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**DATE:** October 18, 2018

**MEMORANDUM TO:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**FROM:** Edward Yang  
Acting Director, Office VI  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of the 2017-2018  
Antidumping Duty Administrative Review of Stainless Steel Butt-  
Weld Pipe Fittings from Malaysia

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on stainless steel butt-weld pipe fittings (pipe fittings) from Malaysia, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is February 1, 2017, to January 31, 2018. The administrative review covers one mandatory respondent: Superinox Max Fittings Industry Sdn. Bhd. (Superinox). We preliminarily determine that Superinox made sales of subject merchandise at prices below normal value (NV) during the POR.

## II. BACKGROUND

On February 23, 2001, Commerce published in the *Federal Register* an AD order on pipe fittings from Malaysia.<sup>1</sup> On February 8, 2017, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD Order on pipe fittings from Malaysia.<sup>2</sup> On February 28, 2018, Commerce received a request from Core Pipe Products, Inc., Shaw Alloy Piping Products, LLC, and Taylor Forge Stainless Inc. (the petitioners) for Commerce to conduct an administrative review of Pantech Stainless & Alloy Industries Sdn. Bhd. (Pantech) and

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<sup>1</sup> See *Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines*, 66 FR 11257 (February 23, 2001) (*Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 22 (February 1, 2018) (*Opportunity Notice*).



Superinox Max Fittings Industry Sdn. Bhd. (Superinox).<sup>3</sup> On April 16, 2018, based on the petitioners' timely request for an administrative review, Commerce initiated an AD administrative review of the two companies.<sup>4</sup>

On May 8, 2018, we issued the AD questionnaire to Pantech and Superinox, the two mandatory respondents. On May 29, 2018, the petitioners withdrew their request for administrative review of Pantech.<sup>5</sup>

From April 2018 to July 2018, Commerce made six separate attempts to mail the AD questionnaire to various addresses for Superinox.<sup>6</sup> None of these mailings were successfully delivered, and Commerce received no response to the AD questionnaire from Superinox.

### III. SCOPE OF THE *ORDER*

For purposes of the *Order*, the product covered is butt-weld fittings. Butt-weld fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the *Order* are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the *Order*.

The *Order* does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The butt-weld fittings subject to the *Order* are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

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<sup>3</sup> See Letter from the petitioners, "Stainless Steel Butt-Weld Pipe Fittings from Malaysia: Petitioner's Request for 2017/2018 Administrative Review," dated February 28, 2018 (Petitioners' Review Request).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

<sup>5</sup> See Letter from the petitioners, "Stainless Steel Butt-Weld Pipe Fittings from Malaysia – Petitioners' Withdrawal of Review Request of Pantech," dated May 29, 2018. The three companies that the petitioners did not include in its withdrawal were Overseas International Steel Industry LLC, Overseas Distribution Services Inc., and Oman Fasteners.

<sup>6</sup> See Memorandum, "Delivery of Antidumping Duty Questionnaire to Superinox Max Fittings Industry Sdn. Bhd.," dated August 16, 2018 (Delivery of Questionnaire).

#### **IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW**

As noted in the “Background” section above, the petitioners filed a request for review of Pantech and Superinox on February 28, 2018. Commerce initiated a review on both companies but, on May 29, 2018, the petitioners filed a withdrawal of its request for review for Pantech. As no other party requested a review of this company and in response to the petitioners’ timely filed withdrawal request, we are rescinding the administrative review in part, pursuant to 19 CFR 351.213(d)(1), with respect Pantech.

#### **V. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE**

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>7</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.<sup>8</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>9</sup> However, section 776(c)(1) of the Act does not require corroboration when the information relied upon for adverse facts available (AFA) is derived from the petition, a final determination in the investigation, any previous review under section 751 of the Act or determination under section 753 of the Act, or any other information placed on the record.

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<sup>7</sup> See section 776(b)(1)(B) of the Act.

<sup>8</sup> See also 19 CFR 351.308(c).

<sup>9</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827 (SAA) at 870 (1994).

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. Further, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>10</sup>

### Application of AFA to Superinox

As noted above, the petitioners requested review of Superinox and certified that on February 28, 2018, a copy of its request was served *via* first class mail to Superinox to an address in Penang, Malaysia.<sup>11</sup> Commerce subsequently issued its *Initiation Notice* in the *Federal Register* identifying Superinox as a company subject to the review.<sup>12</sup> Superinox was then selected by Commerce as a mandatory respondent in this administrative review. Accordingly, on May 8, 2018, we sent the AD questionnaire to Superinox *via* Federal Express to the address identified from a Google search.<sup>13</sup> We further note that the Google Maps Street View feature enables us to view images of Superinox’s parent company’s— Tatt Group Berhad (Tatt Group)—building at that address, and that the Tatt Group’s company name is displayed prominently on the building, while Superinox’s Company name is displayed prominently on a sign directly in front of the Tatt Group building and immediately adjacent to the gate to the same facility.<sup>14</sup> Subsequently, Federal Express notified us that they were unable to deliver the package because the “customer was unavailable or {the} business was closed.”<sup>15</sup> On May 17, 2018, we provided Federal Express with an alternative address, which was identified on Superinox’s website as their Human Resources address.<sup>16</sup> Federal Express again informed us that it was unable to deliver the package because the “customer was unavailable or {the} business was closed.”<sup>17</sup>

On May 30, 2018, we called and inquired with the petitioners regarding any information they might possess regarding Superinox’s address.<sup>18</sup> The petitioners provided the address of Tatt Group from Tatt Group’s web site, and alternative address variations for Superinox and Tatt Group from Superinox’ web site, Tatt Group’s Financial Statements, and third-party web sites and other sources.<sup>19</sup> On May 31, 2018, we sent the AD questionnaire *via* Federal Express to the address for Tatt Group’s corporate headquarters and principal place of business, as identified in Tatt Group’s 2016 audited and published financial statements.<sup>20</sup> This alternative address was similar, but not identical, to the address listed in the petitioners’ request for review and the first address to which we mailed the AD questionnaire, which was also listed on Google. For the

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<sup>10</sup> See section 776(d)(3) of the Act.

<sup>11</sup> See Petitioners’ Review Request.

<sup>12</sup> See *Initiation Notice*.

<sup>13</sup> See Delivery of Questionnaire at 1 and Attachment I.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 2 and Attachment II.

<sup>19</sup> See Memorandum, “Telephone Conversation with and E-Mail from Grace W. Kim Regarding Addresses for Superinox Max Fittings Industry Sdn Bhd.,” dated June 8, 2018.

<sup>20</sup> See Delivery of Questionnaire at 2 and Attachment II.

third time, Federal Express informed us that they were unable to deliver the package because the local Federal Express office indicated that the “customer was unavailable or {the} business closed.”<sup>21</sup>

On June 16, 2018, we provided Federal Express with an address for the Tatt Group’s “corporate branch,” as identified in Tatt Group’s 2016 audited and published financial statements.<sup>22</sup> This address was different from any of the addresses mentioned above. Federal Express informed us that they were unable to deliver the package at this address because the local Federal Express office indicated that the “customer was unavailable or {the} business closed.”<sup>23</sup>

Finally, on July 16, 2018, we sent the AD questionnaire *via* Federal Express to the address identified in the petitioner’s service request and an additional address listed on Superinox’s own website.<sup>24</sup> On July 19, 2018, Federal Express notified us that both packages were undeliverable (*i.e.*, “incorrect address - recipient moved”).<sup>25</sup>

Superinox did not respond to the AD questionnaire and has filed nothing on the record for this administrative review.

In accordance with section 776(a)(1) of the Act, Commerce preliminarily determines that the use of facts available is warranted with respect to Superinox, as necessary information is not available on the record. In addition, we find that use of facts available is warranted pursuant to section 776(a)(2)(C) of the Act because Superinox, the only mandatory respondent in this review, significantly impeded the proceeding. When Commerce published the *Initiation Notice* in the *Federal Register* for this review, it provided effective notice as a matter of law to Superinox, and therefore, Superinox knew, or reasonably should have known, that it was subject to an administrative review.<sup>26</sup> Additionally, we mailed the AD questionnaire to four addresses that Superinox and its parent company use in the normal course of business (*e.g.*, the company advertises itself with these addresses in the public domain), including from Superinox’s own website – which remains active – and Superinox’s parent company’s published financial records. Therefore, it appears Superinox has avoided receipt of the questionnaire. These facts demonstrate unreasonable commercial conduct by Superinox, which inhibited Commerce’s ability to administer the antidumping law.<sup>27</sup>

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

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2 and Attachment III.

<sup>25</sup> *Id.*

<sup>26</sup> See *Opportunity Notice*; see also *Initiation Notice*. See also *Suntec Industries Co., Ltd. v. United States*, 951 F.Supp.2d 1341, 1349 (CIT 2013) (“Commerce provided sufficient constructive notice of the AR3 *Initiation* through publication in the Federal Register.”), *aff’d*, 857 F.3d 1363, 1369 (Fed. Cir. 2017) (“The question therefore comes down to whether the Federal Register notice constituted effective notice as a matter of law, to be treated as indistinguishable from actual notice. Like the Court of International Trade, we conclude that the Federal Register notice did constitute notice as a matter of law.”)

<sup>27</sup> See *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2013–2014*, 80 FR 26224 (May 7, 2015) and accompanying Issues and Decision Memorandum at 3-7, unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 39056 (July 8, 2015); see also *Suntec*, 857 F.3d at

We find that Superinox failed to cooperate by not acting to the best of its ability to comply with a request for information by Commerce. Consequently, Commerce has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted pursuant to section 776(b) of the Act. Accordingly, Commerce is assigning to Superinox a margin based on AFA.

#### Selection and Corroboration of Information Used for Superinox as AFA

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 LTFV investigation, a previous administrative review, or any other information placed on the record.<sup>28</sup> 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.<sup>29</sup> Specifically, Commerce's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).<sup>30</sup> Further, under the new section 776(d)(1) and (2) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. Additionally, under section 776(d)(3) of the Act, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

Because the only individually calculated dumping margin in the history of the proceeding is also the all-others rate and is the rate to which Superinox is currently subject, we find that this rate is not sufficient to induce cooperation. The highest dumping margin in the history of the proceeding is the margin alleged in the petition, 60.10 percent.<sup>31</sup> Thus, we selected the highest

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1372 ("A foreign exporter or producer that is expressly named in an antidumping order, and is subject to continuing antidumping duties for the protection of U.S. industry, can reasonably be expected to have knowledge of the established mechanism for regular reviews (upon request) to determine the final amount of duties owed, of the potentially severe consequences of non-participation by a foreign entity from a non-market economy, and of the need to maintain representation to monitor developments.")

<sup>28</sup> See 19 CFR 351.308(c).

<sup>29</sup> See SAA, at 870.

<sup>30</sup> See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.")

<sup>31</sup> See the petitioners' letter, "Certain Stainless Steel Butt-Weld Pipe Fittings from Malaysia," dated December 29, 1999 (the petition). See also *Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines*, 65 FR 4595 (January 31, 2000) (*Initiation Notice*). See also AD Investigation Initiation Checklist: Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines (January 18, 2000) (*Initiation Checklist*). See also Memorandum, "Stainless Steel Butt-Weld Pipe Fittings from Malaysia Administrative Review – Placing of Initiation Checklist on the Record," dated concurrently with this memorandum (Memo Placing Information on Record).

dumping margin alleged in the petition as the AFA rate applicable to Superinox in this administrative review. Accordingly, because the AFA rate applied to Superinox is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable, pursuant to section 776(c) of the Act.

The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>32</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>33</sup>

Because the selected AFA rate is from the petition, we examined information from the time of the underlying investigation. The petitioners’ methodology for calculating export price (EP), normal value (NV), and price-to-price calculations in the petition is discussed in the Initiation Checklist.<sup>34</sup> During our pre-initiation analysis, we examined: (1) the information used as the basis for EP and NV in the petition; (2) the calculations used to derive the alleged margins (39.60 to 60.10 percent); and (3) information from various independent sources provided in the petition.<sup>35</sup> We determine that the highest petition margin of 60.10 percent is reliable, where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition as reflected in the Initiation Checklist. In addition, because we obtained no other information that would cause us to question the validity of the information supporting the calculations provided in the petition, we consider the margin of 60.10 percent to be reliable for purposes of assigning an AFA rate to Superinox in this administrative review.<sup>36</sup>

Additionally, the NV underlying the petition margin of 60.10 percent is based on information for Malaysian producer Kanzen Tetsu.<sup>37</sup> In the investigation, we individually examined Kanzen Tetsu and calculated transaction-specific margins ranging from 0.651 to 240.73 percent.<sup>38</sup> When we compared the price-to-price margins in the petition to the range of transaction-specific margins calculated for Kanzen Tetsu in the investigation, numerous transaction-specific margins calculated for Kanzen Tetsu in the investigation were higher than the highest margin in the petition.<sup>39</sup> As a consequence, we find the 60.10 percent margin from the petition to be relevant to actual Malaysian producers of subject merchandise. Further, as noted above, since the investigation, there have been no completed reviews or calculated margins, nor has any party placed additional data on the record to consider for purposes of corroboration.

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<sup>32</sup> *Id.*; see also 19 CFR 351.308(d).

<sup>33</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>34</sup> See Initiation Checklist at 10-11.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 13.

<sup>37</sup> *Id.* at 10.

<sup>38</sup> See Memo Placing Information on Record.

<sup>39</sup> See the petition, Volume VI at Exhibit AD-ZA-4. See also the Fifth SQR at Exhibit SB4-1.

In sum, Commerce corroborated the AFA rate of 60.10 percent to the extent practicable within the meaning of section 776(c) of the Act. Thus, we preliminarily assigned this AFA rate to the subject merchandise from Superinox.

## VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.



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Agree

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Disagree

10/18/2018

**X**

*James Maeder*

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
Assistant Secretary for Enforcement and Compliance