UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-583-858
Investigation
Public Document
E&C/Office VI: DF/TW

DATE: March 29, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan

I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of certain carbon and alloy steel cut-to-length (CTL) plate from Taiwan. As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for China Steel Corporation (China Steel) and Shang Chen Steel Co., Ltd. (Shang Chen), the mandatory respondents in this investigation.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Company-Specific Comments

China Steel

Comment 1: Whether to Apply Total Adverse Facts Available to China Steel
Comment 2: China Steel Excluded Operating Costs
Comment 3: China Steel Under-Reported Prime Merchandise

[1] In a 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, we preliminarily determined that the following companies were affiliated and should be treated as a single entity for purposes of the investigation, pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (the Act): China Steel Corporation and Dragon Steel Corporation, which are producers of CTL plate. We refer to the collapsed entity as "China Steel" throughout this memorandum.

Comment 4: China Steel Under-Reported G&A Expenses
Comment 5: China Steel Under-Reported Interest Expenses
Comment 6: China Steel Improperly Reduced COGS
Comment 7: China Steel Date of Sale
Comment 8: China Steel Home Market Post-Sale Price Adjustments
Comment 9: China Steel Destination Codes
Comment 10: China Steel Packing Expenses
Comment 11: Critical Circumstances for China Steel
Comment 12: Alleged Errors in the China Steel Verification Report

Shang Chen

Comment 13: Total Adverse Facts Available for Shang Chen
Comment 14: Adjustments to Shang Chen's Reported Per-Unit Cost of Manufacturing
Comment 15: Shang Chen's General and Administrative Expenses
Comment 16: Shang Chen's Scrap offset
Comment 17: Quarterly Cost Data for Shang Chen
Comment 18: Shang Chen's Differential Pricing Analysis
Comment 19: Shang Chen's Date of Sale
Comment 20: Shang Chen Sales-Related Revenues
Comment 21: Shang Chen's Reported Packing Cost
Comment 22: Alleged Error in Shang Chen's Margin Calculation Program

II. Background

On November 14, 2016, the Department of Commerce (the Department) published the *Preliminary Determination* of sales of CTL plate from Taiwan at LTFV.[2] The period of investigation (POI) is April 1, 2015, through March 31, 2016.

In October 2016 and November 2016, we received scope case briefs and scope rebuttal briefs. On November 29, 2016, we issued a final memorandum in response to these scope comments in which we did not change the scope of this investigation.[3]

In November and December 2016, and in January 2017, we conducted verification of the sales and cost of production (COP) data reported by China Steel and Shang Chen, in accordance with

[2] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 79420 (November 14, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate From France" (Preliminary Decision Memorandum).

[3] *See* memorandum from Scot Fullerton, Director of Antidumping and Countervailing Duty Operations, Office VI, 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: Final Scope Comments Decision Memorandum," dated November 29, 2016 (Final Scope Memorandum).

section 782(i) the Tariff Act of 1930, as amended (the Act).[4] In November 2016, we issued a supplemental questionnaire to China Steel in which we requested that China Steel submit a cost database.[5] China Steel submitted a response to the Department's supplemental questionnaire on November 30, 2016, which was rejected on December 29, 2016, because it contained unsolicited new factual information.[6] The Department provided China Steel an opportunity to re-file its November 30, 2016, submission, absent the unsolicited new factual information.[7] China Steel did so on January 11, 2017.[8]

We invited parties to comment on the *Preliminary Determination*. The Petitioners,[9] China Steel, and Shang Chen submitted case and rebuttal briefs.[10] On March 16, 2017, we held a public hearing at the request of China Steel and Shang Chen.

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[4] For China Steel, *see* memorandum to the File from Tyler Weinhold, Davina Friedmann, and Tom Bellhouse, Analysts, AD/CVD Operations, Office VI, "Verification of the Sales Responses of China Steel Corp. in the Investigation on Certain Carbon and Alloy Steel Cut-to-Length Plate From France," dated February 15, 2017 (China Steel Sales Verification Report); and memorandum from Gary Urso, senior accountant and Michael Martin, supervisory accountant, through Peter Scholl, lead accountant, to Neal Halper, director, Office of Accounting, "Verification of the Cost Response of China Steel Corporation in the Antidumping Duty Investigation of Carbon and Alloy Steel Cut-to-Length Plate from Taiwan," dated February 9, 2017 (China Steel Cost Verification Report). For Shang Chen, *see* memorandum to the File from Davina Friedmann, Tyler Weinhold, and Tom Bellhouse, analysts, AD/CVD Operations, Office VI, "Verification of the Sales Responses of Shang Chen Steel Co., Ltd. in the Investigation on Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan," dated February 9, 2017 (Shang Chen Sales Verification Report); memorandum from Lakshmi Jones, accountant, through Peter Scholl, lead accountant, to Neal Halper, director, Office of Accounting, "Verification of the Cost of Production (COP) and Constructed Value (CV) Response of Shang Chen Steel Co. Ltd. (SCS) in the antidumping duty investigation of Cut-to-Length Plate from Taiwan," dated January 26, 2017 (Shang Chen Cost Verification Report).

[5] *See* letter from the Department to China Steel, "Antidumping Duty Investigation of Carbon and Alloy Steel Cut-To-Length Plate from Taiwan," dated November 9, 2016.

[6] *See* letter from the Department to China Steel, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Rejection of Unsolicited Database," dated December 29, 2016, letter from the Department to China Steel, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Request to Re-File Information," dated January 9, 2017, and Memorandum to the File From Tyler Weinhold, case analyst, "Rejection of Submissions," dated January 9, 2017.

[7] *See* letter from the Department to China Steel, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Rejection of Unsolicited Database," dated December 29, 2016, and letter from the Department to China Steel, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Request to Re-File Information," dated January 9, 2017.

[8] *See* letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan Resubmission of Response to the Department's January 9 letter," dated January 11, 2017.

[9] The petitioners in this investigation are ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises, LLC (Petitioners). Although ArcelorMittal was the only party among Petitioners that submitted case and rebuttal briefs, references throughout this memorandum are to all Petitioners to maintain consistency on the record of this investigation.

[10] *See* letter from Petitioners to the Department, "Carbon and Alloy Steel Cut-To-Length Plate from Taiwan, Petitioners' Case Brief for China Steel Corporation," dated February 28, 2017 (Petitioners' Case Brief for China Steel), letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Case Brief of China Steel Corporation," dated February 28, 2017 (China Steel's Case Brief), letter from Petitioners to the Department, "Carbon and Alloy Steel Cut-To-Length Plate From Taiwan, Petitioners' Case Brief for China Steel Corporation," dated February 28, 2017 (Petitioners' Rebuttal Brief for China Steel), and letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Rebuttal Brief of China Steel Corporation," dated March 6, 2017 (China Steel's Rebuttal Brief).

Based on our analysis of the comments received, as well as our verification findings, we revised the dumping margins for China Steel and Shang Chen from those established in the *Preliminary Determination*.

III. Use of Adverse Facts Available

A. Standard for Facts Available and Adverse Inferences

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.[11]

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

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

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable

[11] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, 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. *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 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). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that 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. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[12] Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[13]

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, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available (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.

As noted above, section 776(a)(2)(B) and (D) of the Act provides that if an interested party fails to provide information within the established deadlines or provides information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse

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

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

inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[14]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[15] Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[16] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[17]

B. Application of Facts Available with an Adverse Inference

1. Application of Partial AFA for China Steel's Costs of Production

As noted in the Department's cost verification report, and as explained further at Comment 1, below, China Steel's reported costs include computer programming errors resulting in costs being reported incorrectly for three CONNUMs.[18] As also noted in the Department's cost verification report, China Steel made another computer programming error that caused an incorrect calculation of weighted-average per-unit costs for certain CONNUMs.[19]

Accordingly, we find that China Steel failed to provided requested information by the established deadlines or in the form and manner requested by the Department, within the meaning of section 776(a)(2)(B) of the Act.[20] We further find that China Steel provided information in its questionnaire responses that we could not verify as accurate, within the meaning of section 776(a)(2)(D) of the Act, because our verification revealed errors and failures in China Steel's cost reporting. China Steel's conduct also significantly impeded this proceeding within the meaning of section 776(a)(2)(C) of the Act.

We further determine that, within the meaning of section 776(b) of the Act, China Steel failed to cooperate by not acting to the best of its ability to comply with the Department's request for

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[14] *See* SAA, H.R. Rep. No. 103-316, at 870; *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).
[15] *See Nippon Steel*, 337 F.3d at 1382-83.
[16] *Id.*, at 1382.
[17] *Id.*
[18] *See* China Steel Cost Verification Report.
[19] *See* China Steel Cost Verification Report. *See also* Comment 1, below.
[20] *See* Comment 1.

information by not providing the Department with timely and accurate cost data for certain CONNUMs, and that the application of partial AFA is, therefore, warranted.[21]

For the final determination, we have made certain adjustments to China Steel's costs of production, as partial AFA.[22] Regarding the three CONNUMs discussed above for which costs were understated, we have increased the costs for these CONNUMs by substituting the highest reported cost of any CONNUM for the reported cost of these three CONNUMs. Regarding the CONNUMs discussed above for which China Steel incorrectly calculated its weighted-average per-unit costs, we have increased the costs for these CONNUMs by substituting the highest reported cost of any CONNUM for the reported cost of the effected CONNUMs. In addition, we have disallowed China Steel's claimed favorable variance adjustment.[23]

2. Application of Partial AFA for China Steel's Reporting of Quality for Certain Products

Information collected at verification indicated that quality codes and matching control numbers were inaccurately reported for certain internal product codes. This information was collected in response to our questions at verification, and not presented as a minor correction. We did not verify the accuracy of China Steel's suggested "corrected" quality codes.[24]

In accordance with section 776(a)(2)(D) of the Act, we find that the use of facts otherwise available is appropriate in this case because China Steel provided information in its questionnaire responses that could not be verified as accurate. Specifically, China Steel reported quality codes that it later admitted at verification were not accurate. Because verified information is not on the record of this investigation, despite the opportunity for China Steel to provide this information in its questionnaire responses or as part of its verification minor correction, we also find that China Steel failed to provide quality code information by the deadlines established for this information or in the form or manner requested. China Steel also significantly impeded this proceeding. Therefore, we find it appropriate to use the facts otherwise available, in part, pursuant to sections 776(a)(2)(B), (a)(2)(C), and (a)(2)(D) of the Act.

Additionally, pursuant to section 776(b) of the Act, we find that China Steel failed to cooperate by not acting to the best of its ability to comply with a request for information with respect to the full reporting of its quality codes. Accordingly, we are applying facts available, in part, with an adverse inference, to account for these erroneous quality codes. China Steel's incorrect reporting of quality codes shifted home market sales from one unique product group (*i.e.*, matching control number (CONNUM)) to another. As AFA, we are applying the highest transaction margin of any U.S. sale of subject merchandise to all U.S. sales which match to CONNUMs containing the commercial products at issue, according to either China Steel's erroneously reported quality coding or to China Steel's "corrected" quality coding.[25]

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[21] *Id.*
[22] *Id.*
[23] *Id. See also* memorandum from Gary Urso to Neal M. Halper Re: "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – China Steel Corporation," dated March 29, 2017 (Cost Calculation Memorandum).
[24] *See* China Steel Sales Verification Exhibit 2.
[25] Because the calculation of the adjustment factor is proprietary in nature, for further discussion, *see* the

3. Application of Partial AFA for Shang Chen Packing Costs

As discussed in Comment 21, below, the Department's questionnaire instructs parties to report packing costs for each shipment to the United States. At verification, the Department accepted, as a minor correction, Shang Chen's revision to the reported thickness of the plate associated with the one U.S. sales transaction of hot-rolled plate (HRP) to the United States. Shang Chen indicated that this revision had no impact on the Department's product-matching code used to report the respective thickness. However, we find that the change did impact the packing cost associated with this U.S. sale. Further, we note that Shang Chen did not submit a revised packing cost at verification for this U.S. sale., despite its ability to do so.

In accordance with section 776(a)(1) of the Act, we find that the use facts otherwise available is appropriate in this case because necessary information is missing from the record. Further, pursuant to section 776(a)(2)(A) of the Act, we find that Shang Chen withheld information that was requested by the Department. Specifically, Shang Chen reported the packing costs associated with plate thicknesses greater than or equal to 15 mm for three different size dimensions of exported merchandise. However, the revised product thickness was 9.5 mm, a thickness for which Shang Chen did not report any packing costs to the Department. Because information for packing costs associated with plate thicknesses less than 15 mm is not on the record of this investigation, despite the opportunity for Shang Chen to provide this information in its questionnaire responses, or as part of its verification minor correction, we find that Shang Chen withheld requested information. Therefore, we find it appropriate to use the facts otherwise available, in part, pursuant to section 776(a)(1)(A) of the Act.

Additionally, pursuant to section 776(b) of the Act, we find that Shang Chen failed to cooperate by not acting to the best of its ability to comply with a request for information with respect to the full reporting of its packing costs. We find that by not responding to our requests for information, or supplementing the record when the opportunity arose, Shang Chen did not cooperate to the best of its ability. Shang Chen could have provided packing costs for HRP with a thickness less than 15 mm in response to our questionnaires or as part of its minor correction at verification, but it did not do so. Accordingly, we are applying facts available, in part, with an adverse inference, to account for packing costs for HRP with a thickness less than 15 mm. As AFA, we are applying the highest packing cost per packet for export sales of HRS with a thickness of less than 15 mm to calculate an adjustment factor to apply to the packing cost for this one sale at issue.[26]

IV. Final Determination of Critical Circumstances

memorandum from Tyler Weinhold through Erin Kearney, Program Manager, Office VI, to the File, "Final Determination Margin Calculation for China Steel," dated concurrently with this memorandum (China Steel Final Analysis Memorandum).

[26] Because the calculation of the adjustment factor is proprietary, in nature, further discussion, *see* the Shang Chen Final Analysis Memorandum.

On September 7, 2016, the Department issued its *Preliminary Determination of Critical Circumstances*.[27] Accordingly, based on trade data submitted through June 2016, the Department preliminarily determined that critical circumstances did not exist for Shang Chen's imports, but did exist for China Steel's imports and all other Taiwanese imports.[28] China Steel raised the issue of critical circumstances for this final determination.[29] In addition, because critical circumstances were alleged in this case and because we made a preliminary determination, pursuant to section 735(a)(3) of the Act, and 19 CFR 351.210(c), we hereby make a final determination on the issue of critical circumstances.

In order to determine whether there is a history of dumping pursuant to section 735(a)(3)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.[30] The Department has not previously issued, nor are we aware of any other World Trade Organization (WTO) member issuing, AD orders on CTL plate from Taiwan. However, the Petitioners point to a historical pattern of dumping exports of similar merchandise from Taiwan.[31]

In determining whether importers knew or should have known that exporters were selling at less than fair value, the Department also considers the magnitude of dumping margins.[32] The Department has found margins of 15 to 25 percent (depending on whether sales are export price sales or constructed export price sales) to be sufficient for this purpose.[33] In this *Final Determination*, the Department found a dumping margin of 6.95 percent for China Steel, 3.62 percent for Shang Chen, and 5.29 percent for all others. Therefore, the statutory requirement of section 735(a)(3)(A)(ii) of the Act has not been satisfied.[34]

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[27] *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 Circumstances*, 81 FR 61666 (September 7, 2016) (*Preliminary Determination of Critical Circumstances*).
[28] *Id.*, 81 FR at 61668.
[29] *See* Comment 11, below.
[30] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010).
[31] *See* letter from Petitioners to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey: Critical Circumstances Allegations," (July 26, 2016).
[32] *See*, *e.g.*, *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation,* 67 FR 19157, 19158 (April 18, 2002) (unchanged in the final determination).
[33] *See*, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 31972, 31978 (June 11, 1997) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997)) and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 42672 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004)).
[34] *See* Comment 11, below. *See also*, *e.g.*, *Cold-Rolled Carbon Steel Preliminary Determination of Critical*

Accordingly, we find that critical circumstances do not exist for China Steel, Shang Chen, or "all other" producers, importers and exporters for this final determination.[35]

V. Scope of the Investigation

The products covered by this investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

> (1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and
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> (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.
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> Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise

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Circumstances, CTL Plate from China Preliminary Determination, and Shrimp from Vietnam.

[35] *See* Final Critical Circumstances Data Memorandum.

remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,
- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,
- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this investigation;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270-300 HBW,
(ii) 290-320 HBW, or
(iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,

- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000,

7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

VI. Scope Comments

During the course of this investigation, the Department received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, the Department modified the language of the scope to clarify the exclusion for stainless steel plate, correct two misidentified HTSUS item numbers, and modify language pertaining to existing steel plate and hot-rolled flat-rolled steel orders.[36]

In October and November 2016, we received scope case and rebuttal briefs and scope rebuttal briefs. On November 29, 2016, we issued a final scope memorandum in response to these comments in which we did not change the scope of this investigation.[37]

VII. Margin Calculations

A. China Steel

With respect to China Steel, in a change from the *Preliminary Determination*, we have based the final determination on information submitted by China Steel, as explained below.

1. Margin Calculation Methodology

a) 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 China Steel'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.[38]

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[36] *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, 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.

[37] *See* Final Scope Memorandum.

[38] As explained below in the section "EXPORT PRICE/CONSTRUCTED EXPORT PRICE," we have determined that China Steel did not have Constructed Export Price (CEP) sales.

b) 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 constructive export prices (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.[39] 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 the *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 state 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,

[39] *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.

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.

c) Results of the Differential Pricing Analysis

For China Steel, based on the results of the differential pricing analysis, the Department finds that more than 66 percent of the value of U.S. sales pass the Cohen's *d* test,[40] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales.[41] Thus, for the final determination, the Department is applying the average-to-transaction method to all of China Steel's U.S. sales to calculate the weighted-average dumping margin for China Steel.

2. 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.[42]

China Steel reported the earlier of the invoice date and shipment date as the date of sale for both home market sales and U.S. sales.[43] 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.[44] We have determined that the material terms of sale for China Steel's sales are established on the invoice date.[45] Therefore, for China Steel's U.S. and home market sales, we used the earlier of the invoice date and shipment date as the date of sale in both markets, in accordance with our normal practice.

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[40] *See* the China Steel Final Analysis Memorandum.
[41] *Id.*
[42] *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)).
[43] *See* letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan — Response to Section A of June 9 Questionnaire July 7, 2016, Section A Response," dated July 7,2016 (China Steel's Section A Response) at 26 and China Steel's October 7, 2016 Response at 50 to 54. *See also* Comment 7, below.
[44] *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.
[45] *See* China Steel's Section A Response, at 26, and China Steel's October 7, 2016 Response at 50 to 54. *See also* Comment 7, below.

3. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by China Steel 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. 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.

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.[46]

4. Export Price/Constructed Export Price

For all sales made by China Steel, 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 prices to unaffiliated purchasers in the United States. China Steel 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.

5. 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.

[46] *See* the China Steel Final Analysis Memorandum; *see also* letter from the Department to All Interested Parties, dated May 19, 2016 (Product Characteristics Letter).

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 China Steel, in accordance with section 773(a)(1)(B) of the Act.

b) Affiliated-Party Transactions and Arm's-Length Test

During the POI, China Steel made sales of the foreign like product in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all billing adjustments, discounts, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length.[47] Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.[48]

c) 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).[49] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[50] 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),[51] we consider the

[47] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).
[48] *See* section 771(15) of the Act and 19 CFR 351.102(b)(35).
[49] *See* 19 CFR 351.412(c)(2).
[50] *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) (*OJ from Brazil*), and accompanying Issues and Decision Memorandum at Comment 7.
[51] 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).

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.[52]

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.[53]

In this investigation, we obtained information from China Steel 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.[54] Our LOT findings are summarized below.

We examined information obtained from China Steel regarding the marketing stage(s) involved in home market and U.S. sales, including a description of the selling activities performed by China Steel for each channel of distribution. In its initial questionnaire response, China Steel reported both its own selling functions associated with sales made in the home market and to the United States, and China Steel's collapsed affiliate, Dragon Steel Corporation's, home market selling functions.[55] Because the Department requested additional information on China Steel's selling functions, in China Steel's October 7, 2016 Response, China Steel submitted a revised selling functions chart that identifies what selling activities are performed by China Steel and Dragon Steel, and provides a description of each of the selling activities performed by each affiliate.[56]

With respect to sales made in the home market, China Steel reported two categories of customers: sales to unaffiliated trading companies and end users (Channel 1) and sales to affiliated trading companies and end users (Channel 2).[57] Also, China Steel indicated that neither it nor Dragon Steel Corporation distinguished between selling functions, or set prices associated with sales made to different categories of customers.[58]

We compared the first channel of distribution in the home market, sales to unaffiliated trading companies and end users, and the second channel of distribution in the home market, sales to affiliated trading companies and end users. China Steel reported selling functions for various activities and specified the level of each activity performed by itself and Dragon Steel. We

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[52] *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
[53] *See*, *e.g.*, *OJ from Brazil*, and accompanying Issues and Decision Memorandum at Comment 7.
[54] *See* China Steel's Section A Response at 21-25 and Appendix A-3-c; China Steel's October 7, 2016 Response at 8-9 and Appendix 2SA-6.
[55] *See* China Steel's Section A Response, at Appendix A-3-c.
[56] *See* China Steel's October 7, 2016 Response at 8-9 and Appendix 2SA-6.
[57] *Id.*
[58] *See* China Steel's Section A Response, at 24 to 25.

found no differences associated with the selling functions and the level at which they were performed by China Steel and Dragon Steel, and between Channel 1 and Channel 2. 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 China Steel's home market channel of distribution constitutes one level of trade.

For sales made to the U.S. market, China Steel reported only one category of customer with respect to U.S. sales, *i.e.*, direct sales made to unaffiliated customers.[59] Accordingly, we determine that only one level of trade exists with respect to EP sales made to the United States.

Comparing the home market 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 and the home market level of trade do not differ. Accordingly, for the final determination, we made no level-of-trade adjustment.

d) Cost of Production Analysis

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD law were made, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than COP.[60] The 2015 law does not specify dates of application for those amendments.[61] 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.[62] 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.[63] We examined the cost data of China Steel 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.[64]

Calculation of COP:

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[59] *See* Initial Questionnaire Response, at 14; *see also*, Supplemental Response, at 17 and Appendix SA-10.
[60] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).
[61] The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl. *See also*, the Petitions.
[62] *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.
[63] *Id.*, 80 FR at 46794-95.
[64] *See* memorandum from Gary Urso to Neal M. Halper, director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," dated concurrently with this memorandum and memorandum from Jayalakshmi Jones to Neal M. Halper, director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Shang Chen Steel Co. Ltd," dated concurrently with the memorandum.

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 China Steel except for the following modifications:

- We revised the reported cost of manufacturing for CONNUMs with identified errors with the highest reported cost of manufacturing of any CONNUM.[65]
- We increased the cost of manufacturing by the reported variance.[66]
- We revised the reported cost of manufacturing for gains on market price declines of by-products, loss for market price decline on materials, loss for purchase contracts, gain for market price decline of supplies, and the gain of physical inventory[67]
  We revised the general and administrative expense rate calculation for non-operating income and expense items and applied the company-specific rates to the company-specific cost databases and weight-averaged the company-specific COP's to calculate the revised COP.[68]

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.

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.

[65] *See* Comment 1, below.
[66] *See* Comment 6, below.
[67] Id.
[68] *See* Comment 4, below.

We found that, for certain products, more than 20 percent of China Steel'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.[69]

e) Calculation of NV Based on Comparison-Market Prices

For China Steel, 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).[70] 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.

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.[71]

[69] *See* the China Steel Final Analysis Memorandum.
[70] We have excluded certain post-sale billing adjustments from our calculation of Normal Value. *See* Comment 7, below.
[71] *See* 19 CFR 351.411(b).

6. Currency Conversions

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.

B. Shang Chen

For Shang Chen,[72] we calculated export price (EP) and normal value (NV) using the same methodology as stated in the *Preliminary Determination*,[73] except as follows.

Changes Since the *Preliminary Determination*:

1. We made certain changes to COP. *See* Comments 15 and 16, below.

- 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.
- We revised the G&A expenses for non-operating income.

2. We revised the respondent's preliminary dumping margin to take into account one programming error. *See* Comment 17, below.

VIII. Discussion of Issues

Comment 1: Whether to Apply Total Adverse Facts Available for China Steel

Petitioners' Case Brief:

- The Department should apply total AFA because of China Steel's failure to submit accurate cost and sales data. Taken collectively, the problems identified at verification demonstrate a failure by China Steel to cooperate to the best of its ability.
- China Steel conceded at verification that its reported costs are inaccurate because COP2 did not reflect the changes reflected in the rejected COP3.[74]
- Verification revealed other significant problems with COP2, namely excluding other operating costs related to production, excluding non-operating expenses, misallocating costs

[72] For Shang Chen, *see* memorandum to the File from Davina Friedmann, senior analyst, AD/CVD Operations, Office VI, "Final Determination Calculations for Shang Chen Steel Co., Ltd." dated March 29, 2017 (Shang Chen Final Calculation Memorandum); *see also*, memorandum to the File through Neal M. Halper, director, Office of Accounting, from Jayalakshmi Jones, accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Shang Chen Steel Co., Ltd." dated March 29, 2017 (Shang Chen Cost Calculation Memorandum).
[73] *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 8 and 9.
[74] *See* Petitioners' Case Brief, at 1.

between prime and non-prime merchandise, reporting inaccurate cost variances, and understating G&A and interest expenses.[75]
- Alternatively, the Department should apply, as partial AFA, the highest reported cost of production for any individual China Steel product as the cost of production for China Steel products.

China Steel's Rebuttal Brief:

- The Department should base its final determination on the COP2 data submitted by China Steel because it fully explained and documented the changes in its cost data and demonstrated at verification that its costs were accurately reported. The record contains a complete cost database to modify any calculation of China Steel's costs. The limited minor errors identified at verification are well within the scope of similar minor error corrections that the Department has routinely accepted at verification in other investigations and reviews.[76]

Department's Position:

For the reasons detailed below, we do not find that China Steel's reporting in this investigation warrants the application of total adverse facts available. However pursuant to sections 776(a)(2)(B)-(D) and 776(b) of the Act, we find that the application of partial adverse facts available is warranted for certain China Steel CONNUMs based on the fact that China Steel failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

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

Once the Department determines that the use of facts available is warranted, the Department must then determine whether an adverse inference is warranted, pursuant to section 776(b) of the Act, which permits the Department to apply an adverse inference if it makes the additional finding that an interested party has failed to cooperate by not acting to the best if its ability to comply with the Department's requests for information. In determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of the respondent's conduct.[77] Instead, the courts have made clear that the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. In

[75] *See* Petitioners' Case Brief, at 11-19.
[76] *See* Petitioners' Case Brief Rebuttal, at 2.
[77] *See Nippon Steel Corp. v. United States,* 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid sufficient attention to its statutory duties.[78] The Department also considers whether there is at issue a "pattern of behavior."[79] The Court of International Trade has found that the "respondent bears the burden of creating a complete and adequate record upon which the Department can make its determination."[80]

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.

We find that pursuant to sections 776(a)(2)(B), (C) and (D) of the Act, the application of facts available to certain China Steel CONNUMs is appropriate because: (1) China Steel failed to accurately and timely report cost information for certain CONNUMs; (2) China Steel took action that further impeded the Department's ability to conduct the proceeding; and (3) China Steel provided information that could not be verified.

Section 773(f)(1)(A) of the Act directs that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the Generally Accepted Accounting Principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, the Department will normally rely on a company's normal books and records if two conditions are met: (1) the books are kept in accordance with the home country's (GAAP); and (2) the books reasonably reflect the cost to produce and sell the merchandise. Here, the record is clear that the reported costs are derived from China Steel's normal books and records, and that those books are in accordance with Taiwan GAAP. Hence, the question facing the Department is whether the reported per-unit costs reasonably reflect the cost to produce and sell the merchandise under consideration (MUC).

In China Steel's Supplemental Section D Response, China Steel provided a new cost database, "COP2."[81] While COP2 addressed changes requested by the Department in its supplemental questionnaire, China Steel also identified additional changes which were beyond those requested by the Department. Because we found that the unsolicited changes and unexplained changes were significant and extensive, and because they could not be differentiated from the solicited

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[78] *See Pacific Giant, Inc. v. United States,* 223 F. Supp. 2d 1336,1342 (CIT 2002) (*Pacific Giant*); *see also Tung Mung Dev. Co. v. United States,* 2001 Ct. Intl. Trade LEXIS 94 at 89 (July 3, 2001) (*Tung Mung*).
[79] *Borden, Inc. v. United States*, 22 C. I. T. 1153 (CIT 1998) (*Borden*).
[80] *See NSK Ltd. v. United States,* 919 F. Supp. 442, 449 (CIT 1996) (*NSK*); *see also Tianjin Mach. Imp. & Exp. Corp. v. United States,* 353 F. Supp. 2d 1294, 1305 (CIT 2004) (*Tianjin*) ("Although the standard does not demand perfection, it censures inattentiveness and carelessness.").
[81] *See* China Steel's October 11, 2016 Section D Supplemental Response, at Appendix-SD-1.

changes, we based China Steel's preliminary margin on total AFA.[82]

After the preliminary determination, we issued another supplemental questionnaire to China Steel on November 9, 2017 requesting it to explain the additional changes made to COP2.[83] On November 30, 2017, we received China Steel's response to the supplemental questionnaire, which explained the changes between COP1 and COP2.[84] COP2 also corrected the cost file to be consistent with the sales databases submitted earlier. Additionally, China Steel identified more errors not previously identified and submitted another cost database reflecting corrections for these errors as COP3. We rejected COP3 as untimely filed new information not requested by the Department.[85]

As noted in the Department's cost verification report, China Steel's reported costs include three CONNUMs where computer programming errors occurred which resulted in its cost calculations being reported incorrectly by having positive production quantities and positive materials cost, but negative variable overhead costs.[86] These negative costs occurred when production of a plate extended over more than one quarter, and the movements into and out of work in process inventory resulted in a net positive quantity in one quarter and net negative quantity in the next quarter. The resulting reported negative variable overhead costs caused an understatement of the standard costs, which ultimately led to an understatement of costs for the three CONNUMs.

We also noted in the Department's cost verification report, that China Steel made another computer programming error that caused, for certain CONNUMs, an incorrect counting of costs in calculating its weighted-average per-unit costs as reported in COP2.[87] More specifically, during the POI, China Steel took cut-to-length plate out of its finished goods inventory to conduct quality testing. When the plate product was removed from inventory, the quantity was taken out (*i.e.*, removed), but the associated costs of the plate product was not removed. After testing, the plate product was placed back into finished goods inventory, and while the appropriate quantity of plate product was placed back in the inventory, the associated costs was also (again) re-entered, thus incorrectly reporting the overall standard costs of the affected plate products.[88] The net result of this error was that the quantities properly netted out, but the standard costs associated with the in and out of the plate product were overstated. As a result, because the total actual costs for subject merchandise under consideration did not change, the overstated standard costs necessarily meant that the calculated favorable variance (that is, the difference between total actual costs and total calculated standard costs) was overstated.

Based on the errors noted at verification, we find that China Steel failed to provide requested information by the established deadlines or in the form and manner requested by the Department, within the meaning of section 776(a)(2)(B) of the Act. We further find that China Steel provided information in its questionnaire responses that we could not verify as accurate, within the

[82] *See* Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan, dated November 4, 2016 ("Prelim Decision Memo").
[83] *See* Department letter re: "Second Supplemental Questionnaire for China Steel," dated November 9, 2016.
[84] *See* China Steel's November 30, 2016 Second Supplemental Section D Questionnaire Response.
[85] *See* Department letter re: "Rejection of Unsolicited Database," dated December 29, 2016.
[86] *See* China Steel Cost Verification Report.
[87] *Id.,* at 15 to 17.
[88] *Id.*

meaning of section 776(a)(2)(D) of the Act, and that it has significantly impeded this the proceeding by providing changes to certain CONNUMs during verification, within the meaning of section 776(a)(2)(C) of the Act. Furthermore, China Steel has not met the requirements of sections 782(d) and (e) of the Act. The requirements of section 782(d) of the Act have not been satisfied because China Steel did not provide enough information to the Department to indicate that its reporting methodology for these CONNUMs might be deficient until verification. It was not until verification that the Department was aware of these errors. By this time, it was too late to notify China Steel of any deficiencies, obtain the new data, and examine the methodologies and data for deficiencies. Similarly, section 782(e) of the Act has also not been satisfied because China Steel failed to submit before the deadlines established by the Department reasonably accurate CONNUM-specific costs for these CONNUMs. In its response to the Department's second supplemental questionnaire, when the Department requested detailed information regarding changes to its reported costs, China Steel reported that it provided actual CONNUM specific costs. At that time, China Steel did not acknowledge that it reported inaccurate costs for certain CONNUMs. These statements by China Steel prevented the Department from asking additional questions about the errors both prior to and during the verification. Thus, China Steel has failed to satisfy the requirements of subsection (1) and (2) of section 782(e). Based on the above, we find that the use of facts available is appropriate for China Steel.

We further determine that, within the meaning of section 776(b) of the Act, China Steel failed to cooperate by not acting to the best of its ability to comply with the Department's request for information by not providing the Department with timely and accurate cost data for certain CONNUMs, and that the application of partial AFA is, therefore, warranted. On more than one occasion, China Steel failed to provide information when requested to do so by the Department. China Steel misrepresented the nature of its reported costs in its last two supplemental questionnaire responses by reporting to the Department that it reported actual CONNUM-specific costs for all CONNUMs when there were errors in its reported costs. This precluded the Department from making supplemental requests for information regarding the errors from verification. China Steel's misrepresentation prevented the Department from issuing supplemental questions that might otherwise have resulted in changes to the methodology, to make the methodology reasonable, such that the Department could have accepted it. We find that China Steel did not act to the best of its ability in reporting costs for certain CONNUMs, and therefore an adverse inference is warranted.

For the final determination, we have made certain adjustments to China Steel's costs of production, as partial AFA. Regarding the three CONNUMs discussed above for which costs were understated, we have increased the costs for these CONNUMs by substituting the highest reported cost of any CONNUM for the reported cost of these three CONNUMs. Regarding the CONNUMs discussed above for which China Steel incorrectly calculated its weighted-average per-unit costs, we have increased the costs for these CONNUMs by substituting the highest reported cost of any CONNUM for the reported cost of the affected CONNUMs. In addition, we have disallowed China Steel's claimed favorable variance adjustment.[89]

[89] *See* memorandum from Gary Urso to Neal M. Halper Re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – China Steel Corporation, dated March 29, 2017 ("Cost Calculation Memorandum").

Comment 2: China Steel Excluded Operating Costs

Petitioners' Case Brief:

- The petitioner argues that China Steel incorrectly reduced China Steel's "FY 2015 Operating Costs Per Financial Statements" by removing "other operating costs" that should have been reported in the Section D cost file (including costs for facility construction or machinery maintenance projects).[90]
- Petitioner contends that while China Steel argued at verification that "none of these costs relate to the production or sale of MUC," it failed to acknowledge that China Steel's 2015 financial statements report these costs as "operating costs," confirming that these costs bear a direct relationship to China Steel's operation and production. If these costs were not related to China Steel's production, they would have been reported in another section of China Steel's income statement, but were not.

China Steel's Rebuttal Brief:

- China Steel states that petitioners' argument is missing a key logical step. The fact that these costs are classified as "operating costs" may, indeed, mean that they relate to some of China Steel's operations. However, it does not mean that they relate to operations involving production or sale of the merchandise under investigation. In fact, the verification report confirms that the Department fully examined the operating costs identified by petitioner, as well as China Steel's contention that these costs related only to non-subject merchandise.[91]

Department's Position:

We agree with China Steel. During the cost verification of China Steel, we confirmed that operating costs include operating costs of non-subject merchandise.[92] Furthermore, during verification, we also confirmed that the amount of other operating costs that are excluded from China Steel's manufacturing costs are not related to its cost of manufacturing of CTL plate. Therefore, we have not made any changes.

Comment 3: China Steel Under-Reported Prime Merchandise

Petitioners' Case Brief:

- None of China Steel's non-prime merchandise can be used for the same applications as its prime merchandise and should, therefore, be valued at the scrap market sales value.
- The Department should find that China Steel's reported non-prime costs do not reflect the scrap market sales value, and that China Steel sold its non-prime merchandise.
- By overstating the costs for non-prime products, China Steel understated the cost for prime merchandise, and China Steel has offset the POI cost of manufacturing for subject carbon

[90] *See* Petitioners' Case Brief, at 11.
[91] *See* China Steel's Rebuttal Brief at 3 and 4.
[92] *See* Cost Verification Report, at 9.

steel (prime and non-prime merchandise) by the POI cost of manufacturing for non-prime subject carbon steel.[93]

China Steel's Rebuttal Brief:

- As explained in China Steel's initial Section D response, its normal cost accounting system values scrap, secondary and salvage merchandise generated during production at a standard cost. This standard cost is deducted from the cost of manufacture for prime-quality products, and is also used to value scrap, secondary and salvage merchandise items when they are either re-introduced into production or sold.
- China Steel reported the cost for prime-quality products in accordance with the figures recorded in its normal accounting system, as explicitly required by the Department's questionnaire.
- China Steel fully disclosed its normal methodologies for valuing scrap, secondary, and salvage merchandise in its questionnaire responses. It reported the costs for subject merchandise in accordance with the methodologies used in its normal cost accounting system, as explicitly required by the Department's questionnaire. The Department also verified that methodology.
- Petitioners have not established that China Steel's normal methodologies for accounting for scrap, secondary, and salvage merchandise are distortive. The analysis the petitioner provided simply compares a single weighted-average cost with a single weighted-average price for the entire investigation period, without considering the differences in the types of products generated and sold by China Steel, without accounting for changes in prices and costs over the course of the period, and without acknowledging most of the scrap is reintroduced into production. Such a comparison is inherently misleading, and does not provide a basis for departing from China Steel's normal accounting methodologies.[94]

Department's Position:

Based on the evidence on the record, we find that the reported values from China Steel's normal books and records used for secondary merchandise are reasonable for reporting the CONNUM-specific costs to the Department.

In its antidumping questionnaire, the Department requested that China Steel report the costs and production amounts of secondary merchandise and scrap according to the methodology used in its normal books and records. In its normal books and records, China Steel subtracts the quantity and value of secondary and kick-off (*i.e.*, scrap) merchandise from the cost of prime production. The value assigned to each product (*i.e.*, secondary merchandise and scrap) is based on their approximate market value and sales value, respectively.

We find that the overall average sales value of scrap should not be equivalent to the overall value of secondary merchandise because these are distinguishable products whose values differ based on the defects associated with the product. We noted that China Steel's methodology in its normal books and records for secondary merchandise values this category of merchandise at a

[93] *See* Petitioners' Case Brief, at 12-14, 35.
[94] *See* China Steel's Rebuttal Brief, at 5-7.

higher value because secondary merchandise contains certain minor defects while kick off material (*i.e.*, scrap) cannot be used for any plate-related purposes and, therefore, record evidence shows that kick off material has severe defects and sells for significantly less than secondary merchandise.[95]

Comment 4: China Steel Under-Reported G&A Expenses

Petitioners' Case Brief:

- China Steel understated its G&A expenses for both China Steel and Dragon Steel by improperly excluding certain expense items, while improperly including offsets for certain income items. In doing so, China Steel artificially understated its reported TOTCOP. Specifically, China Steel failed to include China Steel's non-operating expenses for loss on disposal of property, plant and equipment, and other losses.[96]
- The Court has agreed with the Department that such losses should be included in the G&A expenses. Additionally, China Steel improperly included certain income offsets to China Steel's G&A expenses, including income that was received from an affiliate.[97]
- The Department's practice is to deny a revenue offset to G&A expenses that was obtained from activities where the corresponding costs of the activities are not reflected in those expenses. As China Steel failed to demonstrate that any expenses associated with this income were included in the costs, the Department should deny this income offset to the G&A expenses.[98]
- To determine whether it is appropriate to offset G&A expenses by a particular income amount, the Department requires respondents to detail the nature of each item, its relationship to the general operations of the company, and whether associated expenses have also been reported in the costs. Aside from the nondescript titling of these income items, no information was presented to detail the nature of each item, its relationship to the general operations of the company, and whether associated expenses have also been reported in the costs. As this would reduce G&A expenses, China Steel had the obligation to provide this information to qualify for an offset to actual G&A expenses, and failed to do so.[99]
- China Steel also significantly understated the G&A expenses by choosing a methodology that improperly lowered the G&A ratio. China Steel created a weighted-average G&A ratio based on total production quantities of China Steel and Dragon Steel, instead of actual CONNUM production quantities. This methodology resulted in aberrational and unreasonable G&A expenses. Despite China Steel's production of the CONNUMs accounting for the majority of total production, the weighted-average calculation wrongly assigned a disproportionate weighting. Thus, the resulting "weight-averaged" G&A ratio incorrectly over-weighted Dragon Steel's G&A ratio.[100]

[95] *See* China Steel's October 11, 2016 Section D Supplemental Response, at 5-12 and China Steel's October 7 Response at 14 to 15.
[96] *See* Petitioners' Brief, at 16.
[97] *Id.*, at 17.
[98] *Id.*, at 17.
[99] *Id.*, at 18.
[100] *Id.* at 18.

- In addition, China Steel inaccurately applied this understated G&A ratio to all CONNUMs, not just to the sole CONNUM that was produced by both China Steel and Dragon Steel. The Department should find that China Steel created this methodology to understate the TOTCOM, and ultimately the cost of production.[101]

China Steel's Rebuttal Brief:

- The amount for "loss on disposal of property, plant and equipment, and other losses," was *not* excluded from China Steel's G&A calculation. Instead, as shown in China Steel's initial Section D response, China Steel excluded only the net foreign exchange gains, gain on disposal of investments, and impairment loss on financial assets from the "other gains and losses" that were included in the G&A calculation. The "loss on disposal of property, plant and equipment, and other losses," was *not* excluded.[102]
- The methodological choices relating to the treatment of certain non-operating income items in the calculation of the G&A expense rate for Dragon Steel, and to the methodology used by China Steel to combine the China Steel and Dragon Steel G&A expenses, were disclosed by China Steel in its initial July 28, 2016 Section D response.[103]

Department's Position:

We agree with the petitioner, in part. Section 773(f)(1)(A) of the Act states that the COP "shall normally be based upon the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country…and reasonably reflect the costs associated with the production and sale of merchandise." Because the Act does not contain a definition of a G&A expense or how the G&A expense ratio should be calculated, the Department has developed a consistent and predictable practice for calculating and allocating G&A expenses. This reasonable, consistent, and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide COGS.[104] The rationale for this approach is that, by definition, G&A expenses relate to the general operations of the company as a whole and not to specific products and processes. Accordingly, the Department's well-established practice is to include in the G&A expense ratio calculation certain expenses and revenues that relate to the general operations of the company as a whole.

We agree with the petitioner that the loss on disposal of property, plant, and equipment was not included in China Steel's G&A expense ratio calculation as an increase to the expense. For the final determination, we have included the loss on disposal of property, plant, and equipment in the G&A expense calculation. However, we disagree with the petitioner that China Steel inappropriately reduced its G&A expenses by excluding "other losses," as we confirmed at the cost verification that certain losses were not related to the general operations of the company, but

[101] *See* Petitioners' Brief, at 19.
[102] *See* China Steel's Rebuttal Brief, at 9.
[103] *Id.*, at 9-10.
[104] *See Pre-Stressed Concrete Steel Rail Tie Wire from Mexico: Final Determination of Sales At Less Than Fair Value*, 79 FR 25571 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 6.

were related to investment activities.[105] The Department's practice is to exclude items related to investment activities.[106] See Comment 5 below. We also disagree that certain income offsets to China Steel's G&A expenses were inappropriate. The Department allows a respondent to offset its G&A expenses for non-operating income items, provided the item relates to the general operations of the company and the corresponding non-operating expenses are included in the G&A calculation. In this case, China Steel demonstrated at verification that the non-operating income related to the general operations of the company and China Steel reported the related expenses associated with this income.[107] However, we agree with petitioner that a business proprietary, non-operating income item should not be included in the G&A calculation, as it did not relate to the general operations of the company.[108]

Regarding Dragon Steel's offset to its G&A expenses for miscellaneous income items, we agree with petitioner that China Steel inappropriately reduced Dragon Steel's G&A expenses for a certain business proprietary miscellaneous income item without providing details supporting the nature of this offset. Accordingly, we disallowed the proprietary miscellaneous income offset item. In the instant case, consistent with the Department's practice, we allowed, as an offset to the G&A expenses, only the non-operating income items that relate to the general operations of the company as a whole, and the corresponding expenses that are included in the G&A expenses. We agree with the petitioner that China Steel inappropriately reported a combined G&A and interest expense rate for itself and its affiliate. The Department's practice is to have the respondent report separate G&A and interest expense rates for each reporting company, apply the company-specific ratios to the same company's production costs, and then calculate a weighted-average COP.[109] The fact that in this case, only one identical CONNUM was produced at both China Steel and Dragon Steel, is unpersuasive and not sufficient for the Department to depart from its normal practice. For the final determination, we continue to follow our practice of calculating separate G&A and interest rates and applying the company specific rates to the respective company-specific cost databases, and weight-averaging the company-specific COP's to calculate the reported COP.[110]

Comment 5: China Steel Under-Reported Interest Expenses

Petitioners' Case Brief:

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[105] *See* China Steel Cost Verification Report at 23 to 24.
[106] *See*, *e.g.*, *Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017), and accompanying Issues and Decisions Memorandum at Comment 2 and *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part* 81 FR 49950 (July 29, 2016), and accompanying Issues and Decision Memorandum at Comment 10 (Department practice excludes investment-related gains or losses from the calculation of COP).
[107] *See also* China Steel October 11, 2016 Section D Supplemental Questionnaire Response.
[108] *See* the Cost Calculation Memorandum for the proprietary discussion of this item.
[109] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 11.
[110] Because certain components of the G&A calculation are business proprietary, *see* the Cost Calculation Memorandum for additional detail.

- The interest expense calculation submitted by China Steel is incorrect. Specifically, China Steel failed to include impairment losses on financial assets and therefore should be assigned total AFA because such an omission shows a pattern of uncooperative behavior.[111]

China Steel's Rebuttal Brief:

- The treatment of these losses was made clear in China Steel's initial July 28 submission. And, the record clearly demonstrates that these losses were related to "available for sale financial assets" — in other words, investments. The Department's longstanding practice, of course, is to exclude gains and losses related to investment activities from the calculation of net interest expenses. In short, China Steel's interest expense calculation was fully in accordance with the Department's normal practice.[112]

Department's Position:

The Department's practice is to allow a respondent to exclude from its financial expenses those gains and losses related to investment activities and the impairment losses on financial assets are "available for sale financial assets" and, as such, are considered related to investment activities.[113] Based on our normal practice, we disagree that these values should be added to China Steel's financial expenses, and we have used the reported financial expense rate for the final determination.

Comment 6: China Steel Improperly Reduced COGS

Petitioners' Case Brief:

- China Steel reduced the POI cost of goods sold by loss for market price declines, purchase contracts, and gains on physical inventory. The Department correctly noted in its cost verification report that it should perhaps disallow the adjustment for "the gain for market price decline by-products, loss for market price decline - materials, loss for purchase contracts, and gain for market price decline supplies, and gain on physical inventory," and that the Department has a longstanding practice of including all costs associated with materials, by-products, purchases and supplies in the cost of producing the merchandise.[114]

China Steel's Rebuttal Brief:

- Petitioners contend that China Steel improperly failed to include losses recognized in its financial statements due to the application of the lower-of-cost-or-or market ("LCM") principal to inventories and purchase contracts. However, the Department's established practice is to exclude losses recognized due to the application of the LCM principal, where

[111] *See* Petitioners' Case Brief at 19.
[112] *See* China Steel's Rebuttal Brief at 10.
[113] *See Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part* 81 FR 49950 (July 29, 2016), and accompanying Issues and Decision Memorandum at Comment 10.
[114] *See* Petitioners' Case Brief, at 12.

the loss relates solely to the valuation of the inventories based on market-price declines, and the inventories in question have not actually been written down.[115]

Department's Position:

The Department verified China Steel's overall cost reconciliation at the cost verification and noted that China Steel reduced its cost of goods sold for losses on market prices declines, purchase contracts, and gain on physical inventory.[116] We agree with the petitioners that China Steel should include in its reported costs, gains on market price declines of by-products, loss for market price decline on materials, loss for purchase contracts, gain for market price decline of supplies, and gain of physical inventory. We include in a respondent's costs, all costs associated with producing the subject merchandise and as such deem it appropriate to include these items in China Steel's reported costs. Our practice is to only exclude inventory valuation losses which are attributable to finished goods.[117] Thus, we have only allowed China Steel to only exclude the costs related to the lower of cost or market adjustment for finished goods.

Comment 7: China Steel Date of Sale

Petitioners' Case Brief:

- Although the regulations provide that the Department will normally use the date of invoice, the Department's practice is to consider the date of sale to be the date on which the material terms of sale are first established.[118]
- China Steel initially reported that "the material terms of sale (such as quantity) remain subject to change until the invoice is prepared" and, therefore, China Steel selected the date of invoice for reporting the universe of U.S. and home market sales.[119]
- China Steel personnel confirmed to the Department at verification that if quantity changes occurred outside of the tolerance range, new internal purchase orders and sales orders are generated.[120] Changes to price or to quantity outside the tolerances were not observed in any of the individual sales transactions examined.[121]
- Although the Department's regulations provide that the Department will normally use the date of invoice, the preamble to the regulations indicate that "{i}f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale."[122]

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[115] *See* China Steel's Rebuttal Brief, at 5.
[116] *See* China Steel's Cost Verification Report, at 9-10.
[117] *See Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Review* 74 FR 65751 (December 11, 2009), and accompanying Issues and Decision Memorandum at Comment 3.
[118] *See* Petitioners' Case Brief for China Steel at 24, citing section 351.401(i) of the Department's regulations.
[119] *Id.*, at 21, citing China Steel's Section A Response, at 26.
[120] *Id.,* at 2 and 22 to 23.
[121] *Id.*
[122] *Id.*, at 24, citing *Antidumping Duties; Countervailing Duties*, 62 FR at 27349 (May 19, 1997).

- In *Certain Cut-to-Length Quality Steel Products from Italy*, the Department based the date of sale on the purchase order confirmation date instead of the invoice date.[123] There, the Department explained that in order to change to a date other than the invoice date, the record should "show that the material terms did not change or were not subject to change between this date and the invoice date."[124]
- Because information discovered at verification demonstrates that there is a different date on which the material terms of sale are set for China Steel's U.S. sales, the Department must find that China Steel reported an incorrect date of sales and therefore, an incorrect universe of U.S. and home market sales.[125]
  Information necessary to calculate an accurate margin is not on the record. Therefore, the use total facts available is warranted, in accordance with section 776(a) of the Act.[126] By reporting of the wrong universe of U.S. sales by selecting an incorrect date of sale China Steel has significantly impeded this investigation in accordance with section 776(a)(2)(C) of the Act.[127]
- China Steel has at all times in this investigation been the master of its own information, and has been given multiple opportunities to develop a complete and accurate record. China Steel essentially refused to do so.[128] China Steel had knowledge of its sales process for U.S. sales and could have expanded its reporting of sales data to ensure that the proper U.S. sales would be on the record.[129]
- AFA is essential to ensure that China Steel not benefit from its uncooperative behavior in this investigation and that a complete, accurate and reliable record is built in all subsequent administrative reviews.[130]

China Steel's Case Brief:

- China Steel has been fully responsive to the Department's requests, and has submitted massive amounts of information under impossibly short deadlines and in the face of horrific natural disasters.[131]
- There is no basis for the Department to reject the sales data submitted by China Steel for purposes of its final margin calculations.[132]

Petitioners' Rebuttal Brief:

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[123] *Id.*, at 24, citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Final Results of Antidumping Duty Administrative Review*, 75 FR 47777 (August 9, 2010) (*CTL Plate from Italy 2010*), and accompanying Issues and Decision Memorandum at Comment 1.
[124] *Id.*, at 24, citing *CTL Plate from Italy 2010*, and accompanying Issues and Decision Memorandum at 5.
[125] *Id.*, at 2 and 25.
[126] *Id.*, at 26.
[127] *Id.*, at 28, citing section 776(a) of the Act.
[128] *Id.*, at 29.
[129] *Id.*
[130] *Id.*, at 32.
[131] *See* China Steel's Case Brief, at 2.
[132] *Id.*, at 2.

- The Department must reject China Steel's arguments and use AFA in the final margin analysis.[133]
- China Steel's own arguments demonstrate that China Steel's cost and sales data continue to be fatally flawed and unusable.[134]
- China Steel failed to demonstrate the completeness and accuracy of its responses.[135]
- China Steel provided no documentary evidence in support of its representations as to date of sale.[136]
- No weight can be afforded to company officials' assertions that are not accompanied by supporting documentation.[137]

China Steel's Rebuttal Brief:

- The Department's normal practice is to base the date of sale on the earlier of the date of invoice date or the date of shipment.[138] The Department verified that China Steel reported the date of sale for home market and U.S. sales in accordance with those principles.[139]
- China Steel also documented that the quantity set in the initial purchase order from the customer does not always correspond to the quantity shipped to the customer.[140]
- Petitioners contend that the Department should ignore the documented changes in shipment quantities after the initial purchase order because China Steel's practice is to contact the customer and obtain a revised purchase order before shipping the final quantity.[141] But that practice does not transform the initial purchase order (or even the revised purchase order) into a binding commitment regarding the quantity to be shipped.[142]
- Documents provided at verification show that the quantity remained subject to change, and the purchase orders remained subject to revision, up until the time that it was actually invoiced and shipped.[143]

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[133] *See* Petitioners' Rebuttal Brief for China Steel, at 1 to 2.
[134] *Id.*, at 1 to 2, citing Petitioners' Case Brief for China Steel, at 28 to 32.
[135] *Id.*, at 3, citing Petitioners' Case Brief for China Steel, at 28 to 32.
[136] *Id.*, at 3, citing Petitioners' Case Brief for China Steel, at 21 to 25.
[137] *Id.*, at 3, citing *Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017) (*Phosphor Copper from Korea*), and accompanying Issues and Decision Memorandum at Comment 3.
[138] *See*, letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Rebuttal Brief of China Steel Corporation," dated March 6, 2017 (China Steel's Rebuttal Brief) at 10 to 11, citing Section 351.401(a)(i) of the Department's Regulations; *Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Intent to Rescind in Part*, 72 FR 36658, 36659 (July 5, 2007); and *Certain Frozen and Canned Warmwater Shrimp from Thailand: Notice of Final Determination Sales at a Less than Fair Value and Negative Final Determination of Critical Circumstances*, 69 FR 76918, 76920 (Dec. 23, 2004).
[139] *See*, China Steel's Rebuttal Brief at 11, citing the China Steel Verification Report, at 12.
[140] *Id.*, at 11, citing the China Steel Verification Report, at 12 to 13.
[141] *Id.*, at 11, citing Petitioners' Case Brief, at 23-24.
[142] *Id.*, at 11.
[143] *Id.*

- Purchase order date cannot be used since other terms of sale, such as delivery terms, specifications, dimensions, or delivery dates, may also change after the initial purchase order is received.[144]

Department's Position:

We have used the date of sale information provided in China Steel's sales databases for this final determination. Record evidence supports the use of China Steel's reported date of sale, which is invoice date or the earlier of the invoice or shipment date.[145] Section 351.401(i) of the Department's regulations provides:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

In adopting the regulation, the Department explained:

> As a matter of commercial reality, the date on which the terms of a sale are first agreed is not necessarily the date on which those terms are finally established. In the Department's experience, price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced. The Department also has found that in many industries, even though a buyer and seller may initially agree on the terms of a sale, those terms remain negotiable and are not finally established until the sale is invoiced. Thus, the date on which the buyer and seller appear to agree on the terms of a sale is not necessarily the date on which the terms of sale actually are established. If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice. However, the Department

[144] *Id.*, at 11 to 12, citing letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan Response to Section A of August 23 Supplemental Questionnaire," dated September 2, 2016 (China Steel's September 2, 2016 Response), at 3 to 4.

[145] *See, e.g.,* Letter from China Steel to the Department entitled "RESPONSE OF CHINA STEEL CORPORATION TO SECTIONS B AND C OF THE DEPARTMENT'S JUNE 9 QUESTIONNAIRE," dated July 28, 2016 (China Steel's Section B-D Response), Section B, at 25 to 26, China Steel's October 7, 2016 Response at 51.

> emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly "established" in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.[146]

Further, in *Allied Tube* the Court stated: "As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date."[147]

The Department's practice of using invoice date as the date of sale, unless another date better reflects the date upon which the material terms of sale are established, has been elaborated in numerous Department decisions.[148] However, 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.[149]

Regarding the question of whether the invoice date or the earlier internal purchase order or revised internal purchase order date is the most appropriate basis for the date of sale in this investigation, we find that the evidence supports the date of sale reported by China Steel. In China Steel's Section A Response, China Steel explained that "For both home-market and U.S. sales by {China Steel}, and for home-market sales by {Dragon Steel Corporation), the material terms of the sale (such as quantity) remain subject to change until the invoice is prepared."[150] In China Steel's September 2, 2016 Response, China Steel further explained that certain home market prices, quantity, specification, dimension, delivery term, shipping marks and date of delivery were subject to change between the time the order was made and the time production

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[146] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27348-27349 (May 19, 1997) (*Final Rule (1997)*).
[147] *See Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube*).
[148] *See*, *e.g.*, *Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Intent to Rescind in Part*, 72 FR 36658, 36659 (July 5, 2007); *Certain Frozen and Canned Warmwater Shrimp from Thailand: Notice of Final Determination Sales at a Less than Fair Value and Negative Final Determination of Critical Circumstances*, 69 FR 76918, 76920 (Dec. 23, 2004); *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016), and accompanying Issues and Decision Memorandum at Comment 10; *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 2; and *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 9.
[149] *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; and *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.
[150] *See* China Steel's Section A Response, at 26.

began.[151] In addition, China steel explained that certain home market prices, quantity, delivery terms, and shipping marks were subject to change between the time that production began and the time the invoice was prepared.[152] Furthermore, if the delivery terms changed, the unit price would be amended as well to reflect the difference in delivery requirements.[153]

At verification, China Steel officials indicated that in certain instances, a new internal purchase order would be produced to reflect changes in quantity outside of established quantity tolerances after the start of production, and in other instances, a new internal purchase order would not be produced (*e.g.*, hot-rolled plate, where excess quantity was produced and the customer accepted it).[154] In addition, we collected documents showing changes in material terms of sale between the initial purchase order and the invoice.[155]

As explained in *Allied Tube*, it is the burden of the party attempting to establish a date other than invoice date as the date of sale.[156] China Steel officials' statements at verification do not indicate that China Steel's reporting of date of sale was incorrect, but merely that in some circumstances, or for certain product groups, a new internal purchase order would be produced if quantity overruns were accepted by the customer.[157] Therefore, China Steel's responses and information collected at verification (including officials' statements and documentary evidence) indicate that the earlier of invoice date and date of shipment is a more appropriate basis for date of sale.[158] The mere presence or likelihood of changes to quantity and unit price after the internal purchase order and the fact that new internal purchase orders are sometimes issued as a consequence of such changes indicates that internal purchase order date (or revised internal purchase order date) does not reflect the date upon which the material terms of sale are "finally" and "firmly" established.[159]

In addition, we do not find any evidence that China Steel officials' statements and documentary evidence collected at verification establish that China Steel was deceptive, evasive, or otherwise uncooperative in its responses with respect to the date of sale.[160] Consequently, and because of the foregoing, neither the use of facts available under section 776(a) of the Act, nor an adverse inference under 776(b), is warranted.

We find that *CTL Plate from Italy 2010* is distinguished from the facts of the present investigation because, as the Department explained in that case, "record evidence is unequivocal that there were no changes to the material terms of sale between the date of the purchase-order

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[151] *See* China Steel's September 2, 2016 Response, at 3-5 and 8-9.
[152] *Id*.
[153] *See* China Steel's Section B-D Response, Section B, at Appendix B-7-4 and China Steel's September 2, 2016 Response, at 3 to 5 and Attachment 2SB-13-2.
[154] *See* China Steel Sales Verification Report, at 12 to 14.
[155] Because this issue involves business proprietary information, for further discussion *see* the China Steel Final Analysis Memorandum. *See also* China Steel Verification Exhibits 10-B, 11F, and 11G.
[156] *See Allied Tube*, 132 F. Supp. 2d at 1090-92.
[157] *See* China Steel Sales Verification Report, at 12 to 14.
[158] *See* China Steel's September 2, 2016 Response, at 3 to 5 and China Steel Sales Verification Report, at 12 to 14.
[159] *See Final Rule (1997).*
[160] *See* China Steel Sales Verification Report, at 12 to 14.

confirmation and the date of invoice."[161] As explained above, the same facts are not present here. Record evidence indicates that changes to material terms of sale likely were made at some time between the internal purchase order date (or revised internal purchase order date) and the invoice date.[162]

We also find that *Phosphor Copper from Korea* is distinguished from the facts of the present investigation. There, the Department noted that a company official stated at verification that even if there are changes to prices, the recorded invoice date does not change.[163] However, the Department used invoice date in that case, rather than shipment date, as the date of sale because the company official did not reference any supporting documentation, and because the comment did not comport with the U.S. sales information examined by the Department officials during verification.[164] In contrast, neither the documents collected at verification, nor China Steel's officials' statements at verification, indicate that the material terms of sale were "finally" and "firmly" established at the internal purchase order date or revised internal purchase order date.[165]

As a result, we used invoice date as the date of sale. In instances where the shipment date is before the invoice date we used shipment date pursuant to our normal practice..[166]

Comment 8: China Steel Home Market Post-Sale Price Adjustments

Petitioners' Case Brief:

- China Steel reported seven adjustments, including BILLADJ2H, BILLADJ4H, BILLADJ6H, and BILLADJ7H, which represent post-sale billing adjustments.[167]
- The Department's longstanding practice is to closely scrutinize post-sale price adjustments which have a downward effect on dumping margins and to ensure that such adjustments are legitimate and made in the ordinary course of business.[168]
- In determining whether the interested party demonstrated its entitlement to such an adjustment, the regulations direct the Department to consider "(1) whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common

[161] *See* CTL Plate from Italy 2010, and accompanying Issues and Decision Memorandum at Comment 1.
[162] *See* China Steel's September 2, 2016 Response, at 3 to 5; *see also* China Steel Sales Verification Report, at 12 to 14.
[163] *See Phosphor Copper from Korea*, and accompanying Issues and Decision Memorandum at Comment 3.
[164] *Id.*
[165] *See Final Rule (1997).*
[166] *See* China Steel's Section B-D Response, Section B, at 25 to 26, China Steel's October 7, 2016 Response at 51.
[167] *See* Petitioners' Case Brief for China Steel, at 39, citing China Steel's Section B-D Response, Section B, at 32.
[168] *Id.*, at 39, citing *Lightweight Thermal Paper from Germany: Notice of Final Results of the 2009-2010 Antidumping Duty Administrative Review*, 77 FR 21082 (April 9, 2012) (*Lightweight Thermal Paper from Germany*), and accompanying Issues and Decision Memorandum at Comment 1; *Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 70948 (December 7, 2006) (*Pineapple from Thailand*), and accompanying Issues and Decision Memorandum at Comment 1; and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 13815 (March 28, 1996) (*Steel Products from Canada*), and accompanying Issues and Decision Memorandum at Comment 12.

such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment."[169]

- China Steel's narrative explanations with regard to BILLADJ7H provide no further support for a conclusion that any of the payments meet the Department's criteria.[170]
- There is no evidence that BILLADJ7H was consistently applied, arguing the adjustments were applied in some quarters but not others, and applied to varying product groups. Therefore, there is no reason to infer that customers knew the amount of these adjustments at the time of the sale.[171]
- China Steel's responses and the Department's findings at verification do not establish that customers know in advance the amount of retroactive downward price adjustments relating to BILLADJ2H, BILLADJ4H, or BILLADJ6H.[172]
- Accordingly, negative amounts reported in the fields BILLADJ2H, BILLADJ4H, BILLADJ6H and BILLADJ7H should be set to zero in calculating the net comparison market price.[173]

China Steel's Rebuttal Brief:

- Petitioners' arguments that there is no evidence that retroactive price adjustments (BILLADJ7H) are consistently applied or that customers knew that such adjustments would be made at the time of sale are contrary to record evidence.[174]
- The downward adjustments to home market price are known to the customer at the time of or before the invoice date.
- The BILLADJ7H field reflects the "application of announced quarterly price changes to sales during the quarter that were invoiced prior to the announcement of the price change," which has been in place now for at least 30 years.[175] The fact that the adjustment was applied only in certain quarters of the investigation period does not undercut the description of the adjustment provided by China Steel.[176]
- The retroactive price adjustment applies only to product groups for which China Steel establishes two different price levels during a quarter. Consequently, Petitioners' claim that the retroactive price adjustment was not granted for all products simply reflects differences in the manner in which prices were established for those products, and not any inconsistency in the application of the retroactive price adjustment.[177]

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[169] *Id.*, at 41.
[170] *Id.*, at 39 to 40.
[171] *Id.*, at 40.
[172] *Id.*, at 42.
[173] *Id.*
[174] *See* China Steel's Rebuttal Brief at 14 to 15, citing Petitioners' Case Brief at 39 to 40.
[175] *Id.*, at 15, citing China Steel's Section B-D Response, Section B, at Appendix B-6 and B-7-7.
[176] *Id.*, at 15.
[177] *Id.*, at 15 to 16, citing China Steel's September 2, 2016 Response at Appendix SA-3-1 and letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Response to the Department's September 13 Supplemental Questionnaire," dated October 7, 2016 (China Steel's October 7, 2016 Response).

Department's Position:

Petitioners argue that we should disallow China Steel's reported billing adjustments, BILLADJ2H, BILLADJ4H, BILLADJ6H, and BILLADJ7H, in accordance with 19 CFR 351.401(c), as post-sale billing adjustments for which China Steel has not demonstrated its entitlement. China Steel argues that BILLADJ7H is a legitimate adjustment, which the customer knew would be made at the time of sale.

Section 351.401(c) of the Department's regulations provides:

> In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary normally will use a price that is net of price adjustments, as defined in § 351.102(b), that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable)….

Section 351.401(c) of the Department's regulations was modified, effective April 24, 2016, to include the following: "The Secretary will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment."[178] As explained in *Final Modification*, the term price adjustment includes "discounts, rebates, and post-sale price adjustments that affect the net outlay of funds by the purchaser."

In making this assessment, the *Final Modification* directs the Department to consider: "(1) whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment."[179] Section 351.102(b)(38) further defines the term "price adjustment" as follows: "'Price adjustment' means a change in the price charged for subject merchandise or the foreign like product, such as a discount, rebate, or other adjustment, including, under certain circumstances, a change that is made after the time of sale (see §351.401(c)), that is reflected in the purchaser's net outlay."

In *Antifriction Bearings from France*, the Department allowed certain post-sale billing adjustments, which the respondent reported on a transaction-specific basis, reflecting corrections of data input errors, including certain rebates for one customer who did not comply with the terms of the rebate program in question.[180] However, the Department did not allow certain post-sale discounts or rebates, despite the fact that they reflected the respondent's normal business practice of conducting ongoing price negotiations with its home market customers.[181]

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[178] *See Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24. 2016). (*Final Modification*) and section 351.401(c) of the Department's Regulations.
[179] *See Final Modification*, 81 FR at 15644 to 15645.
[180] *Id.*
[181] *See Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France*, 60 FR 10900,

In *Steel Products from Canada*, the Department disallowed certain post-sale rebates, finding that internal memoranda were not sufficient to demonstrate that respondent Dofasco's customers had knowledge of the terms and conditions of the post-sale rebates in question at or before the time of sale.[182] The Department also disallowed certain other rebates which were collected and allocated on a customer-specific basis because they could not be tied on a transaction-specific basis.[183] However, the Department allowed other post-sale rebates which reflected the respondent's documented normal business practice.[184]

In *Ball Bearings*, the Department allowed certain rebates, finding that the respondent established and disclosed to certain customers the terms and conditions of the rebate program at the beginning of the calendar year before the sales to which these rebates applied took place.[185] The Department also allowed certain billing adjustment resulting from pricing errors or quantity adjustments and found that the respondent had provided adequate documentation to distinguish its treatment of such adjustments from other types of post-sale billing adjustments, such as rebates and discounts.[186]

In *Pineapple from Thailand*, the Department disallowed certain post-sale price adjustments, which increased U.S. prices to adjust for increases in pineapple costs.[187] The Department found that the respondent either could not supply an agreement providing for the price increases or supplied an agreement where virtually none of the terms of the agreement were followed; and the price increases appeared to be unique given there was no evidence that Vita made post-sale price adjustments to sales to any other markets or any other customers.[188]

In *Lightweight Thermal Paper from Germany*, the Department disallowed certain post sale customer-specific rebates which may or may not be product specific, which the respondent had in place for many years, and for which there were no written agreements.[189] However, the Court of International Trade (CIT) issued *Papierfabrik August Koehler AG v. United States*, 971 F. Supp. 2d 1246 (CIT 2014), remanding the Department's decision in *Lightweight Thermal Paper from Germany*.[190] There, the Court disagreed with the Department's determination that the regulations permitted it to disregard certain price adjustments, the terms and conditions of which were not established or known to the customer at the time of sale, finding that "Commerce

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10930 (February 28, 1995) (*Antifriction Bearings from France*).

[182] *See Steel Products from Canada*, at Comment 12.

[183] *Id.*, at Comment 13.

[184] *Id.* In *Final Modification*, the Department specifically declined to adopt the criterion of whether a post-sale billing adjustment reflected a normal business practice as one of the enumerated non-exhaustive factors to consider when determining whether to grant the adjustment.

[185] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 14, 2006) (*Ball Bearings*), and accompanying Issues and Decision Memorandum at Comment 19.

[186] *Id.*

[187] *See Pineapple from Thailand*, and accompanying Issues and Decision Memorandum at Comment 1.

[188] *Id.*

[189] *See Lightweight Thermal Paper from Germany*, and accompanying Issues and Decision Memorandum at Comment 1.

[190] *See Papierfabrik August Koehler AG v. United States*, 971 F. Supp. 2d 1246 (Ct. Int'l Trade 2014) (*Koehler*).

lacked the discretion not to recognize a reduction in the purchaser's net outlay for the foreign like product that satisfied the definition of a 'price adjustment' in § 351.102(b)(38)."[191]

Expressly citing the Court's ruling in *Koehler*, the Department published a proposed modification of its regulations, 19 CFR 351.102(b)(38) and 19 CFR 351.401(c), clarifying the Department's regulations regarding post-sale price adjustments, as explained above.[192]

Regarding BILLADJ2H, BILLADJ4H, and BILLADJ6H, we have not granted the adjustments. China Steel reported BILLADJ2H, BILLADJ4H, BILLADJ6H as price adjustments, intended to correct invoicing errors and changes not reflected in the invoice price. The Department asked China Steel to provide all available documentary evidence supporting the contention that China Steel is entitled to an adjustment,[193] but China Steel provided no documentation for these adjustments, beyond invoices and rebate certificates.[194] At verification, we tied these billing adjustments to China Steel's normal books and records, noting no discrepancies between China Steel's normal books and records, documents reflecting the billing adjustments, and the reported adjustments.[195] However, China Steel failed to provide documentary evidence of the underlying errors that the billing adjustments were purported to correct.[196] Accordingly, we find that China Steel has not demonstrated its entitlement to the adjustments reported under BILLADJ2H, BILLADJ4H, and BILLADJ6H. Therefore, we have not adjusted normal value for these price adjustments.

Regarding BILLADJ7H, China Steel's "retroactive price adjustment," we agree with Petitioners and have not granted the adjustment. The record indicates that the adjustments reported in BILLADJ7H are post-sale billing adjustment rebates which are granted to specific customers for specific products each quarter.[197] Record evidence also indicates that neither the actual rebates, nor the prices on which the actual rebates are based, are set or known by the customer until after the end of the quarter in which the sales occur. Therefore, we find that the terms and conditions of the rebates were not established and/or known to the customer at the time of sale. Record evidence does reflect that the "retroactive price adjustment" program was part of China Steel's normal business practice.[198] However, we find that the existence of this rebate program as a feature of China Steel's normal practice does not constitute a customer's awareness of any potential rebate at the time prior to sale because the customer does not know whether it will

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[191] *Id.*, 971 F. Supp. 2d at 1251 to 1252.
[192] *See Final Modification*.
[193] See Letter from the Department to China Steel, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Sections A, B, and C Supplemental Questionnaire," dated September 13, 2016, at 23.
[194] *See* China Steel's Section B-D Response, section B, at CSC-Appendix B-7-2, CSC-Appendix B-7-4, and CSC-Appendix B-7-6, and China Steel's October 7, 2016 Response at 40 to 43 and CSC-Appendix 2SB-13-1, CSC-Appendix 2SB-13-2, and CSC-Appendix 2SB-13-3.
[195] *See* China Steel Sales Verification Report at 21 and China Steel Verification Exhibits 10-B to 10-D and 11A.
[196] Because this issue involves business proprietary information, for further discussion, *see* the China Steel Final Analysis Memorandum. *See also* China Steel Verification Exhibits 10-B to 10-D and 11A.
[197] *See* China Steel's Section B-D Response, Section B, at 32 to 34 and Appendices B-6 and B-7; China Steel's September 2, 2016 Response at 6 to 7; China Steel's October 7, 2016 Response at 29 to 31, 37 to 43, and Appendix 2SB-13-4.
[198] *See* China Steel's Section B-D Response, Section B, at Appendix B-6 and B-7-7.

actually receive a rebate on any particular product at the time of such sale.[199] Regarding the factors enumerated in *Final Modification*, as explained above, we find that the terms and conditions of the adjustments were not established and/or known to the customer at the time of sale. Furthermore, although we find that the adjustments are common to China Steel during the POI, as this was a long-standing practice of China Steel, this fact does not in and of itself entitle China Steel to such an adjustment. Finally, apart from the adjustments being post-sales in nature, there is nothing in the timing of the adjustment which would in and of itself disqualify the adjustment. Nevertheless, this fact alone is not sufficient for us to grant the retroactive price adjustments. Therefore, consistent with *Final Modification*, *Steel Products from Canada*, *Pineapple from Thailand*, and *Lightweight Thermal Paper from Germany*, and the practice outlined in *Ball Bearings*, we have not adjusted China Steel's normal value for the reported "retroactive price adjustment" in the BILLADJ7H field.

Therefore, consistent with *Final Modification*, and our practice, we have not adjusted China Steel's normal value for the reported "retroactive price adjustment" in the BILLADJ7H field.

Comment 9: China Steel Destination Codes

Petitioners' Case Brief:

- The destination codes reported by China Steel were inaccurately reported, and should have reported destination codes corresponding to the address from which the U.S. customer placed its order.[200]
- The Department should assume, as AFA, that differential pricing exists for all U.S. sales and should use the "alternative" A-T calculation methodology.[201]
- For U.S. sales with delivered terms, transportation charges may have been omitted because of the incorrect reporting of destinations. Therefore, for sales reported with delivered terms, the Department should deduct an appropriate amount for the missing freight charges implied by the misreported destination.[202]

China Steel's Rebuttal Brief:

- China Steel's Section B-D Response explained that the reported destination information reflected the location of the U.S. port to which the merchandise was shipped.[203]
- Petitioners' argument is based on an incorrect assumption that the location of the customer's head office is the same as the destination of the merchandise. Distributors often place orders for delivery to storage facilities or downstream customers located elsewhere.[204]

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[199] *Id.*
[200] *See* Petitioners' Case Brief for China Steel at 43, citing (China Steel Sales Verification Report).
[201] *Id.*, at 43.
[202] *Id.*
[203] *Id.*, at 16, citing the China Steel Verification Report at 25.
[204] *Id.*, at 17.

- Unlike Petitioners' proposed methodology, the destination information reported reflected the information available concerning the location where the merchandise was delivered to the customer.[205]

Department's Position

We agree with China Steel. The Department's questionnaire directed China Steel to report the "customer's place of delivery."[206] China Steel explained in its Sections B and C response that it had reported the place of delivery, *i.e.*, the U.S. port, in the destination field, and reported the state of the U.S. port in the destination state field.[207] Furthermore, China Steel has provided sufficient information necessary for the Department to conduct its differential pricing analysis. Because China Steel accurately responded to the Department's requests for information in its questionnaire responses, we find that the application of AFA is unsupported by record evidence. Accordingly, we have used the information provided to calculate China Steel's margin for the final determination.

Comment 10: China Steel Packing Expenses

Petitioners' Case Brief:

- Unreported packing costs related to labels were discovered at verification.[208]
- Verifiers were denied access to the packing area by China Steel on the grounds that a certification audit was "in process in that area."[209]
- The Department should determine that packing costs were not verified and apply an adverse inference by using the highest reported cost for U.S. sales and setting packing for comparison market sales to zero.[210]
- China Steel's outright refusal to permit the Department to verify all aspects of its sales responses underscores its uncooperative behavior.[211] The statute requires a respondent to cooperate "to the best of its ability," rather than merely requiring that it make what it views as sufficient effort to cooperate.[212]

China Steel's Rebuttal Brief:

- The Department did not make, and China Steel did not refuse, any request for a plant tour of its packing or other production facilities during the time allotted for the sales or cost verification.[213]

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[205] *Id.*
[206] *See* China Steel's Section B-D Response, Section C, at 94.
[207] *Id.*
[208] *See* Petitioners' Case Brief for China Steel, at 44.
[209] *Id.*, at 44.
[210] *Id*.
[211] *Id*., at 32.
[212] *Id*.
[213] *See* China Steel's Rebuttal Brief, at 17.

- The inability of China Steel to fully accommodate the Department's request for a tour of all of the company's packing facilities after the period set aside for verification was over does not warrant adverse inferences against China Steel.[214]
- In the absence of advance notice of a request for additional verification to tour China Steel's production facility, China Steel's obligations were completed when the time specified in the verification agenda was over.[215]

Department's Position:

As explained in the China Steel Sales Verification report, we conducted a tour of China Steel's packing facilities and physical finished goods inventory. China Steel was unable to grant us access to its finished goods inventory for heavy plate. However, we note that China Steel provided us limited access on short notice, despite prior commitments. In addition, we noted that stacks of un-packed plate nevertheless had labels on them, for which China Steel had not reported packing costs. China Steel's officials explained that the cost of labels is so low as to have no meaningful value on a per unit basis. Nevertheless, we find that the facts on this record do not support the application of AFA to China Steel for its packing expenses. The Department made the decision not to conduct a full plant tour during China Steel's verification, due to time constraints. While we agree with petitioners that the presence of labels on unpacked merchandise at China Steel's factory might have served as the basis for further inquiry, if the Department had additional time during verification to determine whether the labels were actually used on the subject merchandise but not reported, we find that the evidence currently on the record does not a support the application of AFA.

Comment 11: Critical Circumstances for China Steel

China Steel's Case Brief:

- Data submitted on the record indicates that critical circumstances do not exist with respect to China Steel.[216]
- Data reported for September 2015 through October 2016 indicates a decline in exports from the seven months before the filing of the petition to the seven months after the filing of the petition.[217]
- China Steel further claims that analysis of China Steel's calculated dumping margins will not indicate a knowledge of dumping.[218]

Petitioners' Rebuttal Comments:

[214] *Id*., at 17 to 18.
[215] *Id*.
[216] *See* China Steel's Case Brief, at 3.
[217] *Id.*
[218] *Id.*

- Critical circumstances continue to exist for China Steel.[219] China Steel's sales and cost data are not reliable.[220] China Steel should not benefit from consideration of its unreliable data. Thus, the final determination should be based on AFA.[221]
- Reported shipment quantities must also be considered suspect and an adverse inference should be applied for the "massive imports" analysis.[222]
- China Steel's proposed seven-month "base" and "comparison" periods should not be relied on. The Department's practice is not to consider shipment data after the Preliminary Determination, when preliminary dumping margins are published.[223]
- Department stated that it would order suspension of liquidation effective 90 days prior to publication of the preliminary determination, or August 16, 2016.[224] The suspension of liquidation in or around mid-August was predictable for importers and shipments were unlikely to have continued thereafter.[225] Thus, the "comparison period" should be April through July 2016, or at the latest, April through August 2016.[226]

Department's Position:

As noted above, for China Steel, Shang Chen, and all other producers, exporters and importers, the statutory criteria of section 735(a)(3)(A)(ii) of the Act have not been satisfied.[227] Therefore, we determine that critical circumstances do not exist for China Steel, Shang Chen, or all others.

Comment 12: Alleged Errors in the China Steel Verification Report

China Steel's Case Brief:

- At page 4 of the China Steel Verification Report, the Department misstated the year of the annual report in question as 2014. The correct year is 2015.[228]

[219] *See*, Petitioners' Rebuttal Brief at 1 and 3 to 5.
[220] *Id.*, at 4.
[221] *Id.*
[222] *Id.*
[223] *Id.*, at 4, citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) and *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49950 (July 29, 2016).
[224] *Id.*, at 5, citing *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 Circumstances*, 81 FR 61666 (September 7, 2016), and *Preliminary Determination*, 81 FR at 79420.
[225] *Id.*, at 5, citing letter from China Steel to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Quantity and Value Shipment Data," dated December 15, 2016.
[226] *Id.*, at 5.
[227] *See* section entitled "Final Determination of Critical Circumstances," above. *See also*, *e.g.*, *Cold-Rolled Carbon Steel Preliminary Determination of Critical Circumstances*, *CTL Plate from China Preliminary Determination*, *and Shrimp from Vietnam.*
[228] *See* China Steel's Case Brief, at 4, citing the China Steel Verification Report, at 4.

- At "page 8 {*sic.* page 11}" of the China Steel Verification report, the Department describes the prices shown on the government uniform invoice. However, the Department misstated the additional unit amount and the total price.[229]
- At "page 8 {*sic.* page 11}" of the China Steel Verification report, in reference to the same GUI, the report states that "China Steel's officials could not explain what the…adjustment was or why it was not reported." In fact, the adjustment in question was a rounding adjustment which was sufficiently explained to Department officials.[230]

Petitioners' Rebuttal Brief:

- China Steel's arguments include new factual information and explanations that are not otherwise on, or supported by, the record of this proceeding. The Department should reject China Steel's arguments and strike these factual assertions from the record.[231]

Department's Position:

We do not intend to amend the Department's verification report, as it represents information as recorded by the verifiers at the time of the verification. We have not taken any other action based on the interested parties' comments with respect to this issue.

Comment 13: Total Adverse Facts Available for Shang Chen

Petitioners' Arguments:

- The Department should apply total AFA to Shang Chen because of its failure to submit accurate, reliable, and usable cost data.
- Shang Chen was given three opportunities to submit CONNUM-specific costs but has failed to do so.[232]
- Shang Chen failed to report cost differences associated with the quality product characteristics. Shang Chen used the same average monthly slab costs without considering the different qualities of steel.[233]
- Shang Chen created thickness and width groups different from those that the Department created, and failed to account for different conversion costs for the newly created groups.
- The Department should find that Shang Chen submitted non-responsive, unreliable and inaccurate conversion costs, despite multiple attempts by the Department to obtain CONNUM-specific costs.
- The widespread misreporting of the material and conversion costs demonstrates that Shang Chen has significantly impeded this proceeding and has failed to cooperate to the best of its ability.

[229] *Id.*, at 4, citing the China Steel Verification Report at 8.
[230] *Id.*
[231] *See* Petitioners' Rebuttal Brief, at 5 to 6.
[232] *See* Petitioners' Case Brief, at 17-23
[233] *See* Petitioners' Case Brief, at 6.

- Shang Chen failed to provide information to the Department in the form and manner requested within the deadlines and therefore, the Department should assign the highest petition rate as total AFA. Alternatively, as partial facts available, the Department should also rely on the single highest revised total manufacturing cost for all reported CONNUMs in the margin calculation.[234]
- If the Department believes that total AFA is not warranted, it must at a minimum, correct the scrap recovery rate, adjust total cost of manufacture for failure to reconcile the production quantity, and correct the G&A expense-rate calculation.

Shang Chen's Rebuttal Arguments:

- Shang Chen reported CONNUM-specific costs that reflected cost differences associated with the differences in the reported quality of the steel, in addition to its respective width and thickness dimensions.
- Shang Chen generated separate costs reflecting both the type of steel slab used, which defined the quality of the plate through a detailed slab-by-slab analysis of its production records.[235]
- Shang Chen counters petitioners' allegation that it did not report CONNUM-specific conversion costs that accounted for cost differences for width and thickness in the reported CONNUM by stating that, although it allocated conversion costs to individual products within a CONNUM on a more specific basis than the Department's defined width and thickness ranges, all the individual products within a CONNUM fell within the Department's defined width and thickness ranges and were subsequently weight averaged to report the CONNUM-specific cost.
- The methodologies used by Shang Chen to calculate the material costs and conversion costs do not indicate a lack of cooperation that would warrant the rejection of the submitted data.
- Shang Chen cooperated to the best of its ability, developed a specific methodology to report CONNUM-specific costs whereas, in its normal books and records, it only calculates a single average cost; accordingly, Shang Chen cannot be expected to manufacture non-existing data.

Department's Position:

We disagree with the petitioner that applying total AFA available is appropriate in the instant investigation.

Sections 776(a)(1) and (2) of the Act provide 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 subsection 782(c)(1) and (e) of the act, (C) significantly impedes 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

[234] *See* Petitioners' Case Brief, at 23.
[235] *See* Shang Chen's Rebuttal Brief, at 2.

available in reaching the applicable decision. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Under the Trade Preferences Extension Act of 2015 (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.[236]

Section 773(f)(1)(A) of the Act directs that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the Generally Accepted Accounting Principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, the Department will normally rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's (GAAP); and 2) the books reasonably reflect the cost to produce and sell the merchandise. Here, the record is clear that the reported costs are derived from Shang Chen's normal books and records, and that those books are in accordance with Taiwan GAAP. Hence, the question facing the Department is whether the reported per-unit costs reasonably reflect the cost to produce and sell the merchandise under consideration (MUC).

Despite the Petitioners' contrary assertions, we find that Shang Chen's CONNUM-specific costs reasonably reflect the cost to produce and sell the MUC. Initially, in its Section D questionnaire response, Shang Chen did not submit CONNUM-specific costs in accordance with the product characteristics defined by the Department, because the costs maintained in its normal books and records were very limited (*i.e.*, one average cost is calculated for each category of product: hot-rolled plate (HRP), hot-rolled sheets (HRS), hot-rolled bands (HRB), hot-rolled coils (HRC) and cold rolled). However, the record evidence shows that despite not generating product-specific costs in the normal course of business, Shang Chen has reported CONNUM-specific costs in accordance with the Department's defined characteristics; fully cooperated with the Department's supplemental questionnaires; and acted to the best of its ability. Based on the record evidence, we have determined that Shang Chen used a reasonable methodology to calculate its CONNUM-specific costs.

Specifically, Shang Chen first analyzed each production order and determined the grade of slab consumed, as well as the associated cost of the slab consumed. Subsequently, it assigned these production orders to CONNUMs and identified the specification of the finished CTL plate based on the quality designations defined by the Department.[237] We examined these CONNUM classifications and associated quality designations at verification. In particular, for selected CONNUMs, we reviewed and obtained supporting documentation of the slab grade designations and the associated assigned quality. For example, for selected production orders, we obtained supporting documentation showing the technical specifications for each quality that showed the

[236] *See* Section 776(b)(1)(B) of the Act; TPPEA, section 502(1)(B).
[237] *See* Department memorandum entitled, "Verification of the Cost of production and Constructed Value Response of Shang Chen Steel Co. Ltd. (Shang Chen), in the antidumping duty investigation of Cut-to-Length Plate from Taiwan," dated January 26, 2017 (Shang Chen Cost Verification Report), at 18-20

plate produced was designated as the quality code in the Department's physical characteristics.[238] Additionally, at verification, for selected CONNUMs, we traced the carbon content, chromium content, and nickel content from the Department's CONNUM specification to the chemical composition of the slab and noted all were in the range defined by the Department.[239] Thus, we do not find that Shang Chen failed to cooperate by not acting to the best of its ability to comply with the Department's requests, nor do we find that the direct material costs provided by Shang Chen are deficient.

Regarding Shang Chen's reported CONNUM-specific conversion costs, we disagree with the petitioners' that Shang Chen's reporting methodology does not account for the Department's width and thickness characteristics. Shang Chen allocated conversion costs to each product based on average machine processing time by thickness and width ranges from its production system, which were more specific than the width and thickness ranges defined by the Department. However, all the production orders that fell within the Department's defined width and thickness ranges for specific CONNUMs were combined and weight averaged to obtain the CONNUM-specific cost reported.[240] Therefore we find that Shang Chen has reported CONNUM specific costs using a reasonable methodology for this final determination.

In summary, we find that Shang Chen responded to the Department's requests for information in a timely manner and has not withheld information that the Department requested. After we identified deficiencies in Shang Chen's questionnaires responses, we provided Shang Chen with an opportunity to remedy those deficiencies and Shang Chen remedied the deficiencies in the form requested in a timely manner. Moreover, based on the record, which demonstrates Shang Chen's cooperation regarding requested information, under section 776(a) of the Act, we do not find that necessary information is missing from the record, or that Shang Chen withheld such information or that the information could not be verified.

Shang Chen has cooperated to the best of its ability by providing timely responses to the Department's requests for information, including supplemental responses, where requested, as discussed above.[241] In this instance, we find that applying total AFA to Shang Chen is not warranted. Accordingly, we have not applied AFA to Shang Chen and have relied on Shang Chen's data, as reported, verified and adjusted, as noted below, in our final determination.

The petitioners cite to *Mukand* and *Nippon,* as well as related cases, in urging the Department to reject Shang Chen's reporting and to apply total AFA on the basis of Shang Chen's alleged withholding of information and Shang Chen's failure to act to the best of its ability in this investigation.[242] However, the facts in cases such as *Mukand* and *Nippon* are not similar to this

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[238] *See* Department memorandum "Verification of the Cost of production and Constructed Value Response of Shang Chen Steel Co. Ltd. (Shang Chen), in the antidumping duty investigation of Cut-to-Length Plate from Taiwan" dated January 26, 2017 (Shang Chen Cost Verification Report), at 19.
[239] *Id.*
[240] *Id.*
[241] *See Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review*, 81 FR 62086 (September 8, 2016).
[242] *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon*); *see also Mukand, Ltd. v. United States*, 767 F. 3d 1300 (Fed. Cir. 2014) (*Mukand*). Petitioners also cite to *Shanghai Taoen Int'l Trading Co.*

proceeding. For example, in *Mukand*, the Department requested size-specific production cost data from the respondent multiple times in separate questionnaires, and provided the respondent with multiple opportunities to provide alternative cost data, or to contact the Department if it was unable to provide the information requested.[243] Similarly, in *Nippon,* the Department determined that the respondent's failure to provide timely conversion factors warranted the application of an adverse inference.[244] In those cases, the respondent did not provide information specifically requested by the Department, which the Department determined was necessary for the proceeding. Here, Shang Chen was responsive to the Department's requests for information and provided information sufficient for the Department to conduct this proceeding. Accordingly, we do not agree with the petitioners' argument that Shang Chen did not report CONNUM-specific costs.[245]

Comment 14: Adjustments to Shang Chen's Reported Per-Unit Cost of Manufacturing

Petitioners' Arguments:

- The Department should remove the quantity of CTL plate reportedly consumed internally by Shang Chen because it is highly doubtful that Shang Chen used such a large amount for internal use. Further, since internally consumed merchandise did not satisfy the intended customer specifications the Department should treat the internally consumed plate similar to Shang Chen's scrap sales in the home market.[246]
- The Department should remove the tonnages related to these items from Shang Chen's reported total production quantity and increase Shang Chen's reported costs.
- Petitioners allege that although some plate shearing was subcontracted, the plate shearing line quantities included subcontracted shearing quantities twice, once as if the plate shearing was done at Shang Chen and then again when plate was received from the subcontracted shearer. Petitioners explain that the production quantity for the plate shearing line should be adjusted. Petitioners argue that the Department must remove the quantity associated with subcontracted tolling operations.[247]

Shang Chen's Rebuttal Arguments

- Shang Chen's reported production quantities tied to the production quantities identified by Shang Chen in its normal production reports.[248]
- The products used internally were classified as saleable plate products under Shang Chen's normal quality control standards and therefore are not scrap.[249]

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v. United States, 360 F. Supp.2d 1339,1343 n. 6, 1344-45, 1348 n. 13 (Ct. Int'l Trade 2005).
[243] *See Mukand*, 767 F.3d at 1300-08.
[244] *See Nippon*, 337 F. 3d, at 1373.
[245] *See* Petitioners' Case Brief, at 19.
[246] *Id.*, at 25.
[247] *See* Petitioners' Case Brief, at 28.
[248] *See* Shang Chen's Rebuttal Brief, at 4.
[249] *See* Shang Chen's October 26 submission of section D questionnaire, at Appendix 2SD-14.

- Shang Chen sheared its hot-rolled coils into sheets either at its own internal shearing line or using outside processors. The quantity of such outside sheared sheets is normally not included in the production of Shang Chen's internal shearing line that is used to allocate internal shearing costs. [250]
- Shang Chen's normal production records incorrectly counted the production of certain sheared sheets as its own production, even though the sheets were sheared at a subcontractor. However, Shang Chen identified this error and corrected it in the submitted calculations.[251]

Department's Position:

We agree with the petitioners that in its normal books and records Shang Chen double-counted the quantity of hot-rolled coils that were sent to outside subcontractors for shearing. However, Shang Chen corrected this error for purposes of reporting costs to the Department. Further, we disagree with the petitioners that the quantity of internally consumed CTL plate should be accounted for as scrap.

Regarding the double-counted hot-rolled coil quantities that were sent to outside subcontractors for shearing, we found that these coils were in fact duplicated in Shang Chen's normal books and records (*i.e.,* production records). Specifically, Shang Chen included the production quantities in both the subcontracted shearing quantities as well as in the self- produced shearing quantities. However, based on record evidence examined at the cost verification, we found that Shang Chen adjusted the reported production quantities for these coils for reporting purposes, and thus these sheared quantities have not been double counted in calculating the reported cost of merchandise under consideration.[252] Therefore, for the final determination, no adjustment is warranted regarding the subcontracted sheared quantities.

With respect to the petitioners' argument that the CTL plate production quantities that were internally consumed should be treated as scrap, we find that the record evidence fails to support this conclusion. In its normal books and records Shang Chen allocates full costs to both prime and non-prime CTL plate products produced (*i.e.,* full costs are allocated to the quantity of both prime and non-prime plate produced). During the verification, the Department confirmed that the CTL plate production quantities reported by Shang Chen and upon which the per-unit reported costs are based, tied to the production quantities in Shang Chen's production reports which included the internally consumed quantities. Further, we confirmed at verification that the quantity of internally consumed CTL plate was used inside the factory building, as well as outside the building on the grounds and roads within the factory premises. While some of the internally consumed plates may be considered non-prime because they had defects which prevented them being sold as prime products under the relevant specifications, the plates could be used for a variety of applications including those applications intended for prime products. Accordingly, based on our review of the record, we find there is no evidence that Shang Chen's

[250] *See* Shang Chen's Rebuttal Brief at 5.
[251] *See* Shang Chen's October 3 submission of section D questionnaire, at 8.
[252] *See* Memorandum regarding, "Verification of the Cost of production and Constructed Value Response of Shang Chen Steel Co. Ltd. (Shang Chen), in the antidumping duty investigation of Cut-to-Length Plate from Taiwan," dated January 26, 2017 (Shang Chen Cost Verification Report), at 17.

internally consumed CTL plate should be classified as scrap. Therefore, for the final determination, we have continued to include the internally consumed CTL plate production quantity in the total production quantity used in the calculation of the reported costs.

Comment 15: Shang Chen General and Administrative Expenses

Petitioners' Arguments:

- Shang Chen incorrectly reduced its G&A expenses with "other" non-operating income. Shang Chen has failed to demonstrate that the other non-operating items are related to the company's core business activities.
- The Department should deny Shang Chen's reduction to the G&A expenses for other non-operating income.[253]

Shang Chen's Rebuttal Arguments:

Shang Chen did not comment.

Department's Position:

We agree with the petitioners, in part, and disallowed a portion of the non-operating income offsets in question. Section 773(f)(1)(A) of the Act states that the cost of production (COP) "shall normally be based upon the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country . . . and reasonably reflect the costs associated with the production and sale of merchandise." Because there is no definition in the Act of what a G&A expense is or how the G&A expense ratio should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses. This reasonable, consistent, and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide COGS.[254] The rationale for this approach is that, by definition, G&A expenses relate to the general operations of the company as a whole and not to specific products and processes. Accordingly, the Department's well-established practice is to include in the G&A expense ratio calculation certain expenses and revenues that relate to the general operations of the company as a whole. In the instant investigation, consistent with the Department's practice, we allowed as an offset to the G&A expenses the non-operating income items that relate to the general operations of the company as a whole and, where the corresponding expenses are included in the G&A expenses. We disallowed non-operating income items that are related to separate lines of business (*e.g.*, a hotel or apartment building), investment activities, etc. However, due to the business proprietary nature of the non-operating income items in question we cannot fully address it in this public document.[255]

[253] *See* Petitioners' Case Brief, at 17.
[254] *See*, *Prestressed Concrete Steel Rail Tie Wire from Mexico: Final Determination of Sales At Less Than Fair Value*, 79 FR 25571 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 6.
[255] *See* Memorandum, "Final Determination Calculations for Shang Chen Steel Co., Ltd.," dated March 29, 2017,

Comment 16: Shang Chen Scrap offset

Petitioners' Arguments:

- Shang Chen provided conflicting information with respect to non-prime home market sales.
- Shang Chen incorrectly included the sales of non-prime secondary hot-rolled plate and heads and tails[256] in the scrap recovery rate, even though these sales were reported in the Section B database.
- Shang Chen explained that some of the sales were sold as "a batch of mid-to-heavy plate" and "constituted a form of salvaged merchandise." Conversely, Shang Chen identified prime Hot Rolled Sheets (HRS), that should be classified as scrap within the very same group, thus the same group of sales were variously characterized by Shang Chen as "primary secondary," "non-prime," or as "scrap."
- Shang Chen's attempt at verification to reclassify these sales as scrap is not supported by record evidence which demonstrates Shang Chen reported much higher unit prices for these apparent non-prime sales, compared to the unit price for scrap sales.

Shang Chen's Rebuttal Arguments:

- The Department should adjust the cost of manufacture for revenue from sales of Hot Rolled Plate (HRP) heads and tails.
- The Department should modify its calculations to reflect the sales of HRP heads and tails as sales of scrap and not sales of non-prime products.[257]
- Shang Chen clarified at the sales verification that sales of hot-rolled plate heads and tails are sales of scrap and sales of hot-rolled sheet heads and tails are sales of non-prime CTL plate.

Department's Position:

We agree with the petitioners. The issue here is whether hot-rolled plate heads and tails and other plate products were associated with sales of non-prime merchandise or sales of scrap. Sales of non-prime merchandise should not be included as a part of the scrap offset to the cost of manufacturing.

As mentioned in the Preliminary Decision Memo,[258] we adjusted the scrap recovery offset to eliminate revenues related to the sales of heads and tails and other plate products because Shang Chen reported those sales as non-prime merchandise in its home market sales database. Shang Chen argues that hot-rolled plate heads and tails are not non-prime merchandise, but rather that

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and memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Shang Chen Steel Co., Ltd.," dated March 29, 2017 (Shang Chen Cost Calculation Memorandum).

[256] The term "heads and tails" refers to the leading and trailing ends of the plate after it is rolled to the desired width, which are irregular, deformed, or otherwise non-standard in dimension.

[257] *See* Shang Chen's Case Brief, at 2.

[258] *See* Memorandum to the File "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination-Shang Chen Steel Co., Ltd. (Preliminary Cost Calculation Memo), November 4, 2016.

they are scrap and therefore should be included in the scrap revenue offset to the cost of manufacturing.

First, we must determine whether the products at issue are non-prime or scrap. We analyze non-prime products on a case by case basis to determine whether downgraded products remain in the scope, and likewise can still be used in the same applications as the subject merchandise (i.e., capable of use as CTL plate). As the Department has stated in previous cases, the downgrading of a product from one grade to another will vary from case to case.[259] At times the downgrading is minor and the product remains within a product group (*i.e.*, remains scope merchandise), while at other times the downgraded product differs significantly, no longer remains subject merchandise, and is not capable of being used for the same applications. Consequently, if the product is not capable of being used for the same applications, the product's market value is usually significantly impaired, often to a point where its full cost cannot be recovered. Therefore, instead of attempting to judge the relative values and qualities between grades, the Department adopted the reasonable practice of looking at whether the downgraded product can still be used in the same general applications as its prime counterparts.[260]

With this distinction in mind, we reviewed the information on the record of this investigation related to Shang Chen's downgraded merchandise (*i.e.*, heads and tails of plates and sheets). Heads and tails of plate and sheet are generated at the end of the production process when cutting a large CTL plate to a specific size, but nonetheless, the heads and tails of plate and sheet can be used as CTL plate themselves. In addition, Shang Chen allocates full costs to these products in its normal books and records. Further, heads and tails of plates and sheets are considered subject merchandise, and have been reported in the sales database. Therefore, because these products are capable of being used as CTL plate, and they are reportable merchandise, we do not find it appropriate to treat these products as scrap. Accordingly, for the final determination, we have not treated heads and tails of plate and sheet as scrap and have otherwise treated these products in question as non-prime products.

Comment 17: Quarterly Cost Data for Shang Chen

Petitioners' Arguments:

- For the final determination, the Department should affirm its preliminary findings that Shang Chen failed to submit reliable quarterly cost data for the alternative cost methodology.
- Shang Chen's methodology for calculating quarterly costs is flawed because: 1) the relative mix of grades purchased in a given month or quarter may not necessarily match the relative mix of grades purchased over the entire year; and 2) the POI indices are impacted by the disparate proportion of grades purchased each quarter and the impact of quarterly material cost changes during the year.

[259] *See Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014) (*Rebar from Turkey*), and accompanying Issues and Decision Memorandum, at Comment 15.

[260] *See Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 15; see, also Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) and accompanying Issues and Decision Memorandum, at Comment 18.

- Petitioners take issue with Shang Chen's statement in its case brief, that the Department misunderstood the methodology employed by Shang Chen when the Department stated that the indices reflected ratios of the weighted-average prices for all purchases over the entire investigation period.
- Shang Chen's reliance on a POI average index is evident in Shang Chen's calculations that appear in Appendix SD-3-2, in October 3 submission.

Shang Chen's Rebuttal Arguments:

- The Department should use the quarterly cost data reported by Shang Chen.
- The indices calculated by Shang Chen were not based on the weighted-average purchase price for slab purchases throughout the investigation period.
- The monthly indices compared only purchases from the same supplier in the same month eliminating any distortions caused by purchases at different times from different suppliers.[261]
- Shang Chen calculated the indices on a monthly-basis for each individual supplier and then averaged the indices.
- Shang Chen argues that examining the difference in prices for purchases of different types of slab at the same time is an appropriate method for eliminating the effect of timing and product-mix differences in Shang Chen's slab purchases.

Department's Position:

The Department's normal practice is to calculate an annual weighted-average cost for the POI. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POI must be deemed significant; and (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or constructed value (CV) during the same shorter cost-averaging period.[262] In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure
from our standard annual-average cost approach.[263]

In this investigation, record evidence does not support that Shang Chen experienced significant cost changes during the POI. Shang Chen provided an analysis of quarterly slab costs and prices in Appendices SD-22 and SD-23 of the October 3, 2016 response to the Department's September 2 Supplemental Questionnaire (SDQR). On pages 3 through 4 of the SDQR Shang Chen described how it calculated the grade-specific material costs for each control number, stating that

[261] *See* Shang Chen's Case Brief, at 5.
[262] *See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSSC from Mexico*), and accompanying Issues and Decision Memorandum at Comment 6; *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC from Belgium*), and accompanying Issues and Decision Memorandum, at Comment 4.
[263] *See SSPC from Belgium*, and accompanying Issues and Decision Memorandum, at Comment 4.

it established an index of the relative costs for each grade of steel slab based on a monthly comparison of the prices charged by Shang Chen's suppliers during the investigation period. Shang Chen further explained that it calculated an average index for each grade of slab for the investigation period by averaging the annual slab purchases. Shang Chen then applied the annual average slab indices to the monthly average slab costs in order to determine the monthly grade-specific material costs. We find this methodology flawed for purposes of the quarterly cost analysis, as the relative mix of slab grades purchased in a given month or quarter does not necessarily match the relative mix of grades purchased over the entire year. As such, the investigation period average indices are impacted by the disparate proportions of grades purchased each quarter, and are impacted by the quarterly material cost changes during the year. The result is a quarterly grade-specific material cost that does not necessarily reflect the actual quarterly grade-specific material costs. As such, we do not consider the reported quarterly material costs reliable in performing the significance of cost change analysis. Therefore, we have determined that Shang Chen's reported quarterly cost information does not support its request for us to deviate from our standard annual average cost methodology.

Comment 18: Shang Chen Differential Pricing Analysis

Shang Chen's Comments:

- Shang Chen takes issue with the Department's use of the "differential pricing" analysis used in the preliminary determination in which the Department utilized an average-to-transaction (A-to-T) comparison under the "alternative" methodology, arguing that the analysis is mathematically and legally improper.[264]
- Shang Chen maintains that while the Department has the discretion to establish arbitrary numerical thresholds, or cut-offs, it may do so only where it follows the notice-and-comment requirements of the Administrative Procedure Act (APA). Otherwise, the Department must provide a case-by-case explanation as to why application of such thresholds is appropriate.[265]
- Specifically, the Department must demonstrate that the cut-offs employed in its differential pricing analysis (*i.e.*, the 0.8 cut-off for the Cohen's *d* test and the 33 and 66 percent ratios of sales passing the Cohen's *d* test) are appropriate in this specific investigation, given Shang Chen's sales experience and the circumstances surrounding the CTL plate market.[266]
- Shang Chen avers that while the statute permits the Department to deviate from the standard average-to-average (A-to-A) method in an investigation to account for "targeted dumping," it may only do so in those instances where it explains why the standard method cannot account for such differences. In this regard, Shang Chen points out that the Department is required to explain why patterns of price differences cannot be addressed under the A-to-A comparison method, as opposed to simply generating a

[264] *See* letter from Shang Chen to the Department, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Case Brief of Shang Chen Steel Co., Ltd." (Shang Chen's Case Brief), dated February 28, 2017, at 6-7.
[265] *Id.*, at 7-9.
[266] *Id.*, at 9-10.

result; the mere existence of a result is not sufficient to meet statutory obligations, nor does it comport with widely-recognized statistical principles.[267,268]

- Shang Chen maintains that the only conditions under which the Department may apply the A-to-T method is where there exists a pattern of U.S. prices for comparable merchandise that differ significantly among purchasers, regions, or period of time, which the Department has yet to establish in this investigation. Further, Shang Chen points out that should the A-to-T method be used, under the World Trade Organization (WTO) Appellate Body, the "zeroing" practice is not permitted.[269]

Petitioners' Rebuttal Comments:

- Shang Chen is incorrect that the differential pricing analysis is mathematically and legally improper, as the statute[270] specifically allows for the A-T pricing methodology as an alternative to the A-A method in an investigation.[271] In this case, the alternative method is more appropriate, as the A-A method cannot account for differences in the analysis employed, given that the Department preliminarily found that 51.19 percent of Shang Chen's U.S. sales passed the Cohen's *d* test by value.
- The numeric thresholds the Department relies upon are not arbitrary in nature, as the Cohen's d coefficient is a recognized measure of effect size to determine whether the observed price differences are significant, while the ratio test determines whether the pattern requirement of the statute has been met. For instance, contrary to Shang Chen's challenge to "numeric thresholds" employed in the Cohen's *d* test, the Departments 0.80 coefficient in the effects test and the 33 and 66 percent thresholds used for the ratio test are recognized statistical methodologies relied upon by the Department, citing to *HR Korea*[272] as support.[273]
- Shang Chen's argument that the Department's reliance on meaningful differences in dumping margins is 'primarily a function of different treatment of negative margins' is without merit. Where the Department finds the existence of a pattern of prices that different significantly it will then determine whether to use the A-A or A-T method; and for the weighted-average margins to be meaningful, there must be either a 25 percent relative change between the margins from either method, or the resulting margin must move across the de minimis threshold, as it did in Shang Chen's case. Accordingly, the Department's application of the A-T method serves as an appropriate tool to address masked dumping.[274]

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[267] Shang Chen asserts that the Department has yet to demonstrate that it is applying the Cohen's *d* test to data sets that follow a normal distribution, in those instances where a sufficient number of data points exist, or roughly an equal variance occurs with respect to Shang Chen's data.
[268] *Id.*, at 10-11.
[269] *Id.*, at 11-13.
[270] Petitioners cite to section 777A(d)(1)(B) of the Act.
[271] *See* Petitioners' Rebuttal Brief, at 11-12.
[272] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016) (*HR Korea*), and accompanying Issues and Decision Memorandum at Comment 11.
[273] *See* Petitioners' Rebuttal Brief, at 13-15.
[274] *Id.*, at 17-18, citing *HR Korea*.

- There is no question that the Department's use of zeroing in the context of applying the A-T method is permitted under the WTO Antidumping Agreement. Both the Department and the Court of International Trade find the Department's use of zeroing in this context as consistent with the United States' international obligations.[275] Therefore, the Department's application of the A-T methodology under the differential pricing test is consistent with U.S. law and should be utilized in the final determination.

Department's Position:

As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute here is a gap filling exercise properly conducted by the Department.[276] As explained in the *Preliminary Determination*, as well as in various other proceedings,[277] the Department's differential pricing analysis, including the use of the Cohen's *d* test as a component in this analysis, is reasonable and is in no way contrary to the law.

1. APA Rulemaking Is Not Required

The Department disagrees with Shang Chen. The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."[278] Further, the Department normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.[279] As the CAFC has recognized, the Department is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.[280] Moreover, the CIT in *Apex* recently held that the

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[275] *See* Petitioners' Rebuttal Brief, citing *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 55595 (September 16, 2015) (*Residential Washers*), and accompanying Issues and Decision Memorandum at Comment 6.

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

[277] *See*, *e.g.*, *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 80 FR 61366 (October 13, 2015) and the accompanying Issues and Decision Memorandum at comment 1; *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013,* 80 FR 32937 (June 10, 2015), and the accompanying Issues and Decision Memorandum at comments 1 and 2, and *Welded ASTM A–312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 46647 (July 18, 2016) at comment 4.

[278] *See* 5 U.S.C. § 553(b)(3)(A).

[279] *See Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014) (*Differential Pricing Comment Request*).

[280] *See Saha Thai Steel Pipe Company v. United States*, 635 F.3d 1335, 1341 (Fed. Cir. 2011); and *Washington Raspberry Com'n v. United States*, 859 F. 2d 898, 902-03 (Fed Cir. 1988). *See also Carlisle Tire & Rubber Co., Div. of Carlisle Corp. v. United States*, 634 F. Supp. 419, 423 (CIT 1986) (discussing exceptions to the notice and

Department's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

> Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the {A-to-A} comparison method." Final I&D Memo at 18 (internal quotations omitted). Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}" and is the product of Commerce's "experience over the last several years, . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Request for Comments, 79 Fed. Reg. at 26,722. Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.[281]

Moreover, as we noted previously, as the Department "gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the average-to-average comparison method, the Department expects to continue to develop its approach with respect to the use of an alternative comparison method."[282] Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case.

2. The Thresholds in the Differential Pricing Analysis Are Reasonable

The Department disagrees with Shang Chen's contention that the Department has never explained the 33 and 66 percent thresholds used in the ratio test. Specifically, in *OCTG from India*, we addressed the establishment of the 33 and 66 percent thresholds as follows:

> In the differential pricing analysis, the Department reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. The Department finds that when a third or less of a respondent's U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute…
>
> Likewise, the Department finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a

comment requirements of the APA).

[281] *See Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1322 (CIT 2016).

[282] *See Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26722 (May 9, 2014).

> respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit the Department to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, the Department considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when the Department finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, the Department finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.[283]

With respect to the argument that the 0.8 threshold for the Cohen's *d* coefficient, which establishes whether the price difference between the test and comparison groups is significant (*i.e.*, the "large" effect size), is arbitrary, the Department addressed the same argument by the respondent Deosen in *Xanthan Gum*, stating:

> Deosen's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary is misplaced. In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's d is a "commonly used measure{}" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's *d* test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[284]

The Department further provided "real world" examples cited by Dr. Cohen to demonstrate the small, medium and large thresholds which he established in order to evaluate the magnitude of the "effect size" quantified in the Cohen's *d* coefficient:

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[283] *See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods From India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*), and accompanying Issues and Decision Memorandum at Comment 1.

[284] *See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) at Comment 3 (*quoting* Dave Lane et al., "Effect Size," Section 2 "Difference Between Two Means"); *see also Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying Issues & Decision Memorandum at Comment 4 (same); *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying Issues & Decision Memorandum at Comment 7 (same).

> Cohen's examples of real-life, practical examples of situations which exhibit a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls…" In other words, Cohen was stating that it is obvious on its face that there is{sic} differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls.[285]

Thus, the Department finds that these thresholds are reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act,[286] and Shang Chen has submitted no factual evidence or argument that these thresholds should be modified for Shang Chen in this investigation. Accordingly, the Department's development of the differential pricing analysis and the application of this analysis in this case, including the thresholds established therein, are consistent with established law.

3. The Differential Pricing Analysis Appropriately Explains Whether the Average-to-Average Method Can Account for Significant Price Differences

The Department disagrees, in part, with Shang Chen that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"[287] whether the A-to-A method can account for significant price differences which are embedded in Shang Chen's pricing behavior in the U.S. market. The Department does agree with Shang Chen that this difference is due to zeroing, because weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield identical results. This is evidenced above with the calculation results for Shang Chen in this final determination.[288]

The difference in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.[289] The

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[285] *See Welded ASTM A-312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and the accompanying Issues and Decision Memorandum at comment 4 (citations omitted), *quoting* Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences, Second Edition* (1988) at 27.

[286] Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. *See, e.g., Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 6.

[287] *See* Shang Chen's Case Brief, at 10.

[288] *See* Attachment IV of Shang Chen's Final Calculation Memorandum (134-136 of the SAS output), where the calculation results of the A-to-A method, the A-to-T method and the "mixed" method are summarized. The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results), the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing).

[289] *See Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping

difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices,[290] such that the A-to-A method would be unable to account for such differences.[291] Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "targeted dumping," the Department finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked "targeted dumping."

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[292] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales[293] remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without

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statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

[290] *See* SAA at 842.

[291] *See Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) ("{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.").

[292] *See* SAA at 842.

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

zeroing) and the A-to-T method with zeroing.[294] The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

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

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

3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[295]

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

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

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped, such that there is no difference between the weighted-average dumping margins calculated using offsets versus using zeroing and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets and the application of zeroing will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*). This also does not constitute a meaningful difference, and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales versus the application of zeroing does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*. Again, there is not a meaningful difference in the weighted-average dumping margins calculated using offsets versus using zeroing, and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales, such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets versus using zeroing. Only under the fifth scenario can the Department consider the use of an alternative comparison method.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether

[294] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. *See* footnote 285 above, which identifies the specific calculation results for Shang Chen in this final determination.

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

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

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

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

Therefore, the Department finds that the meaningful difference test reasonably fills the gap in the statute to consider whether the A-to-A method (or T-to-T method) cannot account for the significant price differences in Shang Chen's pricing behavior in the U.S. market. Congress's intent of addressing "targeted dumping," when the requirements of section 777A(d)(1)(B) of the Act are satisfied,[296] would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that the Department finds that the A-to-A method cannot take into account the pattern of prices that differ significantly for Shang Chen, *i.e.*, the Department identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and the

[296] *See* SAA at 842-843.

Department demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, the Department continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked "targeted dumping,"[297] and has applied an alternative comparison methodology based on the A-to-T method to calculate the weighted-average dumping margin for Shang Chen in this final determination.

4. Application of the Average-to-Transaction Method Is Supported by Record Evidence and the Department's Analysis

The Department disagrees with Shang Chen that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and consider the application of an alternative comparison method based on the A-to-T method. As set forth in the *Preliminary Determination*[298] and as further discussed in this final determination, the Department's differential pricing analysis for Shang Chen in this investigation is both lawful, reasonable, and completely within the Department discretion in executing the trade statute.

The Department disagrees with Shang Chen's claim of support for its arguments based on WTO jurisprudence, including the WTO Appellate Body's findings in *US – Washing Machines (Korea)*. The CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[299] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[300] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[301]

With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA.

Comment 19: Shang Chen Date of Sale

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[297] See A*pex Frozen Foods*. The CIT in *Apex Frozen Foods* held that the "purpose" of applying the average-to-transaction method is to "reveal those cases where offsetting masks dumping, and that purpose is achieved by zeroing." *Apex Frozen Foods* at 44. The Court explained that without zeroing the results of the average-to-average and average-to-transaction comparisons would be mathematically equivalent, obviating any benefit derived from the provision of a statutory alternative. *Id*. The Court therefore held that "The zeroing characteristic of A-T is inextricably linked to the comparison methodology and its effect in the meaningful difference analysis does not render the approach unreasonable." *Id*., at 44-45.

[298] *See Certain Carbon and Alloy Steel Cut-to- Length Plate From Taiwan: Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 79420 (November 14, 2016) (*Preliminary Results*) and the accompanying Decision Memorandum at 6 to 8.

[299] *See Corus Staal BV v. U.S. Dep't of Commerce*, 395 F 3d. 1343, 1347-49 (Fed. Cir. 2005), *cert. denied* 126 S. Ct. 1023 (2006); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

[300] *See*, *e.g.*, 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

[301] *See*, *e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

Petitioners' Comments:

- The Department should use AFA for 227, or 28 percent of, U.S. sales transactions for which Shang Chen reported an incorrect date of sale, as the record demonstrates the reported sale date to be inconsistent, incorrect and unreliable.[302]
- Shang Chen stated in its initial response that it reported the earlier of the commercial invoice or factory shipment date as the date of sale for its U.S. sales. However, in its supplemental response, Shang Chen stated that the SALINDTU database field actually reflected the Government Uniform Invoice (GUI) date; then, in that same supplemental response, Shang Chen stated that it added an additional database field (SALINDT1U) to supplant the erroneous GUI date in order to report the commercial invoice date. The database accompanying that supplemental response indicated that Shang Chen reported one single date as a "plug" date for 227 U.S. sales transactions. Because this commercial sale date information was not provided until verification, Shang Chen withheld the actual commercial invoice date from the record, failed to provide this information in the manner and form requested, and significantly impeded the investigation, ultimately leading to the need to use facts available.[303]
- Because the incorrect date of sale was submitted as a "minor correction" at the outset of verification, Petitioners were not afforded the opportunity to timely analyze and comment on the incorrect sale dates, as such dates were not on the record until the start of verification.[304]
- The sale date information presented to the Department as a minor correction at verification was not minor or clerical, in nature, nor was it simply an "oversight," as claimed by Shang Chen; rather, consistent with the language spelled out in the letter to which the verification agenda was appended, it should constitute new information, because such a change to the date of sale is evidentiary of a change to Shang Chen's sale-date methodology.[305] Petitioners argue that the incorrect sale date that was provided to the Department at verification was outside of the POI and bore no relation to the actual commercial invoice date despite the fact that it had at the very least, Shang Chen had the GUI date at hand, an indication that Shang Chen could have reported the GUI date instead of a "plug" date.[306]
- Contrary to its narrative responses, Shang Chen reported the GUI date in its sales database, which should be controlling. In fact, a comparison of the invoice date included in the initial sales database and the new sale dates provided at verification demonstrates a significant time difference. The time lag is even greater when comparing the reported shipment date and commercial invoice date submitted by Shang Chen at verification, inconsistent with when Shang Chen stated that it normally issues the commercial invoice,

[302] *See* letter to the Department, "Petitioner's Case Brief for Shang Chen Steel Co.," dated March 1, 2017 (Petitioners' Case Brief), at 30.
[303] *Id.*, at 31-33.
[304] *Id.*, at 33-34.
[305] *Id*., at 34-35.
[306] *Id*., at 35.

and which raises questions as to GAAP revenue recognition principles, and perhaps differences between its reported total U.S. sales and U.S. Customs entry data.[307]
- The Department should apply partial facts available to those 227 sales by assigning the highest calculated individual margin for the final determination, given the fact that the invoice date impacts various aspects of the margin analysis from, for example, the universe of reportable U.S. sales to the credit expense calculation.[308]

Rebuttal Comments:

- The Department verified that the reported date of sale was correct, regardless of the error in the reported commercial invoice date. Shang Chen points out that the commercial invoice date error was explained at verification as a minor correction, which resulted from an input error.[309]
- Petitioners' claim that the company changed its date of sale methodology by first reporting the GUI as the date of sale and then changing that date at verification is false.[310]
- Shang Chen maintains that since the beginning of this investigation, it has reported the earlier of the date of shipment or the date of the commercial invoice in the date of sale field in the U.S. sales database. Shang Chen states that despite Petitioners' irrelevant argument regarding the GUI and commercial invoice dates, Shang Chen reported the GUI dates to the Department only for purposes of reconciling those dates to the company's internal sales records.[311]

Department Position:

We disagree with Petitioners that the Department should use AFA for 227 of Shang Chen's U.S. sales transactions, as the facts on the record of this investigation do not support the use of facts available. Pursuant to 19 CFR 351.401(i), the Department will use the invoice date to determine the date of sale, as maintained in the ordinary course of business, unless a different date can be substantiated to the Department's satisfaction, as more reflective of the material terms of sale.[312]

In the *Preliminary Determination*, we used the sale invoice date as reported in the SALINDTU database field, as the date of sale, because the record evidence indicated that the material terms of sale are subject to change until the invoice is prepared and ready for shipment to the customer.[313] At verification, Shang Chen presented minor corrections relating to input errors associated with the SALINDTU field in Shang Chen's database. Shang Chen explained that in preparation for verification, it discovered that it inadvertently reported September 7, 2016, the date of the Department's supplemental questionnaire, as the commercial invoice date in the SALINDTU field for all U.S. sales.

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[307] *Id*., at 36-40.
[308] *Id*., at 40-41.
[309] *See* letter from Shang Chen, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Rebuttal Brief of Shang Chen Steel Co., Ltd.," dated March 6, 2017 (Shang Chen's Rebuttal Brief), at 6-7.
[310] *Id*., at page 7.
[311] *Id*., at pages 7-8.
[312] *See* 19 CFR 351.401(i).
[313] *See* Shang Chen's Section A Response, at 17 (July 7, 2016); *see also*, Supplemental Response, at 9-10 (September 26, 2016).

Throughout the course of this investigation, Shang Chen has maintained, and the Department verified, that the material terms of sale, such as specification, may change until the date the invoice is issued. Shang Chen's initial questionnaire response reported that the material terms of sale may change at any time until the invoice date. Notwithstanding this fact, Shang Chen had reported in the SALEDATU field since submission of its first sales database to the Department the earlier of the date of commercial invoice or date of shipment. As such, we do not find that the revised dates, presented as minor corrections at verification constitute "new information." Accordingly, we accepted the errors as clerical or minor in nature, and examined the revised list of dates presented at verification, as well as those included in the second U.S. sales database submitted with Shang Chen's U.S. supplemental questionnaire response, and found no discrepancies.[314]

Further, the use of the earlier of the invoice date or shipment date is consistent with the Department's practice,[315] and in the case of Shang Chen, appropriately reflects the date on which the material terms were established for its U.S. sales. Accordingly, for the final determination, the Department used the date of sale, as reported in Shang Chen's SALEDATU field, because this date reflects the earlier of Shang Chen's date of invoice or date of shipment.

Comment 20: Shang Chen Sales-Related Revenues

Petitioners' Comments:

- According to record information resulting from verification, Shang Chen earned freight revenue on a subset of U.S. sales, and such revenue was not previously disclosed to the Department.
- Section 351.102(b)(38) of the Department's regulations expresses the requirement to cap freight revenue where it exceeds the freight charge, because it is inappropriate to earn profit on the sale of services (*i.e.*, freight). Petitioners also cite to *Pipe and Tube from Thailand 2010/2011*, and *CMC from Netherlands 2008/2009*,[316] along with other cases, as additional support for those instances in which the Department has addressed this issue in accordance with this regulation.[317]

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[314] *See* Shang Chen Sales Verification Report, dated February 9, 2017, at 8.
[315] *See*, *e.g.*, *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Final Results of the Antidumping Duty Administrative Review*; 2010 to 2011, 78 FR 16247 (March 14, 2013), and accompanying Issues and Decision Memorandum at Comment 7; *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33581 (June 14, 2010); *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497, 35499 (May 20, 200), and accompanying Issues and Decision Memorandum at Comment 2.
[316] *See*, *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) (*Pipe and Tube from Thailand 2010/2011*), and accompanying Issues and Decision Memorandum at Comment 3; *Purified Carboxymethycellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 48310, 48314 (August 10, 2010), *unchanged in* 75 FR 77829 (December 14, 2010) (*CMC from Netherlands 2008/2009*); *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 21634, 21637 (May 1, 2002), *unchanged in* 67 FR 66110, 66112 (October 30, 2002) (*Rebar from Turkey*).
[317] *Id.*, at 43.

- For purposes of the final margin calculation, the Department should cap this revenue in according with the Department's regulations by utilizing information collected at verification.[318,319]

Respondent's Rebuttal Comments:

- The facts on the record do not support Petitioners' assertion that the Department must cap certain revenue earned in relation to ocean freight expense.[320]
- Petitioners' assertion concerning freight revenue results from the use of different exchange rate conversion factors. When comparing the actual ocean freight expense incurred to the actual U.S. dollar amount incurred, the freight amounts yield nearly the same value.[321]
- The sum of the individual line items that break out a freight value on the commercial invoice corresponds to CFR invoice amount, not an FOB price, or a freight revenue amount, as suggested by Petitioners. Petitioners are incorrect that the breakdown of the amounts listed on the commercial invoice transforms the sales from a CFR sales term to an FOB transaction with a separate freight revenue. The freight amounts appear to have been noted to facilitate export declaration and have no legal consequence of the responsible party for the transactions at issue.[322]
- Even if the Petitioners were correct regarding the legal significance of the breakdown on the commercial invoice, the total ocean freight expense for each respective shipment yields a difference of only one cent.
- Consequently, the actual U.S. dollar amounts for ocean freight, as shown on the commercial invoices, are equal to the actual U.S. dollar ocean freight cost; therefore, there is no need for the Department to make an adjustment for freight revenue for the final determination.

Department's Position:

We find insufficient evidence on the record to determine that any freight revenue on sales made to the United States was unreported by Shang Chen. Petitioners point to certain commercial invoices obtained during the course of verification in which Shang Chen separately breaks out free-on-board (FOB) sales value, freight value, and cost-and-freight (CFR) sales value on several commercial invoices. To lend further support to their claim, Petitioners point to *Pipe and Tube from Thailand 2010/2011* and *CMC from Netherlands 2008/2009*, in addition to other cases involving freight revenue.[323]

[318] *Id.*, at 42-44.
[319] Because certain information pertaining to this argument is proprietary in nature, further discussion of the argument and the Department's response to this argument is provided in the Shang Chen Final Analysis Memorandum.
[320] *See* Shang Chen's Rebuttal Brief.
[321] *Id.*, at 9-10.
[322] *Id.*, at 10-11.
[323] *Id.*

The Department does not treat freight-related revenue as an addition to U.S. price in accordance with section 772(c)(1) of the Act, or as a price adjustment under 19 CFR 351.102(b)(38). Rather, in such cases where the Department finds that freight revenue was earned, such revenue is capped by the related expenses, per Department practice, because it is inappropriate to increase the gross unit sales price as a result of profit earned on the sale of freight.[324] Moreover, the Department must find that respondent earned such revenue.[325]

As an initial matter, as distinguished from *Pipe and Tube from Thailand 2010/2011*, *CMC from Netherlands*, and other cases to which Petitioner cites, Shang Chen reported that it did not earn freight revenue on its sales during the POI.[326] Therefore, absent any reported freight revenue, there is no freight revenue cap to apply. Indeed, Shang Chen's questionnaire responses, submitted under certification, indicated that Shang Chen received no freight revenue. Further, during the course of verification, in which we examined Shang Chen's financial documents, we did not discover any unreported freight revenue.

Aside from freight revenue having been reported in a separate database field in the U.S. sales database submitted to the Department in *Pipe and Tube from Thailand 2010/2011*, the freight revenue amount that was specified on the commercial invoices linked to sales contracts in that case. Accordingly, the Department stated that the link between those documents indicated that the freight revenue amounts were not simply "estimates provided for the convenience of customers, but separately negotiated charges that the customer must pay."[327] In this investigation, upon examination of the several commercial invoices where the freight value was broken out as a separate line item, the corresponding sales contract does not make mention of any pre-negotiated revenue between Shang Chen and its customer. In fact, both the sales contract and the commercial invoices refer to Shang Chen's delivery terms on a CFR basis. Absent any substantiation of pre-negotiated freight revenue, the lack of any verification findings, and the fact that such revenue was not reported to the Department on sales made to the United States, we do not find that the few instances in which line items for freight values appeared on a few commercial invoices collected at verification serve as sufficient evidence that Shang Chen received revenue for freight services rendered on U.S. sales. In sum, because Shang Chen did not report freight revenue to the Department, and there is no evidence on the record that freight revenue was earned on sales made to the United States, the issue of capping freight revenue where such revenue exceeds freight expenses is moot for this final determination.

Comment 21: Shang Chen Reported Packing Cost

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[324] *See*, *e.g.*, *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016), and accompanying Issues and Decision Memorandum (LPTs from Korea 2013/14) at Comment 3; *see also, Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 64170 (October 28, 2014) (Pipe and Tube from Thailand 2012/2013), and accompanying Issues and Decision Memorandum at Comment 4.

[325] *See* LPTs from Korea 2013/14, at Comments 3 and 5.

[326] *Id.*; *see also, Large Power Transformers from Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016), and accompanying Issues and Decision Memorandum (in which Hyosung Corporation reported freight revenue to the Department in its U.S. sales database).

[327] *See*, *e.g.*, *Pipe and Tube from Thailand 2012/*2013, at Comment 4.

Petitioners' Comments:

- Shang Chen revised the thickness of CTL plate for one U.S. sale transaction in its verification minor corrections; however, it failed to appropriately adjust packing costs for that sale.[328]
- In the absence of a category of packing costs associated with merchandise that would capture the thickness of the U.S. sale at issue, the Department should increase the cost of packing for that sale using an adjustment factor based on the packing cost for the highest cost per packet specified in Shang Chen's Revised Packing Cost Worksheet reported in its Supplemental Response.[329]

Respondent's Rebuttal Comments:

- Petitioners' argument regarding the packing costs related to U.S. sales observation 32 is without merit. Shang Chen indicates that in various submissions on the record, it specified that the packing type of its plate products was dependent on the dimensions of the plate.
- Verification documents specify the cost associated with this particular sale of HRS plate, and given the dimensions of the product, it would fall under the category of packing type "C," as opposed to packing type "E," which Petitioners posit.
- Petitioners' calculation of the requisite packing costs is incorrect because it does not take into account the correct dimension of the product sold, the number of packets used or the total quantity of subject merchandise shipped in those packets. Any adjustment calculation must still account for the weight and number of packets shipped for purposes of determining the per-unit packing cost.

Department's Position:

We agree with Petitioners. At verification, Shang Chen presented as a minor correction, a revision to the reported thickness associated with one U.S. sales transaction. Specifically, Shang Chen demonstrated with supporting documentation that the thickness for one HRP sale made to the United States actually was 3/8 inch (9.5 mm), rather than 3/4 inch (19.05 mm).[330] While Shang Chen correctly pointed out at verification that the change in thickness has no impact on the thickness code under the Department's product-matching criteria, we find that this change does have an impact on the cost of packing associated with this one U.S. sales transaction. However, Shang Chen made no attempt to report the packing cost associated with this one U.S. sale, despite its ability to do so, given the records maintained in the ordinary course of business.

To calculate an "ex-factory" price for U.S. sales, the Department accounts for various expenses associated with the sale made to the United States, including packing costs. Under section 773(a)(6)(A) and (B) of the Act, the Department is instructed to deduct home market packing

[328] *Id*., at 44-45.
[329] *See* Shang Chen's Supplemental Response, at Exhibit B-20; *see also,* Shang Chen Sales Verification Exhibit 17.
[330] *See* Sales Verification Exhibit 17.

costs and add an amount for U.S. packing costs. The Department looks towards calculating a cost that most accurately reflects the commercial reality of the respondent.[331] However, as explained above, under the section entitled, "Application of Partial AFA for Shang Chen," Shang Chen failed to provide the packing cost for this HRP sale to the U.S. that had a thickness below 15 mm. Because necessary information is not on the record, and because we find that Shang Chen did not act to the best of its ability in failing to provide this information, under section 776(b) of the Act, we are using facts available with an adverse inference to determine the applicable packing cost for this U.S. sale. For this reason, we find it reasonable to rely upon Petitioners' suggested calculation to calculate an adjustment factor to be applied to the packing cost, as the calculation employs the packing cost originally used by Shang Chen, along with other packing cost data on the record for a product with a width less than 12 mm. Because Shang Chen failed to provide the requisite packing cost associated with the one U.S. sale in question, the calculation of this adjustment factor uses the highest total cost per packet for HRS export sales, as an adverse inference, which is included in the revised packing cost worksheet provided in Shang Chen's Supplemental Response.[332, 333]

Comment 21: Alleged Error in Shang Chen's Margin Calculation Program

Petitioners' Comments:

- The Department erred in its reliance on the sale invoice date (SALINDTU) database field in the preliminary margin calculation program, and as such, certain U.S. sales, accounting for nearly 28 percent of the reported U.S. sales transactions, were inadvertently removed for purposes of the margin analysis.[334]
- Because the SALINDTU database field reflects the GUI date, rather than the commercial invoice date, the Department should use the reported date of sale (SALEDATU) field, which reflects the earlier of invoice date or shipment date to ensure all U.S. sales are appropriately captured for purposes of the final margin analysis.[335]

Department's Response:

We agree with Petitioners and have modified the U.S. margin calculation program to utilize the SALEDATU database field, rather than the SALINDTU database field, due to certain reporting errors contained in the SALINDTU field.[336] Further, as explained above under Comment 19, we find that the SALEDATU database field more appropriately reflects the material terms of Shang Chen's U.S. sales.

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[331] *See*, *e.g.*, *Notice of Amendment of Final Determinations of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 66 FR 45279 (August 28, 2001), at Comment 3. Here, the Department based the average credit period on POSCO's average terms of sale during the POI, as it "…most accurately reflects the true price of the merchandise at issue at the time of sale."

[332] *See* Shang Chen's Supplemental Response, at Exhibit B-20.

[333] Because the calculation of the adjustment factor is proprietary, in nature, further discussion of this calculation is provided in the Shang Chen Final Analysis Memorandum.

[334] *Id.*, at 46-47.

[335] *Id.*, at 47.

[336] *See* Comment 9, above, for discussion of this issue.

IX. Recommendation

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

☒ ☐

Agree Disagree

3/29/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance