



A-588-873
Investigation
Public Document
E&C/IV: TT/WH

February 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination of the
Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat
Products from Japan

I. SUMMARY

The Department of Commerce (“Department”) preliminary determines that certain cold-rolled steel flat products (“CRS”) from Japan are being, or are likely to be, sold in the United States at less-than-fair value (“LTFV”), as provided in section 773 of the Tariff Act of 1930, as amended (the “Act”). The Department also preliminarily determinates that critical circumstances exist for the mandatory respondents, JFE Steel Corporation (“JFE”) and Nippon Steel & Sumitomo Metal Corporation (“NSSMC”), and do not exist for the non-individually examined companies receiving the “all-others” rate. The preliminary estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

II. BACKGROUND

On July 28, 2015, the Department received an antidumping duty (“AD”) petition covering imports of CRS from Japan,¹ which was filed in proper form by United States Steel Corporation, AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation, (collectively “Petitioners”). The Department initiated this investigation on August 17, 2015.²

¹ See Petitions for the Imposition of Antidumping Duties on imports of Certain Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom, (July 28, 2015) (“Petitions”).

² See Certain Cold-Rolled Steel Flat Products From Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 FR 51198 (August 24, 2015) (“Initiation Notice”).

In the Initiation Notice, the Department notified the public that the Department intended to select respondents based on United States Customs and Border Protection (“CBP”) data for United States imports of CRS from Japan during the period of investigation (“POI”) under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings listed in the scope of the investigation.³ On August 24, 2015, the Department released CBP import data to interested parties and requested comments regarding the respondent selection.⁴ On September 18, 2015,⁵ November 4, 2015,⁶ November 12, 2015,⁷ and November 19, 2015,⁸ after issuing four respondent selection memoranda, the Department selected JFE and NSSMC, the largest exporters by volume of CRS from Japan that were the first party in the chain of distribution to have knowledge that the CRS from Japan were destined for the United States during the POI. On October 13, 2015, Hitachi Metals Limited (“Hitachi Metals”) filed a request for treatment as a voluntary respondent and subsequently filed timely responses to our AD questionnaires.⁹ On November 25, 2015, and December 1, 2015, JFE and NSSMC informed the Department that they would not respond to the Department’s AD questionnaire and, therefore, would not participate in this investigation as mandatory respondents.¹⁰ After JFE and NSSMC informed the Department that they would not participate in this investigation as mandatory respondents, we selected Hitachi Metals as a voluntary respondent on December 10, 2015.¹¹ For further discussion of the selection of respondents, see the “Respondent Selection” section of this memorandum below.

³ Id. at 51203.

⁴ See Memorandum to the File, “Certain Cold-Rolled Steel Flat Products from Japan: Customs Data for Respondent Selection,” (August 24, 2015).

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Japan: Respondent Selection,” (September 18, 2015) (“Initial Respondent Selection Memorandum”). The Department decided to base respondent selection on the CBP entry data received and to use the largest volume as the appropriate methodology for selecting respondents. In selecting Mitsui & Co., Ltd. and Toyota Tsusho Corp., the Department had selected the two exporters accounting for the largest volume of exports from Japan to the United States during the period of investigation.

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty Investigation of Certain Cold -Rolled Steel Flat Products from Japan: Revised Respondent Selection Memorandum,” (November 4, 2015) (“Revised Respondent Selection Memorandum”) (where the Department stated that Toyota Tsusho had only a certain amount of reportable sales of subject cold-rolled steel during the period of investigation but the Department determined that for Toyota Tsusho’s remaining U.S. sales of subject cold-rolled steel during the period of investigation, Toyota Tsusho was not the first party in the chain of distribution to have knowledge that the subject cold-rolled steel was destined for the United States.).

⁷ See Memorandum to the File, “Marubeni Itochu Steel Inc.’s November 6, 2015 filing and selection of another mandatory respondent, JFE Steel Corporation,” dated November 12, 2015 (“Selection of JFE Memorandum”).

⁸ See Memorandum to the File, “Nippon Steel & Sumikin Stainless Steel Corporation’s November 12, 2015 letter and selection of another mandatory respondent, Nippon Steel & Sumitomo Metal Corporation,” dated November 19, 2015 (“Selection of NSSMC Memorandum”).

⁹ See Letter from Hitachi Metals, “Certain Cold-Rolled Steel Flat Products from Japan: Hitachi Metals’ Request for Voluntary Respondent Treatment and Section A Questionnaire Response,” dated October 14, 2015 (“Hitachi Metals’ Request for Voluntary Treatment”).

¹⁰ See Letter from JFE, “Certain Cold-Rolled Steel Flat Products from Japan: Advisement of Non-Participation in Investigation,” dated November 25, 2015 (“JFE Letter on Non-Participation”); see also Letter from NSSMC, “Certain Cold-Rolled Steel Flat Products from Japan: NSSMC’s Response to Issuance of the Antidumping Duty Questionnaire,” dated December 1, 2015 (“NSSMC Letter of Non-Participation”).

¹¹ We did not select Hitachi Metals as a mandatory respondent, only as a voluntary respondent. See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty Investigation of Certain Cold -Rolled Steel Flat Products from Japan: Whether to Selection

Additionally, in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of CRS to be reported in response to the Department's AD questionnaire.¹² From September through December 2015, the following interested parties submitted comments on the scope of the investigation: Caparo Precision Strip, Ltd.; Sumitomo Corporation of America; POSCO; Hitachi Metals America, Ltd.; Electrolux Home Products, Inc.; Electrolux Home Care Products, Inc.; NSSMC; Nissan North America, Inc.; the Ministry of Economic Development of the Russian Federation; JFE; and Ameri-Source Specialty Products, Inc. In Hitachi Metals' September 8, 2015 scope comments, Hitachi Metals requested that the Department confirm that certain ultra-tempered automotive steel produced by Hitachi Metals, as described below, is excluded from the scope of this instant investigation.¹³ On September 18, 2015, December 1, 2015, and January 6, 2016, Petitioners submitted rebuttal comments in response to the scope comments of each of the parties listed above. On December 4, 2015¹⁴ and February 12, 2016,¹⁵ Hitachi Metals submitted additional scope comments regarding ultra-tempered automotive steel, further supporting its contention that the certain ultra-tempered automotive steel produced by Hitachi Metals, as described below, is excluded from the scope of investigation. On February 22, 2016,¹⁶ Petitioners filed scope comments confirming that certain ultra-tempered automotive steel, as described below, in the Federal Register, and in the "Preliminary Scope Decision Memoranda," should be excluded from the scope of investigation for CRS from Japan. For further discussion of Hitachi Metals' scope comments and scope comments from other interested parties, see "Preliminary Scope Decision Memorandum" issued concurrently with this memorandum.¹⁷

Additional Mandatory and/or Voluntary Respondents," (December 10, 2015) ("Voluntary Respondent Selection Memorandum").

¹² See Initiation Notice, 80 FR at 51199.

¹³ See Letter from Hitachi Metals, "Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Hitachi Metals America's Scope Comments and Request for Clarification of Scope Exclusion for Ultra-Tempered Automotive Steel," dated September 8, 2015 ("Hitachi Metals' September 8, 2015 Scope Comments").

¹⁴ See Letter from Hitachi Metals, "Certain Cold-Rolled Steel Flat Products from Japan: Hitachi Metals America's Response to Petitioners' September 18, 2015 Scope Comments," dated December 4, 2015 ("Hitachi Metals' December 4, 2015 Scope Comments").

¹⁵ See Letter from Hitachi Metals, "Certain Cold-Rolled Steel Flat Products from Japan: Hitachi Metals' Pre-Preliminary Determination Comments," dated February 12, 2016 ("Hitachi Metals' February 12, 2016 Scope Comments").

¹⁶ See Letter from Petitioners, "Certain Cold-Rolled Steel Flat Products from Japan: Response to Additional Information Request Regarding Scope," dated February 22, 2016 ("Petitioners' February 22, 2016 Scope Comments").

¹⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated concurrently with this preliminary determination; see also Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping Duty Operations, "Certain Cold-Rolled Steel Products From Japan: Additional Scope Comments and Decision Memorandum for the Preliminary Determinations," dated concurrently with this preliminary determination (collectively, Preliminary Scope Decision Memorandum).

On September 10, 2015, the United States International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of CRS from Japan.¹⁸

On October 30, 2015, Petitioners timely filed allegations that critical circumstances exist with respect to imports of CRS from Japan.¹⁹ On November 9, 2015, NSSMC and Hitachi Metals filed rebuttal comments to Petitioners’ allegations.²⁰ On November 30, 2015, Petitioners commented on the mandatory and voluntary respondents’ critical circumstances rebuttal comments.²¹ For further discussion of Petitioners’ critical circumstances allegation, see the “Critical Circumstances” section of this memorandum below.

On November 30, 2015, the Department published a notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).²² On January 27, 2016, the Department tolled all administrative deadlines as a result of the recent closure of the Federal Government due to Snowstorm “Jonas.”²³ As a result of the 50-day postponement and the subsequent four day tolling due to the snowstorm, the revised deadline for the preliminary determination in this investigation is now February 29, 2016.

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2015.²⁴

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold- reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or

¹⁸ See Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom, 80 FR 55872 (September 17, 2015).

¹⁹ See Letter from Petitioner, “Certain Cold-Rolled Steel Flat Products from The People’s Republic of China, Japan, And the Russian Federation – Petitioner’s Critical Circumstances Allegation,” dated October 30, 2015.

²⁰ See Letter from NSSMC, “Certain Cold-Rolled Steel Flat Products from Japan: NSSMC’s Rebuttal Comments on Petitioners’ Critical Circumstances Allegations,” dated November 9, 2015; see also Letter from Hitachi Metals, “Certain Cold-Rolled Steel Flat Products from Japan: Response to Petitioners’ Critical Circumstances Allegation,” dated November 9, 2015.

²¹ See Letter from Petitioners, “Certain Cold-Rolled Steel Flat Products from Japan and the Russian Federation – Petitioners’ Response to Respondents’ Critical Circumstances,” dated November 30, 2015.

²² See Certain Cold-Rolled Steel Flat Products From Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 74764 (November 30, 2015).

²³ See Memorandum from Ronald Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, to the Record, Re: “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm ‘Jonas,’” dated January 27, 2016.

²⁴ See 19 CFR 351.204(b)(1).

coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (e.g., in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (e.g., in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (e.g., in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, i.e., products which have been “worked after rolling” (e.g., products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

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

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

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

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High

Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AI-ISS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

- Ball bearing steels;²⁵
- Tool steels;²⁶
- Silico-manganese steel;²⁷
- Grain-oriented electrical steels (“GOES”) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.²⁸
- Non-Oriented Electrical Steels (“NOES”), as defined in the antidumping orders

²⁵ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

²⁶ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

²⁷ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

²⁸ See Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances, 79 Fed. Reg. 42,501, 42,503 (Dep’t of Commerce, July 22, 2014) (“Grain-Oriented Electrical Steel From Germany, Japan, and Poland”). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.”

issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People’s Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.²⁹

Also excluded from the scope of this investigation is ultra-tempered automotive steel, which is hardened, tempered, surface polished, and meets the following specifications:

- Thickness: less than or equal to 1.0 mm;
- Width: less than or equal to 330 mm;
- Chemical composition:

Element	C	Si	Mn	P	S
Weight%	0.90-1.05	0.15-0.35	0.30-0.50	Less than or equal to 0.03	Less than or equal to 0.006

- Physical properties:

Width less than or equal to 150mm	Flatness of less than 0.2% of nominal strip width
Width of 150 to 330mm	Flatness of less than 5 mm of nominal strip width

- Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite;
- Surface roughness: less than or equal to 0.80 $\mu\text{m Rz}$;
- Non-metallic inclusion:
 - Sulfide inclusion less than or equal to 0.04% (area percentage)
 - Oxide inclusion less than or equal to 0.05% (area percentage); and
- The mill test certificate must demonstrate that the steel is proprietary grade "PK" and specify the following:
 - The exact tensile strength, which must be greater than or equal to

²⁹ See Non-Oriented Electrical Steel From the People’s Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders, 79 Fed. Reg. 71,741, 71,741-42 (Dep’t of Commerce, Dec. 3, 2014) (“Non-Oriented Electrical Steel From the People’s Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan”). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

- 1600 N/mm²;
- The exact hardness, which must be greater than or equal to 465 Vickers hardness number;
 - The exact elongation, which must be between 2.5% and 9.5%; and
 - Certified as having residual compressive stress within a range of 100 to 400 N/mm².

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

V. RESPONDENT SELECTION

A. Selection of Mandatory Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statically valid based on the information available at the time of selection; or (2) exporters or producers accounting for the largest volume of the subject merchandise that can be reasonably examined.

After consideration of the complexities expected to arise in these proceedings and the resources available to the Department, on September 18, 2015, the Department selected two mandatory respondents, Mitsui & Co., Ltd. (“Mitsui”) and Toyota Tsusho Corp. (“Toyota Tsusho”), based on CBP data placed on the record of this investigation.³⁰ Upon determining to limit individual

³⁰ See Initial Respondent Selection Memorandum.

examinations, the Department noted at this time that it only had the resources to examine two individual company respondents in this investigation and the respondents selected were those with the greatest export volume.³¹ On November 4, 2015, the Department determined that Mitsui and Toyota Tsusho would not be required to participate as mandatory respondents in the investigation because Mitsui and Toyota Tsusho were not the first party in the chain of distribution to have knowledge that the CRS was destined for the United States.³² The Department deselected Mitsui and Toyota Tsusho and informed both companies that they would not be required to respond to the Department's AD questionnaire at that time.³³

Also, on November 4, 2015, the Department reexamined the CBP entry data and selected Marubeni-Itochu Steel Inc. and Nippon Steel & Sumikin Stainless Steel Corporation ("Nippon Steel & Sumikin") as mandatory respondents, noting again that available resources only permitted the individual examination of two mandatory companies in the investigation.³⁴ On November 12, 2015, the Department deselected Marubeni-Itochu Steel Inc. as a mandatory respondent because Marubeni-Itochu Steel Inc. was not the first party in the chain of distribution to have knowledge that the subject CRS was destined for the United States.³⁵ We informed Marubeni-Itochu Steel Inc. that it was not required to respond to the Department's AD questionnaire at that time.³⁶

On November 12, 2015, the Department reexamined the CBP entry data and selected JFE as a mandatory respondent and issued an AD duty questionnaire to JFE.³⁷ On November 19, 2015, the Department reexamined its selection of Nippon Steel & Sumikin as a mandatory respondent, withdrew the AD duty questionnaire issued to Nippon Steel & Sumikin, and informed the company that it did not need to respond to the Department's AD duty questionnaire because Nippon Steel & Sumikin stated that it is not a producer or exporter of CRS and is only involved in the production and/or export of stainless steel products.³⁸ Also, on November 19, 2015, the Department reexamined the CBP entry data and selected NSSMC as a mandatory respondent and issued it an AD questionnaire.³⁹ On November 25, 2015, and December 1, 2015, JFE and NSSMC informed the Department that they would not respond to the Department's AD questionnaire and, therefore, would not participate in this investigation as mandatory respondents.⁴⁰

B. Selection of Voluntary Respondent

When the Department limits the number of exporters examined in an investigation pursuant to section 777A(e)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual

³¹ Id. at 2-6.

³² See Revised Respondent Selection Memorandum.

³³ Id.

³⁴ Id.

³⁵ See Selection of JFE Steel Memorandum.

³⁶ Id.

³⁷ Id.

³⁸ See Selection of NSSMC Memorandum.

³⁹ Id.

⁴⁰ See JFE Letter of Non-Participation; see also NSSMC Letter of Non-Participation.

examination who voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for exporters or producers initially selected for examination, and (2) the number of exporters or producers subject to the investigation is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation.⁴¹ In determining whether to examine voluntary respondents, pursuant to section 782(a) of the Act, the Department considers whether examination of the voluntary respondents would be unduly burdensome and inhibit the timely completion of the investigation.

On October 13, 2015, Hitachi Metals filed a request for treatment as a voluntary respondent.⁴² Hitachi Metals subsequently filed timely responses to our AD questionnaires by the due dates specified for the mandatory respondents. On December 10, 2015, after issuing the four respondent selection memoranda discussed above, we determined there was insufficient time to select an additional mandatory respondent.⁴³ While we did not select Hitachi Metals as a mandatory respondent, we selected Hitachi Metals as a voluntary respondent because neither of the two selected mandatory respondents are participating in this proceeding (JFE Steel and Nippon Steel & Sumitomo) and reviewing Hitachi Metals in lieu of the two selected mandatory respondents would not place an additional burden on the Department's limited resources. In addition, as noted above, Hitachi Metals submitted its sections A, B, C, and D questionnaire responses; thus, the Department was able to review these responses immediately and issue supplemental questionnaires.⁴⁴ From October 2015 through February 2016, the Department received timely responses to the Department's original and supplemental questionnaires.

On September 9, 2015,⁴⁵ December 4, 2015,⁴⁶ and February 12, 2016,⁴⁷ Hitachi Metals submitted scope comments regarding its ultra-tempered automotive steel. In its February 12, 2016, scope comments, Hitachi Metals explained that it consulted with Petitioners to further clarify the terms of the proposed scope exclusion of ultra-tempered steel for this investigation and that Petitioners did not object to Hitachi Metals' terms of the scope exclusion. Hitachi Metals contends that it manufactures and sells only one grade of certain ultra-tempered automotive steel (*i.e.*, PK grade) within the original scope of the Department's investigation. According to Hitachi Metals', all of its reported home market sales, U.S. sales, and production costs were comprised entirely of the ultra-tempered steel strip with a proprietary "PK" grade that fall within the parameters of the above-mentioned ultra-tempered steel scope exclusion request.⁴⁸

⁴¹ The voluntary respondent provision of the Act was recently revised. See Section 506 of the Trade Preferences Extension Act of 2015, Public Law 114-27 (June 29, 2015); see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015: Interpretive Rule, 80 FR 46793 (August 6, 2015) (establishing a date of application for the statutory revisions contained in the Trade Preferences Extension Act of 2015).

⁴² See Hitachi Metals' Request for Voluntary Treatment.

⁴³ See Voluntary Respondent Selection Memorandum.

⁴⁴ Id.

⁴⁵ See Hitachi Metals' September 8, 2015 Scope Comments.

⁴⁶ See Hitachi Metals' December 4, 2015 Scope Comments.

⁴⁷ See Hitachi Metals' February 12, 2016 Scope Comments.

⁴⁸ Id.

On February 22, 2016, Petitioner filed a revised scope with the exact exclusion language for ultra-tempered automotive steel strip as it appears above in the Scope of the Investigation section of this memorandum and in the corresponding Federal Register notice. Additionally, Petitioners specified that the ultra-tempered steel scope exclusion in Petitioners' proposed scope language, as it appears in the Federal Register, is limited to the CRS from Japan LTFV investigation.⁴⁹ We have adopted Petitioners' proposed scope language as part of this preliminary determination.

Based on our analysis of Hitachi Metals' responses and supporting documentation (i.e., mill certificates, technical specifications, and product brochures) as well as Petitioners' February 22, 2016, scope comments, the Department preliminarily determines that Hitachi Metals' ultra-tempered automotive steel, as described in "Preliminary Scope Decision Memorandum" issued concurrently with this memorandum, is excluded from the scope of this investigation because it meets the specifications of the above-mentioned scope exclusion for certain ultra-tempered automotive steel. The Department notes that, consistent with Petitioners' intent, the scope exclusion for certain ultra-tempered automotive steel is specific only to this CRS from Japan investigation.⁵⁰ Because of the revised scope language, Hitachi Metals has no remaining sales of CRS covered under the scope of the investigation in the United States or the foreign like product in the home market to investigate and to calculate a margin. For further discussion of Hitachi Metals' scope comments, see "Preliminary Scope Decision Memoranda" issued concurrently with this memorandum.

VI. APPLICATION OF FACTS AVAILABLE AND ALL-OTHERS RATE

As noted above, JFE and NSSMC were both selected as mandatory respondents and each received the Department's questionnaire, but did not submit responses to the Department's AD questionnaire. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to JFE and NSSMC.

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or an interested party withholds information requested by the Department; fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the

⁴⁹ See Petitioners' February 22, 2016, Scope Comments.

⁵⁰ See Preliminary Scope Decision Memorandum; see also Petitioners' February 22, 2016 Scope Comments.

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

In this investigation, JFE and NSSMC did not respond to our request for information or otherwise participate in this investigation. As a result, we preliminarily find that necessary information is not available on the record, that JFE and NSSMC withheld information the Department requested, that they failed to provide information by the specified deadlines, and that they significantly impeded the proceeding. Moreover, because JFE and NSSMC failed to provide any information under section 782(e) of the Act, the Department does not have any information to consider or verify. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine JFE's and NSSMC's preliminary, estimated weighted-average dumping margins.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.⁵¹ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA") explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁵² Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁵³ It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁵⁴

We preliminarily find that JFE and NSSMC have not acted to the best of their ability in providing requested information because JFE and NSSMC failed to respond to the Department's questionnaire. The failure of JFE and NSSMC 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 their questionnaire responses, as required by section 782(i)(1) of the Act. Accordingly, the Department concludes that JFE and NSSMC failed to

⁵¹ See also 19 CFR 351.308(a); Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); and 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).

⁵² See H.R. Doc. 103-316, Vol. 1 (1994) at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007).

⁵³ See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000); Preamble, 62 FR at 27340.

⁵⁴ See, e.g., Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476 (March 14, 2014).

cooperate to the best of their ability to comply with a request for information by the Department, in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Based on the above, the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.⁵⁵

C. Preliminary Estimated Weighted-Average Dumping Margin Based on Adverse Facts Available

Section 776(b) of the Act states that the Department, 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.⁵⁶ In selecting a rate based on adverse facts available (“AFA”), the Department 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.⁵⁷ The Department’s practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the Petition, or (2) the highest calculated rate of any respondent in the investigation.⁵⁸ In this investigation, the only Petition dumping margin is 71.35 percent and no rate was calculated for an individually-examined respondent.⁵⁹ Thus, consistent with our practice, we have selected the highest dumping margin alleged in the Petition as the AFA rate applicable to JFE and NSSMC.

D. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) 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. 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.”⁶⁰ Thus, because the 71.35 percent AFA rate applied to JFE and NSSMC is derived from the Petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

⁵⁵ See, e.g., Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at pages 7-11, unchanged in Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part, 79 FR 61609 (October 14, 2014); see also Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total adverse facts available when the respondent failed to respond to the antidumping questionnaire).

⁵⁶ See also 19 CFR 351.308(c).

⁵⁷ See SAA at 870.

⁵⁸ See Welded Stainless Pressure Pipe From Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), accompanying Issues and Decision Memorandum (“WSPP from Thailand”).

⁵⁹ See Initiation Notice; see also Initiation Checklist.

⁶⁰ See SAA at 870; see also 19 CFR 351.308(c)(1).

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁶¹ The SAA and the Department’s regulations explain that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁶² To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.⁶³

Nonetheless, 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.⁶⁴

We determined that the Petition margin of 71.35 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁶⁵

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (“EP”) and normal value (“NV”) calculations, including the constructed value calculations used in the Petition to derive NV and the alleged dumping margins.⁶⁶ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive the dumping margins alleged in the Petition.⁶⁷

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioner’s EP and NV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of

⁶¹ See SAA at 870; see also 19 CFR 351.308(d).

⁶² See SAA at 870; see also 19 CFR 351.308(d).

⁶³ See WSPP From Thailand.

⁶⁴ On June 29, 2015, President Obama signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD 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. See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015). The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation. 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).

⁶⁵ See “Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from Japan,” dated April 17, 2015 (“Initiation Checklist”).

⁶⁶ Id.

⁶⁷ Id.

the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margins alleged in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with new section 776(d)(3) of the Act, 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. Because there are no other participating cooperative respondents in this investigation and Hitachi Metals’ sales are excluded from the scope of this investigation, we relied upon the dumping margins alleged in the Petition, which is the only information regarding the CRS industry reasonably at the Department’s disposal. Furthermore, as noted in GOES from China, in which the only mandatory respondent also received AFA, “there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information.”⁶⁸

Accordingly, the Department preliminarily determines that the highest dumping margin alleged in the Petition has probative value and has corroborated the AFA rate of 71.35 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that 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 mandatory respondents.⁶⁹

E. All-Others Rate

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 rates that are zero, de minimis, or 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 entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

⁶⁸ See Grain-Oriented Electrical Steel From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 59226 (October 1, 2014) (GOES from China), and accompanying Issues and Decision Memorandum at 20; see also KYD, Inc. v. United States, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with the Department that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that “[t]he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition”).

⁶⁹ 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.

As noted above, JFE and NSSMC are the sole mandatory respondents in this investigation, and their estimated dumping margins are determined entirely under section 776 of the Act. Consequently, the only available dumping margin for this preliminary determination is alleged in the Petition. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances has been to assign, as the "all-others" rate, a simple average of the Petition rates.⁷⁰ However, because the Petition here contained only one estimated dumping margin, there are no additional estimated margins available with which to create the "all-others" rate. Consequently, and consistent with its practice, the Department is using the initiation margin of 71.35 percent as the "all-others" rate to entities not individually examined in this investigation.⁷¹

VII. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On October 30, 2015, Petitioners alleged that critical circumstances exist with respect to imports of subject CRS from Japan and that a need for expedited action was warranted.⁷² Petitioners argue that the Department should base the comparison period on a date prior to the filing of the Petition because record evidence indicates that CRS producers and exporters were aware that a proceeding was likely by March 2015. According to Petitioners, by the end of March 2015, there was a widespread belief that a proceeding was imminent based on evidence of public references to the impending trade cases on CRS submitted by Petitioners.⁷³ Petitioners state that such public references in articles and press releases to the impending trade cases on CRS indicate that subject foreign producers, exporters and importers had reason to believe that the proceedings were likely.⁷⁴ As such, Petitioners argue that the Department should compare imports of CRS from Japan for the three-month period from January-March 2015 to April-June 2015.⁷⁵

On November 9, 2015, NSSMC rebutted that Petitioners' request for an expedited affirmative determination of critical circumstances is not warranted and that Petitioners failed to show that there have been massive imports of CRS over a relatively short period because Petitioners used inappropriate base and comparison periods.⁷⁶ According to NSSMC, Petitioners fail to demonstrate that importers, exporters, or producers of CRS from Japan had reason to believe that

⁷⁰ 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.

⁷¹ See Certain Oil Country Tubular Goods From Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination, 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value, 79 FR 53691 (September 10, 2014).

⁷² See Letter from Petitioners, "Certain Cold-Rolled Steel Flat Products From The People's Republic of China, Japan, And the Russian Federation – Petitioners' Critical Circumstances Allegation," dated October 30, 2015 ("Critical Circumstances Allegation").

⁷³ Id. at 13-14.

⁷⁴ Id.

⁷⁵ Id. at 15.

⁷⁶ See Letter from NSSMC, "Certain Cold-Rolled Steel Flat Products from Japan: NSSMC's Rebuttal Comments on Petitioners' Critical Circumstances Allegations," dated November 9, 2015 at 2-3.

an AD proceeding was likely in late March 2015 or at any time prior to the actual filing of the Petition on July 28, 2015. NSSMC argues that Petitioners' evidence for imputed knowledge is speculative because the articles all address potential trade remedies proceedings against China, not Japan.⁷⁷ Moreover, NSSMC claims that even if there was reason to believe that a proceeding was likely in late March 2015, the Department should not deviate from its normal methodology and should select a later comparison period because of the time it takes between the negotiation of a sale and the entry of merchandise into the United States.⁷⁸ According to NSSMC, sales pursuant to negotiations that began in late March/early April 2015 would not enter the United States until later; therefore, NSSMC claims the correct base and comparison periods should be later (i.e., May-July 2015 and August-October 2015, respectively).⁷⁹

Also, on November 9, 2015, Hitachi Metals filed rebuttal comments to Petitioners' critical circumstances allegations.⁸⁰ According to Hitachi Metals, the imputed knowledge requirement in March 2015 is not satisfied because no article submitted by Petitioners specifically mentions a likely U.S. AD case against imports of CRS from Japan.⁸¹ Additionally, Hitachi Metals contends that the mere presence of unsubstantiated rumors in trade publications that the U.S. industry was considering filing new steel petitions is too speculative to form a basis for imputing knowledge that an antidumping duty petition against CRS imports from Japan was likely in March 2015.⁸² As such, Hitachi Metals contends that the Department should use its normal base and comparison periods for its critical circumstances investigation: June-August 2015 and September-November 2015.⁸³

On November 30, 2015, Petitioners commented on Hitachi Metals' and NSSMC's November 9, 2015, rebuttal comments.⁸⁴ Petitioners contend that the imputed knowledge requirement was satisfied in March 2015 because the Department recently concluded in CORE Preliminary Determinations of Critical Circumstances that the evidence submitted by Petitioners in those investigations demonstrates that Petitions on CRS were inevitable by late March 2015 based on similar evidence Petitioners placed on the record in this instant investigation.⁸⁵ Finally, Petitioners argue that NSSMC's request for a longer "relatively short period" should be rejected and that a three-month period is not unusual when the comparison period is based on a date prior to the filing of the Petition. As such, Petitioners continue to argue that the Department should utilize the base and comparison periods of January-March 2015 and April-June 2015 to determine whether there was a massive increase in imports from the subject countries.

⁷⁷ Id. at 5-7.

⁷⁸ Id. at 7-8.

⁷⁹ Id.

⁸⁰ See Letter from Hitachi Metals, "Certain Cold-Rolled Steel Flat Products from Japan: Response to Petitioners' Critical Circumstances Allegation," dated November 9, 2015 at 1-2.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ See Letter from Petitioners, "Certain Cold-Rolled Steel Flat Products from Japan and the Russian Federation – Petitioners' Response to Respondents' Critical Circumstances," dated November 30, 2015.

⁸⁵ Id. (citing to Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances, 80 FR 68504 (November 5, 2015) ("CORE Preliminary Determinations of Critical Circumstances").

sales at LTFV.⁸⁹ For JFE and NSSMC, we are preliminarily assigning them a rate of 71.35 percent, and we are assigning to all other producers or exporters a rate of 71.35 percent. Accordingly, the preliminary estimated weighted-average dumping margins exceed the threshold sufficient to impute knowledge of dumping. Thus, these rates provide a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to the importers.

In determining whether an importer knew, or should have known, that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.⁹⁰ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute knowledge of likely material injury by reason of such imports.⁹¹ Here, the ITC found that “there is a reasonable indication that an industry in the United States is materially injured by reason of imports of {CRS} from Brazil, China, India, Japan, Korea, Russia, and the United Kingdom...”⁹² Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge of material injury to importers.

2. Section 733(e)(1)(B) of the Act: Whether There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

In determining whether imports of the subject merchandise were “massive,” the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption accounted for by the imports.⁹³ In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the Petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the Petition (*i.e.*, the “comparison period”). If the Department finds that importers, or exporters or producers, had

⁸⁹ See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002) (“Steel Wire Rod Preliminary Determination”), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova, 67 FR 55790 (August 30, 2001) (“Steel Wire Rod Moldova Final Determination”); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005) (“Magnesium Metal Preliminary Determination”), unchanged in Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China, 70 FR 9037 (February 24, 2005) (“Magnesium Metal Final Determination”).

⁹⁰ See, e.g., Steel Threaded Rod from India: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 79 FR 9164 (February 18, 2014); see, e.g., Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 75 FR 24572, 24573 (May 5, 2010), unchanged in Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry, 75 FR 30377 (June 1, 2010).

⁹¹ See, e.g., Steel Threaded Rod from India: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 79 FR 9164 (February 18, 2014).

⁹² See Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom, 80 FR 55872 (September 17, 2015).

⁹³ See 19 CFR 351.206(h)(1).

reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.⁹⁴ Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Based on evidence provided by Petitioners, the Department finds that pursuant to 19 CFR 351.206(i), importers, exporters or producers had reason to believe, at some time prior to the filing of the Petition, that a proceeding was likely. Specifically, the Department concludes that the factual information provided by Petitioners indicates that by March 2015, importers, exporters or producers had reason to believe that proceedings were likely. Among the documents Petitioners provided to support their claim of so-called “early knowledge,” the Department finds the following particularly relevant:

- On March 10, 2015, Steel Market Update acknowledged and responded to an influx of “recent” inquiries from importers of cold-rolled steel and CORE steel products “asking questions about the potential for a trade case or anti-dumping filing by the domestic mills against foreign steel imports.” The article stated that “if there is a case most likely other countries will be involved in the trade action.”⁹⁵
- On March 15, 2015, the Wall Street Journal article discusses leading American Steel producers testifying before Congressional Steel Caucus hearing, “a prelude to launching at least one anti-dumping complaint.” According to the article, “China isn’t alone in facing allegations of dumping. Similar complaints have been levelled against others such as Japanese and Indian producers.”⁹⁶
- On March 24, 2015, one report indicated that U.S. steel producers have now built a strong case against the imports and will likely file a complaint with the ITC.⁹⁷
- On March 26, 2015, American Metal Market issued a press release stating that nearly 70 percent of industry participants expected CRS and CORE steel cases to be filed in 2015.⁹⁸
- On March 26, 2015, an article in the Chicago Tribune makes clear that the domestic industry will be pursuing AD cases.⁹⁹

We disagree with NSSMC’s and Hitachi Metals’ claims that the Department should select a later comparison period because of the time it takes between the negotiation of a sale and the entry of merchandise into the United States and that the imputed requirement was not met in March 2015 because Japan was never specifically mentioned in any articles submitted by Petitioner and therefore expectations of a case involving Japan was unlikely at that time. With respect to the

⁹⁴ See 19 CFR 351.206(i).

⁹⁵ See Critical Circumstances Allegation at Exhibit 9.

⁹⁶ *Id.* at Exhibit 10.

⁹⁷ *Id.* at Exhibit 11.

⁹⁸ *Id.* at Exhibit 13.

⁹⁹ *Id.* at Exhibit 12.

purported gap period between the negotiation of a sale and the entry of merchandise into the United States, such a factor is not relevant to the Department's preliminary determination of massive imports for JFE and NSSMC, which as indicated below is based on AFA. Furthermore, the information used to assess massive imports for non-individually examined respondents is, as described below, entry data from Global Trade Atlas ("GTA"). With respect to expectations for a proceeding, section 351.206(i) of the Department's regulations allow for the use of a comparison period prior to the filing of the Petition in situations where importers, exporters, or producers had reason to believe that an AD proceeding was likely prior to the filing of the Petition. The March 15, 2015 Wall Street Journal article specifically mentions Japan and the above-mentioned articles and press releases indicate that, by March 2015, rumors had turned to expectations among steel importers, exporters, and producers that forthcoming Petitions involving multiple countries were inevitable. As such, the Department preliminarily finds information on the record demonstrates that by March 2015, importers, exporters or producers had reason to believe that a proceeding involving CRS was likely and that a comparison period prior to the filing of the Petition is warranted.

a. JFE and NSSMC

It is the Department's practice to conduct its massive imports analysis with respect to the mandatory respondents based on their reported monthly shipment data.¹⁰⁰ However, as noted above, the mandatory respondents did not respond to our request for information. Therefore, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted. Accordingly, we preliminarily find that there were massive imports of subject merchandise from JFE and NSSMC, pursuant to our practice.¹⁰¹

b. Non-Individually Examined Respondents

In keeping with recent prior determinations, we did not impute the adverse inferences of massive imports that we applied to the mandatory respondents to the non-individually examined companies receiving the "all-others" rate.¹⁰² Rather, we examined data for total relevant imports during the comparison period, relative to a base period, to determine whether imports were massive with respect to these companies.

It is the Department's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.¹⁰³ The Department typically determines whether to include the month in which a party had reason to believe that a proceeding

¹⁰⁰ See, e.g., Carbon Steel Pipe Final Determination; see also SDGE Final Determination.

¹⁰¹ See Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part, 79 FR 29423 (May 22, 2014) and accompanying Preliminary Decision Memorandum 11-16, unchanged in Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part, 79 FR 61609 (October 14, 2014); see also SDGE Final Determination, 74 FR at 2052-2053.

¹⁰² Id. (noting that where mandatory respondents receive AFA we do not impute "massive imports" to companies receiving the "all-others" rate).

¹⁰³ Id.

was likely in the base or comparison period depending on whether the event that gave rise to the belief occurred in the first half (included in the comparison period) or second half (included in the base period) of the month.¹⁰⁴ Based on these practices, the Department compared GTA data for the period March 2015 through December 2015 (the last month for which GTA data is currently available) with the preceding ten-month period of May 2014 through February 2015.¹⁰⁵ These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration. From these data, the Department finds that there was not a massive surge in imports of more than 15 percent (specifically, 13.7 percent) during a “relatively short period” of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there were not massive imports for all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Based on the foregoing, the Department preliminarily determines that critical circumstances exist for the mandatory respondents, JFE and NSSMC, and do not exist with respect to the non-individually examined companies receiving the “all-others” rate.

VIII. VERIFICATION

Because none of the mandatory respondents in this investigation provided information requested by the Department and the Department preliminarily determines each of the mandatory respondents to have been uncooperative, verification will not be conducted.

IX. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Date

¹⁰⁴ Id.

¹⁰⁵ See Memorandum from William Horn to the File, “Certain Cold-Rolled Steel Flat Products from Japan: U.S. Import Data Considered in Critical Circumstances Analysis,” dated concurrently with this memorandum.