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Investigation
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October 21, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

CASE: Certain Iron Mechanical Transfer Drive Components from Canada

SUBJECT: Issues and Decision Memorandum for the Final Determination of
Sales at Less-Than-Fair-Value

SUMMARY

The Department of Commerce (“the Department”) finds that certain iron mechanical transfer drive components (“IMTDCs”) from Canada are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). The period of investigation (“POI”) is October 1, 2014, through September 30, 2015.

After analyzing the comments submitted by TB Woods Incorporated (“Petitioner”), we have made no changes to the *Preliminary Determination*¹ for the sole mandatory respondent, Baldor Electric Company Canada (“Baldor”). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues for which we received comments:

Comment 1: Adverse Facts Available
Comment 2: All-Others Rate

¹ See *Certain Iron Mechanical Transfer Drive Components From Canada: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36887 (June 8, 2016) (“*Preliminary Determination*”), and accompanying Preliminary Issues and Decision Memorandum.



BACKGROUND

The following events have taken place since the Department published the *Preliminary Determination* in this investigation on June 8, 2016.

On July 8, 2016, Petitioner submitted a case brief.² No other party submitted comments³ and no party submitted a request for a hearing.

SCOPE OF THE INVESTIGATION⁴

The products covered by this investigation are iron mechanical transfer drive components, whether finished or unfinished (*i.e.*, blanks or castings). Subject iron mechanical transfer drive components are in the form of wheels or cylinders with a center bore hole that may have one or more grooves or teeth in their outer circumference that guide or mesh with a flat or ribbed belt or like device and are often referred to as sheaves, pulleys, flywheels, flat pulleys, idlers, conveyer pulleys, synchronous sheaves, and timing pulleys. The products covered by this investigation also include bushings, which are iron mechanical transfer drive components in the form of a cylinder and which fit into the bore holes of other mechanical transfer drive components to lock them into drive shafts by means of elements such as teeth, bolts, or screws.

Iron mechanical transfer drive components subject to this investigation are those not less than 4.00 inches (101 mm) in the maximum nominal outer diameter.

Unfinished iron mechanical transfer drive components (*i.e.*, blanks or castings) possess the approximate shape of the finished iron mechanical transfer drive component and have not yet been machined to final specification after the initial casting, forging or like operations. These machining processes may include cutting, punching, notching, boring, threading, mitering, or chamfering.

Subject merchandise includes iron mechanical transfer drive components as defined above that have been finished or machined in a third country, including but not limited to finishing/machining processes such as cutting, punching, notching, boring, threading, mitering, or chamfering, or any other processing that would not otherwise remove the merchandise from

² See Letter from Petitioner to the Secretary of Commerce, “Certain Iron Mechanical Transfer Drive Components From Canada: Petitioner’s Case Brief,” dated July 8, 2016 (“Petitioner’s Brief”).

³ In a separate memorandum, we address the scope comments received in this case and the two companion cases related to the People’s Republic of China. See Memorandum from Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Antidumping Duty Investigations of Certain Iron Mechanical Transfer Drive Components from Canada and the People’s Republic of China and Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People’s Republic of China: Scope Decision Memorandum for the Final Determinations,” (“Final Scope Decision Memorandum”) dated concurrently with this notice.

⁴ The scope incorporates certain changes made after the *Preliminary Determination*. For a full discussion of these changes, see Final Scope Decision Memorandum.

the scope of this investigation if performed in the country of manufacture of the iron mechanical transfer drive components.

Subject iron mechanical transfer drive components are covered by the scope of this investigation regardless of width, design, or iron type (*e.g.*, gray, white, or ductile iron). Subject iron mechanical transfer drive components are covered by the scope of this investigation regardless of whether they have non-iron attachments or parts and regardless of whether they are entered with other mechanical transfer drive components or as part of a mechanical transfer drive assembly (which typically includes one or more of the iron mechanical transfer drive components identified above, and which may also include other parts such as a belt, coupling and/or shaft). When entered as a mechanical transfer drive assembly, only the iron components that meet the physical description of covered merchandise are covered merchandise, not the other components in the mechanical transfer drive assembly (*e.g.*, belt, coupling, shaft). However, the scope excludes flywheels with a ring gear permanently attached onto the outer diameter. A ring gear is a steel ring with convex external teeth cut or machined into the outer diameter, and where the diameter of the ring exceeds 200 mm and does not exceed 2,244.3 mm.

For purposes of this investigation, a covered product is of “iron” where the article has a carbon content of 1.7 percent by weight or above, regardless of the presence and amount of additional alloying elements.

Excluded from the scope are finished torsional vibration dampers (TVDs). A finished TVD is an engine component composed of three separate components: an inner ring, a rubber ring and an outer ring. The inner ring is an iron wheel or cylinder with a bore hole to fit a crank shaft which forms a seal to prevent leakage of oil from the engine. The rubber ring is a dampening medium between the inner and outer rings that effectively reduces the torsional vibration. The outer ring, which may be made of materials other than iron, may or may not have grooves in its outer circumference. To constitute a finished excluded TVD, the product must be composed of each of the three parts identified above and the three parts must be permanently affixed to one another such that both the inner ring and the outer ring are permanently affixed to the rubber ring. A finished TVD is excluded only if it meets the physical description provided above; merchandise that otherwise meets the description of the scope and does not satisfy the physical description of excluded finished TVDs above is still covered by the scope of this investigation regardless of end use or identification as a TVD.

Also excluded from the scope are certain TVD inner rings. To constitute an excluded TVD inner ring, the product must have each of the following characteristics: (1) a single continuous curve forming a protrusion or indentation on outer surface, also known as a sine lock, with a height or depth not less than 1.5 millimeters and not exceeding 4.0 millimeters and with a width of at least 10 millimeters as measured across the sine lock from one edge of the curve to the other;⁵ (2) a face width of the outer diameter of greater than or equal to 20 millimeters but less than or equal to 80 millimeters; (3) an outside diameter greater than or equal to 101 millimeters but less than or equal to 300 millimeters; and (4) a weight not exceeding 7 kilograms. A TVD inner ring is

⁵ The edges of the sine lock curve are defined as the points where the surface of the inner ring is no longer parallel to the plane formed by the inner surface of the bore hole that attaches the ring to the crankshaft.

excluded only if it meets the physical description provided above; merchandise that otherwise meets the description of the scope and does not satisfy the physical description of excluded TVD inner rings is still covered by the scope of this investigation regardless of end use or identification as a TVD inner ring.

The scope also excludes light-duty, fixed-pitch, non-synchronous sheaves (“excludable LDFPN sheaves”) with each of the following characteristics: made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN-GJL 200 or lower; having no more than two grooves; having a maximum face width of no more than 1.75 inches, where the face width is the width of the part at its outside diameter; having a maximum outside diameter of not more than 18.75 inches; and having no teeth on the outside or datum diameter. Excludable LDFPN sheaves must also either have a maximum straight bore size of 1.6875 inches with a maximum hub diameter of 2.875 inches; or else have a tapered bore measuring 1.625 inches at the large end, a maximum hub diameter of 3.50 inches, a length through tapered bore of 1.0 inches, exactly two tapped holes that are 180 degrees apart, and a 2.0- inch bolt circle on the face of the hub. Excludable LDFPN sheaves more than 6.75 inches in outside diameter must also have an arm or spoke construction.⁶ Further, excludable LDFPN sheaves must have a groove profile as indicated in the table below:

Size (belt profile)	Outside Diameter	Top Width Range of Each Groove	Maximum Height	Angle
MA/AK (A, 3L, 4L)	≤ 5.45 in.	0.484 – 0.499 in.	0.531 in.	34°
MA/AK (A, 3L, 4L)	>5.45 in. but ≤ 18.75 in.	0.499 – 0.509 in.	0.531 in.	38°
MB/BK (A, B, 4L, 5L)	≤ 7.40 in.	0.607 – 0.618 in.	0.632 in.	34°
MB/BK (A, B, 4L, 5L)	>7.40 in. but ≤ 18.75 in.	0.620 – 0.631 in.	0.635 in.	38°

In addition to the above characteristics, excludable LDFPN sheaves must also have a maximum weight (pounds-per-piece) as follows: for excludable LDFPN sheaves with one groove and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 4.7 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 8.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 8.5 pounds; for

⁶ An arm or spoke construction is where arms or spokes (typically 3 to 6) connect the outside diameter of the sheave with the hub of the sheave. This is in contrast to a block construction (in which the material between the hub and the outside diameter is solid with a uniform thickness that is the same thickness as the hub of the sheave) or a web construction (in which the material between the hub and the outside diameter is solid but is thinner than at the hub of the sheave).

excludable LDFPN sheaves with two grooves and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 15.0 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 13.3 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 17.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 16.5 pounds; and for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 26.5 pounds.

The scope also excludes light-duty, variable-pitch, non-synchronous sheaves with each of the following characteristics: made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN-GJL 200 or lower; having no more than 2 grooves; having a maximum overall width of less than 2.25 inches with a single groove, or of 3.25 inches or less with two grooves; having a maximum outside diameter of not more than 7.5 inches; having a maximum bore size of 1.625 inches; having either one or two identical, internally-threaded (*i.e.*, with threads on the inside diameter), adjustable (rotating) flange(s) on an externally-threaded hub (*i.e.*, with threads on the outside diameter) that enable(s) the width (opening) of the groove to be changed; and having no teeth on the outside or datum diameter.

The scope also excludes certain IMTDC bushings. An IMTDC bushing is excluded only if it has a tapered angle of greater than or equal to 10 degrees, where the angle is measured between one outside tapered surface and the directly opposing outside tapered surface.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 8483.30.8090, 8483.50.6000, 8483.50.9040, 8483.50.9080, 8483.90.3000, 8483.90.8080. Covered merchandise may also enter under the following HTSUS subheadings: 7325.10.0080, 7325.99.1000, 7326.19.0010, 7326.19.0080, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070, 8431.39.0080, and 8483.50.4000. These HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

DISCUSSION OF THE ISSUES

Comment 1: Adverse Facts Available

Petitioner’s Argument

Petitioner argues that, for the final determination, the Department should continue to apply total adverse facts available (“AFA”) to Baldor. Petitioner contends that during the course of the proceeding, Baldor informed the Department that it would not respond to the outstanding supplemental questionnaires and would no longer participate in this investigation. Based on Baldor’s withdrawal from participation, Petitioner maintains that Baldor failed to provide the

Department with requested information and substantial information is missing from the record. Moreover, Petitioner avers that this is a direct result of Baldor's failure to cooperate to the best of its ability. Petitioner argues that accordingly, the application of total adverse facts was appropriate. Petitioner further argues that the Department should continue to use the highest rate from the petition, *i.e.*, 191.34 percent, as the AFA rate.

Department's Position:

The Department agrees with Petitioner. Section 776(a) of the Act provides that the Department shall apply "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 the Department, 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

As noted in the Department's *Preliminary Determination*, on April 19, 2016, Baldor submitted a letter in which it informed the Department that it "will not be responding to the various supplemental questionnaires issued by the Department over the last several weeks{,}" and that it "does not intend to submit any further responses to questionnaires from the Department in this investigation."⁷ As a result, we found that Baldor failed to participate in this investigation and to provide requested information that is necessary for the Department to calculate an antidumping duty margin for Baldor in this investigation. By only responding to certain parts of the Department's initial and supplemental questionnaires before deciding to no longer participate in this investigation, Baldor did not provide the Department with the requisite information, such as, for example, complete database fields related to products sold in the United States, and production processes data. Without this information, it is not possible for the Department to calculate an antidumping duty margin. Moreover, without Baldor's continued participation, none of the information submitted can be verified by the Department. Therefore, in reaching this final determination, we continue to find that Baldor withheld requested information, significantly impeded this proceeding, provided information which cannot be verified, and did not provide the Department with necessary information to calculate an antidumping duty margin. Pursuant to

⁷ See letter from Baldor to the Department, re: Certain Iron Mechanical Transfer Drive Components from Canada – Baldor Canada's Decision Not to Respond to Department's Questionnaires, dated April 19, 2016 ("No Response Letter"). In its No Response Letter, Baldor explained that it reserved the right to provide scope comments, to comment on issues relating to the possible implementation of provisional measures, and to comment on any potential antidumping duty orders that may be published.

sections 776(a)(1), (2)(A), (C), and (D) of the Act, the Department continues to find that the use of total facts available is appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (“TPEA”), which made numerous amendments to the antidumping duty and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁹

Section 776(b)(1)(A) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.¹⁰ In doing so, and under the TPEA, the Department 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.¹¹ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹² Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.”¹³

We continue to find that Baldor did not act to the best of its ability in this investigation, within the meaning of section 776(b)(1) of the Act, because it failed to participate in this investigation and to respond to the Department’s requests for information, which significantly impeded the proceeding. The failure of Baldor to respond to the Department’s questionnaire or otherwise participate in this investigation has precluded the Department from performing the necessary analysis and verification of its questionnaire responses, as required by section 782(i)(1) of the Act. Therefore, for this final determination, we continue to find that an adverse inference is warranted in selecting from the facts otherwise available with respect to this company.¹⁴

⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *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) (*Applicability Notice*).

⁹ See *Applicability Notice*, 80 FR at 46794-95. The 2015 amendments may be found at the following website address: <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

¹⁰ See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

¹¹ See section 776(b)(1)(B) of the Act.

¹² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”) at 870.

¹³ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (“*Nippon*”).

¹⁴ See *Nippon*, 337 F.3d at 1382-83.

Section 776(b)(2) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.¹⁵

The Department's practice, when selecting an AFA rate from among the possible sources of information, is to select the highest rate on the record of the proceeding and to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."¹⁶

As a result, for this final determination, we continue to assign Baldor a rate of 191.34 percent, which is the highest rate alleged in the petition, as noted in the initiation of the LTFV investigation.¹⁷

When using facts otherwise available, section 776(c)(1) of the Act provides that, where the Department relies on secondary information (such as information in the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.¹⁸ The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.¹⁹ To be considered corroborated, the Department must find the secondary information is both reliable and relevant.²⁰

Section 776(d)(2) of the Act provides that the Department has the discretion to apply the highest dumping margin in selecting among the facts otherwise available, and section 776(d)(3) of the Act makes clear that when selecting an AFA margin, the Department 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.

For this final determination, we continue to determine that the highest petition margin of 191.34 percent is reliable by examining evidence supporting the calculations in the petition. During our pre-initiation analysis, we examined the key elements of the export price ("EP") and normal value ("NV") calculations used in the petition to derive an estimated margin. We also examined

¹⁵ See also 19 CFR 351.308(c).

¹⁶ See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

¹⁷ See *Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73716, 73720 (November 25, 2016) ("Initiation Notice").

¹⁸ See also 19 CFR 351.308(d).

¹⁹ See 19 CFR 351.308(d); see also SAA at 870.

²⁰ See, e.g., SAA at 870; *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).

information (to the extent that such information was reasonably available) from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the elements of the EP and NV calculations used in the petition to derive estimated margins. Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider Petitioners' EP and NV calculations to be reliable.²¹ Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the EP or NV calculations provided in the petition, based on our examination of the aforementioned information, we continue to consider the EP and NV calculations from the petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the calculation of the margins in the petition by examining source documents and affidavits, as well as publicly available information, we continue to determine that the margins in the petition are reliable for the purposes of this investigation.

Further, we considered whether the selected margin is relevant. The Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin.²² Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. No information has been placed on the record to indicate that the rates in the petition are not relevant, and, moreover, in this particular case, the information contained in the petition is specific to Baldor.²³ As such, we find these rates relevant to Baldor. Furthermore, as there are no other participating respondents in this investigation for which we are calculating a dumping margin, we relied upon the rates found in the petition, which is the only information regarding the IMTDCs industry reasonably at the Department's disposal. We were unable to find any information that would discredit the relevancy of the selected AFA rate.

Based on the above, for this final determination, the Department continues to find the highest rate derived from the petition (*i.e.*, 191.34 percent) is, therefore, corroborated to the extent practicable, pursuant to section 776(c) of the Act because the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative respondent.²⁴ Thus, we have assigned Baldor this rate as AFA in this final determination.

²¹ See "Antidumping Duty Investigation Initiation Checklist: Certain Iron Mechanical Transfer Drive Components from Canada," dated November 17, 2015 ("Initiation Checklist") at pages 5-11.

²² See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin).

²³ Specifically, we note that in this particular case the offer for sales quotes contained in the petition are from Baldor-Maska (Baldor). See Volume II of the Petition, at 3 and Exhibit II-1.

²⁴ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

Comment 2: All-Others Rate

Petitioner's Argument

Petitioner maintains that for the final determination, the Department should not modify the antidumping duty margin calculated for “all-other” producers and exporters of subject merchandise in the *Preliminary Determination*. Petitioner contends that because the only mandatory respondent in this proceeding received a dumping margin based on total AFA, the Department was permitted to rely on any reasonable method to determine the all-other dumping margin in accordance with the statute. Based on the information on the record, Petitioner maintains that the Department’s reliance on the simple average of the margins calculated in the petition was reasonable and serves as an appropriate all-others rate.

Department’s Position:

We agree with Petitioner. Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

As noted above, Baldor is the sole mandatory respondent in this proceeding, and its margin is determined entirely under section 776 of the Act. Consequently, the only available dumping margins for this final determination are found in the petition. Pursuant to section 735(c)(5)(B) of the Act, the Department’s practice under these circumstances has been to calculate the “all-others” rate as a simple average of these margins.²⁵ In this investigation, a simple average of the margins established in the petition, upon which the Department initiated (*i.e.*, 9.60 percent and 191.34 percent), yields a 100.47 percent margin for entities not individually examined.²⁶ Consequently, and consistent with our practice, for this final determination, the Department continues to assign an “all-others” rate of 100.47 percent to entities not individually examined.

²⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

²⁶ See, e.g., Initiation Checklist at 11 and Attachment V.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination in the *Federal Register*.

Agree _____ Disagree _____



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

October 21, 2016
Date