



A-351-845
Administrative Review
3/22/2016 – 9/30/2017
Public Document
E&C OI: PZ

DATE: July 6, 2018

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: Wendy J. Frankel
Director, U.S. Customs and Border Protection Liaison Unit
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Results of the
2016-2017 Administrative Review of the Antidumping Duty Order
on Certain Hot-Rolled Steel Flat Products from Brazil

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products from Brazil. The review covers six producers and/or exporters of the subject merchandise. Commerce selected one mandatory respondent, Companhia Siderurgica Nacional (CSN), for individual examination. The period of review (POR) is March 22, 2016, through September 30, 2017. Because CSN did not respond to Commerce's questionnaire, we preliminarily find that CSN failed to provide information within the established deadlines, thereby significantly impeding this administrative review. Accordingly, we are preliminarily assigning a margin to CSN based on adverse facts available (AFA).

II. BACKGROUND

In October 2016, Commerce published in the *Federal Register* an AD order on hot-rolled steel from Brazil and six other countries.¹ On October 4, 2017, Commerce published in the *Federal*

¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October



Register a notice of opportunity to request an administrative review of the AD order on hot-rolled steel from Brazil for the period March 22, 2016, through September 30, 2017.²

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in October 2017, Commerce received timely requests to conduct an administrative review from both CSN³ and domestic interested parties in this proceeding.⁴ On December 7, 2017, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for six companies.⁵ On February 13, 2018, we selected CSN as the sole mandatory respondent in this review.⁶ We issued a questionnaire to CSN the same day.⁷ For a description of the events that occurred subsequent to issuance of the questionnaire, *see* “Use of Facts Available,” below.

III. SCOPE OF THE ORDER

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the

3, 2016) (*AD Order*).

² *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 46217 (October 4, 2017).

³ *See* CSN’s Letter, “Re: Hot-Rolled Steel Products from Brazil: Request for Review – 2016/2017 Review Period,” dated October 31, 2017 (CSN Request for Review).

⁴ AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., SSAB Enterprises LLC, and United States Steel Corporation (collectively, domestic interested parties). *See* Domestic Interested Parties’ Letter, “Re: Hot-Rolled Steel Flat Products from Brazil: Request for Administrative Review,” dated October 31, 2017 (Petitioner Request for Review).

⁵ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 57705 (December 7, 2017).

⁶ *See* Memorandum, Antidumping Duty Administrative Review: Hot-Rolled Steel Flat Products from Brazil, dated February 13, 2018 (Respondent Selection Memorandum).

⁷ *See* Commerce Letter, “Re: Request for Information, Antidumping Duty Administrative Review, Companhia Siderurgica Nacional S.A.,” dated February 13, 2018 (AD questionnaire).

product covered by the existing antidumping⁸ or countervailing duty⁹ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), and

(2) where the width and thickness vary for a specific product (e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

⁸ *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

⁹ *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (i.e., hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;¹⁰
- Ball bearing steels;¹¹
- Tool steels;¹² and

¹⁰ For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

¹¹ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

¹² Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent

- Silico-manganese steels;¹³

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

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

IV. APPLICATION OF FACTS AVAILABLE AND ADVERSE INFERENCES

In accordance with sections 776(a) and (b) of the Act, we determine that the use of AFA is appropriate for these preliminary results. Therefore, for the reasons discussed below, we are preliminarily assigning to CSN the dumping margin of 34.28 percent.

A. Use of Facts Available

Section 776(a)(1) and (2) of the Act provide that if necessary information is not available on the record or an interested party: (A) withholds information requested by the Department; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that if an interested party, “promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner,” then Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1)

carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹³ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On February 13, 2018, we issued the AD questionnaire to CSN.¹⁴ In the questionnaire, we established due dates of March 6, 2018, and March 22, 2018, for CSN's responses to section A and sections B through D of the AD questionnaire, respectively. However, CSN failed to respond to section A of the Department's AD questionnaire by the established deadline. On March 7, 2018, CSN filed a withdrawal of its request for review and requested rescission of this review.¹⁵ However, because the domestic interested parties' timely request for this administrative review included CSN, we are continuing to conduct this review of CSN and the other producers and/or exporters for which the petitioners requested a review. On March 15, 2018, CSN notified Commerce that it was withdrawing from participation as a respondent in this review.¹⁶

As noted above, CSN failed to respond to the Commerce's AD questionnaire in this administrative review. As a consequence, we preliminarily find that the necessary information is not available on the record and that CSN withheld information requested by Commerce, failed to provide information by the specified deadlines, and significantly impeded the proceeding.¹⁷ Moreover, because CSN failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available for the preliminary dumping margin of CSN.

B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In applying adverse inferences, Commerce is not required to determine, or to 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. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce 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."¹⁸ Furthermore, Commerce does not require

¹⁴ See AD questionnaire.

¹⁵ See CSN's Letter, "Re: Hot-Rolled Steel Products from Brazil: Withdrawal of Request for Review," dated March 7, 2018.

¹⁶ See CSN's Letter, "Re: Hot-Rolled Steel Products from Brazil: Withdrawal from Participation as a Respondent," dated March 15, 2018.

¹⁷ See sections 776(a)(2)(A), (B), and (C) of the Act.

¹⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (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).

affirmative evidence of bad faith on the part of a respondent before Commerce may make an adverse inference in selecting from the facts available.¹⁹

We preliminarily find that CSN did not act to the best of its ability to comply with Commerce's request for information. CSN requested this administrative review,²⁰ and as a full participant in the underlying antidumping investigation,²¹ CSN was aware of the consequences of its failure to respond within the established deadline.²² Nonetheless, CSN failed to respond to Commerce's AD questionnaire. Therefore, we preliminarily determine that CSN failed to cooperate to the best of its ability in providing the necessary information for Commerce to conduct this administrative review.²³ Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.²⁴

C. Selection and Corroboration of Adverse Facts Available Rate

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.²⁵ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²⁶

As AFA, we are preliminarily assigning to CSN a dumping margin of 34.28 percent, which is the highest rate that we previously assigned to a respondent in a prior segment of this proceeding. Specifically, Commerce assigned to Usinas Siderurgicas de Minas Geraisa (Usiminas), a non-

¹⁹ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27340 (May 19, 1997).

²⁰ See CSN Request for Review.

²¹ See generally, e.g., *AD Order; Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016); and *Certain Hot-Rolled Steel Flat Products from Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 81 FR 15235 (March 22, 2016).

²² See the AD questionnaire cover letter, at 3 ("If the Department does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding . . . {which} may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.").

²³ See *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at 5-6 (applying AFA to the China-wide entity because several respondents that were a part of the China-wide entity did not respond to the Department's quantity and value questionnaire).

²⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (where Commerce applied total AFA because the respondent failed to respond to the questionnaire); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

²⁵ See also 19 CFR 351.308(c).

²⁶ See SAA at 870.

cooperative respondent, a dumping margin of 34.28 percent in the LTFV investigation of this proceeding.²⁷

Section 776(c) of the Act provides that where Commerce relies on secondary information rather than on information obtained during the course of a review, it must corroborate that information using independent sources that are reasonably at its disposal. However, section 776(c) also states that Commerce shall not be required to corroborate any dumping margin applied in a separate segment of the same proceeding. Because we are applying as the AFA rate a dumping margin applied in a prior segment of this proceeding, we are not required to corroborate this margin pursuant to section 776(c)(2) of the Act.

Accordingly, we are preliminary assigning CSN an AFA dumping margin of 34.28 percent.

D. Rate for Non-Selected Companies

The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in calculating a rate for non-examined companies in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an administrative review.²⁸ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents.

Consistent with the Court of Appeals for the Federal Circuit's decision in *Albemarle Corp. v. United States*,²⁹ in this review, we preliminarily determine that a reasonable method for determining the rate for the non-selected companies is to use the dumping margin applied to the sole mandatory respondent (CSN) in this administrative review.³⁰ This is the only dumping margin determined in this review for an individual respondent, and thus, it is appropriate to apply this dumping margin to the five non-selected companies under section 735(c)(5)(B) of the Act. Accordingly, we preliminarily assign to the non-selected companies the dumping margin of 34.28 percent.

²⁷ See AD Order.

²⁸ See, e.g., *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008).

²⁹ See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016).

³⁰ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 17527 (April 20, 2018).

V. CONCLUSION

We recommend applying the above methodology for these preliminary results.

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Agree

Disagree

7/6/2018

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