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Administrative Review
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Public Document
Office 1: Team

July 17, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Certain Large Diameter Carbon
and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½
Inches) from Japan; 2012-2013 Administrative Review

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4 ½ inches) from Japan. The review covers four producers/exporters of the subject merchandise, JFE Steel Corporation (JFE); Nippon Steel Corporation (Nippon); NKK Tubes (NKK); and Sumitomo Metal Industries, Ltd. (SMI). The period of review (POR) is June 1, 2012, through May 31, 2013. We preliminarily find that a sale of subject merchandise was made at a price below normal value during the POR.

Background

On June 26, 2000, the Department published the antidumping duty order on large diameter seamless pipe from Japan.¹ On June 3, 2013, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan for the period June 1, 2012, through May 31, 2013.² On July 1, 2013, United States Steel Corporation (U.S. Steel), a domestic producer of the subject merchandise, made a timely request that the Department conduct an administrative review of JFE, Nippon, NKK, and SMI. On August 1, 2013, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department

¹ See *Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 33061 (June 3, 2013).



published in the *Federal Register* a notice of initiation of this antidumping duty administrative review.³

On August 7, 2013, the Department released U.S. Customs and Border Protection (CBP) import data for respondent selection purposes and invited parties to comment.⁴ On August 13, 2013, NKK submitted comments on the CBP data, and on September 10, 2013, NKK submitted a letter to the Department certifying that it made no shipments or entries for consumption in the United States of subject merchandise during the POR. The Department received no other comments on the CBP data. On September 24, 2013, the Department issued its antidumping duty questionnaire to JFE, Nippon, and SMI. On September 27, 2013 Nippon and SMI submitted a joint letter to the Department certifying that each company made no shipments or entries for consumption in the United States of subject merchandise during the POR.⁵ On November 1, 2013, JFE submitted a letter stating it had no sales of subject merchandise to or in the United States during the POR. Thereafter, the Department sent a no shipments inquiry to CBP and received information on possible entries of the subject merchandise by three of the respondents.⁶ The Department sent letters on February 25, 2014 to NKK, SMI, and JFE requesting clarification on the information provided by CBP in relation to their statements of no shipments or sales to the United States.⁷ NKK, and SMI provided timely responses.⁸ The Department rejected JFE's response for untimeliness.⁹

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. *See*

³ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 46566 (August 1, 2013).

⁴ *See* Memorandum to the File regarding "Antidumping Duty Administrative Review: Certain Large Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4 ½ Inches) from Japan: Release of Customs and Border Protection ("CBP") Data," (August 7, 2013) (CBP Import Data Release).

⁵ Nippon and SMI filed a joint response and noted that Nippon merged with SMI on October 1, 2012 at which time Nippon became the parent company to SMI. On the same date Nippon's name was changed to Nippon Steel & Sumitomo Metal Corporation. *See* Letter to the Department, "Certain Large Diameter Carbon and Alloy Seamless, Standard, Line and Pressure Pipe from Japan: Certification of No U.S. Sales During Administrative Review Period," (September 27, 2013) (Nippon and SMI Certification).

⁶ *See* Memorandum to the File, "Antidumping Duty Administrative Review: Certain Large Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4 ½ Inches) from Japan; Release of Customs and Border Protection ("CBP") Entry Documents," (February 18, 2014) (CBP Entry Document Release).

⁷ *See* Letters to NKK, SMI, and JFE, all regarding "2012-2013 Antidumping Duty Administrative Review: *Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) from Japan*," all dated February 25, 2014. A second letter was sent to JFE on April 14, 2014, because it did not receive the original letter. *See* Letter to JFE Steel Corporation co Morgan J. West, "2012-2013 Antidumping Duty Administrative Review: *Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) from Japan*" (April 14, 2014).

⁸ *See* Letter to the Department, "Certain Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe (Over 4 ½ inches) from Japan," (March 11, 2014) (NKK Entry Documentation Response); *See* Letter to the Department from Nippon and SMI, "Certain Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan: Response of Nippon Steel and Sumitomo Metal Corporation to Department's Request for Clarification," (March 18, 2014) (SMI Entry Documentation Response).

⁹ *See* Memorandum to Central Records Unit, "Countervailing Duty Administrative Review: *Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) from Japan*: Rejection of Submission Filed by WSP," (May 23, 2013).

Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013). Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the preliminary results of this review was March 19, 2014.¹⁰ On March 5, 2014, the Department extended the deadline for preliminary results to July 17, 2014.¹¹

Scope of the Order

The products covered by the order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (“ASTM”) A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and the American Petroleum Institute (“API”) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of the order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (“HTSUS”).

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (“ASME”) code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless

¹⁰ If the new deadline falls on a non-business day, in accordance with the Department’s practice, the deadline will become the next business day.

¹¹ See Memorandum to Christian Marsh, Deputy Assistance Secretary for Antidumping and Countervailing Duty Operations, “*Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) from Japan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,*” (March 5, 2014).

pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard. Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of the order.

Specifically excluded from the scope of the order are: A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. B. Finished and unfinished oil country tubular goods (“OCTG”), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in the scope when used in standard, line or pressure applications. C. Products produced to the A-335 specification unless they are used in an application that would normally utilize ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications. D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is: (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, “API 5L”).

With regard to the excluded products listed above, the Department will not instruct CBP to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-335 specification is being used in an A-106 application; we will require end-use certifications for imports of that specification. Normally, we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

DISCUSSION OF THE METHODOLOGY

Preliminary Determination of No Shipments

As noted above, between September 10 and November 1, 2013, JFE, Nippon, NKK, SMI all filed no-shipment certifications indicating that they did not export subject merchandise into the United States during the POR. The Department subsequently confirmed with CBP the no shipment claim made by Nippon. However in response to the Department’s no shipments inquiry to CBP, CBP data showed subject merchandise manufactured by three of the respondent companies, JFE, NKK, and SMI, may have entered the United States during the POR. On February 18, 2014, the Department placed on the record of this review, copies of the entry

documents in question.¹² For further discussion of the entries included in the CBP Entry Document Release, *see* No Shipments Memo.¹³

NKK

On February 25, 2014, the Department issued a letter to NKK, requesting that it explain the apparent discrepancy between NKK's claim of no exportation of subject merchandise to the United States and the CBP information. On March 11, 2014, NKK responded that it accurately stated that it did not export subject merchandise to the United States during the POR, and this statement is not contradicted by CBP data.

Based on NKK's submission and our review of CBP documentation, the Department finds that the record evidence supports NKK's claim that, at the time of the sale, it did not have knowledge of these entries of subject merchandise into the United States during the POR. On this basis, we preliminarily find that subject merchandise produced by NKK, and entering the United States under its antidumping case number during the POR, did so by way of intermediaries without the knowledge of NKK. For further discussion, *see* No Shipments Memo.

JFE

On February 25, 2014, the Department issued a letter to JFE, requesting that it explain the apparent discrepancy between its claim of no sales of subject merchandise to the United States and the CBP information.¹⁴ As noted above, JFE's response was rejected for untimeliness.

Although JFE's response regarding the CBP documentation was late, and consequently rejected, we conducted our own review of CBP documentation in light of JFE's initial no shipment claim. The Department finds that the record evidence supports JFE's claim that it had no sales of subject merchandise to or in the United States during the POR. Based on our review of the documentation, we preliminarily find that subject merchandise produced by JFE, and entering the United States under its antidumping case number during the POR, did so by way of intermediaries without the knowledge of JFE. For further discussion, *see* No Shipments Memo.

SMI

On February 25, 2014, the Department issued a letter to SMI, requesting that it explain the apparent discrepancy between SMI's claim of no exportation of subject merchandise to the United States and the CBP information. On March 18, 2014, SMI responded that it accurately stated that it did not export subject merchandise to the United States during the POR.¹⁵ SMI also provided an explanation for each CBP entry that listed SMI as the manufacturer of the imported

¹² *See* Memorandum to the File, regarding "Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ Inches) from Japan: Release of Customs and Border Protection ("CBP") Entry Documents, (February 18, 2014).

¹³ *See* Memorandum to Thomas Gilgunn, "Preliminary Results of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ Inches) from Japan: No Shipments Memorandum" dated concurrently with this memorandum (No Shipments Memo).

¹⁴ As noted above, we issued a second letter to JFE on April 14, 2014, because it did not receive our first letter.

¹⁵ SMI Entry Documentation Response.

subject merchandise, stating for each entry there is no evidence to suggest SMI knew or had any reason to know at the time of sale that the products were ultimately destined for the United States. As explained in the *Application of Facts Available* section below, we preliminarily determine that SMI had an entry of subject merchandise enter into the United States customs territory during the POR. However, based on our review of the other entries listed in the CBP entry documentation, we preliminarily find that the other entries of subject merchandise produced by SMI, and entering the United States under its antidumping case number during the POR, did so by way of intermediaries without the knowledge of SMI. For further discussion, *see* No Shipments Memo.

In summary, the Department finds that JFE's, NKK's, and Nippon's claims of no shipments or entries for consumption are substantiated. Based upon the certifications and the evidence on the record, we are satisfied that none of these respondents had shipments of subject merchandise to the United States during the POR and, as such, we preliminarily determine that JFE, NKK, and Nippon had no reviewable transactions during the POR.

In our May 6, 2003, *Assessment Policy Notice*, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.¹⁶

In order to alleviate the concerns in the *Assessment Policy Notice*, we preliminarily determine that we should instruct CBP to liquidate entries of merchandise produced by JFE, NKK, and Nippon, and exported by other parties at the all-others rate. In addition, in order to be consistent with the *Assessment Policy Notice*, the Department's current practice is to not to rescind the review in part in these circumstances. Rather, we will complete the review with respect to JFE, NKK, and Nippon, and issue appropriate instructions to CBP based on the final results of the review.

Facts Available

Application of Facts Available

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if: (1) necessary information is not available on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide such information by 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 such information but the information cannot be verified as provided by section 782(i) of the Act.

As noted in the "Background" section, above, the Department first released certain CBP import data to respondents and requested comments.¹⁷ However, SMI did not provide comments on this

¹⁶ *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

¹⁷ *See* CBP Import Data Release.

information. CBP data indicated that SMI had entries of subject merchandise into the United States during the POR under its name and/or CBP number.¹⁸ Based on this CBP data, we sent SMI our standard antidumping duty questionnaire. SMI did not respond to the questionnaire, and claimed that it had no shipments or entries for consumption in the United States of subject merchandise during the POR.¹⁹ However, based on our review of the CBP entry documentation, we found that entries of subject merchandise from SMI may have entered U.S. Customs territory during the POR. Therefore, we asked SMI to:

{E}xplain the apparent discrepancy between SMI's claim of no exportation of subject merchandise to the United States by SMI and the CBP information. If, in fact, SMI shipped subject merchandise during the POR, and it was the first company in the distribution chain with knowledge that the merchandise was destined to the United States, it is subject to this administrative review.²⁰

When confronted with these facts and our request for comments, SMI still did not respond to our questionnaire, and continued to argue that it had no shipments or entries into the United States during the POR.²¹ As discussed in our No Shipment Memo, we find that there is a reasonable basis to believe that SMI knew or should have known that it had a shipment or entry of subject merchandise into the United States during the POR. As a result, we find that because SMI did not respond to our questionnaire, despite evidence to the contrary that it should have reported this reviewable sale, SMI did not provide the requested information necessary for the Department to calculate SMI's antidumping duty rate in this review, withheld information requested by the Department by the deadlines established, and significantly impeded this proceeding.²² Because SMI failed to provide the information required, despite the Department's repeated requests for information, we find that the requirements of sections 782(c)(1) and (e) of the Act are satisfied. Therefore, pursuant to section 776(a) of the Act, in these preliminary results, the Department bases SMI's antidumping duty rate on facts otherwise available.

Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. 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."²³

¹⁸ See CBP Entry Document Release.

¹⁹ See Nippon and SMI Certification.

²⁰ See Letter to SMI regarding, "2012-2013 Antidumping Duty Administrative Review: Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) from Japan," (February 25, 2014).

²¹ SMI Entry Documentation Response.

²² See sections 776(a)(1), (2)(A), (B), and (C) of the Act.

²³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) (SAA) at 870.

Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.”²⁴ We preliminarily find that SMI did not act to the best of its ability in this administrative review, within the meaning of section 776(b) of the Act, because it failed to respond to the Department’s request for information and provide timely information. In this regard we preliminarily find that there is a reasonable basis to believe that SMI knew or should have known that it had a shipment or entry of subject merchandise into the United States during the POR.²⁵ Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to this company.

Selection of Adverse Fact Available (AFA) Rate

In deciding what rate to apply as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record.

The Department’s practice, when selecting an AFA rate from among the possible sources of information, has been 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 adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”²⁶ Specifically, the Department’s practice in reviews, when 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.²⁷ The Court of International Trade and the Court of Appeals for the Federal Circuit (the CAFC) have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.²⁸

²⁴ 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*) (“Compliance with the best of its ability standard is determined by assessing whether {the} respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.... While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element.”).

²⁵ See No Shipments Memo.

²⁶ 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); see also *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 72825, 72826 (December 6, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

²⁷ 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.”).

²⁸ See, e.g., *KYD, Inc. v. United States*, 607 F.3d 760, 766-767 (CAFC 2010) (*KYD*) (discussing favorably the “presumption that a prior dumping margin imposed against an exporter in an earlier administrative review continues to be valid if the exporter fails to cooperate in a subsequent administrative review.”); see also *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).

In this proceeding, the highest rate is the highest petition rate of 107.80 percent. We assigned this rate to SMI, Nippon, and Kawasaki Steel Corporation in the original less-than-fair-value (LTFV) investigation as an AFA rate.²⁹ We are preliminarily assigning SMI the AFA rate of 107.80 percent, which is the petition rate which it was assigned in the LTFV investigation, and is the highest margin on the record of this proceeding. In addition, this is the current cash deposit applicable to entries entered under SMI's CBP case number, including the entry at issue in this case.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department 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 or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.³⁰ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.³¹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.³² As noted above, SMI failed to provide any information with respect to its sales in this review. Therefore, we are assigning SMI the same rate that it received as an AFA rate in the LTFV investigation, and the rate which continues to apply to SMI's entries as entered. This rate was found to be corroborated in the LTFV investigation to the extent practicable, and nothing on the record of this review calls into question that corroboration analysis.³³ The CAFC has recognized the "presumption that a prior dumping margin imposed against an exporter in an earlier administrative review continues to be valid if the exporter fails to cooperate in a subsequent administrative review."³⁴ Therefore, we find that the 107.80 percent rate continues to be reliable and relevant to SMI, and it is therefore corroborated to the extent practicable.

²⁹ See *Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000).

³⁰ See SAA at 870.

³¹ *Id.*

³² See *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).

³³ See *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, 64 FR 69718 (December 14, 1999), unchanged in the final determination, *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, 65 FR 25907 (May 4, 2000).

³⁴ See *KYD*, 607 F.3d at 766-767.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

17 July 2014
(Date)