co. Ltd., (8) Hebei Jingye Group, (9) Hebei Puyang Iron and Steel Co. Ltd., (10) Hebei Wenfeng Iron and Steel Co. Ltd., (11) Hebei Xiniin Iron and Steel Co. Ltd., (12) JFE Steel Corp (Guangzhou), (13) Jiangyin Huaxi Iron and Steel Co. Ltd., (14) Jinding Heavy Industry Co. Ltd., (15) Lengshuijiang Iron and Steel Group Co., (16) Liuzhou Iron and Steel Co., (17) Maanshan Iron and Steel Co. Ltd., (18) Minmetals Yingkou Medium Plate Co. Ltd., (19) Nanyang Hanye Special Steel Co. Ltd., (20) Ningxia Tianyuan Manganese Industry Group, (21) Qilu Special Steel Co. Ltd., (22) Qingdao Dtom Metal Products Co. Ltd., (23) Shandong Iron and Steel Group, (24) Shandong Taishan Iron and Steel Co. Ltd., (25) Shanghai Wubo Steel Structure Material Co., Ltd., (26) Shougang Group, (27) Tianjin Rockcheck Steel Group Co. Ltd., (28) Tianjin Tiantie Metallurgical Group (Bohai Steel), (29) TISCO – Taiyuan Iron and Steel (Group) Co. Ltd., (30) Wenzhou Yucang Steel Industry Co. Ltd., (31) WISCO – Wuhan Iron and Steel (Group) Corp, (32) Xinxing Ductile Iron Pipes Co. Ltd., and (33) Xinyu Iron and Steel Co. Ltd. For further information, please refer to the "PRC-wide Entity" section, below.
[18] Id., at Attachment II. The companies to which FedEx was unable to deliver the Q&V packages are: (1) Baoshan Iron and Steel Co. Ltd (Baosteel Co. Ltd), (2) Baosteel Group Corp, (3) Hunan Valin Xiangtan Iron and Steel (Group) Co., (4) Jinan Iron and Steel Co. Ltd., (5) Jiuguan Iron and Steel (Group) Co. Ltd (JISC), (6) Laiwu Steel Group Ltd., (7) Panzhihua Iron and Steel (Group) Co. (Pangang Group), (8) Pingxiang Iron and Steel Co. Ltd., (9) Qingdao Iron and Steel Group Co., (10) Rizhao Steel Group, (11) SGIS Songshan Co. Ltd., (12) Shandong Lu Steel (Group) Co. Ltd., (13) Sinosteel Corp, (14) Tianjin Iron and Steel Group Co. Ltd., (15) Topsky Steel Industry Co. Ltd., (16) Valin Group, and (17) Wuyang Iron and Steel Co. Ltd.
[19] Id., at Attachment III. The companies which refused delivery of the Q&V packages are: (1) Baotou Iron and Steel (Group) Co. Ltd., (2) CITIC Pacific, (3) Kunming Iron and Steel (Group) Co. Ltd (KISC), (4) Nanjing Iron and Steel United Co. Ltd (NISCO), (5) Tangshan Iron and Steel Group Ltd (TISCO), (6) Tonghua Steel Group. For further information, please refer to the "PRC-wide Entity" section, below.
[20] On May 14, 2016, the Department received an untimely filed Q&V questionnaire response from Jiangsu Tiangong Tools Company Limited ("Tiangong"). On May 23, 2016, the Department rejected Tiangong's filing as untimely and did not retain the submission in the official record of this proceeding. See the Department's letter to Tiangong re: "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Rejection of Quantity and Value Questionnaire Response," dated May 23, 2016.
[21] See Memorandum to James C. Doyle, Director, Office V, from Frances Veith, Senior International Trade Compliance Analyst, re: "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Respondent Selection," dated May 27, 2016.
[22] See Letter from Catherine Bertrand to Jiangyin Special, dated May 27, 2016 ("Initial Questionnaire").

responses.[23] During the same time frame, Petitioners submitted comments regarding Jiangyin Special's questionnaire responses.[24]

VI. DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be an NME country.[25] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[26] In the Initiation Notice, the Department notified parties of the application process by which exporters may obtain a separate rate status in this LTFV investigation.[27] The process requires exporters to submit a separate rate application ("SRA")[28] and to demonstrate an absence of both de jure and de facto government control over their export activities.

The Department's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[29] The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in Sparklers[30] and further developed in Silicon Carbide.[31] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can

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[23] See Letters from Jiangyin Special, re: "Response to Section A of the Antidumping Duty Questionnaire," dated June 27, 2016 ("SAQR"), and "Response to Sections C and D of the Antidumping Duty Questionnaire," dated July 15, 2016.
[24] See Letter from SSAB, re: "SSAB's Factual Information to Rebut, Clarify, or Correct Jiangyin's AQR," dated July 13, 2016; see also Letter from ArcelorMittal USA LLC, re: "Deficiency Comments on Section A Questionnaire Response of Mandatory Respondent Jiangyin," dated July 13, 2016.
[25] See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).
[26] See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55040 (September 24, 2008).
[27] See Initiation Notice, 81 FR at 27095.
[28] See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005), available at http://enforcement.trade.gov/policy/bull05-1.pdf.
[29] See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers").
[30] Id.
[31] See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

demonstrate the absence of both de jure and de facto government control over its export activities. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Under the separate rates test, the Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.

Further, the Department typically considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export prices ("EP") are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and, (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China antidumping duty proceeding, and Commerce's determinations therein.[32] In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[33] We have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in

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[32] See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd., et al. v. United States, 885 F. Supp. 2d 1343 (CIT 2012) ("Advanced Technology"), affirmed in Advanced Technology & Materials Co., Ltd., et al. v. United States, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is available at http://enforcement.trade.gov/remands/12-147.pdf. See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

[33] See Advanced Technology, 885 F. Supp. 2d 1343, 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); id., at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); id., at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); id., at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

and of itself means that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

On June 27, 2016, Jiangyin Special filed a timely Section A questionnaire response, which included all the relevant information for the Department to make a separate rate determination.[34] No other companies filed a timely SRA. Consequently, the Department only reviewed the separate rate eligibility of Jiangyin Special, the sole mandatory respondent, for the preliminary determination. Based on the information that Jiangyin Special provided in its SAQR, the Department preliminarily determines that it is not eligible to receive a separate rate because it is under the ownership and control of a State-Owned Enterprise ("SOE").[35]

Separate Rate Determination for Jiangyin Special

Consistent with our practice, the Department has preliminarily not granted a separate rate to Jiangyin Special.[36] Jiangyin Special provided information on the record that does not support a preliminary finding of an absence of de facto government control.[37] Because the information is business proprietary in nature, we have discussed the evidence in detail in a separate memorandum.[38]

Jiangyin Special's SAQR demonstrates that it is majority owned and controlled by a SOE.[39] The record shows that the SOE, through various holding companies, selects shared management and elects shared directors to the board across its subsidiary companies, including Jiangyin Special.[40] Based on the information that Jiangyin Special provided, we find that an SOE, wholly owned by

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[34] See Jiangyin Special's SAQR dated June 27, 2016.
[35] The name of this SOE is business proprietary information. For further details, see Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Irene Darzenta-Tzafolias, Director, Office 8, from Irene Gorelik, Senior Analyst, re: "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Preliminary Separate Rate Analysis for Jiangyin Xingcheng Special Steel Works Co., Ltd." dated November 4, 2016 ("Preliminary Separate Rate Memo").
[36] See, e.g., 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 81 FR 69786, 69787 (October 7, 2016) and accompanying Preliminary Decision Memorandum at 13-14, 17; Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, 81 FR 64135, 64136 (September 19, 2016) and accompanying Preliminary Decision Memo at 11-15; Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination, 81 FR 61186, 61191 (September 6, 2016) and accompanying Preliminary Decision Memorandum at 12-13, 16.
[37] See, e.g., Silicon Carbide, 59 FR at 22586-87; Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).
[38] See Preliminary Separate Rate Memo.
[39] See Jiangyin Special's SAQR.
[40] See Preliminary Separate Rate Memo.

the PRC government, controls the selection of Jiangyin Special's management among other things; therefore de facto control over Jiangyin Special exists.[41] Because we preliminarily determine that, based on Jiangyin Special's SAQR, it is under de facto government control, we did not request additional information from Jiangyin Special after we received its SAQR. As a result, we are treating Jiangyin Special as part of the PRC-wide entity, subject to the PRC-wide rate.

The PRC-wide Entity

The record indicates there are PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive timely responses to its Q&V questionnaire or any SRAs from numerous PRC exporters and/or producers of the merchandise under consideration that were named in the Petition and to whom the Department issued Q&V questionnaires.[42] Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them to be part of the PRC-wide entity.[43] Furthermore, as explained below, we preliminarily determine to assign to the PRC-wide entity a rate based entirely on adverse facts available ("AFA").

Application of Facts Available and Adverse Inferences

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department 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. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section

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[41] Id.
[42] See Q&V Delivery Confirmation. Of the 56 packages sent, 33 were delivered, six were refused by recipients, and 17 were unable to be delivered because of insufficient or incorrect addresses.
[43] See, e.g., Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 75966 (December 7, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

776(d) of the Act.[44] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[45]

Section 776(b) of the Act provides that the Department 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. In doing so, and under the TPEA, the Department 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.[46] Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[47]

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department 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.[48]

Use of Facts Available

The Department preliminarily finds that because several companies which had not demonstrated that they were separate from the PRC-wide entity failed to provide any response to the Department's Q&V questionnaire, the PRC-wide entity failed to respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Accordingly, the Department preliminarily determines that use of facts available is warranted in determining the rate of the PRC-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[49]

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[44] See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) ("TPEA"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015).
[45] Id., 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.
[46] See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).
[47] See also 19 CFR 351.308(c).
[48] See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).
[49] See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 4986, 4991 (January 31, 2003), unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that the Department 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. In doing so, and under the TPEA, the Department 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.[50] Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[51]The Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity did not cooperate to the best of its ability.[52] The PRC-wide entity neither filed documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the PRC-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[53]

Selection and Corroboration of the AFA rate

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[54] 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.[55] Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[56]

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding when applying an adverse inference, including the highest of such margins.[57] The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated; neither is the Department required to

[50] See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).
[51] See also 19 CFR 351.308(c).
[52] See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).
[53] Id., 337 F.3d 1373, 1382-83.
[54] See also 19 CFR 351.308(d).
[55] See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, attached to H.R. No. 103-316, vol. 1 at 870 (1994), reprinted in 1994 U.S.C.C.A.N. 37773, 4163.
[56] See section 776(c)(2) of the Act; TPEA, section 502(2).
[57] See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[58]

In selecting a rate for the PRC-wide entity based on AFA, the Department's practice is to select 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.[59] Specifically, it is the Department's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition, or (b) the highest calculated dumping margin of any respondent in the investigation.[60] There are no calculated margins for any respondents in this investigation. Therefore, as AFA, the Department has preliminarily assigned to the PRC-wide entity the rate of 68.27 percent, which is the highest dumping margin alleged in the Petition. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation. Because the AFA rate that the Department used is from the Petition, it is secondary information subject to the corroboration requirement. Petitioners' methodology for calculating the EP and normal value ("NV") in the Petition is discussed in the Initiation Notice and the PRC AD Initiation Checklist.[61] We determined that the highest petition margin of 68.27 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis.[62]

To corroborate the 68.27 percent petition rate for purposes of this preliminary determination, the Department first revisited its pre-initiation analysis of the reliability of the information in the Petition. During our pre-initiation analysis, we examined: (1) the information used as the basis for EP and NV in the Petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided either in the petition or in supplements to the Petition.[63]

Based on our examination of the information, as discussed in detail in the PRC AD Initiation Checklist, we consider Petitioners' EP and NV calculations to be reliable.[64] In addition, we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents, as well as publicly available information, we preliminarily determine that this petition rate is reliable for the purposes of assigning an AFA rate as the PRC-wide rate in this investigation.

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[58] See section 776(d)(3) of the Act; TPEA, section 502(3).
[59] See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland, 69 FR 77216 (December 27, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland, 70 FR 28279 (May 17, 2005).
[60] See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17436, 17438 (March 26, 2012); Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.
[61] See Initiation Notice; see also Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China ("PRC AD Initiation Checklist").
[62] Id.
[63] Id.
[64] Id.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The petition rate is relevant because it is based on a price quote for the merchandise under consideration and surrogate values that are contemporaneous with the POI. In addition, no information has been placed on the record that discredits this information. As such, we find the highest petition rate of 68.27 percent relevant to the PRC-wide entity. Furthermore, as there are no respondents in this investigation for which we are calculating a separate dumping margin, we relied upon the rates found in the Petition, which is the only information regarding the CTL plate industry reasonably at the Department's disposal.

Accordingly, the Department has corroborated the AFA rate of 68.27 percent to the extent practicable within the meaning of section 776(c) of the Act.

VII. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

In applying section 777A(f) of the Act, the Department examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[65] For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[66] Because there has been no demonstration on the record that an adjustment for domestic subsidies is warranted, the Department is not making any such adjustment to the rate being assigned to the PRC-wide entity.

VIII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

Pursuant to section 772(c)(1)(C) of the Act, the Department normally makes adjustments for countervailable export subsidies. The Department is making no adjustments to the PRC-wide entity's antidumping cash deposit rate in the instant investigation because the Department has made no findings in the companion CVD investigation that any of the programs are export subsidies.[67] While certain programs in the companion CVD investigation were alleged to be export subsidies, as a result of non-cooperation by certain mandatory respondents, the Department's preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences.[68]

In relying on facts available with adverse inferences, the Department did not preliminarily determine that the subsidies in question were export subsidies. As such, the Department finds

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[65] See section 777A(f)(1)(A)-(C) of the Act.
[66] See section 777A(f)(1)-(2) of the Act.
[67] See Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 81 FR 62871 (September 13, 2016) and accompanying Preliminary Decision Memorandum.
[68] Id.

that, without a determination in the companion CVD investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to section 772(c)(1)(C) of the Act.[69] Accordingly, consistent with our recent practice,[70] we will not apply the export subsidy offset to the cash deposit rates assigned to the PRC-wide entity, as reflected in the accompanying Federal Register notice.

IX. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 NOVEMBER 2016
(Date)

[69] See, e.g., Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures, 81 FR 36867 (June 8, 2016) and accompanying Preliminary Decision Memorandum at page 13, unchanged in Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value, 81 FR 75028 (October 28, 2016).
[70] Id.