

**Final Results of Redetermination Pursuant to  
*China Steel Corp. v. United States*  
Consol. Court No. 17-00152 (August 6, 2019)**

**I. Summary**

The U.S. Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *China Steel Corp. v. United States*, Consol. Court No. 17-00152 (August 6, 2019) (*China Steel*). This remand addresses one issue in the antidumping duty investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from Taiwan, specifically, the application of adverse facts available (AFA) with respect to making our difference-in-merchandise adjustment (DIFMER).<sup>1</sup> On November 4, 2019, we released draft remand results (Draft Remand), and provided interested parties an opportunity to comment on the draft.<sup>2</sup> We received comments on the Draft Remand from ArcelorMittal USA (Arcelor).<sup>3</sup> As we explain below, on remand we have followed the Court’s instructions and recalculated a rate for China Steel Corporation (China Steel).

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<sup>1</sup> See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM); see also *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders*, 82 FR 24096 (May 25, 2017) (*Amended Final*), and accompanying Memorandum, “Amended Final Determination of the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Allegation of Ministerial Error for China Steel Corporation” (Amended Final Memorandum).

<sup>2</sup> See Memorandum, “Certain Carbon and Alloy Cut-to-Length Plate from Taiwan: Analysis Memorandum for China Steel Corporation,” dated November 4, 2019 (Draft Calculation Memorandum).

<sup>3</sup> See Arcelor’s Letter, “Certain Carbon and Alloy Cut-to-length Plate from Taiwan – Comments on the Department’s Draft Remand Redetermination in *China Steel Corp. v United States*, Ct. No. 17-00152,” dated November 18, 2019 (Arcelor’s Comments).

## II. Background

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Tariff Act of 1930, as amended (the Act), provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.<sup>4</sup>

In the *Final Determination*, we applied partial AFA to China Steel because: (a) it failed to provide requested information by the established deadlines or in the form and manner requested by Commerce, within the meaning of section 776(a)(2)(B) of the Act; (b) it provided information in its questionnaire responses that we could not verify as accurate because our verification revealed errors and failures in China Steel's cost reporting, within the meaning of section 776(a)(2)(D) of the Act; and (c) its conduct significantly impeded this proceeding, within the meaning of section 776(a)(2)(C) of the Act.<sup>5</sup> Moreover, we found that, within the meaning of section 776(b) of the Act, China Steel failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information by not providing timely and accurate cost

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<sup>4</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015); *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). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

<sup>5</sup> For further discussion of the facts of the case, see *Final Determination* at "Use of Adverse Facts Available" and accompanying IDM at Comment 1.

data for certain CONNUMs, and as such, that the application of partial AFA was warranted.<sup>6</sup>

We note that the Court upheld the application of AFA with respect to China Steel.<sup>7</sup>

In the *Amended Final*, we found that a variable was incorrectly coded, which caused an error in the DIFMER adjustments, resulting in erroneous price-to-price matches, causing an incorrect calculation of normal value.<sup>8</sup> The Court has not upheld Commerce's correction of this error, and instead held that the law does not support the use of adverse inferences when calculating costs specifically related to the physical differences of China Steel's products.<sup>9</sup>

### III. Analysis

We respectfully disagree with the Court's decision concerning Commerce's use of AFA in computing the DIFMER adjustment. Specifically, Commerce uses cost data to compute the DIFMER adjustment, and the Court sustained Commerce's application of AFA to China Steel's cost data.<sup>10</sup> In our view, there is no basis in the statute to permit the application of AFA to data for one purpose but disallow the application of AFA to the same data when used for a different purpose.

Therefore, Commerce is complying with the Court's order in *China Steel* under respectful protest. In accordance with the Court's order,<sup>11</sup> for these final results of redetermination, Commerce calculated a rate for China Steel using the second cost database

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<sup>6</sup> In addition to the partial AFA, we also applied neutral facts available where appropriate. *Id.*

<sup>7</sup> *See China Steel* at 24-27.

<sup>8</sup> For further discussion of this ministerial error and calculation, *see* Amended Final Memorandum at "Cost of Production Database Used in China Steel Margin Program;" *see also* Memorandum to the File, "Amended Final Determination Calculation for China Steel Corporation in the Antidumping Duty Investigation of Certain Carbon and Alloy Cut-to-Length Plate from Taiwan – Analysis" dated May 19, 2017.

<sup>9</sup> *See China Steel* at 27-32.

<sup>10</sup> *Id.* at 27.

<sup>11</sup> *Id.*

submitted by China Steel to compute the DIFMER adjustment without the application of an adverse inference.<sup>12</sup>

#### **IV. Comments from Interested Parties**

##### *Arcelor's Comments*

- In the *Final Determination*, Commerce: (1) adjusted China Steel's reported cost data in the second cost database (COP2) it submitted for a large number of control numbers (CONNUMs), (2) determined that there were certain CONNUMs that contained identical or similar home market products to products sold in the United States, and (3) made non-AFA increases to China Steel's costs, including an adjustment to total cost of manufacture, general and administrative expenses, and interest expenses reported in COP2.<sup>13</sup> As such, Commerce found that China Steel reported incorrect costs in COP2 in various respects, and made both AFA and non-AFA adjustments, that were required for proper product matching and margin analysis.<sup>14</sup> The Court specifically affirmed the AFA adjustments to COP2.<sup>15</sup>
- In the *Amended Final*, Commerce rejected a proposed programming language change, which was intended to ensure that product matches between the home and U.S. markets would be made on an equal basis (*i.e.*, using the same COP2 database, as adjusted by Commerce's final decision regarding AFA and non-AFA cost adjustments).<sup>16</sup> Instead, Commerce amended the final margin analysis by replacing the first cost database (COP1) submitted by China Steel

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<sup>12</sup> See Memorandum, "Remand on Certain Carbon and Alloy Cut-to-Length Plate from Taiwan: Analysis Memorandum for China Steel Corporation," dated concurrently with these final remand results.

<sup>13</sup> See Arcelor's Comments at 8 (citing Memorandum, "Final Determination Calculation for China Steel Corporation in the Antidumping Duty Investigation of Certain Carbon and Alloy Cut-to-Length Plate From Taiwan – Analysis," dated March 29, 2019 (Final Calculation Memorandum) at 3-8).

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

<sup>15</sup> *Id.* (citing *China Steel* at 27).

<sup>16</sup> *Id.* at 5 (citing Arcelor's Letter, Carbon and Alloy Steel Cut-to-Length Plate from Taiwan – Petitioner's Ministerial Error Allegations Concerning China Steel Corporation," dated April 17, 2016, at 5).

with COP2, using an adjusted COP2 for home market sales (the comparison market program), but an unadjusted COP2 for U.S. sales (the margin program). The Draft Remand, therefore, adopts the same asymmetrical methodology used in the *Amended Final*.<sup>17</sup>

- In accordance with the statute, and Commerce’s regulations and normal practice, the margin program first matches the home market and U.S. sales on an identical basis by matching products with identical physical characteristics (needing no DIFMER) under the established CONNUM system.<sup>18</sup> By definition, there is no difference in variable cost of manufacture (on which DIFMERs are based) for identical products classified within the same CONNUM, regardless of the market in which the product is sold.<sup>19</sup> In accordance with section 771(16) of the Act, however, if a U.S. sale has no identical match in the home market, Commerce will match the U.S. sale to a home market sale on a “similar” basis, meaning Commerce will select a product with the most similar physical characteristics that, by definition, has a difference in variable costs of manufacture of less than 20 percent of the total cost of manufacture.<sup>20</sup>
- Commerce applied additional programming steps in the *Amended Final* to offset the distortive nature of the asymmetrical DIFMER adjustments based on its use of an adjusted COP2 for home market sales and unadjusted COP1 for U.S. sales.<sup>21</sup> The corrective steps in the *Amended Final* ensured that an AFA margin would be assigned to U.S. sales impacted by the asymmetrical cost adjustments.<sup>22</sup> Commerce’s corrective steps in the *Amended Final*, therefore, mitigated the unequal DIFMER adjustments based on the use of adjusted and

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<sup>17</sup> *Id.* at 5-6.

<sup>18</sup> *Id.* at 6 (citing 19 USC 1677b(a)(6)(C)(ii); 19 CFR 351.411 (2017); *Eregli Demir ve Celik Fabrikalari T.A.S v. United States*, 308 F. Supp. 3d 1297, 1321 n.34 (CIT 2018)).

<sup>19</sup> *Id.*

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

<sup>21</sup> *Id.* at 7.

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

unadjusted costs for home market and U.S. sales.<sup>23</sup> Commerce's Draft Remand incorrectly changed these corrective steps.

- In implementing the Court's directive, Commerce continued to make adjustments, both AFA and non-AFA, to the cost data in the COP2 database in the comparison market program for Draft Remand, creating an adjusted COP2.<sup>24</sup> The adjusted COP2 dataset is used for the cost test and for DIFMER adjustments for home market sales.<sup>25</sup> The same cost adjustments to COP2, however, did not carry over to the margin calculation program.<sup>26</sup> The unadjusted COP2 is used for DIFMER adjustments for U.S. sales, and appears to have been relied on in an attempt to implement the Court's order.<sup>27</sup>
- As directed by the Court, in the Draft Remand, Commerce attempted to compute DIFMER adjustments by not incorporating the AFA adjustments to COP2; however, not all of Commerce's adjustments to COP2 relate to AFA.<sup>28</sup> Moreover, the Court did not instruct Commerce to compare adjusted and unadjusted data in COP2 for the DIFMER adjustment. In the Draft Remand, Commerce maintained the *Amended Final* programming language for product matching, instead making changes to the corrective steps used in the *Amended Final*.<sup>29</sup> As a result, the Draft Remand introduces a distortion caused by the asymmetrical comparison of adjusted and unadjusted costs for the DIFMER adjustments.<sup>30</sup> A comparison of an adjusted COP2 for home market sales to an unadjusted COP2 for U.S. sales is like comparing apples and oranges, and does not result in accurate product matches, accurate

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

<sup>24</sup> *Id.* at 3.

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

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* (citing Final Calculation Memorandum at 3-7).

<sup>29</sup> *Id.* at 8.

<sup>30</sup> *Id.*

DIFMER adjustments or, ultimately, an accurate antidumping margin.<sup>31</sup> In this regard, Commerce's Draft Remand runs afoul of the statute by creating DIFMERs for products with identical physical characteristics.<sup>32</sup>

- Commerce has not explained its single programming change from the *Amended Final* to the Draft Remand.<sup>33</sup> Specifically, Commerce made a programming change with respect to one CONNUM, but it is not a CONNUM affected by any of the AFA changes made by Commerce in the investigation.<sup>34</sup>
- Notwithstanding Commerce's and Arcelor's concerns with respect to the Court's prohibition on the use of AFA to compute DIFMER adjustments in this case, Commerce must issue a final remand in accord with the statute, the regulations and its longstanding practice. Consistent with those guideposts, Commerce: (a) must not apply a DIFMER test or adjustment for products having identical CONNUMs, (b) must not conduct DIFMER adjustments on an asymmetrical basis (*i.e.*, using an adjusted COP2 in the comparison market program and an unadjusted COP2 in the margin program), and (c) should apply AFA margins to the U.S. sales classified within the four CONNUMs that are common to China Steel's reported sales in both the U.S. and home market as it did in the *Amended Final*.<sup>35</sup>

*No other party commented on the Draft Remand.*

**Commerce's Position:** We agree, in general, with Arcelor's recitation of Commerce's practice with respect to our treatment of the product concordance in the margin program and the cost

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<sup>31</sup> *Id.* at 10-11.

<sup>32</sup> *Id.* at 8 and 10.

<sup>33</sup> *Id.* at 8-9.

<sup>34</sup> *Id.* at 9-10.

<sup>35</sup> *Id.* at 11-12.

test.<sup>36</sup> We also agree, in general, with Arcelor’s summarization of the issues with respect to China Steel in the *Final Determination* and *Amended Final*.<sup>37</sup> In the Draft Remand, Commerce made an inadvertent error in the margin program. Specifically, in the *Amended Final*, we made several AFA and neutral facts available programming changes to the COP database in the comparison market program. We intended to remove the AFA adjustments for purposes of calculating DIFMER in the Draft Remand; however, we agree with Arcelor that our facts available changes failed to carry over to the margin program. This inadvertent error resulted in unequal DIFMER adjustments based on the use of adjusted and unadjusted costs for home market and U.S. sales. Put another way, we used an adjusted COP2 in the comparison market program, and an unadjusted COP2 in the margin program. We have corrected this error for the final remand by using for DIFMER a COP2 database which includes our original neutral facts available adjustment, but does not include the application of AFA. This corrects the distortion noted by Arcelor, above.

We disagree with Arcelor that Commerce did not explain its programming changes from the *Amended Final* to the Draft Remand. Arcelor correctly notes that we made one programming change, but we maintain that the reasons for this change, and why this particular change was made, were described in the Draft Calculation Memorandum.<sup>38</sup> Specifically, as stated in the Draft Calculation Memorandum, “in order to compute the DIFMER adjustment without the application of an adverse inference, we ran the step 1 margin program, which identified one CONNUM in the output (under ‘CONNUMs for which AFA was Applied Because of Incorrect

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<sup>36</sup> See Arcelor’s Comments at 6 (citing 19 USC 1677b(a)(6)(C)(ii); 19 CFR 351.411 (2017); *Eregli Demir ve Celik Fabrikalari T.A.S v. United States*, 308 F. Supp. 3d 1297, 1321 n.34 (CIT 2018)).

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

<sup>38</sup> See generally Arcelor’s Comments.

Quality Codes in CMCONNUMs’) as the only CONNUM affected by the changes made at the *Amended Final*. As such, we removed this CONNUM from the programming in step two” in order to comply with the Court’s order.<sup>39</sup> Commerce made one other application of AFA which only affected specific CONNUMs in the *Amended Final*, *i.e.*, setting the total cost of manufacturing for certain CONNUMS to the highest total cost of production.<sup>40</sup> None of these affected CONNUMs passed both the arms-length test and the cost test, and as such, sales of these CONNUMs did not undergo a DIFMER adjustment. Therefore, no additional programming changes were required to comply with the Court’s specific order “to compute the DIFMER adjustment using information from the COP2 database without the application of an adverse inference.”<sup>41</sup>

We agree with Arcelor that the Court’s order to compute the DIFMER adjustment to normal value using the cost information on the record for all CONNUMs without the application of an adverse inference results in distortions. The Court’s order, put in different terms, means that it is reasonable to find that the reported costs for certain CONNUMs are unreliable and to use an adverse inference when selecting costs for those CONNUMs for performing the sales below cost test; however, for those same CONNUMs, it is inappropriate to rely on those same costs in performing the DIFMER adjustment. That is to say, the Court’s order means there are two different appropriate costs for the same CONNUM. Therefore, we have conducted this remand under respectful protest.

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<sup>39</sup> See Draft Calculation Memorandum at 2.

<sup>40</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – China Steel Corporation,” dated March 29, 2017, at 22-24; and *Final Determination* IDM at Comment 1.

<sup>41</sup> See *China Steel* at 32.

## V. Conclusion

Pursuant to the Court's order, we calculated a weighted-average margin for China Steel without the use of AFA in the DIFMER test. Based on this approach, we calculated a dumping margin of 6.73 percent for China Steel. As such, we intend to issue a *Federal Register* notice of court decision not in harmony with the *Amended Final* if these remand results are upheld by the Court.

12/3/2019

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Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance