



July 20, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Antidumping Duty Investigation of Steel
Concrete Reinforcing Bar from Taiwan

I. SUMMARY

The Department of Commerce (the Department) determines that steel concrete reinforcing bar (rebar) from Taiwan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The petitioners in this investigation are the Rebar Trade Action Coalition and its individual members.¹ The period of investigation (POI) is July 1, 2015, through June 30, 2016.

We analyzed the comments submitted by the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the margin calculations for the mandatory respondents in this investigation: Power Steel Co., Ltd. (Power Steel) and Lo-Toun Steel and Iron Works Co., Ltd. (Lo-Toun) (collectively, the respondents). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

A complete list of the issues in this investigation on which we received comments is provided below.

Comment 1: Whether a Particular Market Situation Exists with Respect to Power Steel’s Billet Purchases from China.

¹ The individual members of the Rebar Trade Action Coalition are Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc. (collectively, the petitioners).



Comment 2: Whether to Apply the Department's Quarterly-Cost Methodology to Power Steel

Comment 3: Whether to Incorporate Findings from the Department's Cost Verification in the Final Determination for Power Steel

Comment 4: Whether to Rely on Adverse Facts Available for Lo-Toun's Rate

II. BACKGROUND

On March 7, 2017, the Department published the *Preliminary Determination* in the less-than-fair-value investigation of rebar from Taiwan.² On March 16, 2017, Lo-Toun withdrew from further participation in this proceeding as a mandatory respondent.³ The Department conducted the cost and sales verifications of Power Steel from March 6 through March 17, 2017.⁴ The Department received case and rebuttal briefs on May 23 and May 30, 2017, from the petitioners and the mandatory respondents.⁵ On June 20, 2017, the Department issued a memorandum concerning the petitioners' particular market situation (PMS) allegation with regard to Power Steel's billet purchases.⁶ The Department received case and rebuttal briefs regarding the PMS allegation between June 26, and July 3, 2017.⁷ The Department held a public hearing on July 6, 2017.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are rebar from Taiwan. For a complete description of the scope of this investigation, *see* Appendix I of the *Federal Register* notice.

² See *Steel Concrete Reinforcing Bar from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 12800 (March 7, 2017) (*Preliminary Determination*) and the accompanying Preliminary Decision Memorandum (PDM).

³ See letter from Lo-Toun, "Steel Concrete Reinforcing Bar from Taiwan: Lo-Toun Withdrawal of Participation as Mandatory Respondent," dated March 16, 2017 (Lo-Toun Withdrawal Letter).

⁴ See Memorandum, "Verification of the Cost Response of Power Steel Co., Ltd. In the Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from Taiwan," dated May 12, 2017 (Power Steel Cost Verification Report); *see also* Memorandum, "Verification of the Sales Response of Power Steel Co., Ltd. In the Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from Taiwan," dated May 8, 2017 (Power Steel Sales Verification Report).

⁵ See letter from Power Steel, "Re: Steel Concrete Reinforcing Bar from Taiwan," dated May 23, 2017 (Power Steel's Case Brief); letter from Lo-Toun, "Re: Steel Concrete Reinforcing Bar from Taiwan: Case Brief for Lo-Toun," dated May 23, 2017 (Lo-Toun's Case Brief); *see also* letters from the petitioners, "Re: Steel Concrete Reinforcing Bar from Taiwan: case Brief," dated May 23, 2017 (Petitioners' Case Brief), and "Re: Steel Concrete Reinforcing Bar from Taiwan: RTAC's Rebuttal Brief," dated May 30, 2017 (Petitioners' Rebuttal Case Brief).

⁶ See Memorandum, "Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from Taiwan: Particular Market Situation," dated June 20, 2017 (PMS Memorandum).

⁷ See letter from Power Steel, "Re: Steel Concrete Reinforcing Bar from Taiwan: Particular Market Situation Brief," dated June 26, 2017 (Power Steel's PMS Brief); *see also* letter from the petitioners, "Re: Steel Concrete Reinforcing Bar from Taiwan: Case Brief Regarding Particular Market Situation," dated June 26, 2017 (Petitioners' PMS Brief); *see also* letter from Power Steel, "Re: Steel Concrete Reinforcing Bar from Taiwan," dated July 3, 2017 (Power Steel's PMS Rebuttal Brief); *see also* letter from the petitioners, "Re: Steel Concrete Reinforcing Bar from Taiwan: Rebuttal Brief Regarding Particular Market Situation," dated July 3, 2017 (Petitioners' PMS Rebuttal Brief).

IV. SCOPE COMMENTS

In the *Preliminary Determination*, we modified the scope language as it appeared in the *Initiation Notice*.⁸ On April 4, 2017, the Department set the briefing schedule in regards to scope comments.⁹ No interested parties submitted scope comments, and for this final determination, the scope of this investigation remains unchanged from the scope in the *Preliminary Determination*.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the margin calculations.¹⁰ These changes are as follows:

- We reallocated certain freight costs attributable to the purchase of billets which had been reported as part of variable overhead (VOH) and general and administrative expenses (G&A) to raw materials and recalculated raw materials, VOH and G&A accordingly.
- We recalculated Power Steel's scrap offset to ensure that it was limited to scrap generated as a result of the production of subject merchandise during the POI.
- We revised the adjustment concerning the cost of subcontracting so that it was allocated in accordance with Power Steel's POI experience.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Lo-Toun was selected as a mandatory respondent in this investigation.¹¹ On March 16, 2017, Lo-Toun withdrew from further participation in this proceeding as a mandatory respondent, stating that it "withdraws from further participation in this proceeding as a mandatory respondent" and "does not intend to participate in the proposed verification of its questionnaire responses."¹² For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the final determination with respect to Lo-Toun.

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, use the "facts otherwise available" (FA) if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B)

⁸ See *Preliminary Determination* PDM at "Scope Comments;" see also *Steel Concrete Reinforcing Bar from Japan, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 71697 (October 18, 2016) (*Initiation Notice*).

⁹ See Memorandum, "Scope Briefing Schedule for the Antidumping and Countervailing Duty Investigations of Steel Concrete Reinforcing Bar from Japan, the Republic of Turkey, and Taiwan," dated April 4, 2017.

¹⁰ See Memorandum, "Analysis for the Final Determination of the Less-Than-Fair Value Investigation of Steel Concrete Reinforcing Bar from Taiwan for Power Steel Co., Ltd.," dated concurrently with this Memorandum.

¹¹ See Memorandum, "Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Taiwan: Deselection of Agir Haddecilik International LLP as a Mandatory Respondent and Selection of a Replacement Mandatory Respondent" dated December 9, 2016.

¹² See Lo-Toun Withdrawal Letter.

fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available (AFA) when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In making this final determination, we find it necessary to rely on FA and appropriate to use an adverse inference when selecting from among the facts available to determine an estimated weighted-average dumping margin for Lo-Toun, as detailed below.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."¹³ The Department's practice also ensures that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁴

A. Application of FA and AFA to Determine the Estimated Weighted-Average Dumping Margin for Lo-Toun

As noted above, Lo-Toun notified the Department after the *Preliminary Determination* that it would no longer participate in this investigation. By refusing to participate further in the investigation, Lo-Toun significantly impeded this proceeding, and provided information that cannot be verified. Thus, for the final determination, pursuant to sections 776(a)(2)(C) and (D) of the Act, we are basing Lo-Toun's margin on facts otherwise available.

We determine that an adverse inference is warranted for Lo-Toun, pursuant to section 776(b) of the Act. By discontinuing its participation, Lo-Toun did not act to the best of its ability in this investigation and, therefore, failed to cooperate. Accordingly, we find that AFA is warranted. (*See* Comment 4 below).

B. Selection and Corroboration of AFA Rate

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 Trade Preferences

¹³ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*) and the accompanying Issues and Decision Memorandum at "V. Use of Adverse Facts Otherwise Available and Adverse Inferences;" see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998) (*Semiconductors from Taiwan*).

¹⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870.

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.¹⁵ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.¹⁶

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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.¹⁷ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value,¹⁸ although under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹⁹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, 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.

In an investigation, the Department's general practice with respect to the assignment of adverse rates is to assign the higher of the highest petition rate or the highest calculated dumping margin of any respondent in the investigation.²⁰ In this case, the petition has the highest rate of 84.66 percent. In order to determine the probative value of the 84.66 percent petition rate, we examined the information on the record. When we compared the petition rate to highest calculated transaction-specific dumping margin for Power Steel, we found that the highest petition dumping margin is significantly higher than the highest calculated transaction-specific dumping margin for Power Steel (*i.e.*, 32.01 percent). Thus, the Department is unable to corroborate the highest petition rate based on the facts and circumstances in this investigation. Accordingly, we are applying the highest individual transaction margin calculated for the other respondent, Power Steel, as the AFA rate applicable to Lo-Toun. We find that this rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a

¹⁵ See section 776(b)(1)(B) of the Act.

¹⁶ See also 19 CFR 351.308(c).

¹⁷ See SAA at 870.

¹⁸ *Id.*

¹⁹ See section 776(c)(2) of the Act.

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

timely manner.”²¹ It was unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.²²

VII. DISCUSSION OF ISSUES

Comment 1: Whether a Particular Market Situation Exists with Respect to Power Steel’s Billet Purchases from China.

Petitioners’ Case Brief:

- The Department should find that Power Steel’s cost of production in Taiwan was distorted by reason of its purchases of Chinese billets.²³
- To eliminate the distortive impact of the PMS, the Department should adjust Power Steel’s cost of production for the final determination by increasing the raw material costs by the amount that Chinese billet prices undercut local Taiwanese billet prices.²⁴
- The Department’s and Power Steel’s analyses regarding the petitioners’ PMS allegation do not rebut the petitioners’ PMS analysis.²⁵
- The factual differences between the instant investigation and the Department’s recent decision in *OCTG from Korea* do not indicate that there is no PMS in Taiwan.²⁶

Power Steel’s Case Brief:

- Power Steel agrees with the Department’s preliminary determination that there is insufficient evidence to conclude that a PMS exists in this investigation.²⁷
- The record evidence does not support the petitioners’ allegation that Power Steel paid lower prices for its Chinese sourced billets compared to the Taiwanese sourced billets.²⁸
- The Department correctly concluded that the petitioners’ analysis of Power Steel’s billet purchase prices was not a valid analytical framework to evaluate whether a PMS exists.²⁹
- None of the conditions underlying the PMS finding from the *OCTG from Korea* case are applicable to Power Steel in this case.³⁰
- The statute places a preference for using a company’s own books and records to determine costs. The PMS provision is an exception to that rule.³¹

²¹ See *Drill Pipe from China*; see also *Semiconductors from Taiwan*.

²² See section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information). See, also, *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum (*Uncoated Paper from Indonesia*) at Comment 1.

²³ See Petitioners’ PMS Case Brief at 2.

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.* at 12.

²⁷ See Power Steel’s PMS Case Brief at 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 2.

³¹ *Id.*

Petitioners' Rebuttal Brief:

- Power Steel conceded that Chinese billet prices distorted billet pricing in Taiwan during the POI.³²
- Power Steel used enough Chinese billet to affect its overall billet costs.³³
- The Department's analysis of Power Steel's billet purchases demonstrates that Chinese billet prices typically were lower than Taiwanese billet prices.³⁴
- The petitioners' proposed methodology of analyzing billet prices is both reasonable and conservative, as it does not include the price-depressing effects of Chinese billet on Taiwanese-origin billet.³⁵
- The differences between the record in the instant investigation and the record in *OCTG from Korea* are not indicative of whether a particular market situation exists here.³⁶

Power Steel's Rebuttal Brief:

- The Department properly concluded that the petitioners' analysis of Power Steel's billet prices was invalid and distortive.³⁷
- The petitioners' methodology of imputing monthly billet prices as a gap-filler was inappropriate and distortive.³⁸
- The petitioners' use of simple averages instead of weighted averages for billet prices differences was inappropriate and distortive.³⁹
- The Department's analysis does not show that Power Steel's Chinese billets were "systematically" lower than Taiwanese billets.⁴⁰
- Power Steel does not concede that Chinese billet prices distorted Taiwanese billet prices.⁴¹
- The petitioners incorrectly assume that any subsidies on Chinese billets automatically and completely passed through to Power Steel.⁴²

Department's Position

For the final determination, the Department continues to rely on its analysis in the PMS Memorandum, finding that there is insufficient evidence to conclude that a PMS exists with regard to Power Steel's purchase of Chinese billets in the instant investigation. As explained in the Department's PMS Memorandum, after verifying the accuracy of Power Steel's books and records, comparing the price differentials between domestic and imported billets, and

³² See Petitioners' PMS Rebuttal Brief at 3.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 5.

³⁶ *Id.*

³⁷ See Power Steel's PMS Rebuttal Brief at 1.

³⁸ *Id.* at 2.

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 8.

⁴² *Id.* at 9.

considering the petitioners' analytical model, the Department found that Power Steel's billet costs have not been distorted such as to warrant an adjustment of Power Steel's reported costs in determining whether Power Steel may be dumping in the U.S. market.⁴³ The Department analyzed Power Steel's billet purchases during the POI (*i.e.*, the cost calculation period) and concluded that, on average, the Chinese billets were priced higher than Taiwanese billets.⁴⁴ The Department also analyzed the grade-specific POI prices for both Chinese billets and Taiwanese billets.⁴⁵ The Department's grade-specific POI analysis revealed that the POI average Chinese prices were lower than the comparable Taiwanese prices for two grades of billets, but for the remaining grade, the average POI Chinese price exceeded the average POI Taiwanese price.⁴⁶ Further, on a grade-specific basis, Chinese monthly prices were occasionally higher than the Taiwanese monthly prices.⁴⁷ Therefore, we concluded that the prices of billets imported from China were not distorted when compared to domestically sourced billets, and there is not sufficient support to conclude that a PMS exists with respect to Power Steel's imports of Chinese billets.

While Power Steel never "conceded" that Chinese billet prices distorted billet prices in Taiwan, it did state that there was a temporary decrease in billet prices between November 2015 and February 2016 as the result of the Chinese government's attempts to deal with overcapacity of billet production.⁴⁸ However, we note that Power Steel purchases of Chinese billets during the months at issue were relatively small.⁴⁹ Moreover, while Power Steel purchased three grades of billets from China,⁵⁰ we note that, overall, and for each of the three grades at issue, Power Steel purchased a substantial majority of its billets from Taiwanese producers.⁵¹ In light of these facts, and our determination that the prices of billets imported from China were not distorted when compared to domestically sourced billets, Power Steel's statement about a temporary decrease in billet prices does not persuade us that a PMS exists with regard to Power Steel's purchase of Chinese billets in the instant investigation.

No party argued or demonstrated that there were errors in our calculations analyzing the PMS allegation. However, the petitioners oppose the Department's methodology of using weighted-average monthly billet prices for its POI-average analysis, advocating the use of a simple average and arguing that the use of weighted-average comparisons is reasonable only if the monthly purchase volumes from both markets are distributed evenly over the POI.⁵² The Department disagrees with the petitioners' assertion. As the overall quantity of Chinese and Taiwanese billets purchased directly affects the overall billet costs that Power Steel incurred,

⁴³ See PMS Memorandum at 5, and attachment Excel worksheet.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* As explained previously, the Department analyzed the grade-specific prices on a POI basis because, in this investigation, the Department has determined that it is appropriate to rely on POI average costs rather than those of an abbreviated cost calculation period (*e.g.*, quarterly costs). Nevertheless, because the petitioner conducted its analysis using average monthly prices, the Department also conducted a grade-specific monthly weighted-average analysis. The Department's weighted monthly-average grade-specific analysis produced comparable results.

⁴⁷ *Id.*

⁴⁸ See Power Steel's supplemental section D response at 28.

⁴⁹ See Power Steel Final Analysis Memo.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Petitioners' PMS Rebuttal Brief at 11.

using a weighted average to calculate the billet price comparison is more reasonable than using a simple average because, in a simple average, all 12 monthly average prices carry the same weight without regard to the respective purchase quantities. In this case, our analysis indicates that the weighted-average approach takes into account fluctuations in purchase quantities, more accurately accounting for the volume of sales in each month.

Furthermore, the petitioners have not supported their claim that a simple average is more reasonable than a weighted average of Power Steel's monthly billet costs. To the contrary, we note that the petitioners claimed during the public hearing that, not only are price fluctuations for billet during the POI "a little bit erratic" but that, also, "you've got large swings in volumes" for the monthly quantities of purchased billets.⁵³ Thus, the petitioners identified the very reason that the Department has determined that using a weighted average of Power Steel's billet costs is appropriate for this final determination.

The Department disagrees that the petitioners' quantitative analysis is reasonable. The Department finds that an analysis of Power Steel's billet costs on a POI basis, as compared with a monthly basis, is appropriate, as this is the basis on which costs were calculated and included in its dumping analysis (*see* issue 2 below). In arguing against the use of quarterly cost (*see* Comment 2), the petitioners argue that the Department must use POI-average costs in determining Power Steel's cost of production, because the use of shorter periods "may exaggerate cost swings in an unreliable way."⁵⁴ With this statement, the petitioners repeat the fundamental basis for the Department's practice normally to rely on POI-average costs. Accordingly, it would be illogical to calculate Power Steel's cost of production based on a POI-cost methodology, and then to base an analysis of Power Steel's billet costs on a monthly basis, which may exaggerate cost swings in an unreliable way.

Nonetheless, even if the Department found that a monthly analysis were appropriate, on a grade-specific basis, Chinese monthly prices were sometimes higher than the Taiwanese monthly prices and sometimes lower than the Taiwanese monthly prices.⁵⁵ Therefore, even using, *arguendo*, a monthly analysis, the Department still concludes that the prices of billets imported from China are not systemically lower than the prices billets produced in Taiwan, and the costs of Power Steel's billets were not distorted. Thus, regardless of the averaging period, the Department finds insufficient support to conclude that a PMS exists with respect to Power Steel's purchases of Chinese billets.

The Department also disagrees with the petitioners' claim that their proposed methodology of analyzing billet prices is conservative. The Department finds that petitioners' use of imputed monthly prices where Power Steel did not purchase the same grade billets from both China and Taiwan in the same month, as well as the use of a simple average, distort the analysis of Power Steel's billet costs. As an initial matter, the Department's preference is to analyze actual price differences and, therefore, the Department normally prefers to rely on actual purchase information, as opposed to hypothetical imputed purchase prices. The petitioners' methodology of imputing monthly Chinese or Taiwanese billet costs for months in which Power Steel did not

⁵³ *See* Hearing Transcript at 36-37.

⁵⁴ *See* Petitioners' Rebuttal Brief at 5.

⁵⁵ *See* PMS Memorandum at 5; *see also* Power Steel's PMS Case Brief at 1.

purchase the same grade of billets from both China and Taiwan distorts the overall price differential for each grade of the billets. Therefore, the Department finds that the petitioners' approach is not "conservative" and may lead to unreliable results.

The Department disagrees with the petitioners' claim that Chinese subsidies on billets have distorted Power Steel's costs for billets. The fact that prices for Chinese billets may be either higher or lower than the price for Taiwanese billets in the same month indicates that neither Chinese billets nor Taiwanese billets are the price leader for Power Steel. This is consistent with general market economy principles, where a seller seeks the highest attainable price and the customer seeks the lowest available price. The evidence for Power Steel demonstrates that neither Chinese prices nor Taiwanese prices dominate Power Steel's billet costs, as there is no systemic pricing pattern.

We agree with the petitioners' argument that the differences between this record and the record in *OCTG from Korea* are not indicative as to whether a PMS exists in this investigation. In *OCTG from Korea*, the Department determined that a PMS existed in Korea on the totality of the conditions in the Korean OCTG market, including: (1) a flood of imports of the raw material input, hot-rolled coil (HRC), from China; (2) subsidization of HRC by the Korean government; (3) strategic alliances between certain Korean HRC producers and OCTG producers which may have affected prices; and (4) Korean government electricity subsidies. The Department's decision in *OCTG from Korea* states, "each of these allegations are contributing factors that, taken together, lead the Department to conclude a particular market situation exists in Korea." However, the record in this case does not include the same facts or allegations as in *OCTG from Korea*. Here, the petitioners have alleged that the price of Chinese billets was lower than the Taiwanese domestic billets price. Our analysis of the PMS allegation regarding Power Steel's purchase of the Chinese billets, as outlined above, does not support a conclusion that the Chinese billets prices in the Taiwanese market were distorted and there is not sufficient support to conclude that a PMS exists in the instant investigation with respect to Power Steel's purchases of Chinese billet.

Comment 2: Whether to Apply the Department's Quarterly-Cost Methodology to Power Steel

Power Steel's Case Brief:

- The Department should apply its quarterly-cost methodology for the final determination because record evidence demonstrates that there were significant cost changes and a reasonable linkage between quarterly sales prices and quarterly costs.⁵⁶

⁵⁶ See *Pastificio Lucio Garofalo, S.p.A. v. United States*, 783 F. Supp. 2d 1230, 1238-40 (CIT 2011), *aff'd* *Pastificio Lucio Garofalo, S.p.A. v. United States*, 469 F. App'x 901 (Fed. Cir. 2012); see also *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 46704, 46708 (August 6, 2012) unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 9668 (February, 11, 2013); see also *Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Review*, 74 FR 31242 (June 30, 2009) and accompanying Issues and Decision Memorandum at Comment 1; see also *Stainless*

- A comparison of the overall average total cost of manufacturing (TOTCOM) during the first quarter of 2016 and the overall TOTCOM during the second quarter of 2016 demonstrates that there were significant cost changes.⁵⁷
- Two CONNUMs which experienced a cost change in excess of 25 percent accounted for a large portion of Power Steel's total combined sales in the U.S. and Taiwanese markets during the period of investigation.⁵⁸
- Record evidence indicates that there is a close correlation between the CONNUM-specific quarterly average TOTCOMs and the corresponding quarterly average sales prices.⁵⁹

Petitioners' Rebuttal Brief:

- The Department should not apply a quarterly-cost methodology for the final determination.
- Less than one half of the top-selling CONNUMs in each of the U.S. and Taiwanese markets had cost changes which exceeded 25 percent during the period of investigation.⁶⁰
- "The application of quarterly costing would be inappropriate here because the quarterly cost data as reported may exaggerate cost swings in an unreliable way."⁶¹
- Because Power Steel does not maintain quarterly inventory values in its normal books, Power Steel's methodology for calculating quarterly billet costs may exaggerate cost swings by not representing rolling average inventory values accurately.

Department's Position:

We have determined that, because record evidence demonstrates that Power Steel did not experience significant cost changes during the POI, it is appropriate to apply our normal methodology of calculating a POI weighted-average cost. The Department has established a predictable and consistent practice for determining whether we should deviate from the normal methodology of calculating a POI weighted-average cost and resort to an alternative cost reporting methodology. In determining whether to deviate from our normal methodology for calculating a POI weighted-average cost, the Department has established two criteria that must

Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (Dec. 11, 2008) and accompanying Issues and Decision Memorandum (*Plate from Belgium*) at Comment 4.

⁵⁷ See Power Steel's Case Brief at 3.

⁵⁸ *Id.*

⁵⁹ *Id.* at 4-5.

⁶⁰ See *Diethyl Terephthalate From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 82 FR 9195 (February 3, 2017) and accompanying Preliminary Decision Memorandum at 21; see also *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017) and accompanying Issues and Decision Memorandum at Comment 2; see also *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) and accompanying Issues and Decision Memorandum at Comment 1; see also *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 75 FR 18788 (April 13, 2010) unchanged in *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 75 FR 64696 (October 20, 2010).

⁶¹ See Petitioners' Rebuttal Brief at 5.

be met, *i.e.*, significance of cost changes and the linkage between costs and sales information.⁶² The United States Court of International Trade (CIT) has upheld the Department's use of these two criteria for determining whether it is appropriate to use an alternative cost reporting methodology.⁶³ The Department has explained that the first criterion (*i.e.*, significance of cost changes) must be met before evaluating the linkage between cost and sales information.⁶⁴ A significant change in cost for this purpose is defined as a greater than 25 percent change in the COM between the high and low quarters during the POI/POR.⁶⁵ As described below in *Plate from Belgium*⁶⁶ and upheld by the CIT subsequently:

The Department's threshold of 25 percent originates from generally accepted accounting standards promulgated in International Financial Reporting Standards (IFRS). International Accounting Standard (IAS) 29 was developed to provide guidelines for enterprises reporting in the currency of a hyperinflationary economy so that the financial information provided is meaningful. Essentially, IAS 29 establishes when it is appropriate for an entity to depart from normal IFRS accounting standards and adopt an alternative method, because the existing method (*i.e.*, historical costing) will result in distortions. We find that a similar comparison can be made here, where a particular basket of goods (*i.e.*, stainless steel inputs) are experiencing rapid changes in price levels which largely impacts the total cost of manufacturing (COM). To benchmark these changes in COM to our significance threshold, we have used U&A Belgium's data to compute the cost difference, in terms of a percent, between the lowest quarterly COM and the highest quarterly COM. For the highest volume control numbers (CONNUMs) sold in the home market and U.S., the cost difference exceeds our significance threshold. This significance threshold is high enough to ensure that we do not move away from our normal practice without good cause and forgo the benefits of using an annual average cost, but allows for a change in methodology when significantly changing input costs are clearly affecting our annual average cost calculations.⁶⁷

⁶² See, e.g., *Steel Reinforcing Concrete Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017) and accompanying Issues and Decision Memorandum (*Rebar from Turkey*) at Comment 2; see also *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 (*Hot-Rolled Steel from Turkey*) at Comment 6. See also *Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

⁶³ See *Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 33 Ct. Int'l Trade 1721 (November 23, 2009) sustaining *Final Results of Redetermination Pursuant to Court Remand* (September 8, 2009) at 7, which is available at <http://enforcement.trade.gov/remands/09-55.pdf>; see also *SeAH Steel Corp. v. United States*, 704 F. Supp. 2d 1353, 1362-1363 (May 19, 2010) (*SeAH Steel*).

⁶⁴ See *Rebar from Turkey* at Comment 2; see also *Hot-Rolled from Turkey* at Comment 6; see also *Plate from Belgium* at Comment 4 (stating "if the Department finds cost changes to be significant in a given administrative review or investigation, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POI/POR").

⁶⁵ *Id.*

⁶⁶ See *Plate from Belgium* at Comment 4. See also *Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009) and accompanying Issues and Decision Memorandum (*Welded Stainless Steel Pipes from Korea*) at Comment 1.

⁶⁷ See *SeAH Steel*, in support of *Welded Stainless Steel Pipes from Korea*.

For the purposes of analyzing whether the change in costs is significant (*i.e.*, greater than 25 percent), the Department analyzes the change in the COM of each of the five largest CONNUMs sold in the home market and the change in the COM of the five largest CONNUMs sold in the United States.⁶⁸ The Department considers the change in cost to be significant when the majority of CONNUMs examined experienced a cost change in excess of 25 percent.⁶⁹

The Department has examined the record evidence and determined that less than half of the 5 largest volume CONNUMs sold in each of the domestic and U.S. markets experienced a cost change greater than 25 percent.⁷⁰ Power Steel's contention that record evidence demonstrates significant cost changes during the POI is based on a flawed analysis. As explained above, the Department analyzes POI cost changes on a CONNUM-specific basis and considers cost changes to be significant when the majority of CONNUMs examined experienced a POI cost change greater than 25 percent.⁷¹ The CIT has upheld the Department's examination of the CONNUM-specific POI cost changes.⁷² Nonetheless, despite the Department's well-established practice of examining CONNUM-specific POI cost changes, Power Steel's analysis focused on calculating the simple average COM for each quarter and calculating the POI change between the quarter with the lowest average COM and the quarter with the highest quarterly COM. Power Steel's analysis is flawed, not only because it departs from the Department's well-established practice, but also because it disregards the reality that Power Steel produced a different mix of CONNUMs during each quarter of the POI, so that overall average comparisons are meaningless. Accordingly, because record evidence demonstrates that Power Steel did not experience significant cost changes during the POI, we do not arrive at the issue of linkage

⁶⁸ See *Certain Welded Carbon Steel Pipes and Tubes From Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011) and accompanying Issues and Decision Memorandum at n. 14; see also *Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010) and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Pasta From Italy: Notice of Final Results of the Thirteenth Antidumping Duty Administrative Review*, 75 FR 81212 (December 27, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁹ See *Rebar from Turkey* at Comment 2 (declining to apply a quarterly costing methodology when eight out of the ten highest volume CONNUMs did not meet the 25 percent threshold). Compare *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 75 FR 18788, 18791 (April 13, 2010) (applying the quarterly-costing methodology when "the percentage difference between the high and low quarterly COM clearly exceeded the 25 percent threshold for four of five control numbers (CONNUMs) sold in the home market and all five CONNUMs sold in the United States") unchanged in *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 75 FR 64696 (October 20, 2010).

⁷⁰ See Memorandum labeled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Power Steel Co., Ltd., dated July 20, 2017. We note that, despite the petitioners' contention that Power Steel's cost calculation methodology precludes an analysis of quarterly cost changes, we find that Power Steel's cost methodology serves as a reliable basis for calculating quarterly costs because Power Steel's quarterly billet cost calculation methodology reflected both quarterly consumption, quarterly purchases, and quarterly beginning and ending inventory balances.

⁷¹ See *supra* footnotes 12 and 13 and accompanying text. See also *Welded Stainless Steel Pipes from Korea* at Comment 1 (explaining "we analyzed, on a product-specific basis, the extent to which the total COM changed during the POR").

⁷² See *SeAH Steel*, 704 F. Supp. 2d at 1363 (stating "importantly, however, Commerce computed (*on a CONNUM specific basis*) the percentage difference between the low quarterly average cost of manufacture and the high quarterly cost of manufacture") (emphasis added).

between sales and costs, and we have continued to apply our normal methodology of calculating a POI weighted-average cost.

Comment 3: Whether to Incorporate Findings from the Department’s Cost Verification in the Final Determination for Power Steel

Petitioners’ Case Brief:

- The Department should adjust Power Steel’s submitted direct materials costs to include freight charges which had been reported in variable overhead incorrectly.⁷³
- The Department should adjust Power Steel’s submitted scrap offset to ensure it only includes scrap generated by the production of the merchandise under consideration during the POI.⁷⁴
- The Department should use the supporting information obtained during the cost verification to calculate CONNUM-specific subcontracting charges rather than rely on the estimates it calculated for the Preliminary Determination.⁷⁵

Power Steel did not comment on these issues.

Department’s Position:

We agree with the petitioners that it is appropriate to make the changes noted in the cost verification report. Accordingly, we have adjusted Power Steel’s submitted costs to reflect both our verification findings and the minor corrections presented at the start of the cost verification.

Comment 4: Whether to Rely on Adverse Facts Available for Lo-Toun’s Rate

Lo-Toun’s Case Brief:

- The AD rates calculated for Power Steel and Lo-Toun in the *Preliminary Determination* were significantly lower than the AD rate alleged in the Petition, therefore “the Department should not automatically assign the very high Petition AD rate to Lo-Toun as adverse facts available.”⁷⁶
- “Lo-Toun has at all times cooperated to the best of its ability in these proceedings prior to its withdrawal.”⁷⁷
- “The Department should instead review all information on the record and assign to Lo-Toun a final AD rate based on actual calculated AD margins...The Department should simply use Lo-Toun’s preliminary AD rate of 29.47 percent as its final AD rate.”⁷⁸

⁷³ See Petitioners’ Case Brief at 4.

⁷⁴ *Id.* at 4-5.

⁷⁵ *Id.* at 5.

⁷⁶ See Lo-Toun’s Case Brief at 3 (citing, *e.g.*, Memorandum from Gary Taverman to Ronald K. Lorentzen “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 Italy” dated March 29, 2017 at Comment 4).

⁷⁷ See Lo-Toun’s Case Brief at 3-4.

⁷⁸ *Id.*

Petitioners' Rebuttal Brief:

- The Department should determine Lo-Toun's final AD margin based on adverse facts available,⁷⁹ given that Lo-Toun withdrew from participation in the review and, thus, prevented the agency from verifying the company's questionnaire responses.⁸⁰
- As in past trade remedy proceedings,⁸¹ the Department should resort to the use of the facts available with adverse inferences because Lo-Toun's responses could not be verified.⁸²
- In investigations where the Department determines the margin on the basis of "total" adverse inferences, "the agency generally relies on the petition rate {84.66% }."⁸³

Department's Position

As discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we agree with the petitioners and determine that the application of facts available with an adverse inference is warranted for Lo-Toun in the final determination.

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record or a party withholds information, significantly impedes the proceeding, or provides information that cannot be verified as provided in section 782(i) of the Act. The Department may use inferences adverse to the interests of a party in applying facts available where a party fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information, pursuant to section 776(b) of the Act. By withdrawing from further participation in the investigation, and by preventing the Department from verifying its information, Lo-Toun significantly impeded the investigation and rendered information previously submitted unverifiable.⁸⁴ Furthermore, Lo-Toun's withdrawal from the investigation demonstrates its failure to cooperate by not acting to the best of its ability to comply with a request for information.⁸⁵ As the petitioners note, the Department has previously relied on the use of facts available with adverse inferences when companies failed to allow the Department to verify its information.⁸⁶

Therefore, for the reasons stated above, the Department is relying on facts otherwise available with an adverse inference in determining Lo-Toun's estimated weighted-average dumping margin in this final determination. Section 776(b)(2) of the Act states that an adverse inference

⁷⁹ See sections 776(a)(2)(D) and 776(b) of the Act.

⁸⁰ See Petitioners' Case Brief.

⁸¹ See Petitioners' Case Brief at 3 (citing, e.g., *Galvanized Steel Wire from the People's Republic of China*, 77 FR 17418 (March 26, 2012) (*Galvanized Steel Wire from China*) at 3-4; see also *Certain Lined Paper Products from Indonesia*, 71 FR 47171 (August 16, 2006) (*Paper Products from Indonesia*) and the accompanying Issues and Decision Memorandum at Comment 6.

⁸² See Petitioners' Case Brief at 3.

⁸³ *Id.* (citing, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China*, 75 FR 59217 (September 27, 2010) (*Coated Paper from China*); see also *Paper Products from Indonesia* and the accompanying Issues and Decision Memorandum at Comment 6).

⁸⁴ See sections 776(a)(2)(C) – (D) of the Act.

⁸⁵ See section 776(b) of the Act.

⁸⁶ See, e.g., *Galvanized Steel Wire from China*; see also *Paper Products from Indonesia*.

may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.⁸⁷ As noted above, in an investigation, the Department's general practice with respect to the assignment of adverse rates is to assign the higher of the highest petition rate or the highest calculated dumping margin of any respondent in the investigation.⁸⁸ However, the Department is unable to corroborate the highest petition rate based on the facts and circumstances in this investigation. While the petitioners argue to apply the petition rate of 84.66 percent to Lo-Toun, as described above, the Department was unable to corroborate that rate and, accordingly, is not relying on it as AFA. In attempting to corroborate that rate, the Department compared the petition rate of 84.66 to Power Steel's highest transaction-specific dumping margin and found the petition rate to be significantly higher than the highest calculated transaction specific dumping margin for Power Steel (*i.e.*, 32.01 percent). Therefore, the Department determines to base the AFA rate for Lo-Toun on Power Steel's information.

The Department disagrees with Lo-Toun that the Department should use the rate the Department assigned to Lo-Toun in the *Preliminary Determination*. The SAA states 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."⁸⁹ In this case, the Department has done so by selecting the highest transaction-specific margin of the cooperating mandatory respondent.⁹⁰ Because this rate is not secondary information, but rather is based on information obtained in the course of this investigation, the Department need not corroborate this rate pursuant to section 776(c) of the Act.

⁸⁷ See also 19 CFR 351.308(c).

⁸⁸ See, *e.g.*, *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 20.

⁸⁹ See SAA at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007); see also *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at page 4, unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁹⁰ See *Uncoated Paper from Indonesia* at Comment 1.

VIII. 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

7/20/2017

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance