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March 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from Japan are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

II. BACKGROUND

On August 11, 2015, the Department received an antidumping duty (AD) petition covering imports of certain hot-rolled steel products from Japan,¹ which was filed in proper form by AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners). The Department initiated this investigation on August 31, 2015.²

¹ See Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, Turkey, and the United Kingdom, dated August 11, 2015 (the Petition).

² See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 FR 54261 (September 9, 2015) (Initiation Notice).



In the Initiation Notice, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on September 3, 2015, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.

Also 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 hot-rolled steel to be reported in response to the Department's AD questionnaire.⁴ From September through October 2015, the following interested parties submitted comments on the scope of the investigation: POSCO; Tata Steel IJmuiden BV; BlueScope Steel Ltd. (BlueScope); Nippon Steel & Sumitomo Metal Corporation; and JFE Steel Corporation. On October 5, October 21, and November 5, 2016, the petitioners submitted rebuttal scope comments in response to the scope comments of each of the interested parties that submitted scope comments. For a summary of the scope comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.⁵ The Department is preliminarily not modifying the scope language as it appeared in the Initiation Notice.

On September 16, 2015, in addition to the petitioners, BlueScope, Companhia Siderúrgica Nacional, Ereğli Demir ve Çelik Fabrikaları T.A.Ş., Hyundai Steel Company (Hyundai Steel), Nippon Steel & Sumitomo Metal Corporation, POSCO, Tata Steel IJmuiden BV, Tata Steel UK Ltd., and Usinas Siderurgicas de Minas Gerais - Usiminas S.A. submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁶ On September 21, 2016, BlueScope filed rebuttal comments. On September 22, 2015, the petitioners, Colakoglu Metalurji A.S., Colakoglu Dis Ticaret A.S., and Hyundai Steel filed rebuttal comments.⁷

On September 16, 2015, Nippon Steel & Sumitomo Metal Corporation (Nippon Steel) filed comments with a request for voluntary respondent treatment in the event the Department limited the number of exporters or producers to be individually examined. On September 18, 2015, Nippon Steel filed additional comments stating it should be selected as the mandatory respondent together with its affiliated exporter Nippon Steel & Sumikin Bussan Corporation (Nippon Bussan), collectively Nippon Group.⁸ Further, the Nippon Group reiterated its earlier request for

³ See Initiation Notice, 80 FR at 54265.

⁴ Id. at 54262.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

⁶ These companies are interested parties in the hot-rolled steel investigations, *i.e.*, Australia, Brazil, Japan, the Netherlands, Turkey, the Republic of Korea and the United Kingdom.

⁷ Id.

⁸ We are preliminarily treating these companies as a single entity for antidumping duty purposes. See "Single Entity Analysis" section below.

voluntary respondent treatment, if not selected as a mandatory respondent. On September 17, 2015 Tokyo Steel Co., Ltd. submitted a request to be selected as mandatory respondent or, alternatively, as a voluntary respondent. On September 18, 2015 JFE Holdings, Inc., JFE Steel Corporation, and their affiliates (collectively JFE Group) requested to be considered for voluntary respondent treatment in the event it was not selected as a mandatory respondent.⁹ On September 24, 2015, JFE Group submitted additional comments on the subject. On October 27, 2015, the Department limited the number of mandatory respondents selected for individual examination to the two largest publicly-identifiable producers/exporters of the subject merchandise by volume. Accordingly, we selected JFE Shoji and Nippon Bussan as mandatory respondents in this investigation.¹⁰

With regard to companies requesting voluntary respondent treatment, we stated that since JFE Shoji and Nippon Bussan were selected as mandatory respondents, the only remaining request for voluntary treatment was that of Tokyo Steel. As such, if Tokyo Steel or any other companies that submitted voluntary responses in accordance with the deadlines and set criteria, we would evaluate the circumstances during the course of the investigation to determine whether the individual examination of such companies would be unduly burdensome and inhibit the timely completion of the investigation.¹¹ We have determined that the individual examination of voluntary respondents would be unduly burdensome and would inhibit the timely completion of this investigation.¹² Therefore, we have not analyzed Tokyo Steel's voluntary responses to our questionnaires.

On September 30, 2015, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled steel from Japan.¹³

On October 27, 2015, the Department issued the AD questionnaire to the Nippon Group and to the JFE Group. On November 22 and November 24, 2015, respectively, the JFE Group and the Nippon Group each submitted timely responses to section A of the Department's AD questionnaire (*i.e.*, the section relating to general information), and in December 2015, both companies responded to sections B and C of the Department's AD questionnaire (*i.e.*, the sections relating to home market and U.S. sales, and cost of production information). In December 2015, the respondents also submitted timely responses to section D of the Department's AD questionnaire (*i.e.*, the section relating to cost of production and constructed value). From December 2015 through February 2016, we issued supplemental questionnaires to

⁹ We are preliminarily treating these companies as a single entity for antidumping duty purposes. See "Single Entity Analysis" section below.

¹⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Japan," dated October 27, 2015, at 7-8.

¹¹ *Id.*

¹² See Memorandum to Edward Yang, Director, Office VII, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Japan: Whether to Select Additional Mandatory and or/Voluntary Respondents," dated concurrently with this memorandum.

¹³ See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom: Determinations, Investigation Nos. 701-TA-545-547 and 731-TA-1291-1297 (Preliminary), 80 FR 58787 (September 30, 2015).

the Nippon Group and the JFE Group, and we received responses to these supplemental questionnaires from January 2016 through March 2016.

On November 10, 2015, the Nippon Group notified the Department of difficulty in responding to the questionnaire with respect to all downstream sales by its affiliated customers in the home market. On November 23, 2015, in part of its Section A questionnaire response, the Nippon Group requested an exemption from reporting further manufactured U.S. sales relating to Section E of the Department's questionnaire for certain imports of subject merchandise that are subject to the special rule for merchandise with value added after importation, and certain sales of further manufactured products that were a small proportion of total U.S. sales.

On November 10, 2015, the JFE Group notified the Department of difficulty in responding to the questionnaire with respect to certain downstream sales, and stating that due to this difficulty it would report all sales of hot-rolled steel to, rather than by, the affiliated processors and resellers. On November 25, 2015, the JFE Group requested an exemption from reporting further manufactured U.S. sales relating to Section E of the Department's questionnaire because the sales of such products were a small proportion of total U.S. sales.

On November 25, 2015, the Department postponed the time period for issuing the preliminary determination of this investigation by 50 days, in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).¹⁴ On January 27, 2016, the Department tolled all administrative deadlines as a result of the government closure due to Snowstorm "Jonas."¹⁵ 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 March 14, 2016.

Petitioners filed comments in advance of this preliminary determination on February 26, 2016 and February 29, 2016.¹⁶ On March 2, 2016, the JFE Group filed a letter objecting to petitioners filing of February 26, 2016. Further, on March 4, 2016, the JFE Group filed a response to petitioners' comments. On March 9, 2016 petitioners' replied to JFE Group's comments. On February 24, 2016 Tokyo Steel filed comments providing reasons why the Department should calculate a company-specific AD rate for Tokyo Steel. On March 1, 2016, petitioners filed comments on Tokyo Steel's request. To the extent possible, we have considered these comments in making this determination.

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

¹⁴ See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 73702 (November 25, 2015).

¹⁵ See Memorandum from Ronald Lorenzen, 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.

¹⁶ See Letter from Petitioners, "Certain Hot-Rolled Steel Flat Products from Japan: Pre-Preliminary Determination Comments for JFE," dated February 26, 2016. See also Letter from Petitioners, "Certain Hot-Rolled Steel Flat Products from Japan: Pre-Prelim Comments for NSSMC," dated February 29, 2016.

III. PERIOD OF INVESTIGATION

The period of investigation (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 August 2015.¹⁷

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On March 10, 2016, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), the JFE Group requested that, contingent upon an affirmative preliminary determination of sales at LTFV, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁸ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On October 23, 2015, Petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise under investigation.¹⁹ On December 9, 2015, the Department issued its preliminary critical circumstances determinations.²⁰ Pursuant to this determination, the Department preliminarily determined that critical circumstances exist for imports of subject merchandise from the Nippon Group and the JFE Group. The Department preliminarily determined that critical circumstances do not exist with respect to "all other" producers/exporters.

VI. SCOPE OF THE INVESTIGATION

The products covered by this investigation are hot-rolled steel from Japan. For a full description of the scope of this investigation, see this investigation's accompanying preliminary determination notice at Appendix I.

¹⁷ See 19 CFR 351.204(b)(1).

¹⁸ See Letter to the Secretary of Commerce from JFE, regarding "Certain Hot-Rolled Steel Flat Products from Japan: Revised Request to Postpone Final Determination" (March 10, 2016).

¹⁹ See Letter from Petitioners, "Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan and the Netherlands – Critical Circumstances Allegations," October 23, 2015.

²⁰ See Antidumping Duty Investigations of Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, and the Netherlands and Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Determinations of Critical Circumstances, 80 FR 76444 (December 9, 2015).

VII. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,²¹ the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage (i.e., "scope").²² As indicated above, certain interested parties commented on the scope of the investigation as it appeared in the Initiation Notice. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum. The Department is preliminarily not modifying the scope language as it appeared in the Initiation Notice.

VIII. SINGLE ENTITY ANALYSIS

Section 771(33) of the Act identifies persons that shall be considered "affiliated" or "affiliated persons," if: (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person. Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The Department's regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²³

Section 351.401(f) of the Department's regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;

²¹ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997).

²² See Initiation Notice, 80 FR at 54261.

²³ See also Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 2727298 (May 19, 1997).

- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.²⁴

The Department has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.²⁵ While section 19 CFR 351.401(f) explicitly applies to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, the Department has treated exporting companies as a single entity,²⁶ as well as producers and exporters as a single entity.²⁷

Furthermore, the CIT has upheld the Department's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.²⁸ For example, in Hontex II,²⁹ the CIT held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.³⁰

Nippon Steel/Nippon Bussan

We preliminarily determine that Nippon Steel and Nippon Bussan are affiliated pursuant to section 771(33)(E) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f). The Nippon Group states in its Section A questionnaire response that Nippon Steel and Nippon Bussan are affiliated due to their stock ownership.³¹ Nippon Steel is the producer of the subject merchandise while Nippon Bussan exported subject merchandise produced by Nippon Steel to the United States during the POI.³² These companies, therefore, are affiliated in accordance with section 771(33)(E) of the Act.

²⁴ See 19 CFR 351.401(f).

²⁵ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5

²⁶ Id.

²⁷ Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review, 75 FR 69626 (November 15, 2010).

²⁸ See Queen's Flowers de Colon v. United States, 981 F. Supp. 617, 628 (CIT 1997).

²⁹ See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) ("Hontex II")

³⁰ Id.

³¹ See Nippon Group's letter to the Department, "Certain Hot-Rolled Steel Flat Products from Japan: NSSMC's Response to the Department's Section A Questionnaire," at A-12 to A-18, and Exhibit A-4 (November 23, 2015) (Nippon Group SAQR).

³² Id. at A-2.

While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.³³ We preliminarily determine that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.³⁴ Therefore, in accordance with 19 CFR 351.401(f) and the Department's practice,³⁵ we are treating Nippon Steel and Nippon Bussan as a single entity for the purposes of this preliminary determination.³⁶

JFE Steel/JFE Shoji Trade

We preliminarily determine that JFE Steel and JFE Shoji are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f). The JFE Group states in its Section A questionnaire response that both JFE Steel and JFE Shoji are subsidiaries of the holding company JFE Holdings Inc., a publicly held corporation under the Japanese Companies Act, and that JFE Holdings has complete control over the affiliated companies.³⁷ JFE Steel is the producer of the subject merchandise while JFE Shoji is a trading company that resells a broad range of products. All sales of the merchandise under consideration in the United States were made by JFE Steel to unaffiliated trading companies or through JFE Shoji.³⁸ These companies are under common control of the same parent holding company and, therefore, are affiliated in accordance with section 771(33)(F) of the Act.

While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.³⁹ We preliminarily determine that there is a significant potential for the manipulation of price among these companies as evidenced by the level of common ownership and the intertwined nature of the operations of these companies.⁴⁰ Therefore, in

³³ See, e.g., Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 28955 (May 20, 2015).

³⁴ See Memorandum to the File from Jack Zhao, "Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Certain Hot-Rolled Steel Flat Products from Japan – Nippon Group," dated March 14, 2016 (Nippon Group Preliminary Calculation Memorandum).

³⁵ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

³⁶ See Nippon Group Preliminary Calculation Memorandum.

³⁷ See JFE Group Section A Questionnaire Response at A-9, A-21-22.

³⁸ *Id.*, at A-18-19.

³⁹ See, e.g., Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 28955 (May 20, 2015).

⁴⁰ See Memorandum to the File from Myrna Lobo, "Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Certain Hot-Rolled Steel Flat Products from Japan – JFE Group," dated March 14, 2016 (JFE Group Preliminary Calculation Memorandum).

accordance with 19 CFR 351.401(f) and the Department's practice,⁴¹ we are treating JFE Steel and JFE Shoji as a single entity for the purposes of this preliminary determination.⁴²

IX. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the Nippon Group's and the JFE Group's sales of the subject merchandise from Japan to the United States were made at less than normal value, the Department compared the export price (EP) and constructed export price (CEP) to the normal value (NV) as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the EPs (or CEPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁴³ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing

⁴¹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

⁴² See JFE Group Preliminary Calculation Memorandum.

⁴³ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); or Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For the Nippon Group and the JFE Group, purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code and/or state for the Nippon Group and the JFE Group) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

The Nippon Group

For the Nippon Group, based on the results of the differential pricing analysis, the Department preliminarily finds that 73.61 percent of the value of U.S. sales pass the Cohen's *d* test,⁴⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for the Nippon Group.

The JFE Group

For the JFE Group, based on the results of the differential pricing analysis, the Department preliminarily finds that 19.31 percent of the value of U.S. sales pass the Cohen's *d* test.⁴⁵ These results do not support consideration of an alternative to the average-to-average method. Thus, for this preliminary determination, the Department is applying the average-to-average method to all of the JFE Group's U.S. sales.

⁴⁴ See Nippon Group Preliminary Calculation Memorandum.

⁴⁵ See JFE Group Preliminary Calculation Memorandum.

X. USE OF FACTS AVAILABLE AND ADVERSE FACTS AVAILABLE

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.⁴⁶

A. Use of Facts Available

As noted further below in this section, both the Nippon Group and the JFE Group did not provide certain requested information necessary for the Department to calculate dumping margins for them in this investigation. By not responding to certain sections of the Department’s questionnaire or not providing the information, the Nippon Group and the JFE Group withheld information requested by the Department, failed to provide such information by the deadlines for submission of the information or in the form and manner requested by the Department, and significantly impeded this proceeding. Accordingly the use of facts available is warranted in determining AD margins for Nippon Group and the JFE Group, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act.

B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds an interested party has failed 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.⁴⁷ In addition, the 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.”⁴⁸ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁴⁹

⁴⁶ See also 19 CFR 351.308(c).

⁴⁷ See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 70295, 70297 (December 11, 2007).

⁴⁸ See SAA at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁵⁰ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁵¹

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

We preliminarily find that the Nippon Group and the JFE Group failed to cooperate by not acting to the best of their abilities to comply with requests for certain information in this investigation, within the meaning of section 776(b) of the Act, because each failed to respond to the Department's requests for information. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to these respondents.⁵²

C. Selection and Corroboration of Adverse Facts Available (AFA) Rate

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁵³ Under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such

Administrative Review, 72 FR 69663, 69664 (December 10, 2007); see also 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 Preliminary 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).

⁴⁹ See Preamble, 62 FR at 27340

⁵⁰ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

⁵¹ Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

⁵² See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁵³ See SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

margins. The TPEA also 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. In selecting a rate based on adverse facts available, 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.⁵⁴ 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 dumping margin of any respondent in the investigation.⁵⁵ In those instances described below where we rely upon AFA, we preliminarily apply to the Nippon Group and the JFE Group the highest company-specific rate alleged in the petition.⁵⁶

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, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁵⁷ 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.⁵⁸ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, 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.⁶⁰ Thus, because the AFA rates applied to the Nippon Group and the JFE Group are derived from the petition and, consequently, are based upon secondary information, the Department must corroborate it to the extent practicable. 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.⁶¹ Thus, we determined that the petition margins provided for the Nippon Group and the JFE Group of 28.86 percent and 28.34 percent, respectively, is reliable, to the extent appropriate information was available, by reviewing the adequacy and accuracy of the

⁵⁴ See SAA at 870.

⁵⁵ See, e.g., Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁶ See Petition Volume IV at 9 and Exhibit IV-15.

⁵⁷ See also 19 CFR 351.308(d).

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finishing 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).

⁶¹ Id.

information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.⁶²

We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination.⁶³ During our pre-initiation analysis, we examined the key elements of the EP and NV calculations used in the petition to derive the estimated margin.⁶⁴ During our pre-initiation analysis, we also examined information (to the extent that such information was reasonably available) from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the elements of the EP and NV calculations used in the petition to derive the estimated margin.⁶⁵

Based on our examination of the information, as discussed in detail in the Initiation Checklist,⁶⁶ we consider the petitioners' EP and NV calculations to be reliable. We obtained no other information that would make us 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. Because we confirmed the accuracy and validity of the information underlying the derivation of the margins in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the margins in the petition are reliable for purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. We determine that the petition rates are relevant because they are based on aggregate data involving the hot-rolled steel industry as well as information specific to the JFE Group and the Nippon Group. More specifically, the information contained in the petition is relevant to the respondents because the U.S. price in the petition was based on the average unit value (AUV) of U.S. imports from Japan under the relevant HTSUS subheading during the POI, thus including all Japanese shippers of the merchandise under investigation. Moreover, we analyzed the Nippon Group's and the JFE Group's margin programs and found product-specific margins at or above each company's highest petition rate.⁶⁷

In sum, the Department corroborated the AFA rates of 28.86 and 28.34 percent to the extent practicable within the meaning of section 776(c) of the Act because the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative respondents.⁶⁸ As these rates are

⁶² See Letter from Petitioners, "Re: Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, Turkey, and the United Kingdom - Responses to the Department's Supplemental Questions Regarding Volume IV (Japan) of Petitions for the Imposition of Antidumping and Countervailing Duties," dated August 18, 2016, at Exhibit IV-SUPP-15.B.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ See Initiation Checklist at 7-9.

⁶⁷ See Nippon Group Preliminary Calculation Memorandum and JFE Group Preliminary Calculation Memorandum.

⁶⁸ See section 776(c) of the Act; 19 CFR 351.308(c) and (d); see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube

both reliable and relevant, we determine that they each have probative value and, thus, it has been corroborated to the extent practicable, pursuant to section 776(c) of the Act. Thus, we preliminarily assigned these AFA rates to certain U.S. sales of subject merchandise from the Nippon Group and the JFE Group in instances where each failed to cooperate to the best of its ability. In addition, we preliminarily assigned the highest company-specific CONNUM-specific cost with respect to certain non-reported cost information in instances where the Nippon Group and the JFE Group failed to cooperate to the best of their ability.

The Nippon Group

1. Non-Reported Sales from the Nippon Group's Further Manufactured Resellers

In its Section C questionnaire response, the Nippon Group stated that certain non-prime products sold by the Nippon Group's further manufacturer, Steelscape LLC (Steelscape), have not been included in the U.S. sales database.⁶⁹ The Nippon Group argued these non-prime products are non-subject merchandise, including these non-prime products in the U.S. sales database would be inconsistent with the purpose of the calculation of CEP, Steelscape's cost already reflected the impact of the value reduction applied to non-prime products, and Steelscape's such sales of non-prime products account for a very small percentage of Steelscape's total sales during the POI.

Section 751(a)(2)(A) of the Act requires the Department to calculate the dumping margin for each entry of the subject merchandise entered during the POI. Steelscape imported subject merchandise of prime quality product. As the Nippon Group has not provided these non-prime sales information from Steelscape, the Department is unable to assess or analyze these sales for dumping margin calculation. Therefore, the Department preliminarily determines to apply facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because we find that necessary information is not available on the record of the investigation and that the Nippon Group withheld requested information and significantly impeded the proceeding.

Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available because the Nippon Group has failed to cooperate to the best of its ability to comply with our request for information. As adverse facts available, we have preliminarily applied the highest Nippon Group-specific margin calculated in the petition to these unreported sales by Steelscape.⁷⁰

2. Non-Reported Downstream Sales for the Nippon Group Affiliates

In a supplemental questionnaire, the Department requested that the Nippon Group report sales of all its home market affiliated downstream resellers that were not made at arm's length, as the Nippon Group's sales to all these affiliated customers accounted for more than five percent of its total sales of foreign-like product in the home market.⁷¹ The Nippon Group explained that

from the People's Republic of China, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁹ See Nippon Group Section C questionnaire response, dated December 17, 2015, at 11-14.

⁷⁰ See Nippon Group Preliminary Calculation Memorandum.

⁷¹ See Department's supplemental section A questionnaire, dated December 22, 2015 at question 10.

certain home market resellers are minority-owned by the group, and certain sales at issue are small in quantity when compared to its total home market sales.⁷² The Department requested the Nippon Group to conduct arm's length analyses and provide the downstream sales of those affiliated resellers that fail the arm's length test.⁷³ The Nippon Group resubmitted its home sales database and responded with regard to certain affiliated resellers' resale information; however, the Nippon Group did not report the majority of its affiliated resellers' resales that did not pass the Department's arm's length test.⁷⁴

Because the Nippon Group has not provided all of these home market affiliated company downstream resales, the Department is unable to further assess or analyze these sales. Therefore, the Department preliminarily determines to apply facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because we find that necessary information is not available on the record of the investigation and that the Nippon Group withheld requested information and significantly impeded the proceeding.

Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available because the Nippon Group has failed to cooperate to the best of its ability to comply with our request for information. As adverse facts available, we have preliminarily applied the highest Nippon Group home market price for unaffiliated customers to these unreported affiliated resellers' resales.⁷⁵

The JFE Group

1. Section E Questionnaire Response for California Steel Industries, Inc. (CSI) Sales

In a supplemental questionnaire, the Department requested the JFE Group to provide a Section E response with respect to CSI's further manufactured sales and to revise the U.S. sales database to include the further manufactured sales by CSI to the first unaffiliated U.S. customers.⁷⁶ On February 2, 2016, the JFE Group requested an extension to respond to the supplemental questionnaire stating it needed additional time to respond due to the extensive nature of the questionnaire.⁷⁷ The Department granted the JFE Group an extension until February 10, 2016.⁷⁸ On February 8, 2016, the JFE Group requested an additional extension to respond to certain specific questions including its Section E response.⁷⁹ The Department granted the JFE Group an extension until noon on February 16, 2016.⁸⁰ In its response on February 16, 2016, the JFE Group stated it was not possible to provide a full section E response so far into the investigation

⁷² See Nippon Group's letter to the Department on November 10, 2015.

⁷³ See Department's supplemental sections B-C questionnaire, dated January 29, 2016 at question 1.

⁷⁴ See Nippon Group supplemental sections B-C questionnaire response, dated February 17, 2016, question 1.

⁷⁵ See Nippon Group Preliminary Calculation Memorandum.

⁷⁶ See JFE Group Supplemental Questionnaire Sections A-C, dated January 29, 2016 at question 51.

⁷⁷ See JFE Group Letter "Certain Hot-Rolled Steel Flat Products from Japan (A-588-874): Extension Request for Second Supplemental Questionnaire (Sections A-C)," dated February 2, 2016.

⁷⁸ See Department Letter "Hot-Rolled Steel Flat Products from Japan: Sections A through C Second Supplemental Questionnaire Response Extension," dated February 4, 2016.

⁷⁹ See JFE Group Letter "Certain Hot-Rolled Steel Flat Products from Japan (A-588-874): Second Extension Request for Second Supplemental Questionnaire (Sections A-C)," dated February 8, 2016.

⁸⁰ See Department Letter "Hot-Rolled Steel Flat Products from Japan: Sections A through C Second Supplemental Questionnaire Response - Second Extension," dated February 9, 2016.

with the time limits provided, that gathering such data is time-intensive and not a task that can be accomplished within the short amount of time given even with the extension granted for the response to this question, and that the JFE Group was issued another separate supplemental section D questionnaire at the same time. Further, the JFE Group stated that the amount of CSI's sales were small, and its request for exemption was consistent with the Department's approach in analogous cases, where the Department has exempted the reporting of a small amount of further-manufactured sales or required that such sales be reported only in the Section C sales file, and not in the context of a full Section E response. Given this, the JFE Group, stated it was providing the sales made by CSI, but not the related further manufacturing expenses or the further manufacturing cost data due to time constraints. In doing so, the JFE Group did not request any additional extensions so that it could provide the requested information about CSI's further manufactured sales.

Because the JFE Group has not provided further manufacturing expense or cost data for CSI's sales of further manufactured merchandise, the Department lacks information needed to determine the U.S. prices of these sales. Therefore, the Department preliminarily determines to apply facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because we find that necessary information is not available on the record of the investigation and that the JFE Group withheld requested information and significantly impeded the proceeding.

Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available because the JFE Group has failed to cooperate to the best of its ability to comply with our request for information. As adverse facts available, we have preliminarily applied the highest JFE Group-specific margin calculated in the petition to CSI's further manufactured sales.⁸¹

2. Non-Reported Downstream Home Market Sales for Certain JFE Group Affiliates

In a supplemental questionnaire, the Department requested the JFE Group to confirm that it had provided a full list of affiliated parties that resold subject merchandise in the home market and to identify all affiliated resellers that re-sold hot-rolled steel sourced from JFE Steel, JFE Shoji, or any of JFE Shoji's subsidiaries.⁸² In its response the JFE Group explained that sales to certain affiliated resellers are an extremely small quantity of home market sales, and the JFE Group is reporting all JFE sales to these companies, rather than by the affiliated companies that resell, based upon its request to exempt the reporting of their downstream sales.⁸³ The Department then requested the JFE Group to conduct an arm's length analysis and provide the downstream sales of those affiliated resellers that fail the arm's length test.⁸⁴ The JFE Group responded with regard to two of the affiliated reseller's customers that the sales were a small quantity of home market sales and due to the short amount of time to prepare its response, the JFE Group was not reporting the sales for the two affiliated customers.⁸⁵

⁸¹ See JFE Group Preliminary Calculation Memorandum.

⁸² See Department's Supplemental Section A Questionnaire to JFE Group, dated December 21, 2015 at question 6; see also Department's Supplemental Sections A-C questionnaire, dated January 29, 2016 at question 10.

⁸³ See JFE Group Supplemental Section A Questionnaire Response Part 1, dated January 4, 2016 at 7.

⁸⁴ See Department's Supplemental Sections A-C Questionnaire, dated January 29, 2016 at question 10.

⁸⁵ See JFE Group Supplemental Sections A-C Questionnaire Response Part 2, dated February 16, 2016, question 10 at 10-11 and footnote 6.

Because the JFE Group has not provided these sales, the Department is unable to further assess or analyze these sales. Therefore, the Department preliminarily determines to apply facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because we find that necessary information is not available on the record of the investigation and that the JFE Group withheld significant information and significantly impeded the proceeding.

Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available because the JFE Group has failed to cooperate to the best of its ability to comply with our request for information. As adverse facts available, we have preliminarily applied the highest JFE Group home market price to these unreported affiliated resellers sales.⁸⁶

3. Non-Usable Control Numbers for Certain Home Market Sales

On reviewing the JFE Group's quantity and value chart, the Department requested the JFE Group to explain the nature of a certain category of sales and indicate whether these sales had been included in the home market database.⁸⁷ The JFE Group responded that "the sales categorized as 'JFE Supplied, Missing PO' are sales for which the purchase order is not available in JFE Shoji's or JKK's⁸⁸ sales invoicing system. Because the JFE system is entirely organized around the purchase order number, it is not possible to tie such sales to any particular sale. Thus, the lack of a purchase order makes it impossible to create any connum characteristics and report JFE Steel expenses (such as freight) for the product or to report it using the DOC methodology..." The JFE Group stated that for sales missing connum characteristics it has reported the sales with "X". The JFE Group further emphasized that these sales were an extremely small amount of total sales of subject merchandise and foreign like product and none of these sales were intended for the United States.⁸⁹ The JFE Group did not report manufacturing costs for these CONNUMS.⁹⁰

As a result of this missing cost of manufacturing information, the Department could not conduct its cost test for unknown products. Therefore, the Department preliminarily determines to apply facts available pursuant to sections 776(a)(1) and (2)(C) of the Act because we find that necessary information is not available on the record of the investigation and that the JFE Group significantly impeded the proceeding.

Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available because the JFE Group has failed to cooperate to the best of its ability to comply with our request for information. As adverse facts available, we have preliminarily assigned the CONNUM associated with the highest cost to these JFE Group home market sales.⁹¹

⁸⁶ See JFE Group Preliminary Calculation Memorandum.

⁸⁷ See Department's Supplemental Sections A-C Questionnaire, dated January 29, 2016 at question 2.c.

⁸⁸ JFE Shoji Kokan Kanzai (JKK) is also known as JFE Shoji Pipe & Fitting Trade Corporation, an affiliated company in the JFE Group that resells hot-rolled steel.

⁸⁹ See JFE Group Supplemental Sections A-C Questionnaire Response Part 2, dated February 16, 2016 at 3.

⁹⁰ See JFE Group February 5, 2016 Supplemental Section D Questionnaire Response at attachment D-67 and JFE's cost of production data file "JFESCP02."

⁹¹ See JFE Group Preliminary Calculation Memorandum.

4. Certain Cost of Production and Constructed Value Adjustments

The Department's analysis indicates that for certain inputs the JFE Group has not substantiated its claim to have paid a market price. Accordingly, the Department preliminarily determines to apply facts available pursuant to sections 776(a)(1) and (2) (C) of the Act because we find that necessary information is not available on the record.⁹² As facts available, we have increased the transfer prices paid for these inputs by a percentage adjustment calculated using market prices and increased the JFE Group's total cost of manufacturing.⁹³

In addition, the Department requested that the JFE Group revise its COP data file to include a separate data field that reported the per-unit adjustment necessary to revise the transfer prices between the collapsed entities to reflect the actual costs to each company.⁹⁴ The JFE Group failed to provide the information as requested.⁹⁵ Instead, the JFE Group simply stated that the "Section D Response is based on JFE Steel as the producer, *i.e.*, JFES did not collapse the two entities for reporting manufacturing costs."⁹⁶ The Department requested the information again in its second supplemental section D questionnaire dated February 10, 2016 (2SDQ). Specifically, the Department requested that the JFE Group revise its "COP data file to include a separate data field that reports the per-unit adjustment necessary to eliminate JFE Shoji's mark-up on these purchases."⁹⁷ The JFE Group again failed to provide this information.⁹⁸ The JFE Group responded that because, "JFE is not requesting that JFE Steel and JFE Shoji be collapsed and has not reported its costs on a collapsed basis. There accordingly is no need to modify the cost file to eliminate JFE Shoji's mark-up, as that requirement is not applicable."⁹⁹ The JFE Group has not provided the costs of the inputs JFE Shoji supplied to JFE Steel. Accordingly, the Department preliminarily determines to apply facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act because we find that necessary information is not available on the record, the JFE Group withheld significant information and the JFE Group significantly impeded the proceeding.¹⁰⁰

Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available because the JFE Group has failed to cooperate to the best of its ability to comply with our request for certain information related to JFE Shoji's sales of inputs and services to JFE Steel.¹⁰¹ As adverse facts available, we are adjusting the transfer prices of all inputs and services obtained from JFE Shoji by the single highest transactions disregarded adjustment calculated for purposes of our transactions disregarded analysis.¹⁰²

⁹² See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – JFE Steel Corporation (JFE Group Preliminary Cost Memorandum), dated concurrently with this preliminary determination.

⁹³ See JFE Group Preliminary Cost Memorandum.

⁹⁴ See the Department's January 15, 2015 Supplemental Section D questionnaire at 3.

⁹⁵ See JFE's February 5, 2016 Supplemental Section D (SDR) at 2.

⁹⁶ *Id.*

⁹⁷ See 2SDQ at 3.

⁹⁸ See JFE Group February 18, 2016 Second Supplemental Section D Response (2SDR) at 1-4.

⁹⁹ See 2SDR at 4.

¹⁰⁰ See JFE Group Preliminary Cost Memorandum.

¹⁰¹ *Id.*

¹⁰² *Id.*

XI. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁰³ The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.¹⁰⁴ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale in both markets, in accordance with our practice.¹⁰⁵

The Nippon Group

The Nippon Group reported the date of invoice for home market sales as date of sale, and reported date of invoice for U.S. market sales for its EP sales and certain Steelscape's CEP sales. For certain Steelscape's CEP sales with shipment date prior to the date of invoice, the Nippon Group reported the date of shipment as the date of sale.¹⁰⁶ Consistent with Department's practice of using the earlier of shipment or invoice date as the date of sale, we used shipment date as the date of sale in such instances.

The JFE Group

The JFE Group reported the shipment date as the date of sale for its sales to both the United States and the home market because it can precede the invoice date. The JFE Group stated the shipment of the subject merchandise from its facility triggers the issuance of the invoice for sales to the United States and the domestic market.¹⁰⁷ The invoice is generally issued on the same day as shipment from the mill, but may lag by a few days during processing.¹⁰⁸ Further, the JFE Group added that the material terms of sale frequently change between order date and shipment.¹⁰⁹ For its U.S. sales, the JFE Group reported JFE Shoji America's shipment date as the date of sale because it can precede the sale invoice date. For consignment sales, the JFE

¹⁰³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (*Allied Tube & Conduit Corp.*) (“As elaborated by Department practice, a date other than invoice date ‘better reflects’ the date when ‘material terms of sales are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.”).

¹⁰⁴ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) and accompanying Issues and Decision Memorandum, at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum, at Comment 2.

¹⁰⁵ *Id.*

¹⁰⁶ See Nippon Group's December 17, 2015 Section B response at 24, and Section C response at 25.

¹⁰⁷ See JFE Group Initial Questionnaire Response Section A (IQRA), dated November 23, 2015 at A-37.

¹⁰⁸ See JFE Group Supplemental Sections A-C Questionnaire Response Part 1, dated February 10, 2016 at 3.

¹⁰⁹ See JFE Group IQRA at A-37, JFE Supplemental Section A Part 1 dated January 4, 2016 at 15, and JFE Supplemental Section A Part 2, dated January 11, 2016 at 7.

Group reported JFE Shoji America's invoice date as the date of sale because it does not know the quantity of the sale until it is notified by the customer.¹¹⁰

For the preliminary determination, the Department is using the JFE Group's shipment date as date of sale for home market and U.S. sales, and JFE Shoji America's shipment date or invoice date, as appropriate, as the date of sale for U.S. market sales, consistent with the Department's normal methodology regarding date of sale that the date of sale is normally the date of invoice (or the shipment date, if earlier) and because the material terms of sale (e.g., quantity or price) are still subject to change when orders are confirmed. This is in accordance with 19 CFR 351.401(i) and the Department's practice, as noted above.¹¹¹

XII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Japan during the POI that fit the description in the "Scope of Investigation" section of the accompanying notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristics reported by the respondents in the following order of importance: whether the product is painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, pickled, and patterns in relief. For the Nippon Group's and the JFE Group's sales of hot-rolled steel in the United States, the reported control number identifies the characteristics of the hot-rolled steel as exported by the Nippon Group and the JFE Group.¹¹²

XIII. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the

¹¹⁰ See JFE Group IQR Section C, dated December 17, 2015 at C-21.

¹¹¹ See also, e.g., Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 29426 (May 22, 2014) and accompanying Decision Memorandum at 16, unchanged at Non-Oriented Electrical Steel From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 79 FR 61612 (October 14, 2014) ("As the information on the record indicates that the material terms of sale...could change until the date of shipment or invoice, where applicable, for both U.S. and comparison market sales, for purposes of this preliminary determination, we used the date of shipment (if earlier than the date of invoice) or the date of invoice as the date of sale for POSCO's reported U.S. and comparison market sales.").

¹¹² See Nippon Group IQR Section C at 15-21; and JFE IQR Section C at C-8 to 16.

United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

In accordance with section 772(a) of the Act, we calculated EP for certain of the Nippon Group and the JFE Group's U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(b) of the Act, for the remainder of the Nippon Group's and the JFE Group's U.S. sales, we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with the Nippon Group or the JFE Group, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

The Nippon Group

We based EP on the price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. inland freight.

We calculated the CEP based on the price to the first unaffiliated purchaser in the United States. We made deductions from the starting price for any movement expenses (e.g., foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. inland freight), in accordance with section 772(c)(2)(A) of the Act.¹¹³ In addition, we made an adjustment to price for the cost of any further manufacturing or assembly for sales used in the calculations, in accordance with section 772(d)(2) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses, bank charges, and other direct selling expenses) and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by the Nippon Group and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.¹¹⁴

The JFE Group

The JFE Group reported EP sales to unaffiliated Japanese trading companies during the POI.¹¹⁵ Accordingly, we based EP on the price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, and international freight.

¹¹³ See Nippon Group IQR-C at 38-68.

¹¹⁴ See Nippon Group Preliminary Calculation Memorandum.

¹¹⁵ See JFE Group IQR Section A at A-40.

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. The JFE Group reported that all of its CEP sales of subject merchandise were through its affiliate JFE Shoji America.¹¹⁶

We calculated the CEP based on the price to customers in the United States. We made deductions from the starting price (adjusted for billing adjustments) for any movement expenses (e.g., foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act.¹¹⁷

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses and foreign and U.S. inventory carrying costs) and indirect selling expenses.¹¹⁸ We also made an adjustment for profit allocated to these selling expenses, in accordance with section 772(d)(3) of the Act. In addition, we made an adjustment to price for the cost of any further manufacturing or assembly for sales used in the calculations, in accordance with section 772(d)(2) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by JFE Shoji America on their sales of the subject merchandise in the United States and the profit associated with those sales.¹¹⁹

XIV. NORMAL VALUE

A. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the Nippon Group's and the JFE Group's respective aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home

¹¹⁶ See JFE Group IQR Section A at 26 and JFE Supplemental Section A Part 1, dated January 4, 2016 at 12.

¹¹⁷ See JFE Group IQR Section C at 29-30. See also, JFE Preliminary Calculation Memorandum.

¹¹⁸ See JFE Group Preliminary Calculation Memorandum.

¹¹⁹ Id.

market sales as the basis for NV for the Nippon Group and the JFE Group, in accordance with section 773(a)(1)(B) of the Act.

Consistent with our practice, we also included the Nippon Group's and the JFE Group's sales to affiliated parties for purposes of determining home market viability.¹²⁰

B. Affiliated-Party Transactions and Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.¹²¹ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."¹²²

During the POI, the Nippon Group and the JFE Group made sales of hot-rolled steel in the home market to affiliated parties, as defined in section 771(33) of the Act.¹²³ Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c).¹²⁴ In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While the Department's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates. Pursuant to 19 CFR 351.403(c) and, in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.¹²⁵ With respect to

¹²⁰ See Certain Oil Country Tubular Goods From Saudi Arabia: Final Determination of Sales at Less Than Fair Value, 79 FR 41986 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).

¹²¹ See 19 CFR 351.403(c).

¹²² See China Steel Corp. v. United States, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 55352, 55355 (September 7, 2011) ("Mexican Pipe")).

¹²³ See Nippon Group IQR-B at 7-8, and JFE IQR at B-20.

¹²⁴ Including JFE Shoji's home market sales to affiliates and Nippon Bussan's sales to its affiliates.

¹²⁵ See section 771(15) of the Act and 19 CFR 351.102(b).

sales to affiliated resellers that failed the arm's-length test, we used the reported downstream sales of these affiliates in our calculations for the preliminary determination.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹²⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹²⁷ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),¹²⁸ we consider the starting prices to be the gross unit prices less all discounts and rebates. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹²⁹

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹³⁰

In this investigation, we obtained information from the Nippon Group and the JFE Group regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.¹³¹ Our LOT findings are summarized below.

¹²⁶ See 19 CFR 351.412(c)(2).

¹²⁷ *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

¹²⁸ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

¹²⁹ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

¹³⁰ See, *e.g.*, OJ from Brazil at Comment 7.

¹³¹ See Nippon Group IQR Section A at A-22 and Exhibits A-10 and A-11; and JFE IQR Section A at A-26-35 and Exhibit A-12.

The Nippon Group

As described above, we have treated Nippon Steel and Nippon Bussan as a single entity. In the home market, the Nippon Group sells merchandise under consideration through three channels of distribution. In channel 1, the Nippon Group negotiates sales with affiliated and unaffiliated primary customers through affiliated and unaffiliated trading companies, this channel of distribution accounts for the vast majority of the group's home market sales. In channel 2, the Nippon Group sells to affiliated and unaffiliated trading companies that re-sell the steel in quantities and prices negotiated by the trading companies. In channel 3, the Nippon Group sells directly to affiliated and unaffiliated primary customers without the assistance of the trading companies. In connection with all three types of sales, the Nippon Group performed the following categories of selling functions: production planning, strategic planning & marketing, order evaluation, order/invoice system, end-user sales contact, advertising, warranty, technical services, administration, packing, freight & delivery.¹³² Further, the Nippon Group reported performing the essentially the same functions at the same relative level of intensity for all of its home market sales. On this basis, we preliminary determine that all home market sales are at the same LOT.¹³³

The Nippon Group reported that it made U.S. sales through one channel of distribution. However, we find that the Nippon Group made sales through two channels of distribution: EP sales through unaffiliated trading companies for sales to unaffiliated U.S. customers and CEP sales by the Nippon Group's affiliated U.S. further manufacturers to unaffiliated customers. We find that the Nippon Group performed all selling functions at the same relative level of intensity,¹³⁴ as the Nippon Group negotiates prices with the assistance of the trading companies, and the trading companies arrange transport to the primary customers.¹³⁵ Thus, we preliminarily determined that the Nippon Group's U.S. sales are made at the same LOT.

We then compared the home market LOT to the U.S. LOT and found that the selling functions the Nippon Group performed for its home market customers are virtually the same as those performed for its U.S. customers at a similar level of intensity. The only difference is that the Nippon Group coordinates freight & delivery at a relatively lower level of intensity for U.S. sales. This difference is not sufficient to determine that Nippon Group's LOT for U.S. sales is different from the home market LOT. Therefore, we preliminarily determine that home market sales and the U.S. were made at the same LOT, and that no LOT adjustment was warranted. Because the Nippon Group's home market LOT is not at a more advanced stage of distribution than its U.S. LOT, a CEP offset is not warranted.

The JFE Group

As described above, we have treated JFE Steel and JFE Shoji as a single entity. Thus we have considered the selling functions provided by the JFE Group in our analysis. In the home market, we preliminarily determine that the JFE Group made sales through three channels of distribution

¹³² See Nippon Group IQR Section A at Exhibit A-10.

¹³³ Id.

¹³⁴ Id.

¹³⁵ See Nippon Group IQR Section A at A-29.

(i.e., direct sales to unaffiliated trading companies (J-1), sales to unaffiliated customers through affiliated trading companies (J-2), and direct sales to affiliated customers (J-3)).

Information on the record indicates that the JFE Group performed the following selling functions for sales to all home market customers: demand forecasting; information on market potential and customers; developing sales strategy; advertising/marketing services; visiting customers; promoting products; technical advice/product brochures; warranty and other after-sales services; entering orders into the computer system; claim reports; technical advice regarding use of product; pricing; scheduling production and delivery; inventory maintenance; administrative support; arranging transportation; pre-sale warehousing; freight and delivery arrangements; sales processing; rebate administration; and collection payments/follow-up on unpaid customer invoices.¹³⁶

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that the JFE Group performed the same selling functions at the same relative level of intensity for its sales in the home market. We therefore preliminarily determine that all home market sales were made at the same LOT.

With respect to the U.S. market, we preliminarily determine that the JFE Group made sales through three channels of distribution: EP sales through unaffiliated trading companies for sales to U.S. customers (US-1); CEP sales through JFE Shoji America to unaffiliated customers (US-2); and CEP sales through JFE Shoji America to affiliated customer CSI (US-3).¹³⁷ We have not considered channel US-3 in our LOT analysis, as the further manufacturing costs for these sales were not reported and for the reasons explained in the section “Use of Facts Available and Adverse Facts Available” above, we have not used these sales. The JFE Group reported that it performed the same selling functions in Japan: demand forecasting; information on market potential and customers; developing sales strategy; advertising/marketing services; visiting customers; promoting products; technical advice/product brochures; warranty and other after-sales services; entering orders into the computer system; claim reports; technical advice regarding use of product; pricing; scheduling production and delivery; administrative support; arranging transportation; pre-sale warehousing; freight and delivery arrangements; sales processing; and collection payments/follow-up on unpaid customer invoices. The JFE Group performed virtually the same selling functions as the home market with very limited exceptions. Because we find that there were no significant differences in selling activities performed by the JFE Group for channels US-1 and US-2, we determine that these sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOTs and preliminarily determine that the selling functions that the JFE Group performed for its home market customers are not significantly different than those performed for its U.S. customers. These differences are not sufficient to determine that the U.S. LOT is different from the Home Market LOT. Consequently, we preliminarily determine that the JFE Group’s sales to the United States and

¹³⁶ See JFE IQR Section A at 33-34 and Exhibit 12. See also JFE Supplemental Section A Part 1, dated January 4, 2016 at 13-14.

¹³⁷ See JFE Group IQR Section A at A-26.

home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted. Because the JFE Group's home market LOT is not at a more advanced stage of distribution than its U.S. LOT, a CEP offset is not warranted.

D. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.¹³⁸ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.¹³⁹ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent companies in all AD proceedings.¹⁴⁰ Accordingly, the Department requested this information from the Nippon Group and the JFE Group.¹⁴¹ We preliminarily determined that the Nippon Group and the JFE Group made sales in the home market during the POI that were below their respective COPs.

1. Calculation of Cost of Production (COP)

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.¹⁴²

The Nippon Group

We relied upon the COP and constructed value (CV) information for the Nippon Group from the company's submissions except in the following instances where the data presented was not appropriately quantified or valued:¹⁴³

- a. We increased the reported total cost of manufacturing (TOTCOM) of each CONNUM by an amount to adjust certain purchases of inputs in accordance with section 773(f)(2) of the Act.
- b. We adjusted the Nippon Group's offset for hot-rolled scrap generated during production to reflect the average price charged for sales to unaffiliated customers.
- c. We revised the Nippon Group's reported total G&A expenses to exclude certain

¹³⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

¹³⁹ See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) ("Applicability Notice").

¹⁴⁰ Id., 80 FR at 46794-95.

¹⁴¹ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

¹⁴² See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

¹⁴³ See Nippon Group Preliminary Cost Calculation Memorandum.

investment related items.

- d. The Nippon Group reported a negative financial expense rate for Nippon Steel in its COP/CV file. Accordingly, we have not included financial expense in Nippon Group's COP for this preliminary determination.
- e. Adjustment to Further Manufacturing Costs of Steelscape: we adjusted the further manufacturing cost to account for the affiliated party transactions between the further manufacturer and a processor. Additionally, the Nippon Group used its own financial expense ratio in the calculation of in further manufacturing costs. We note that the highest level consolidated financial statements in which Steelscape's results are included are those of Bluescope. Thus, we used a financial expense ratio based on Bluescope's fiscal year 2015 audited consolidated financial statements.
- f. Adjustment to a further manufacturer's costs: Because this further manufacturer is a consolidated subsidiary of the Nippon Group, the group reported the financial expense ratio based on Nippon Steel's own rate. As noted above, Nippon Steel's reported a negative rate. Accordingly, we have not included financial expense in this further manufacturer's costs for this preliminary determination.

The JFE Group

We relied on the COP data submitted by the JFE Group in its Section D and supplemental Section D questionnaire responses except as follows.¹⁴⁴ In accordance with section 773(f) of the Act, we revised the JFE Group's reported costs in those instances where we determined that the transfer prices paid for those inputs were less than the market prices for those inputs.¹⁴⁵ Where we determined that the market price information submitted by the JFE Group was not comparable to transfer prices for purposes of our analysis, we relied on facts available.¹⁴⁶ We also revised JFE Steel's reported costs to exclude its adjustment for non-prime products.¹⁴⁷

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the

¹⁴⁴ See JFE Group Preliminary Cost Calculation Memorandum.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Id.

normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of the Nippon Group's and the JFE Group's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of NV Based on Comparison Market Prices

The Nippon Group

We increased, where appropriate, the starting price to account for billing adjustment in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight, under section 773(a)(6)(B)(ii) of the Act.

For comparisons made to EP sales (Nippon Group U.S. sales Channel 1), we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home-market sales (e.g., imputed credit) and adding U.S. direct selling expenses (e.g., imputed credit), where appropriate.

For comparisons to CEP sales (Nippon Group U.S. sales Channels 2), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (e.g., imputed credit).

For comparisons to both EP and CEP sales, we deducted home-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.¹⁴⁸

¹⁴⁸ See 19 CFR 351.411(b).

The JFE Group

We calculated NV based on prices to unaffiliated customers. We also made a deduction from the starting price for inland freight, under section 773(a)(6)(B)(ii) of the Act.

For comparisons made to EP sales (JFE Group U.S. sales Channel US-1), we made adjustments for COS differences pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home-market sales (e.g., imputed credit) and adding U.S. direct selling expenses (e.g., imputed credit), where appropriate.

For comparisons to CEP sales (JFE Group U.S. sales Channel US-2), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (e.g., imputed credit).

For comparisons to both EP and CEP sales, we deducted home-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.¹⁴⁹

XV. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

¹⁴⁹ See 19 CFR 351.411(b).

XVI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 MARCH 2016
Date