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Administrative Review
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December 10, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Taiwan; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on steel concrete reinforcing bar (rebar) from Taiwan.[1] This review covers one company. The period of review (POR) is March 7, 2017 through September 30, 2018. We preliminarily find that mandatory respondent, Power Steel Co., Ltd. (Power Steel), made sales of the subject merchandise in the United States at prices below normal value. The estimated weighted-average dumping margins are shown in the "Preliminary Results" section of the accompanying *Federal Register* notice. We are conducting this administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

II. BACKGROUND

Pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b), on October 22 and October 26, 2018, Power Steel and Lo-Toun Steel and Iron Works Co., Ltd. (Lo-Toun Steel) each requested

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 63615 (December 11, 2018) (*Initiation Notice*).

an administrative review of the antidumping duty order on rebar from Taiwan.[2] On October 31, 2018, the petitioner submitted a request to review Power Steel.[3]

On December 11, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review of the antidumping duty order on rebar from Taiwan, covering Power Steel and Lo-Toun Steel.[4] In the "Respondent Selection" section of the *Initiation Notice*, Commerce stated that, if necessary, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of rebar from Taiwan during the POR.[5] Because there were only two companies for which reviews were requested, on December, 18, 2019, we issued the standard antidumping duty questionnaire to Power Steel and Lo-Toun Steel.[6] On January 8, 2019, Lo-Toun Steel submitted a request to be excluded as mandatory respondent.[7] On February 15, 2019, Lo-Toun Steel withdrew its self-request for an administrative review.[8]

Between February 21 and October 29, 2019, Power Steel submitted timely responses to Commerce's original and supplemental questionnaires.[9] On September 19, 2019, the petitioner submitted deficiency comments on Power Steel's sections A-D supplemental questionnaire responses.[10]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[11]

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[2] *See* Power Steel's Letter, "Steel Concrete Reinforcing Bar from Taiwan: Request for Administrative Review," dated October 22, 2018; and Lo-Toun Steel's Letter, "Steel Concrete Reinforcing Bar from Taiwan: Administrative Review Request on behalf of Lo-Toun," dated October 26, 2018.

[3] The petitioner is the Rebar Trade Action Coalition (RTAC), which is comprised of Bayou Steel Group, Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc. *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Taiwan: Request for Administrative Review," dated October 31, 2018.

[4] *See Initiation Notice*, 83 FR at 63615

[5] *Id.*

[6] *See* Commerce's Letter, "Antidumping Duty Questionnaire," dated December 18, 2019 (Initial AD Questionnaire).

[7] *See* Lo-Toun Steel's Letter, "Request to Reconsider Selection of Lo-Toun as Mandatory Respondent," dated January 8, 2019.

[8] *See* Lo-Toun Steel's Letter, "Withdrawal of Request for Administrative Review on behalf of Lo-Toun," dated February 15, 2019. No other party requested a review of Lo-Toun Steel.

[9] *See* Power Steel's February 21, 2019 Section A Questionnaire Response (Power Steel's February 21, 2019 AQR); *see also* Power Steel's March 14, 2019 Sections BC Questionnaire Response (Power Steel's March 14, 2019 BCQR); Power Steel's March 19, 2019 Section D Questionnaire Response (Power Steel's March 19, 2019 DQR); Power Steel's September 3, 2019 Supplemental Section A-C Response (Power Steel's September 3, 2019 SQR); Power Steel's September 10, 2019 Supplemental Section D Response; and Power Steel's October 29, 2019 Second Supplemental Section D Response.

[10] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Taiwan: Deficiency Comments on Power Steel's Supplemental Questionnaire Responses and PMS Adjustment Methodology," dated September 19, 2019.

[11] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

On August 7 and October 8, 2019, Commerce postponed the preliminary results of this review.[12] Accordingly, the deadline for these preliminary results is December 10, 2019.

On April 9, 2019, the petitioner submitted an allegation, supported with factual information, that a particular market situation (PMS) exists in Taiwan such that the cost of production of rebar does not reflect the ordinary course of trade during the POR.[13] On August 6, 2019, Commerce initiated on the petitioner's allegation to determine whether a PMS exists in Taiwan.[14]

On November 12, 2019, the petitioner submitted new factual information, pursuant to 19 CFR 351.301(c)(5) and 19 CFR 351.102(b)(21)(v).[15] Pursuant to 19 CFR 351.301(c)(5)(ii), Commerce issued a memorandum accepting the submission and establishing a deadline to submit rebuttal, clarification, or correction information.[16] Commerce did not receive any submission of such information from interested parties. On November 25, 2019, the petitioner submitted pre-preliminary comments.[17]

III. SCOPE OF THE ORDER

The merchandise subject to this review is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (*e.g.*, mill mark, size, or grade) and which has been subjected to an elongation test.

The subject merchandise includes rebar that has been further processed in the subject countries or a third country, including but not limited to cutting, grinding, galvanizing, painting, coating, or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the rebar. Specifically excluded are plain rounds (*i.e.*, nondeformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test.

The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001,

[12] *See* Memorandum, "Steel Concrete Reinforcing Bar from Taiwan: Extension of Deadline for the Preliminary Results of the Review," dated August 7, 2019; and Memorandum, "Steel Concrete Reinforcing Bar from Taiwan: Second Extension of Deadline for the Preliminary Results of the Review," dated October 8, 2019.
[13] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Taiwan: Particular Market Situation Allegation" dated April 8, 2019.
[14] *See* Memorandum, "Allegation of a Particular Market Situation in the 2017-18 Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Taiwan," dated August 6, 2019.
[15] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Taiwan: Submission of Other Factual Information - CV Profit and Selling Expense Information," dated November 12, 2019.
[16] *See* Memorandum, "Administrative Review of Steel Concrete Reinforcing Bar from Taiwan: Accepting Petitioner's Submission of Factual Information," dated November 14, 2019.
[17] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Taiwan: Comments in Advance of the Preliminary Determination," dated November 25, 2019.

7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6030, 7227.90.6035, 7227.90.6040, 7228.20.1000, and 7228.60.6000.

HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Pursuant to 19 CFR 351.213(d), based on the timely withdrawal of Lo-Toun's self-request for review, we are partially rescinding this administrative review with respect to Lo-Toun Steel. Accordingly, the sole company subject to this administrative review is Power Steel.

V. COMPARISONS TO NORMAL VALUE

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), to determine whether Power Steel's sales of rebar from Taiwan were made in the United States at less than normal value, we compared the export price (EP) to the normal value (NV) as described in the "Export Price" and "Normal Value" sections of this notice.

A. Product Comparisons

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Order" section of this notice, above (*i.e.*, the foreign like product), that were in the ordinary course of trade for purposes of determining an appropriate normal value for comparison to the EP. In order to define products sold in the home and U.S. markets, we relied on six physical characteristics: type of steel, minimum specified yield strength, coating, martensitic, nominal diameter, and form. If contemporaneous home market sales were reported for merchandise which was identical to subject merchandise sold in the U.S. market, then we calculated NV based on the monthly weighted-average home market prices of all such sales. If there were no contemporaneous home market sales of identical merchandise, then we identified home market sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR 351.414(e), and calculated NV based on the monthly weighted-average home market prices of all such sales. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market, we calculated NV based on constructed value (CV).

B. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average or A-to-A method) unless Commerce determines that another method is appropriate in a particular situation. In antidumping duty investigations, Commerce examines whether to compare weighted-average NVs with transaction-specific EPs (or CEPs) (the average-to-transaction or A-to-T method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of

administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.[18]

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of A-to-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[19] Commerce 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 administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-to-A method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported or consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip) 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 POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EPs or CEPs and NVs 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of

[18] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

[19] *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); *see also 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 (October 13, 2015).

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 means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test groups pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large threshold (*i.e.*, 0.8).

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 account 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 A-to-T method to all sales as an alternative to the A-to-A 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 A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen's *d* test. 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 A-to-A 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, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative 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 A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative 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 margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.[20]

[20] The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g.*, *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

C. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce finds that 97.00 percent of the value of Power Steel's U.S. sales pass the Cohen's *d* test,[21] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-to-A method cannot account for such differences, because the margin moves across the *de minimis* threshold between the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using an alternative comparison method applying the A-to-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-to-T method to all U.S. sales to calculate the weighted-average dumping margin for Power Steel.[22]

VI. DATE OF SALE

According to 19 CFR 351.401(i), Commerce will normally use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that Commerce may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. Furthermore, if the shipment date precedes the invoice date, then Commerce will use the shipment date as the date of sale.[23]

For U.S. sales, Power Steel reported its date of sale as the invoice date.[24] Specifically, Power Steel reported that the invoice is created on the same day as it files an export declaration to Taiwanese customs.[25] The export declaration contains the finalized quantity and value of the shipment and is filed prior to the date of shipment.[26] Therefore, in accordance with our normal practice, in the absence of information indicating a different date of sale better reflects the date on which the material terms of sale are established, we are using invoice date as date of sale.

For its home market sales, Power Steel reported its date of sale as the value-added tax (VAT) invoice date.[27] For most home market sales, the VAT invoice date occurs on the date of shipment.[28] However, for certain sales to construction company customers, the VAT invoice date is between 5 to 90 days after the shipment date, once Power Steel's customer has examined and accepted the merchandise.[29] Although Power Steel has demonstrated that the material terms

[21] *See* Memorandum, "Analysis for the Preliminary Results of the First Administrative Review of Steel Concrete Reinforcing Bar from Taiwan for Power Steel Co., Ltd.," dated concurrently with this memorandum (Power Steel's Preliminary Analysis Memorandum), at 5-6.
[22] *Id*.
[23] *See 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 IDM at Comment 11; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.
[24] *See* Power Steel's February 21, 2019 AQR at 16.
[25] *See* Power Steel's September 3, 2019 SQR at 1.
[26] *Id*.
[27] *See* Power Steel's March 14, 2019 BQR at 20.
[28] *Id.*
[29] *See* Power Steel's September 3, 2019 SQR at 1.

of sale are subject to change between the purchase order and the VAT invoice date, there is no evidence that the terms of sale continue to change after the merchandise has shipped. Rather, Power Steel's sales documents indicate that the quantity and unit selling price are finalized in the shipping list, on the date of shipment.[30] Therefore, because the record demonstrates that the material terms of sale are finalized on the earlier of the VAT invoice or shipment date, in accordance with 19 CFR 351.401(i), we are preliminarily relying on the earlier of the VAT invoice or shipment date as Power Steel's home market date of sale.

VII. EXPORT PRICE

In accordance with section 772(a) of the Act, "the term 'export price' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." For all sales made by Power Steel, we used EP on the price at which merchandise under consideration was sold to the first unaffiliated purchaser in the United States.[31] Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for movement expenses: domestic inland freight, domestic brokerage and handling, international freight, international brokerage and handling, U.S. duties, and credit and bank charges.[32]

A. Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962, as amended,[33] and issued Proclamation 9705 that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that the Secretary assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties . . ." Therefore, we find that the analysis here depends on whether section 232 duties constitute "United States import duties," and whether the duties are "included in such price."

The Court of Appeals for the Federal Circuit (CAFC) has previously considered whether certain types of duties constitute "United States import duties" for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce's determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.[34]

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[30] *Id.* at Supp 3-2-1, Supp 3-2-2.
[31] *See* Power Steel's March 14, 2019 CQR at 9 and Exhibit C-2.
[32] *Id.* at Exhibit C-2.
[33] *See* 19 U.S.C. § 1862.
[34] *See Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

Having acknowledged Commerce's analysis of the legislative history to the Antidumping Act of 1921, which "referred to 'United States import duties' as normal customs duties and referred to antidumping duties as 'special dumping duties' and that 'special dumping duties' were distinguished and treated differently from normal customs duties," the CAFC in *Wheatland* agreed that "Congress did not intend all duties to be considered 'United States import duties.'"[35]

The CAFC then found reasonable Commerce's analysis that section 201 duties were more akin to antidumping duties than "ordinary customs duties."[36] In comparing section 201 duties with antidumping duties, the CAFC found that: (1) "{l}ike antidumping duties, {section} 201 duties are remedial duties that provide relief from the adverse effects of imports;" (2) "{n}ormal customs duties, in contrast, have no remedial purpose;" (3) "antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;" and (4) "{section} 201 duties are like antidumping duties . . . because they provide only temporary relief from the injurious effects of imports," whereas normal customs duties "have no termination provision, and are permanent unless modified by Congress."[37] In sustaining Commerce's decision regarding section 201 duties in *Wheatland*, the CAFC also held that "{t}o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice."[38]

Section 232 duties are not akin to antidumping or 201 duties. Proclamation 9705 states that it "is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the *national security* . . ."[39] The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with "the effects on the *national security* of imports of the article."[40] The particular national security risk spelled out in proclamation 9705 is that the "industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs—a situation that is fundamentally inconsistent with the safety and security of the American people."[41] In other words, section 232 duties are focused on addressing national security prerogatives, separate and apart from any

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[35] *Id.* at 1361.
[36] *Id.* at 1362.
[37] *Id.* at 1362-63.
[38] *Id.* at 1365.
[39] *See* Proclamation 9705, 83 FR at 11627 (emphasis added); Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) ("In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security"); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).
[40] *See* section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); *see also* section 232(a) of the Trade Expansion Act of 1962 (explaining that "{n}o action shall be taken . . . to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security").
[41] *See* Proclamation 9705, 83 FR at 11627.

function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Even more critical to this point is that the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.[42] The Annex to Proclamation 9740 refers to section 232 duties as "ordinary" customs duties, and it also states that "{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein." Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that AD duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

We have determined that section 232 duties should be treated as "United States import duties" for purposes of section 772(c)(2)(A) of the Act — and thereby as "U.S. Customs duties," which are deducted from U.S. price.

VIII. NORMAL VALUE

A. Home Market Viability as Comparison Market

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 five percent or more of the aggregate volume of U.S. sales), we compared the volume of Power Steel's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act.[43] Based on this comparison, we determined that Power Steel had a viable home market during the POR.[44] Consequently, we based NV on home market sales to unaffiliated purchasers made in usual quantities in the ordinary course of trade.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.[45] Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[46] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

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[42] *See* Proclamations 9705, 83 FR at 11627; Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 ("All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

[43] *See* Power Steel's February 21, 2019 AQR at 2; and Power Steel's March 14, 2019 BQR at 1.

[44] *See* Power Steel's February 21, 2019 AQR at 2; and Power Steel's March 14, 2019 BQR at 1.

[45] *See* section 773(a)(7)(A) of the Act.

[46] *See* 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.[47] 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, 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),[48] we consider the starting prices to be the gross unit prices less all discounts and rebates. 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.[49]

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market to the same LOT as the EP or CEP, Commerce 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 an 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), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[50] In this review, Commerce obtained information from Power Steel regarding the selling activities involved in making its reported home market and U.S .sales, including a description of the selling activities performed by Power Steel for each channel of distribution.[51] Selling activities can generally be grouped into five categories for our analysis: Provision of Sales Support,[52] Provision of Training Services,[53] Provision of Technical Support,[54] Provision of Logistical Services,[55] and Performance of Sales Related Administrative Activities.[56]

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[47] *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 IDM at Comment 7.

[48] 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 (SG&A) expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

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

[50] *See, e.g.*, *OJ from Brazil* IDM at Comment 7.

[51] Commerce's Initial AD Questionnaire requested quantitative and qualitative information regarding Power Steel's selling activities. *See* Initial AD Questionnaire at A-7-9, I-11-12.

[52] The Provision of Sales Support can include: sales forecasting, strategic/economic planning, advertising, sales promotion, sales/marketing support, market research, and other related activities. *See* Initial AD Questionnaire at A-15.

[53] The Provision of Training Services can include: personnel training/exchange, distributer/dealer training, and other related activities. *Id.*

[54] The Provision of Technical Support can include: engineering services, technical assistance, and other related activities. *Id.*

[55] The Provision of Logistical Services can include: inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities. *Id.*

[56] The Performance of Sales Related Administrative Activities can include: order input/processing, rebate programs, warranty service, and other related activities. *Id.*

In the home market, Power Steel reported that it made sales through three channels of distribution, but that the "sales process is generally the same for all three channels of distributions, with some minor variations."[57] Power Steel reported that it "generally provided limited sales activities and services" for all three channels of distribution.[58] Specifically, Power Steel reported performing the following sales activities for all sales in the home market: provision of sales support at low intensity; provision of logistical support at low intensity; and performance of sales related administrative activities at low intensity.[59] Based on our examination of Power Steel's submissions, we preliminarily find that the record does not support Power Steel's assertion that its home market sales were made at three different LOTs. Therefore, we preliminarily find that Power Steel's sales in the home market are made at one LOT.

In the U.S., Power Steel reported that it made sales through one channel of distribution: through traders or wholesalers.[60] For all sales in the U.S. market, Power Steel indicated that it provided logistical support at low intensity and performance of sales related administrative activities at low intensity.[61] Accordingly, we preliminarily find that Power Steel's U.S. sales were made at one LOT.

For sales in the home market and U.S. market, Power Steel reported that "the prices charged […] do not vary depending on the channel of distribution.[62] We compared the selling activities at the U.S. LOT with the selling activities at the home market LOT and found that the levels of trade in the U.S. and home markets were at the same or similar levels of intensity in the home market and the U.S. market, irrespective of distribution channel.[63] As a result, pursuant to section 773(a)(7)(A) of the Act, no LOT adjustment is warranted.

C. Affiliated Party Transactions and the Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.[64] Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade.[65]

[57] *See* Power Steel's February 21, 2019 AQR at 14.
[58] *Id.* at 11.
[59] *Id.* at Exhibit A-5(2).
[60] *Id.* at Exhibit A-5(1).
[61] *Id.* at Exhibit A-5(1).
[62] *Id.* at 12.
[63] *Id.* at Exhibit A-5(1)-(2).
[64] *See* 19 CFR 351.403(c).
[65] *See China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

During the POR, Power Steel reported that it did not make any sales to affiliated parties in the home market.[66] Accordingly, we did not test whether sales were made at arm's-length prices.

D. Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act[67] requires Commerce to request CV and COP information from respondent companies in all antidumping duty proceedings.[68] Accordingly, Commerce requested this information from Power Steel.

1. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. 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 by examining two primary criteria: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.[69]

2. Significance of Cost Changes

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.[70] In the instant case, record evidence shows that Power Steel did not experience significant cost changes (*i.e.*, changes that exceeded 37.5 percent over the 18 month period) between the high and low quarterly COM during the POR.[71] Therefore, we determined that our quarterly cost methodology is not warranted and, therefore, we are applying our standard methodology of using annual costs based on Power Steel's reported data.

[66] *See* Power Steel's March 14, 2019 BQR at 5.
[67] *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015); and *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).
[68] *Id.*, 80 FR at 46794-95.
[69] *See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010), and accompanying IDM at Comment 6; and *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 IDM at Comment 4.
[70] *See SSPC from Belgium* IDM at Comment 4.
[71] *See* Power Steel's Preliminary Analysis Memorandum.

3. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Power Steel's cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses, interest expenses, and home market packing costs. We relied on the COP data submitted by Power Steel.[72]

4. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales by the respondent had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act.[73] We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable billing adjustments, discounts and rebates, movement charges, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.[74]

5. Results of the COP Test

On a product-specific basis, pursuant to 773(b) of the Act, we compared Power Steel's COP values to their respective home market prices, net of applicable billing adjustments, movement charges, selling expenses, and packing, to determine whether home market sales had been made at prices below COP. In determining whether to disregard Power Steel 's home market sales made at prices below COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with section 773(b) of the Act, where less than 20 percent of a given product was sold at prices less than the COP, we did not disregard below-cost sales of that product, because the below-cost sales were not made in "substantial quantities." However, we disregarded the below-cost sales that: (1) have been made within an extended period of time (within six months to one year) in substantial quantities (20 percent or more), as defined by sections 773(b)(2)(B) and (C) of the Act; and (2) were not made at prices which permit recovery of all costs within a reasonable period of time, as prescribed by section 773(b)(2)(D) of the Act.

Accordingly, we have preliminarily determined to disregard certain home market sales of Power Steel as outside of the ordinary course of trade in the determination of NV because: (1) 20 percent or more of a given product was sold at prices less than COP; and (2) based on our comparison of prices to the weighted-average COP for the POR of the sold product, they were

[72] *See* Power Steel's March 19, 2019 DQR.
[73] *See* Power Steel's Preliminary Analysis Memorandum.
[74] *Id.*

made at prices that would not permit recovery of all costs within a reasonable period of time. We used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Particular Market Situation

The petitioner submitted an allegation that a PMS exists in Taiwan such that the COPs of rebar in Taiwan are distorted, and thus warrants an adjustment to the respondents' COP.

Section 504 of the TPEA amended section 771(15) of the Tariff Act of 1930, as amended (the Act) by adding an additional circumstance that Commerce will consider to be outside the ordinary course of trade: "{s}ituations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price." The TPEA also provided Commerce with discretion to "use another calculation methodology under this subtitle or any other calculation methodology" when a PMS exists "such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."[75] The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."[76]

For these preliminary results, Commerce finds that a PMS did not exist in Taiwan during the POR concerning the costs of primary inputs as a component of the COP.[77]

F. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the price Power Steel reported for home market sales to unaffiliated customers. We also made deductions from NV, consistent with section 773(a)(6)(B)(ii) of the Act, for movement expenses, including inland freight. We made these adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales, including credit and bank charges, and adding U.S. direct selling expenses to NV, including credit expenses and bank charges. We also made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act.[78]

When comparing U.S. sale prices with NVs based on comparison market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in 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 products and the subject merchandise.[79]

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[75] *See* section 773(e) of the Act.
[76] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.
[77] For a complete discussion, *see* Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from Taiwan: Decisions on Particular Market Situation Allegations," dated concurrently with this memorandum.
[78] *See* Power Steel's Preliminary Analysis Memorandum.
[79] *See* 19 CFR 351.411(b).

IX. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at http://enforcement.trade.gov/exchange/index.html.

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

12/10/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance