




A-583-858
Investigation
Public Document
AD/CVD Ops VI: DF/TW

DATE: 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 Taiwan

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain carbon and alloy steel cut-to-length plate (CTL plate) from Taiwan 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 weighted-average dumping margins are 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 Taiwan,¹ which was filed in proper form by ArcelorMittal USA LLC, Nucor Corporation (Nucor), and SSAB Enterprises, LLC (collectively, the petitioners). The Department initiated this investigation on April 28, 2016.²

In the Initiation Notice, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the

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

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).



Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on May 5, 2016, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ The Department did not receive comments on the results of the CBP entry data placed on the record of this investigation.

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.⁵ The Department received a number of timely scope comments on the record of this investigation, as well as on the records of the companion CTL plate investigations involving Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, Korea, the People's Republic of China, South Africa, Taiwan, and Turkey.⁶

On June 7, 2016, the Department limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the subject merchandise by volume, China Steel Corp. (China Steel) and Shang Chen Steel Co., Ltd. (Shang Chen). Accordingly, we selected China Steel and Shang Chen as mandatory respondents in this investigation and issued the AD questionnaire to them.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 Taiwan.⁸

³ See Initiation Notice, 81 FR at 27095.

⁴ See Letter from Robert James, Program Manager, to All Interested Parties, dated May 5, 2016.

⁵ See Initiation Notice, 81 FR at 27090, 27091.

⁶ 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 Decision Memorandum), and 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: 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 Decision Memorandum).

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan," dated June 7, 2016. See also, Letters from Robert James, Program Manager, to China Steel and Shang Chen regarding issuance of initial questionnaire to each mandatory respondent, dated June 9, 2016.

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). See also Memorandum to the File from Brittany Bauer, Analyst, entitled, "Placing the International Trade Commission Preliminary Report on the record for the Anti-Dumping Investigations of 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 October 7, 2016.

On June 2, 2016, one of the petitioners (*i.e.*, Nucor) and various other interested parties in this and/or the companion AD investigations on CTL plate 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.

On July 7, 2016, China Steel and Shang Chen submitted timely responses to section A of the Department's AD questionnaire (*i.e.*, the section relating to general information).⁹ On July 28, 2016, China Steel and Shang Chen responded to sections B, C, and D of the Department's AD questionnaire (*i.e.*, the sections relating to home market sales, U.S. sales and cost of production (COP)/constructed value (CV), respectively).¹⁰

In August 2016, the 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.¹¹ Based on the request, the Department published a postponement of the preliminary determination until no later than November 4, 2016.¹²

In August 2016 and September 2016, we issued supplemental questionnaires to China Steel and Shang Chen.¹³ We received responses to these questionnaires from August 2016 through

⁹ See Letter from China Steel to the Department, regarding "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan—Response to Section A of June 9 Questionnaire," dated July 7, 2016 (China Steel's Section A Response), and Letter from China Steel to the Department, regarding "Antidumping Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Response to Section A of the Department's Questionnaire," dated July 7 2016 (Shang Chen's Section A Response).

¹⁰ See Letter from China Steel to the Department, regarding "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan — Response to June 9 Questionnaire," dated July 28, 2016 (China Steel's Sections B - D Response), and Letter from Shang Cheng to the Department, regarding "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan — Response to June 9 Questionnaire," dated July 28, 2016 (Shang Cheng's Sections B - D Response)..

¹¹ See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, China, France, Germany, Italy, Japan, Korea, and Taiwan—Petitioners' Request for an Extension of the Department's Preliminary Antidumping Duty Determinations, dated August 15, 2016.

¹² 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).

¹³ See Letter from the Department to Shang Chen regarding, "Countervailing Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Supplemental Questionnaire," dated August 17, 2016 (August 17, 2016, Section A Supplemental Questionnaire to Shang Chen); Countervailing Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Supplemental Questionnaire, August 31, 2016 (August 31, 2016, Section A-C Supplemental Questionnaire to Shang Chen); Letter from the Department to Shang Chen regarding, "Antidumping Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan," September 2, 2016 (September 2, 2016, Section D Supplemental Questionnaire to Shang Chen); and Letter from the Department to Shang Chen regarding, "Antidumping Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan," October 19, 2016 (October 19, 2016, Section D Supplemental Questionnaire to Shang Chen); Letter from the Department to China Steel regarding, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Section A Questionnaire," August 23, 2016 (August 23, 2016, Section A Supplemental Questionnaire to China Steel); Letter from the Department to China Steel, regarding "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Sections A, B, and C Supplemental Questionnaire," September 13, 2016 (September 13, 2016, Section A-C Supplemental Questionnaire to China Steel); Letter from the Department to China Steel regarding, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan," September 16, 2016 (September 16, 2016, Section D Supplemental Questionnaire to China Steel).

October 2016.¹⁴ We note that Shang Chen's final cost supplemental response was submitted to the Department on October 26, 2016. Because it was submitted so close to the preliminary determination, we did not use this cost data in our analysis for the preliminary determination. We will consider this additional information for purposes of the final determination.

On September 6, 2016, and October 13, 2016, the Department addressed the scope comments placed on the record of this investigation by interested parties.¹⁵ On October 14, 2016, and October 18, 2016, Petitioner, ArcelorMittal USA LLC, filed pre-preliminary determination comments.¹⁶

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2015, through March 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2016.¹⁷

IV. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On July 26, 2016, the petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise.¹⁸ On September 7, 2016, the Department published its preliminary critical circumstances determination.¹⁹ Pursuant to this determination, the

¹⁴ See Letter from Shang Chen regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan-Response to Section A of August 18 Supplemental Questionnaire," dated August 25, 2016 (Shang Chen's August 25, 2016, Supplemental Sections A Response); Letter from Shang Chen regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan-Response to August 31, Questionnaire," dated September 26, 2016 (Shang Chen's September 26, 2016 Supplemental Sections A-C Response); Letter from Shang Chen regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Response to September 2 Questionnaire," dated October 3, 2016 (Shang Chen's October 3 Supplemental Section D Response); Letter from Shang Chen regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Response to the Department's September 16 Supplemental Questionnaire," dated October 11, 2016 (Shang Chen's October 11 Supplemental Section D Response); Letter from Shang Chen regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Response to October 19 Questionnaire, dated October 26, 2016 (Shang Chen's October 26 Supplemental Section D Response); Letter from China Steel regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan Response to Section A of August 23 Supplemental Questionnaire," September 2, 2016 (China Steel's September 2, 2016, Supplemental Section A Response); Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan - Response to the Department's September 13 Supplemental Questionnaire," October 7, 2016 (China Steel's October 7, 2016, Supplemental Section A-C Response); and Letter from China Steel regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Response to the Department's September 16 Supplemental Questionnaire," October 11, 2016 (China Steel's October 11, 2016, Supplemental Section D Response).

¹⁵ See Preliminary Scope Memorandum and Additional Preliminary Scope Memorandum, respectively.

¹⁶ These pre-preliminary comments were submitted by only ArcelorMittal USA LLC. See, e.g., Letter from Petitioner regarding, "Carbon And Alloy Steel Cut-to-Length Plate from Taiwan – Pre-Preliminary Comments on Shang Chen Steel Co.," submitted to ACCESS on October 14, 2016.

¹⁷ See 19 CFR 351.204(b)(1).

¹⁸ See Letter from the Petitioners, "Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey: Critical Circumstances Allegations," dated July 26, 2016.

¹⁹ See Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey; Antidumping and Countervailing Duty Investigations: Preliminary Determinations of Critical

Department preliminarily determined that critical circumstances exist for imports of subject merchandise from China Steel and All-Other producers/exporters.²⁰

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on October 31, 2016, China Steel and Shang Chen requested that the Department postpone the final determination, and that provisional measures be extended.²¹

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondents' requests and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations,²² the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²³ 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.²⁴ 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.

VI. AFFILIATIONS AND COLLAPSING

As explained in the China Steel Affiliation and Collapsing Memorandum, we preliminarily collapsed China Steel and China Steel's affiliated producer, Dragon Steel Corporation (Dragon Steel), in accordance with 19 CFR 351.401(f).²⁵

Circumstances, 81 FR 61666 (September 7, 2016) (Preliminary Determination of Critical Circumstances).

²⁰ Based upon our analysis, we found no critical circumstances exist with respect to Shang Chen. *See* Preliminary Determinations of Critical Circumstances.

²¹ *See* letters from China Steel and Shang Chen regarding, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Request for Extension of the Deadline for the Department's Final Determination," dated October 31, 2016.

²² *See* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

²³ *See* Initiation Notice, 81 FR at 27090.

²⁴ 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.

²⁵ *See* Memorandum from Tyler Weinhold to Scot Fullerton, Director, Office VI, "Affiliations and Collapsing in the Less-than Fair Value Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Taiwan – China Steel Corporation," dated November 4, 2016.

VII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Shang Chen's sales of subject merchandise from Taiwan to the United States were made at LTFV, the Department compared the export price (EP) to the normal value (NV), as described in the "Export Price/Constructed Export Price," and "Normal Value" sections of this memorandum.²⁶ For China Steel, see the section below entitled, "Application of Facts Available and Adverse Inferences."

A) Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁷ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code

²⁶ As explained below in the section entitled "EXPORT PRICE/CONSTRUCTED EXPORT PRICE," we have determined that Shang Chen did not have Constructed Export Price (CEP) sales.

²⁷ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); and Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362, dated October 13, 2015.

(i.e., zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (i.e., weighted-average price) of a test group and the mean (i.e., weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two

calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) Results of the Differential Pricing Analysis

For Shang Chen, based on the results of the differential pricing analysis, the Department preliminarily finds that more than 33 percent and less than 66 percent of the value of U.S. sales pass the Cohen's *d* test,²⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the de minimis threshold when calculated using the average-to-average method versus when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Shang Chen. Because we have preliminarily used total AFA to determine the margin for China Steel, this section does not apply to China Steel.

VIII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁹

Shang Chen reported the invoice date (*i.e.*, tax invoice date), which is issued on the date of shipment, as the date of sale for its home market sales. For its U.S. sales, Shang Chen reported the earlier of the date of the commercial invoice or the date of factory shipment as the date of

²⁸ See the Memorandum to the File from Davina Friedmann, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan—Shang Chen," dated November 4, 2016 (Shang Chen Preliminary Analysis Memorandum).

²⁹ See 19 CFR 351.401(i); see also Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

sale.³⁰ The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.³¹ For Shang Chen's home market sales, we used the invoice date as the date of sale; otherwise, we used the earlier of the invoice date or shipment date as the date of sale in both markets, in accordance with our practice.³²

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by Shang Chen in Taiwan during the POI that fit the description in the "Scope of Investigation" section of the accompanying Federal Register notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. For Shang Chen, we compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.³³

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: quality, minimum specified carbon content, minimum specified chromium content, minimum specified nickel content, minimum specified yield strength, nominal thickness, heat treatment status, nominal width, form, painting, the existence of patterns in relief, and descaling.³⁴

X. EXPORT PRICE/CONSTRUCTED EXPORT PRICE

For all sales made by Shang Chen, we used EP methodology, in accordance with section 772(a) of the Act, because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and therefore, CEP methodology was not otherwise warranted.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. Shang Chen reported no billing adjustments or rebates in connection with sales made to the United States. We made deductions from the starting price, where appropriate, for movement expenses (e.g., foreign inland freight and foreign brokerage and handling expenses), in accordance with section 772(c)(2)(A) of the Act.

³⁰ See Shang Cheng's Section A Response at 16, and Shang Chen's September 26 Supplemental Section A-C Response, at 3).

³¹ See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11; see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

³² Id.

³³ For China Steel, refer the section of this decision memorandum entitled, "Application of Facts Available and Adverse Inferences."

³⁴ See Shang Chen Preliminary Analysis Memorandum and letter from the Department to all interested parties dated May 19, 2016 (Product Characteristics Letter).

XI. NORMAL VALUE

A) *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Shang Chen, in accordance with section 773(a)(1)(B) of the Act.

B) *Affiliated-Party Transactions and Arm's-Length Test*

Shang Chen reported no sales to affiliated parties during the POI. Therefore, the arm's-length test was not applicable to sales made by Shang Chen in the home market during the POI.

B) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁶ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),³⁷ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³⁸

³⁵ See 19 CFR 351.412(c)(2).

³⁶ *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

³⁷ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³⁸ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁹

In this investigation, we obtained information from Shang Chen regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁴⁰ Our LOT findings are summarized below.

We examined information obtained from Shang Chen regarding the marketing stage(s) involved in home market and U.S. sales, including a description of the selling activities performed by Shang Chen for each channel of distribution. In its initial questionnaire response, Shang Chen reported only its own selling functions associated with sales made in the home market and to the United States.⁴¹ Because Shang Chen indicated in its initial questionnaire response that Shang Shing Steel Industrial Co., Ltd. (SSSIC), an affiliate of Shang Chen that performed administrative and sales support to Shang Chen with respect to sales made to the United States, the Department requested additional information associated with selling activities performed by SSSIC in both markets.⁴² In its Supplemental Response, Shang Chen submitted a revised selling functions chart that incorporated activities associated with selling functions performed by SSSIC and Jiangyin Zongcheng Steel Co., Ltd. (JZS).⁴³ Shang Chen also submitted in its supplemental response a chart describing the activities provided by SSSIC.⁴⁴

With respect to sales made in the home market, Shang Chen reported three categories of customers, specifically, sales to trading companies, distributors and end users.⁴⁵ Shang Chen explained that, despite making sales to three types of customers in the home market, all such sales were made to unaffiliated customers that resell the merchandise to end users either without processing or after shearing and cutting activities. Also, Shang Chen indicated that it does not distinguish between selling functions, nor does it set prices associated with sales made to different categories of customers. Shang Chen explained that, for these reasons, it reported only one channel of distribution for sales made in the home market, *i.e.*, direct sales from its production facility to unaffiliated customers.⁴⁶

³⁹ See *e.g.*, *OJ from Brazil*, at Comment 7.

⁴⁰ See China Steel's Sections A Response at 21-25; China Steel's October 7, 2016, Section A-C Response at 8-9 and Appendix 2SA-6; Shang Chen's Section A Response at A-11-A-16; Shang Chen's Supplemental Section A Response, at SA-17-SA-19 and Appendix SA-10 and SA-12.

⁴¹ See Shang Chen's Section A Response, at Appendix A-3-c.

⁴² See Supplemental Response, at 18 and Appendix SA-11 (SSSIC Support Services Chart).

⁴³ *Id.*, at 18 and Appendix SA-12. JZS is a company located in the People's Republic of China that is not involved with the subject merchandise; however, certain owners of Shang Chen sit on the board of directors of JZS.

⁴⁴ *Id.*, at 18 and Appendix SA-11.

⁴⁵ See Initial Questionnaire Response at Appendix B-2.

⁴⁶ *Id.*, at 13; see also, Supplemental Response at 17.

In its Supplemental Questionnaire, along with the selling-functions description, Shang Chen included a revised chart of selling activities that specified the level of each activity performed by itself and SSSIC. For the one reported channel of distribution in the home market, Shang Chen reported selling functions for various activities and specified the level of each activity performed by itself. In this chart, Shang Chen reported selling activities associated with the following functions: sales forecasting, strategic/economic planning, personnel training, procurement/sourcing services, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, paying commissions, and providing rebates, warranty service, guarantees, after-sales services, repacking, and freight and delivery.⁴⁷ We found minimal differences associated with the selling functions and the level at which they were performed by Shang Chen and SSSIC. As such, the differences in selling functions were not significant enough such that they meet the regulatory requirement of being made at “separate marketing stages.” Consequently, we find that Shang Chen’s home market channel of distribution constitutes one level of trade.

For sales made to the U.S. market, Shang Chen reported only one category of customer with respect to U.S. sales, *i.e.*, direct sales made to unaffiliated distributors, specifically, trading companies that resell the subject merchandise to end users.⁴⁸ Shang Chen also reported that SSSIC performs certain administrative and support activities associated with Shang Chen’s sales made to the United States, the expenses of which are recorded by SSSIC under only one category of expenses, *i.e.*, “payroll expenses.”⁴⁹ In its revised chart of selling functions, Shang Chen reported the same universe of selling activities for both home market and U.S. sales. While there exist some differences between selling activities performed by Shang Chen and SSSIC for sales made to the United States, we found these differences to be minimal. Because we found minimal differences associated with the activities performed by Shang Chen and SSSIC for U.S. sales, coupled with the fact that the activities performed by SSSIC are categorized as only “payroll activities,” which provides less clarity with respect to the role of SSSIC in those sales, we preliminarily determine that only one level of trade exists with respect to EP sales made to the United States.

Comparing the HM level of trade to the U.S. level of trade, we determined that the selling activities and point of distribution associated with EP sales were essentially the same as those associated with the home market level of trade and therefore, the EP level of trade did exist in the home market. Accordingly, for this preliminary determination, we matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment.

C) *Cost of Production Analysis*

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 section 773(b)(2) of the Act, regarding the Department’s requests for

⁴⁷ Because certain information concerning the levels of selling functions performed by Shang Chen, SSSIC and JZS are proprietary in nature, further discussion of the analysis conducted on the level of selling functions is provided in the Shang Chen Preliminary Analysis Memorandum.

⁴⁸ See Initial Questionnaire Response, at 14; see also, Supplemental Response, at 17 and Appendix SA-10.

⁴⁹ See Supplemental Response, at 2.

information on sales at less than COP.⁵⁰ The 2015 law does not specify dates of application for those amendments.⁵¹ 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 in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁵² Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁵³ Accordingly, the Department requested this information from China Steel and Shang Chen. We examined the cost data of Shang Chen and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.⁵⁴

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.

We relied on the COP data submitted by Shang Chen. However, in the case of Shang Chen, we made the following modifications:⁵⁵

- We revised the reported scrap recovery cost to exclude sales revenue from non-prime plate.
- We revised the general and administrative expense (G&A) and financial expense ratio to reflect the offset for scrap recovery.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

⁵⁰ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁵¹ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>. See also the Petitions.

⁵² 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, dated August 6, 2015.

⁵³ Id., 80 FR at 46794-95.

⁵⁴ See Memorandum from Jayalakshmi Jones to Neal M. Halper, Director, Office of Accounting, entitled, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Shang Chen Steel Co. Ltd,” dated November 4, 2016.

⁵⁵ Id.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Shang Chen's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁵⁶

E) *Calculation of NV Based on Comparison-Market Prices*

For Shang Chen, we calculated NV based on delivered and ex-work prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for billing adjustments, rebates, and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act. We also made circumstance-of-sale adjustments (*i.e.*, credit expenses), pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.401(b). We added U.S. packing costs and deducted home market packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale, where appropriate (*i.e.*, commissions, credit expenses, and bank charges). Specifically, we deducted direct selling expenses incurred for home market sales and added U.S. direct selling expenses.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

⁵⁶ See Shang Chen Preliminary Analysis Memorandum.

In accordance with section 772(c)(2) of the Act, and where appropriate, we made deductions from the starting price for various expenses including certain movement expenses, foreign inland freight and warehousing expenses, foreign brokerage and handling expenses, harbor maintenance and terminal handling fees, international freight, and indirect selling expenses.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁵⁷

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.

As explained above, 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 776(d) of the Act.⁵⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁵⁹

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

⁵⁷ See 19 CFR 351.411(b).

⁵⁸ 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.

⁵⁹ 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>.

based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁶⁰ 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.⁶¹

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.⁶²

Use of Facts Available

In the Department’s September 16, 2016, Section D Supplemental Questionnaire, we instructed China Steel to correct certain errors in the cost of production (COP) database provided in China Steel’s Sections B - D Response.⁶³ In China Steel’s October 11, 2016, Supplemental Section D Response, China Steel provided a new COP database which purportedly corrected these errors.⁶⁴ In addition, China Steel stated: “In addition, there were errors in the coding of product-matching control numbers in China Steel’s July 28 submission, particularly in the reporting of the ‘Quality’ characteristic(field 3.1).” Our review of the submitted database revealed that China Steel made extensive and significant changes to its COP data, beyond those requested by the Department. Apart from the short statement regarding product coding, China Steel provided no further explanation of these changes.⁶⁵ China Steel’s unsolicited coding error changes were not made in response to a supplemental questionnaire or otherwise solicited by the Department. Further, China Steel neither properly explained nor properly documented these extensive and significant changes in its supplemental response or elsewhere. Because these unsolicited and unexplained changes are significant and extensive, because they cannot be differentiated from solicited changes, and because COP is integral to the margin calculations, we find that China Steel’s reported cost data is unreliable for use in this preliminary determination. There is no way for us to determine which of the two different databases is the proper one to use at this stage.

For these reasons, pursuant to section 776(a)(2)(B) of the Act, the Department preliminarily finds that China Steel failed to provide requested information in the form and manner requested and by the deadlines established by the Department. By revising its costs so extensively and significantly, and by doing so in such close proximity to the statutory date for the preliminary determination, China Steel has also significantly impeded the proceeding under section 776(a)(2)(C) of the Act. The claimed “corrections” are so extensive and significant, they raise

⁶⁰ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁶¹ See also 19 CFR 351.308(c).

⁶² See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁶³ See Letter from China Steel to the Department, regarding “Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan — Response to June 9 Questionnaire,” dated July 28, 2016 (China Steel’s Sections B - D Response).

⁶⁴ See China Steel’s October 11, 2016, Supplemental Section D Response at Appendix SD-1 and the accompanying COP data submitted under Access bar code 3513286-05 (China Steel’s October 11, 2016 COP data base).

⁶⁵ See China Steel’s October 11, 2016, Supplemental Section D Response at 1.

serious doubts about the accuracy of the costs on the record of this investigation. Accordingly, the Department preliminarily determines that use of facts available is warranted in determining the rate of China Steel, pursuant to sections 776(a)(2)(B)-(C) of the Act.

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 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.⁶⁶ 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.⁶⁷

We find that an adverse inference in selecting the facts available is warranted in this case because China Steel failed to cooperate to the best of its ability by failing to explain the extensive, significant, and unsolicited changes to its cost database. China Steel merely stated: “In addition, there were errors in the coding of product-matching control numbers in China Steel’s July 28 submission, particularly in the reporting of the ‘Quality’ characteristic(field 3.1),”⁶⁸ and provided no further explanation. However, this is an insufficient explanation. Furthermore, China Steel had the opportunity to provide its cost database on July 28, 2016, but failed to provide these significant changes until October 11, 2016, as part of an unrelated set of corrections.⁶⁹ By submitting an unexplained and new cost database when it did, China Steel has prevented the Department from determining, in time for the preliminary determination, which set of cost data is reliable.

The Department finds that these failures by China Steel demonstrate that China Steel did not cooperate to the best of its ability.⁷⁰ Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁷¹ Although we preliminarily determine to apply AFA to China Steel, we intend to issue a supplemental questionnaire after the preliminary determination to provide China Steel with an opportunity to explain the changes made to its cost database.

⁶⁶ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁶⁷ See also 19 CFR 351.308(c).

⁶⁸ See China Steel’s October 11, 2016, Supplemental Section D Response at 1.

⁶⁹ See China Steel’s Sections B - D Response and China Steel’s October 11, 2016, Supplemental Section D Response. See also Memorandum from Tyler Weinhold through Erin Kearney, Program Manager Office VI, to Scot Fullerton, Director Office VI, “Application of Adverse Facts Available for China Steel Corporation in the Antidumping Duty Investigation of Certain Carbon and Alloy Cut-to-Length Plate From Taiwan,” dated concurrently with this memorandum (Facts Available Memorandum).

⁷⁰ 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.”)).

⁷¹ *Id.*, 337 F.3d 1373, 1382-83.

Selection 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.⁷² 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.⁷³ Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁷⁴

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.⁷⁵ 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; nor is the Department required to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁷⁶

The Department’s general practice with respect to the assignment of a rate as AFA in investigations is to assign the higher of the highest dumping margin alleged in the petition, or the highest calculated dumping margin of any respondent in the investigation.⁷⁷ In this investigation, the dumping margins alleged in the petition range from 8.30 to 77.13 percent.⁷⁸ We compared the highest dumping margin alleged in the petition (77.13 percent) with the transaction-specific dumping margins of Shang Chen. However, we were unable to corroborate the 77.13 percent rate. This rate is significantly higher than the range of Shang Chen’s transaction-specific dumping margins.⁷⁹ Therefore, we are unable to corroborate the highest petition margin.⁸⁰

⁷² See also 19 CFR 351.308(d).

⁷³ 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.

⁷⁴ See section 776(c)(2) of the Act; TPEA, section 502(2).

⁷⁵ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁷⁶ See section 776(d)(3) of the Act; TPEA, section 502(3).

⁷⁷ See Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 20.

⁷⁸ See Letter from Petitioners regarding “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, South Africa, Taiwan, and Turkey - Petitioners’ Amendment to Petition Volume XI Relating to Taiwan Antidumping Duties,” dated April 18, 2016 (Petitioners’ Supplement to the Petition), at Exhibit AD-TW-SU PP-6.A and AD-TW-SU PP-6B.

⁷⁹ See the Facts Available Memorandum.

⁸⁰ See Monosodium Glutamate from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 26408 (May 8, 2014), and accompanying Preliminary Decision Memorandum at “Corroboration” section (unchanged in Monosodium Glutamate from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and the Final Affirmative Determination of Critical Circumstances, 79 FR 58326 (September 29, 2014)).


Based on record evidence, the Department has assigned to China Steel as AFA the highest transaction-specific margin calculated for Shang Chen, 28.00 percent as the highest calculated dumping margin of any respondent in the investigation, pursuant to our practice. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation, and therefore, is not secondary information.⁸¹ The transaction underlying this dumping margin is neither unusual in terms of transaction quantities, nor otherwise atypical.⁸²

XII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

XIII. 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

⁸¹ See section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information).

⁸² See the Facts Available Memorandum.