



A-583-858  
Administrative Review  
POR: 11/14/2016 - 4/30/2018  
**Public Document**  
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December 20, 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: Issues and Decision Memorandum for the Final Results of the  
2016-2018 Administrative Review of the Antidumping Duty Order  
on Certain Carbon and Alloy Steel Cut-To-Length Plate from  
Taiwan

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments of the interested parties in the 2016-2018 administrative review of the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from Taiwan. As a result of our analysis, we made no changes to the margin calculations for Shang Chen Steel Co., Ltd. (SCS), the sole mandatory respondent with reviewable transactions in this administrative review. We recommend that you approve the positions described in the "Discussion of Issues" section of this memorandum. Below is a complete list of issues in this administrative review for which we received comments from interested parties:

Comment 1: Issues with SCS's Sales Reconciliation

Comment 2: Issues with SCS's Reported Entry Data for U.S. Sales

Comment 3: Actions to Remedy SCS's Alleged Reporting Inaccuracies



## II. BACKGROUND

On July 17, 2019, Commerce published the *Preliminary Results* of this administrative review.<sup>1</sup> The period of review (POR) is November 14, 2016 through April 30, 2018.

We invited interested parties to comment on the *Preliminary Results*.<sup>2</sup> On August 16, 2019, we received a case brief from ArcelorMittal USA LLC (the petitioner).<sup>3</sup> On August 21, 2019, we received a rebuttal brief from SCS.<sup>4</sup> After analyzing the comments received, we made no changes to the weighted-average dumping margin for SCS from that presented in the *Preliminary Results*; however, we did make certain changes to SCS's reported entered value, as discussed below.

## III. MARGIN CALCULATIONS

For SCS, we calculated export price and normal value using the same methodology stated in the *Preliminary Results*, except that we made adjustments to the entered values for specific sequence numbers reported in SCS's U.S. sales listing. *See* Comment 3.

## IV. DISCUSSION OF THE ISSUES

### Comment 1: Issues with SCS's Sales Reconciliation

#### *Petitioner's Case Brief*

- SCS "removed" third country sales of subject merchandise from its sales reconciliation, rendering it unreliable. Thus, because of these issues, Commerce should rely on total adverse facts available (AFA) to calculate SCS's margin for the purposes of these final results.<sup>5</sup>
- Commerce provided SCS with opportunities to correct errors in its sales reconciliation. As a result, SCS removed sales of CTL plate to third countries from its reconciliation, resulting in the revised sales databases reconciling with SCS's section D questionnaire response.<sup>6</sup> However, this revision did not rectify SCS's error because SCS defined "subject merchandise" differently in its section D response and sales reconciliation.

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<sup>1</sup> *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2018*, 84 FR 34127 (July 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> *Id.* 84 FR at 34128.

<sup>3</sup> *See* Petitioner's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Petitioner's Case Brief for Shang Chen Steel Co., Ltd.," dated August 16, 2019. The petitioner subsequently refiled this document at Commerce's request to treat as public information certain information which had already been disclosed as such. *See* Petitioner's Letter, "Carbon and Alloy Steel Cut-to-Length (CTL) Plate from Taiwan: Resubmission of Case Brief regarding Shang Chen Steel Co., Ltd.," dated October 7, 2019 (Petitioner's Case Brief).

<sup>4</sup> *See* SCS's Letter, "Rebuttal Brief of Shang Chen Steel Co., Ltd.," dated August 21, 2019 (SCS's Rebuttal Brief).

<sup>5</sup> *See* Petitioner's Case Brief at 3 (citing *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 81 FR 35320 (June 2, 2016) and accompanying Issues and Decision Memorandum (IDM) at Comment 1).

<sup>6</sup> *Id.* at 4 (citing SCS's July 3, 2019 Fifth Supplemental Questionnaire Response (SCS July 3, 2019 SQR) at 2).

- The quantity of third country sales SCS removed from the sales reconciliation exceed the amount of CTL plate SCS reported producing during the POR in its section D response. Thus, these products could not have been produced by SCS in Taiwan. However, SCS did not report selling CTL plate produced by other manufacturers during the POR.
- Alternatively, if SCS produced its excluded third country sales in Taiwan, then SCS's reported cost data are inaccurate and incomplete. Because SCS improperly excluded from the reconciliation in-scope CTL plate sold to third countries, SCS used an inaccurate denominator when calculating its unit cost of manufacture (COM). As a result, Commerce should not rely on SCS's reported cost data.<sup>7</sup>
- Additionally, other record evidence undermines the reliability of SCS's sales reconciliation. Specifically, even after SCS removed the third country sales in question from its reconciliation, the U.S. and home market sales quantities shown in the reconciliation do not match the quantities reported in SCS's U.S. and home market databases.<sup>8</sup>
- In the event Commerce chooses not to base SCS's margin on total AFA, it should nonetheless apply partial AFA to increase SCS's reported COM. Specifically, Commerce should apply the adjustment factor, representing the percent of the total sales quantity of subject merchandise which SCS failed to account for in its sales reconciliation,<sup>9</sup> to SCS's reported total COM.<sup>10</sup>

#### *SCS's Rebuttal Brief*

- Petitioner's arguments regarding SCS's sales reconciliations have been fully addressed in SCS's previous submissions.
- A review of SCS's sales reconciliation worksheets shows that the third-country sales figure noted by the petitioner does not reflect sales of in-scope CTL plate products. Instead, that figure reflects sales of merchandise in coils, not subject to this proceeding, rather than CTL plate.<sup>11</sup>
- Therefore, SCS properly excluded these third country sales of coiled products. Consequently, the petitioner's claim that SCS should be penalized for doing so is without merit.<sup>12</sup>

**Commerce's Position:** We disagree that SCS's sales reconciliation is unreliable. The information SCS provided in its supplemental questionnaire response shows that the third country sales SCS excluded from its sales reconciliation are products in coil form.<sup>13</sup> The

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<sup>7</sup> *Id.* at 7-8.

<sup>8</sup> *Id.* at 8-10.

<sup>9</sup> Because the petitioner's proposed adjustment factor is business proprietary information, it cannot be discussed here. See Petitioner's Case Brief at 11.

<sup>10</sup> *Id.* at 10-11.

<sup>11</sup> See SCS's Rebuttal Brief at 2 (citing SCS's March 14, 2019, Third Supplemental Questionnaire Response (SCS March 14, 2019 SQR) at Appendix 2SD-5).

<sup>12</sup> See SCS's Rebuttal Brief at 2-3 (citing *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 69996 (December 16, 2003) (*Butt-Weld Pipe from Taiwan*), and accompanying IDM at Comment 1).

<sup>13</sup> See SCS July 3, 2019 SQR at Exhibit D-18.

language of the scope of this order clearly excludes such merchandise: “{t}he products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products *not in coils...*”<sup>14</sup> Thus, contrary to the petitioner’s claim, these products should not have been included in SCS’s COM.

Moreover, we find no issue with SCS’s reconciliation of the POR quantity of home market and U.S. sales. The quantity figure that the petitioner claims is a “discrepancy” in SCS’s sales reconciliation is the POR quantity of SCS’s sales of CTL plate to all markets, not only sales to the home market and United States. The POR quantity of home market and U.S. sales shown on SCS’s reconciliation worksheet matches the POR quantity of home market and U.S. sales reported in the sales databases without discrepancy.<sup>15</sup> Thus, because there is no error in SCS’s reported sales reconciliation, we find no basis to rely on the facts available to address this issue in calculating SCS’s margin for purposes of the final results.

## **Comment 2: Issues with SCS’s Reported Entry Data for U.S. Sales**

### *Petitioner’s Case Brief*

- Evidence on the record indicates that SCS’s reported U.S. entry data are unreliable. SCS’s failure to provide reliable U.S. entry data significantly impeded this review and underscores SCS’s failure to cooperate with Commerce to the best of its ability such that Commerce should base SCS’s margin on AFA in the final results.
- In response to Commerce’s supplemental questionnaire, SCS provided Commerce with the Customs and Border Protection (CBP) 7501 Form for specific sequence numbers.<sup>16</sup> While information on the CBP 7501 Form demonstrated that SCS reported incorrect entered values for these specific sequence numbers, SCS only revised these reported entered values when Commerce specifically requested that it do so.<sup>17</sup>
- Additionally, evidence on the record indicates that SCS’s reported entry data for other U.S. sales are equally unreliable.<sup>18</sup>
- SCS also failed to submit the electronic version of its revised U.S. sales database until Commerce requested it. SCS’s failure to submit timely the requested information, in the manner Commerce requested, significantly impeded this administrative process.<sup>19</sup>
- SCS reported different product characteristics in the U.S. sales database than shown on the CBP 7501 Form.<sup>20</sup>

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<sup>14</sup> See *Preliminary Results* PDM at “Scope of the Order” (emphasis added).

<sup>15</sup> See SCS’s Rebuttal Brief at Attachment 1; see also SCS March 14, 2019 SQR at Appendix 2SD-5.

<sup>16</sup> See Petitioner’s Case Brief at 12 (citing SCS’s March 28, 2019 Fourth Supplemental Questionnaire Response (SCS March 28, 2019 SQR) at Appendix SC-3-1).

<sup>17</sup> See Petitioner’s Case Brief at 13 (citing SCS July 3, 2019 SQR at 5 and Appendix 2SC-1-1).

<sup>18</sup> *Id.* at 16 – 19. The issues that the petitioner raises regarding SCS’ reported entry data are business proprietary in nature and, thus, cannot be discussed here. See Memorandum, “2016-2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Final Analysis Memorandum,” dated concurrently with this memorandum (BPI Analysis Memorandum) at 1-2, for a discussion of these issues.

<sup>19</sup> See Petitioner’s Case Brief at 13.

<sup>20</sup> *Id.* at 14. Because the issues the petitioner raises are business proprietary in nature, see BPI Analysis

- Commerce relies on the reported entered values to calculate cash deposit rates, and inflated entered values in the denominator of those calculations will result in an understated cash deposit rate.<sup>21</sup>
- Given these issues, Commerce should not rely on SCS's reported entered values in its calculations for the final results. Instead, Commerce should use the programming language in its SAS program to calculate entered values or, in the alternative, assign the lowest entered value SCS reported in its U.S. sales database to all U.S. sales.<sup>22</sup>
- Therefore, if Commerce does not base SCS's margin on total AFA in the final results, it should apply partial AFA to close gaps on the record created by SCS's unreliable reported entered values.<sup>23</sup>

#### *SCS's Rebuttal Brief*

- In response to Commerce's supplemental questionnaire, SCS acknowledged its misreporting of the entered values in question and corrected this error. However, the petitioner has not identified any other transaction with a similarly inflated reported entered value.<sup>24</sup>
- Documents on the record show that SCS reported in the U.S. sales database the per-unit entered values that were actually reported to CBP by the importer of record.
- Petitioner contends that SCS's reported entered values should be rejected because, in a number of cases, the entered values are higher than the gross unit prices reported in SCS's sales database. However, there is no requirement that the importer report entered values that are less than or equal to the gross unit prices reported by the exporter.
- In this case, SCS sold merchandise on a free-on-board Taiwan port basis to an unaffiliated trading company in Taiwan, which in turn exported the product to its Canadian affiliate, and that Canadian company imported the merchandise to the United States.
- Under normal Customs principles, the entered value reported by the Canadian affiliate of the trading company should reflect the price it paid the Taiwan trading company. However, there is no reason to expect that this amount would equal the price that the Taiwan trading company paid SCS. Thus, petitioner's comparison of the price the Taiwan trading company paid to SCS to the entered value is irrelevant.<sup>25</sup>

**Commerce's Position:** We disagree with the petitioner that SCS's reported entered values are unreliable. In response to our supplemental questionnaire, SCS revised certain aberrational entered values it originally reported in its U.S. sales database.<sup>26</sup> However, we do not find that this error, which SCS corrected before the preliminary results, provides a basis to determine that SCS's reported entered values are systemically flawed. Moreover, we disagree that the other

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Memorandum for further discussion.

<sup>21</sup> *Id.* at 12.

<sup>22</sup> *Id.* at 20.

<sup>23</sup> *Id.* at 19-20. The options that the petitioner proposes to apply partial AFA are business proprietary information that cannot be discussed here.

<sup>24</sup> See SCS's Rebuttal Brief at 3-4.

<sup>25</sup> *Id.* at 4-5.

<sup>26</sup> See SCS July 3, 2019 SQR at 2 and Exhibit 2SC-1-1.

issues the petitioner raises with regard to SCS's reported entered values demonstrate that SCS misreported them.<sup>27</sup>

Further, while SCS did not simultaneously submit electronic versions of its revised sales databases with its response to Commerce's supplemental questionnaire, SCS remedied this deficiency at our request on the same date we requested that it do so.<sup>28</sup> Thus, because SCS's revised sales databases have been on the record since April 2, 2019, well before the date of the *Preliminary Results*, we find no basis to determine that SCS impeded this administrative review.

Finally, we disagree with the petitioner's claim that it is appropriate to apply AFA to SCS for the issues with its reported entry data. As discussed in the BPI Analysis Memorandum and also below, we find that the issues identified by the petitioner call into question the data the importer of record provided to CBP.<sup>29</sup> However, we do not find that the evidence on the record shows that any of SCS's reported data is unreliable and, therefore, we find no basis to penalize SCS for the actions of its unaffiliated importer. Thus, we find no basis to apply AFA to SCS for the purposes of these final results. As a result, except as discussed in Comment 3, we continued to rely on SCS's U.S. sales data as reported in our calculations for the final results.

### **Comment 3: Actions to Remedy SCS's Alleged Reporting Inaccuracies**

#### *Petitioner's Case Brief*

- Given the issues in SCS's reporting, discussed in Comment 2, above, Commerce should self-initiate a circumvention inquiry and request that CBP investigate whether SCS's importer is evading AD duties on CTL plate.<sup>30</sup>
- Finally, Commerce should modify its draft liquidation instructions to specify the importer and include other data to ensure that SCS does not evade AD duties.<sup>31</sup>

No other party commented on this issue.

**Commerce's Position:** We agree with the petitioner that there appear to be issues with the CBP 7501 Form on the record of this administrative review. To address these issues, we informed CBP of our concerns regarding the potential evasion of AD duties by SCS's importer.<sup>32</sup> However, we find that there is no evidence on the record to suggest that SCS was involved in

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<sup>27</sup> Because the petitioner's arguments on this issue are business proprietary in nature, *see* BPI Analysis Memorandum at 2 for further discussion. Moreover, we note that, even assuming *arguendo* there were issues with SCS's reported entered values, this would not affect the calculation of SCS's cash deposit rate, as the petitioner argues, because entered value is not used in this calculation. Commerce only uses entered value as the denominator of the calculation of the assessment rate. *See* Comment 3.

<sup>28</sup> *See* SCS's Letter, "Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Response to the Department's April 2 Letter," dated April 2, 2019.

<sup>29</sup> *See* BPI Analysis Memorandum at 2 for further discussion.

<sup>30</sup> *See* Petitioner's Case Brief at 15.

<sup>31</sup> *See* Petitioner's Case Brief at 21-23. The language that the petitioner proposes adding is business proprietary information that cannot be discussed here.

<sup>32</sup> *See* Commerce's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan," dated October 3, 2019.

this potential evasion; moreover, SCS is not affiliated with its importer of record. Thus, we find no basis to penalize SCS for the actions of its unaffiliated importer.

Nonetheless, we modified our calculations to address the inaccurate reporting, and potential duty evasion, of SCS's importer shown on the CBP 7501 Form. Specifically, we revised the calculation of the importer-specific assessment rate in the final margin program for the sales corresponding to the entry shown on the CBP 7501 Form on the record of this proceeding.<sup>33</sup>

Finally, regarding the language the petitioner proposes adding to SCS's draft liquidation instructions, we disagree that this language will achieve the outcome the petitioner seeks. The potential evasion issues the petitioner raises stem from entries of subject merchandise for which cash deposits may not have been collected; therefore, modifying the liquidation instructions in the manner the petitioner proposes in its case brief would have no effect on entries of CTL plate which were not suspended. Consequently, aside from the change to the calculation of the importer-specific assessment rate described above, we made no changes to the language of our draft liquidation instructions for SCS for purposes of these final results.

#### IV. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.

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Agree

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\_\_\_\_\_  
Disagree

X



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Signed by: JEFFREY KESSLER