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Investigation
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DATE: August 4, 2016

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

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less than Fair Value Investigation of Certain
Hot-Rolled Steel Flat Products from the Netherlands

I. SUMMARY

The Department of Commerce (the Department) determines that certain hot-rolled steel flat products (hot-rolled steel) from the Netherlands is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015.

We analyzed the comments of the interested parties in this investigation. As a result of this analysis, and based on pre-verification corrections and our findings at verification, we made certain changes to the margin calculations for the mandatory respondent, Tata Steel IJmuiden B.V. (TSIJ). The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying *Federal Register* notice. We recommend that you approve the positions in the “Discussion of the Issues” section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

- Comment 1: Purchases of Raw Material Inputs
- Comment 2: General and Administrative (G&A) Expenses Ratio
- Comment 3: TSIJ’s B-Slab Adjustment to Cost of Manufacturing



II. BACKGROUND

On March 22, 2016, the Department published its preliminary determination of sales at LTFV in the antidumping duty (AD) investigation of hot-rolled steel from the Netherlands.¹ The Department conducted sales and cost verifications of TSIJ. On April 21, 2016, AK Steel (one of the petitioners)² and TSIJ requested that the Department conduct a hearing in this investigation, which the Department conducted on June 24, 2016.³

We invited parties to comment on the *Preliminary Determination*. We received case⁴ and rebuttal⁵ briefs from AK Steel and TSIJ in June 2016. Based on our analysis of the comments received, as well as our findings at verification and pre-verification corrections, the weighted-average dumping margins determined in this final determination differ from that in the *Preliminary Determination*.

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.⁶ No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination. We have conducted this investigation in accordance with section 735(a) of the Act.

III. CRITICAL CIRCUMSTANCES

The Department preliminarily found,⁷ and continues to find, that critical circumstances do not exist for imports of hot-rolled steel from the Netherlands. For the final determination, we continue to find that there is no history of injurious dumping of hot-rolled steel from the Netherlands pursuant to section 735(a)(3)(A)(i) of the Act. Further, the final estimated weighted-average dumping margin of 3.73 percent that we calculated for TSIJ, the only mandatory respondent in this investigation, and for all other producers or exporters, does not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for export price

¹ See *Certain Hot-Rolled Steel Flat Products from the Netherlands: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 15225 (March 22, 2016) (*Preliminary Determination*).

² AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

³ See Hearing Transcript, filed with the Department on July 1, 2016.

⁴ See Letter from AK Steel Corporation, "Certain Hot-Rolled Steel Flat Products From The Netherlands: Petitioner's Case Brief" (June 9, 2016); and Letter from TSIJ, "Certain Hot-Rolled Steel Flat Products From The Netherlands: Case Brief of Tata Steel IJmuiden BV" (June 9, 2016).

⁵ See Letter from AK Steel Corporation "Certain Hot-Rolled Steel Flat Products From The Netherlands: Petitioner's Rebuttal Brief" (June 20, 2016).

⁶ See *Preliminary Determination* and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands" at page 4. See also *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, 54262 (September 9, 2015) (*Initiation Notice*).

⁷ 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).

sales). Therefore, for the final determination, we determine that there is no sufficient basis to find, pursuant to section 735(a)(3)(A)(ii) of the Act, that importers should have known that the exporters were selling the merchandise under consideration at LTFV. Because the statutory criteria of section 735(a)(3)(A) of the Act have not been satisfied, we did not examine whether imports from TSIJ or from all other companies were massive over a relatively short period, pursuant to section 735(a)(3)(B) of the Act. Accordingly, we continue to find that critical circumstances do not exist for imports of hot-rolled steel from the Netherlands.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain hot-rolled steel flat products from the Netherlands. For a complete description of the scope of this investigation, *see* the “Scope of the Investigation,” in Appendix I of the *Federal Register* notice accompanying this Issues and Decision Memorandum.

V. MARGIN CALCULATIONS

We calculated export price (EP) and normal value (NV) using the same methodology stated in the *Preliminary Determination*. Further, we made the following changes to our calculations based on pre-verification corrections and our findings at verification,⁸ as well as our analysis of case and rebuttal briefs:

- We implemented pre-verification corrections that TSIJ identified and that we examined during verifications of TSIJ’s sales and cost responses.⁹
- We adjusted TSIJ’s reported G&A expenses to include employee benefits and employee profit sharing expenses.
- As partial adverse facts available (AFA), for purchases of iron ore, we used the highest prices for each type of iron ore (pellet, lump, or fines) reported by TSIJ.

VI. COMPARISONS TO FAIR VALUE

In the *Preliminary Determination*, the Department applied a differential pricing analysis to determine whether application of the average-to-transaction method is appropriate to calculate TSIJ’s weighted-average dumping margin, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act. For TSIJ, we preliminarily applied the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin.

⁸ *See* Memorandum to the File entitled “Verification of the Sales Response of Tata Steel IJmuiden B.V. in the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands,” dated April 13, 2016, and Memorandum to the File entitled “Verification of the Cost Response of Tata Steel IJmuiden BV in the Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands,” dated June 1, 2016 (Cost Verification Report).

⁹ For a complete discussion of these changes, *see* Memorandum to Neal Halper, Director, Office of Accounting, entitled “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Tata Steel IJmuiden B.V.,” (TSIJ Final Cost Calculation Memorandum) and Memorandum to the File entitled “Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands: Final Determination Analysis Memorandum for Tata Steel IJmuiden B.V.,” (TSIJ Final Analysis Memorandum), both dated concurrently with this notice.

For the final determination, based on the results of the differential pricing analysis, the Department finds that 79.69 percent of the value of TSIJ's U.S. sales pass the Cohen's *d* test,¹⁰ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department 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 and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales.¹¹ Thus, for this final determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for TSIJ.

VII. DISCUSSION OF THE ISSUES

Comment 1: Purchases of Raw Material Inputs

In the *Preliminary Determination*, we found that TSIJ failed to provide information needed to conduct a transactions disregarded analysis of TSIJ's purchases of iron ore and coal from affiliated parties that were consumed in the production of hot-rolled steel.¹² Using partial AFA, we adjusted TSIJ's reported costs to use the highest price available on the record for iron ore and coal.

TSIJ contends that the Department improperly applied AFA to TSIJ's purchases of raw materials at the *Preliminary Determination* because TSIJ used arm's-length prices paid to unaffiliated suppliers in its reported cost of materials. The Department's questionnaire instructed TSIJ to identify all suppliers "involved in the development, production, sale and/or distribution of the merchandise under investigation which the Department may also consider affiliated with your company..." and to identify all major inputs purchased from affiliated parties that were used in the production of subject merchandise. TSIJ states that the invoicing done by its affiliates Tata Steel Group Procurement (TSGP) and Tata Steel UK Ltd (TSUK) does not constitute a related party transaction because they are not suppliers of production materials to TSIJ. In addition, TSIJ asserts that all activities related to the purchase of these raw materials, *i.e.* procurement and the negotiation of the terms of sale and delivery, were conducted by TSIJ and that TSGP only provided financing. As a result, TSIJ asserts that the purchase price provided for the raw material inputs in its response represents the amount paid to unaffiliated suppliers for the raw material purchases (*i.e.*, market prices). TSIJ concludes that, as market prices were provided, the Department assertion that it was unable to compare transfer prices to market prices for purposes of applying the transactions disregarded rule, pursuant to section 773(f)(2) of the Act, is contradicted by the record. Specifically, TSIJ states that the record reflects that it reported the price paid to unaffiliated suppliers, the definition of a market price, which is also the transfer price. Thus, TSIJ claims that the Department had all the information that it needed to make a determination with respect to the transactions disregarded rule, and the use of facts available is unwarranted.

¹⁰ See TSIJ Final Analysis Memorandum (at margin calculation program output).

¹¹ *Id.*

¹² See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 5-8.

Moreover, TSIJ argues that section 773(f)(2) of the Act does not apply to the majority of TSIJ's raw material purchases because they are not affiliated transactions. TSIJ negotiates the prices and terms of sale with the unaffiliated raw material suppliers and receives the materials directly at its production facility. The Department has previously found that the transactions disregarded rule does not apply when the affiliate involved is not acting as "a supplier of an input."¹³ TSIJ contends that TSGP is a purchasing agent, not a supplier of the inputs, and that TSUK is neither a purchasing agent nor a supplier and, therefore, the "transactions disregarded" rule should not apply. TSIJ also contends that if the respondent controlled all aspects of the input purchases, the Department considers these purchases to be transactions between the respondent and unaffiliated suppliers, despite the presence of an affiliated party in the transactions. Further, even if the rule is applied, TSIJ argues that the prices provided are market prices.

TSIJ argues that the information highlighted as deficient in the Preliminary Cost Calculation Memorandum,¹⁴ regarding the transactions disregarded rule was provided by TSIJ in exhibits SD-7 and SD-8 of the February 5, 2016, supplemental questionnaire response. The narrative provided also discussed TSGP and TSUK, and TSIJ asserts that it has no additional information to provide, making the use of facts available unwarranted. Exhibit SD-7 provides monthly purchase data for each raw material product purchased. Exhibit SD-8 provides support in the form of invoice traces showing that TSIJ's recorded cost reflects the actual purchase cost from its unaffiliated suppliers. TSIJ states that this fact was confirmed at verification, albeit with timing and exchange rate differences, as highlighted in the verification report.

Further, TSIJ argues that use of facts available is inappropriate because TSIJ provided timely and complete responses, and did not impede the investigation. The Department's supplemental questionnaire asked for "information that was needed to conduct a transactions disregarded analysis" only if these entities were affiliated suppliers. In the narrative response, TSIJ explained TSGP's and TSUK's roles in the transactions in question, and claimed that the companies are not affiliated suppliers. If the Department found the information on the record incomplete, then it is mandated by statute to provide TSIJ an opportunity to cure the perceived deficiency and it did not do so. TSIJ further contends that use of an adverse inference was also inappropriate, given that TSIJ made a good faith effort to comply with the Department's requests, and there is no evidence that TSIJ deliberately concealed the transactions or manipulated its dumping margins.

Even if the Department concludes that use of AFA is appropriate, TSIJ argues that the AFA adjustment calculation is flawed because the Department used a single price to value all three forms of iron ore (*i.e.*, pellets, lump and fines) purchased by TSIJ. The use of one price double counts expenses incurred by TSIJ to process certain types of iron ore at its sinter and pellet plants, as was done in the investigation of *Steel Concrete Reinforcing Bars from the People's Republic of China*.¹⁵ The Department should revise its AFA cost adjustment to use individual

¹³ See *Chlorinated Isocyanurates from Japan: Final Determination of Sales at Less Than Fair Value*, 79 FR 56059 (September 18, 2014) and accompanying Issues and Decision Memorandum at Comment 4 (*Chlorinated Isocyanurates from Japan*).

¹⁴ See Memorandum to Neal M. Halper, Director, Office of Accounting, from Milton Koch, International Trade Accountant, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Tata Steel IJmuiden BV, dated March 14, 2016 (Preliminary Cost Calculation Memorandum).

¹⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the*

rates for iron ore fines, lump iron ore, and iron ore pellets.

AK Steel argues that TSIJ did not disclose that its purchases were made through affiliates or the involvement of TSGP in its initial questionnaire responses. AK Steel asserts that the Department asked, in a supplemental questionnaire, whether TSIJ made or arranged purchases through affiliates and if TSIJ had such purchases, it was instructed to complete several questions to provide information regarding its affiliated purchases. AK Steel argues that, as the Department explained in the *Preliminary Determination*, TSIJ unilaterally determined that its transactions did not involve affiliated parties and did not provide the required information for analyzing whether the purchases were arm's-length transactions. Thus, AK Steel asserts that the Department's use of AFA was appropriate.

AK Steel contends that TSIJ's argument that the transactions disregarded rule analysis does not apply because TSIJ controlled all aspects of the input purchases from the unaffiliated supplier, as in *Chlorinated Isocyanurates from Japan*, is misplaced. AK Steel notes that the facts in this case differ; TSGP is an affiliated reseller, not a buyer's agent, as in *Chlorinated Isocyanurates from Japan*. According to AK Steel, the Department does apply the transactions disregarded rule to resellers, even when the "affiliate's services are limited to document handling and acting as a payment intermediary."¹⁶

AK Steel also disagrees with TSIJ's claim that TSIJ provided all the information required for the transactions disregarded rule analysis in exhibits SD-7 and SD-8, which show that the transfer prices paid to TSGP and TSUK are simply "passed through" market prices. AK Steel argues that the prices provided by TSIJ are not equivalent to TSGP's acquisition cost and they do not contain the selling, general, and administrative expenses (SG&A) of the affiliates involved in the transaction. AK Steel states that, without TSGP's acquisition price and TSGP's and TSUK's SG&A, the Department cannot conduct the "transactions disregarded" rule analysis. Further, the five transactions selected by TSIJ were unsolicited and self-selected, and the Department found unexplained differences at verification. According to AK Steel, TSIJ has not demonstrated that the prices paid to unaffiliated suppliers match the transfer prices reported in exhibit SD-7.

AK Steel argues that, because TSIJ does not contest that it was affiliated with TSGP and TSUK, and it made purchases through these affiliates, it had an obligation to provide responses as requested in sections A and D of the initial questionnaire, and that the Department provided TSIJ an opportunity to cure the deficiency in its January 8, 2016, supplemental questionnaire. However, because TSIJ chose not to cure the deficiency, AFA is appropriate. With respect to TSIJ's argument that an adverse inference is unwarranted, AK Steel contends that TSIJ's responses, while timely, were not complete, and TSIJ did not act to the best of its ability by choosing not to report information regarding its affiliated transactions as requested.

People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶ See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 28 (*Bottom Mount Combination Refrigerator-Freezers from Mexico*).

Regarding the selection of the rates used to apply AFA, AK Steel contends that the Department's discretion in selecting an AFA rate has been upheld previously by both the Court of Appeals for the Federal Circuit and the Court of International Trade. AK Steel notes that the Department "has broad discretion to choose which sources and facts it will rely on to support an adverse inference when a respondent has been shown to be uncooperative"¹⁷ and that this investigation is subject to the Trade Preferences Extension Act,¹⁸ which broadened the Department's discretion.

Further, according to AK Steel, the methodology proposed by TSIJ would reward TSIJ for its non-cooperation because the result is not adverse. Moreover, AK Steel asserts that TSIJ bases its methodology on the fact that the types of iron ore are qualitatively different, but TSIJ's contention that the use of one price for iron ore double counts expenses is not supported by the record. AK Steel contends that the record evidence shows that all iron ore is processed by TSIJ before it is used, either at the pellet or sinter plant. Consistent with the *Preliminary Determination*, AK Steel concludes that the Department should continue to use the same AFA adjustment for the final determination.

Department's Position: For the final determination, we continued to analyze TSIJ's affiliated purchases of iron ore and coal in accordance with the transactions disregarded rule, section 773(f)(2) of the Act. Further, consistent with the *Preliminary Determination*, we have continued to apply partial AFA to TSIJ's affiliated purchases of coal and iron. However, we have revised the partial AFA rates used to adjust the affiliated party purchases for iron ore by using the highest prices for each type of iron ore reported by TSIJ (iron ore pellets, iron ore lump, iron ore fines). See TSIJ's Final Cost Memorandum for further discussion.¹⁹

As an initial matter, we find that TSIJ's reliance on *Chlorinated Isocyanurates from Japan* is misplaced. Under section 773(f)(2) of the Act, the "transactions disregarded" rule provides that "a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration." In applying this rule, the Department's established practice is to value an input at the higher of the transfer price or the market price for the input when a respondent purchases inputs from an affiliated supplier.²⁰ In *Chlorinated Isocyanurates from Japan*, the respondent Shikoku purchased directly from suppliers and the unaffiliated suppliers invoiced Shikoku directly. The Department found these transactions to be between Shikoku and its unaffiliated suppliers because Shikoku controlled all aspects of the input purchases, rather than the commissioned sales agent.²¹ Unlike *Chlorinated Isocyanurates from Japan*, where the affiliated party was a commissioned sales agent, in the instant case the affiliated parties are resellers that also provided procurement services to TSIJ.²² Further, for all affiliated purchases,

¹⁷ See *Hebei Jiheng Chemicals Co. v. United States*, Court No. 14-00337, Slip Op. 2016-14 (Court of International, February 18, 2016).

¹⁸ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat 362 (2015).

¹⁹ See TSIJ Final Cost Calculation Memorandum at 2.

²⁰ See *Chlorinated Isocyanurates from Japan*, and accompanying Issues and Decision Memorandum at Comment 4.

²¹ *Id.*

²² See Cost Verification Report at 22-23.

the payment is made through the affiliated resellers TSGP and TSUK.²³ Notwithstanding TSIJ's claims to the contrary, record evidence demonstrates that the affiliated resellers TSGP and TSUK are involved in the purchasing chain and that TSIJ does not control all aspects of the input purchases. As noted by AK Steel, the Department has applied the transactions disregarded rule in instances where the affiliated resellers' services were limited to document handling and acting as a payment intermediary.²⁴

For the affiliated iron ore and coal purchases, we disagree with TSIJ that it has fully complied with our request for information and that full market price information is on the record. As noted in the *Preliminary Determination*, in its response to section A of our initial questionnaire, we instructed TSIJ to identify all suppliers "involved in the development, production, sale and/or distribution of the merchandise under investigation which the Department may also consider affiliated with your company," under section 771(33) of the Act.²⁵ In the section D of the initial questionnaire, we requested that TSIJ identify, *inter alia*, all inputs received from affiliated parties and state whether the transfer prices of the inputs reflect market prices.²⁶ We also asked that TSIJ list the major inputs purchased from affiliated parties that were used in the production of the merchandise under consideration and, for those inputs that were, to complete the affiliated supplier chart in question II.A.8. In response, TSIJ indicated that it purchased coal from only one affiliated party.²⁷

Notwithstanding TSIJ's response, we observed that TSIJ's financial statement included a line item for "Purchases of raw materials from other Tata Steel companies, acting as an agent;"²⁸ this is inconsistent with TSIJ's reporting of limited coal purchases from only one affiliated party. In a supplemental section D questionnaire, we sought additional information regarding these affiliated purchases, which were not reported by TSIJ in its initial questionnaire response. In particular, we asked TSIJ to "state whether any of TSIJ's purchases of raw materials used in the production of the merchandise under investigation were made through, or arranged by TSGP or any other Tata affiliate."²⁹ We also requested that if TSIJ had purchases through Tata affiliates, that TSIJ:

- b) Provide all the information requested in the chart (*e.g.*, transfer price, percentage the supplier specific purchases represent of the total purchases, etc.) under question II.A.8. Ensure you provide the data separately for each affiliated supplier.
- c) If the affiliated supplier is not the producer and TSIJ did not obtain any of these products from unaffiliated companies, explain whether the affiliates supplied the product or service to unaffiliated companies during the POI. If so, provide the POI weighted-average per-unit market price charged by the affiliates to unaffiliated companies.
- d) If no market information is available, provide the quantity, the POI amount incurred by each affiliated party in supplying the product or service to TSIJ and the POI weighted-

²³ *Id.*

²⁴ See *Bottom Mount Combination Refrigerator-Freezers from Mexico*, and accompanying Issues and Decision Memorandum at Comment 28.

²⁵ See initial section A questionnaire, dated September 30, 2015, at A-6.

²⁶ See initial section D questionnaire, dated September 30, 2015, at D-3 to D-4.

²⁷ See TSIJ's response to initial section D questionnaire, dated November 20, 2015, at 5-6.

²⁸ See TSIJ's response to initial section A questionnaire, dated October 28, 2015, at Exhibit A-12 at page 36.

²⁹ See supplemental section D questionnaire, dated January 14, 2016, at 5.

average per-unit COP for the product or service including, selling, G&A, and financial expenses. Additionally, provide a worksheet that demonstrates how you calculated the affiliated supplier's COP.³⁰

Based upon TSIJ's own assessment of the information needed for our analysis, TSIJ chose not to report additional information in response to our questionnaire. Instead, TSIJ only provided limited information regarding its purchases and did not provide requested affiliated supplier information for either its TSGP purchases or purchases from the other Tata Group affiliates identified in its initial questionnaire response. As noted above, when analyzing affiliated transactions in accordance with the transactions disregarded rule, section 773(f)(2) of the Act, we normally compare the transfer prices paid to the affiliate to market prices. Contrary to TSIJ's assertion, TSIJ did not provide market prices for these purchases (*i.e.*, the affiliate's acquisition cost from its unaffiliated suppliers plus an amount for its affiliate's SG&A expenses),³¹ despite our request for this information and providing an opportunity for TSIJ to cure the deficiency.

TSIJ asserts that it complied with the Department's requests by submitting: (1) exhibit SD-7, which provides the monthly raw material purchase information; and (2) exhibit SD-8, which contains the paper trail for five transactions and, according to TSIJ, shows that the transfer prices are equivalent to the prices charged by the unaffiliated supplier, plus freight. Thus, TSIJ claims that it reported the price paid to unaffiliated suppliers, the definition of a market price, which is also the transfer price. First, we disagree with TSIJ that the invoices provided in exhibit SD-8 to support the prices reported in exhibit SD-7 show a direct pass through from TSGP and TSUK to TSIJ.³² Second, we also disagree with TSIJ's contention that we confirmed at verification, albeit with minor differences, that the prices reported by TSIJ in exhibit SD-7 are accurate and used in TSIJ's reported cost of production (COP). While TSIJ asserts that there are only minor differences, the prices reported do not reconcile to TSIJ's inventory movement schedule. Because the information discussed is business proprietary in nature and not susceptible to public summary, please *see* the Final Cost Calculation Memorandum for more details.

More importantly, we disagree with TSIJ that the record contains market prices for these purchases (*i.e.*, the affiliate's acquisition cost plus an amount for SG&A expenses). In other words, even if, *arguendo*, we agreed with TSIJ that the prices reported were a direct pass through from its affiliates, the fact remains that its affiliates, TSGP and TSUK, incurred costs related to the procurement services they provided, such as processing payments, invoicing, freight financing, and freight logistics, that have not been reported.³³ We specifically requested that TSIJ provide the POI amount incurred by each affiliated party in supplying the product to TSIJ and the POI weighted-average per-unit COP for the product including, selling, G&A, and

³⁰ See supplemental section D questionnaire, dated January 14, 2016, at question 8.

³¹ See *Corrosion-Resistant Steel from Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 8; *Bottom Mount Combination Refrigerator-Freezers from Mexico*, and accompanying Issues and Decision Memorandum at Comment 28.

³² See Cost Verification Report at 22.

³³ *Id.* Further, we discovered the additional involvement of Tata affiliates in freight related to the raw material purchases only at verification and not in the responses reported by TSIJ. The late discovery of either TSGP's substantial undisclosed involvement in chartering ships/financing freight or the involvement of another undisclosed TSIJ affiliate leaves the record incomplete.

financial expenses.³⁴ Part of the rationale for the “transactions disregarded” rule is to ensure transactions between affiliates are arm’s-length transactions and costs incurred to procure the products or services are not being shifted to an affiliate.³⁵ Here, as noted above, both TSGP and TSUK are incurring selling and G&A costs related to the affiliated transactions that have not been reported by TSIJ. Further, we note that in the companion investigation of certain hot-rolled steel flat products from the United Kingdom, TSUK, the mandatory respondent in that investigation, provided the necessary information for the transactions disregarded analysis of affiliated raw material purchases. TSIJ’s failure to provide this information precluded us from conducting the necessary analysis of all of TSIJ’s affiliated supplier purchases and determining whether or not the transactions were made at arm’s-length prices.

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

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination, but does not meet all the applicable requirements established by the administering authority, if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and

³⁴ See supplemental section D questionnaire, dated January 14, 2016, at 5.

³⁵ See *Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada*, 64 FR 17324 (April 9, 1999) (in discussing the major input rule, noting that “the intent of {the major input rule} and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier.”).

(5) the information can be used without undue difficulties.

On June 29, 2015, the President of the United States signed into law the *Trade Preferences Extension Act (TPEA)*,³⁶ which made numerous amendments to the AD and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.³⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.³⁸

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. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. 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.”³⁹ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁴⁰

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. 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. Further, and under the *TPEA*, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, although we are not doing so here, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such 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

³⁶ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) and *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*).

³⁷ See *TPEA and Applicability Notice*.

³⁸ See 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

³⁹ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

⁴⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

We agree with AK Steel that, by not providing the requested market price for its affiliated purchases of iron ore and coal, TSIJ withheld information requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and (C) of the Act. Without the requested information, we are unable to properly analyze whether TSIJ’s purchases of iron ore and coal represent arm’s-length transactions, as required by the Act. Accordingly, we also find that necessary information is missing from the record, within the meaning of section 776(a)(1) of the Act.

We also disagree with TSIJ that we improperly applied an adverse inference in selecting from among the facts available in the *Preliminary Determination*. TSIJ claims that it provided complete and timely responses to the Department’s requests, and that there was no evidence that TSIJ attempted to conceal the transactions or manipulate its dumping margin. For reasons explained above, we do not find TSIJ’s responses to be complete. Further, an adverse inference is appropriate when the Department finds that a party has failed to cooperate to the best of its ability in complying with the Department’s request; the Department is not required to find bad faith before it can resort to AFA.⁴¹ Thus, we continue to find that TSIJ failed to cooperate by not acting to the best of its ability to provide information requested by the Department, and that application of partial AFA, within the meaning of section 776(b) of the Act, is appropriate with respect to TSIJ’s purchases of iron ore and coal.

With respect to TSIJ’s arguments that we should have provided it an opportunity to cure the deficiency as required by section 782(d) of the Act, we disagree that we failed to provide such an opportunity. As explained above, section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. In sections A and D of our initial questionnaire, we asked for information related to input purchases through affiliated parties. TSIJ identified purchases of iron ore and coal from only one affiliated party, neither of which was TSUK or TSGP. We found that this contradicted information in TSIJ’s financial statements, which suggested TSIJ purchased raw materials through other affiliated companies. We asked TSIJ, therefore, to “state whether any of TSIJ’s purchases of materials used in the production of the merchandise under investigations were made through, or arranged by {TSGP} or any other Tata affiliate.”⁴² We further instructed TSIJ to report additional information “{i}f so,” including detailed information that was needed to conduct a transactions disregarded analysis.⁴³ When TSIJ unilaterally determined that this information was unnecessary, the Department was not required to *again* flag the deficiency for TSIJ. TSIJ received the required opportunity to remedy the deficiency in its original questionnaire response, under section 782(d) of the Act. As TSIJ missed its opportunity to cure the deficiency regarding the undisclosed affiliates involved in purchasing raw materials, the Department was not required to expend further efforts to secure this information.

⁴¹ See *Nippon Steel*, 337 F. 3d at 1378.

⁴² See supplemental section D questionnaire, dated January 14, 2016, at 5.

⁴³ *Id.*

Finally, with respect to revising the partial AFA calculation to use the highest prices for each type of iron ore reported by TSIJ (iron ore pellets, iron ore lump, iron ore fines), we agree. Record evidence supports TSIJ's arguments that pellets are used directly in the blast furnace, while iron ore lump and fines are first processed by TSIJ before use.⁴⁴ Therefore, using a pellet price for all iron ore purchases double counts the cost of processing lump and fines at the sinter and pellet plants. Contrary to AK Steel's argument that this result is not adverse, we disagree because we are using the highest price for each type of iron ore. The only difference is we are using the highest price on the record of the different types of iron ore to avoid any double counting of processing costs associated with types of iron ore purchased. Accordingly, for the final determination, as partial AFA, we are using the highest reported prices for each type of iron ore pellet, lump, or fines reported by TSIJ.⁴⁵

Comment 2: G&A Expenses Ratio

AK Steel argues that the Department should adjust TSIJ's G&A expense ratio to include employee benefits and employee profit sharing expenses. The Department found at verification that these general expenses were omitted from TSIJ's reported G&A expenses, and the Department's practice is to include them in the G&A expense ratio.

TSIJ did not comment on this issue.

Department's Position: The Department found at verification that these general expenses were omitted from TSIJ's reported G&A expenses.⁴⁶ It is the Department's established practice to include employee benefits and employee profit sharing in the G&A expense ratio, as they are benefits bestowed on the employees of the company and, as such, should be included in the calculation of COP and constructed value.⁴⁷ Therefore, for the final determination, we have adjusted TSIJ's G&A expenses to include both employee benefits and employee profit sharing expenses.

Comment 3: TSIJ's B-Slab Adjustment to Cost of Manufacturing

TSIJ contends that the Department was incorrect in reversing the B-slab and non-prime adjustment reported by TSIJ in its COP calculation. In the normal course of business, TSIJ

⁴⁴ See Cost Verification Exhibit 5 at 12401.

⁴⁵ See TSIJ Final Cost Calculation Memorandum at Attachment 2.

⁴⁶ See Cost Verification Report at 2.

⁴⁷ See *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review* 74 FR 6365 (February 9, 2009), and accompanying Issues and Decision Memorandum at Comment 7, *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review* 73 FR 7710 (February 11, 2008), and accompanying Issues and Decision Memorandum at Comment 8, *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006), and accompanying Issues and Decision Memorandum at Comment 7, and *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review* 70 FR 73444 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 5. See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554, 5581 (February 4, 2000), where the Department determined that "{b}ecause employee profit sharing is a cost of labor and it is an expense recognized within the POI, it should be included in the reported cost."

internally lowers in its normal books and records the cost of B quality and non-prime production to reflect lower sales value and increases the cost of prime merchandise. For reporting to the Department, TSIJ reversed the internal adjustment to report actual costs for its B-slab and non-prime products. TSIJ notes that the same materials, labor, and overhead were used in B-slab and non-prime production as were used in the production of prime merchandise. TSIJ argues that, for the final determination, the Department should include the B-slab and non-prime adjustments to its reported costs to “reasonably reflect the costs associated with the production of the merchandise,” consistent with section 773(f)(1)(a) of the Act.

According to AK Steel, TSIJ’s responses indicate that non-prime products have a different end use, as they do not receive mill test certificates. Further, AK Steel asserts that the non-prime products are recorded in TSIJ’s normal cost accounting system at the lower standard cost to reflect the lower sales value of the merchandise and that TSIJ makes a corresponding increase to the standard costs of prime merchandise. For reporting to the Department, AK Steel asserts that TSIJ made an adjustment which shifts costs away from prime products to non-prime products and, accordingly, the Department correctly excluded these variables in the *Preliminary Determination* and should continue to do so for the final determination. In *Oil Country Tubular Goods from Taiwan*⁴⁸ and *Oil Country Tubular Goods from Turkey*,⁴⁹ AK Steel argues that the Department reviewed respondents with similar systems and found it would be distortive to assign the same costs to prime and non-prime products when they have different end uses and when doing so would conflict with the generally accepted accounting principles (GAAP) principle of lower of cost or market (*i.e.*, that inventory valuations are recorded at historical cost unless the current market value is lower).

Department’s Position: We agree with AK Steel, and consistent with the *Preliminary Determination*, we have disallowed TSIJ’s adjustment to its normal books and records that assigns full cost to its non-prime products. We do not have a practice of treating all non-prime production akin to scrap, *i.e.*, valued at their sales prices or assigning the full cost of production. Rather, we analyze the products sold as non-prime on a case-by-case basis to determine whether the downgraded products remain in scope, and likewise can still be used in the same applications as subject merchandise.⁵⁰ Sometimes the downgrading is minor and the product remains within a product group, while at other times the downgraded product differs significantly and it no longer belongs to the same group and cannot be used for the same applications as the prime product. If the product is not capable of being used for the same applications, the product’s market value is usually significantly impaired, often to a point where its full cost cannot be recovered and assigning full costs to that product would not be reasonable.⁵¹ Instead of

⁴⁸ See *Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 41979 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 5.

⁴⁹ See *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 8.

⁵⁰ See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 9 (*Welded Line Pipe from Korea*). See also *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014), and accompanying Issues and Decision Memorandum at Comment 15.

⁵¹ See *Welded Line Pipe from Korea* and accompanying Issues and Decision Memorandum at Comment 9.

attempting to judge the relative values and qualities between grades, we adopted the reasonable practice of looking at whether the downgraded product can still be used in the same general applications as its prime counterparts.⁵²

Therefore, we reviewed the information on the record of this investigation with regard to TSIJ's downgraded merchandise. TSIJ reported in its response to section D of the questionnaire that, in the normal course of business, "TSIJ assigns a lower standard cost to second quality production and 'B' quality production...{to} reflect the lower sales value."⁵³ Additionally, TSIJ increases the cost of prime quality merchandise to "capture the cost of the value-based reduction to the standard costs of B and second quality production."⁵⁴ Further, in its response to section B of the questionnaire, TSIJ explained that "Tata Steel NL does not sell secondary steel with a mill test certificate, nor does it sell secondary material on the basis of its quality or make assurances as to the quality of this merchandise."⁵⁵ Moreover, as to secondary material, {TSIJ reported that} Tata Steel NL does not maintain information on the specific quality of steel the company intended to produce, and any underlying information on the coil is lost in the sales reporting system as part of the handling and sales process for secondary material. Once a coil has been downgraded to second or third quality, it is not, and cannot, be sold as one of the quality designations utilized for commercial sales of hot-rolled steel that have been requested by the Department in data field QUALITYH."⁵⁶ Further, in response to our request that TSIJ identify their customers' ultimate uses of prime and non-prime product, TSIJ explained that, while the end use of prime products is known, the application of non-prime products is unknown.⁵⁷ Finally, in response to our request that TSIJ "{c}larify whether there are any applications where a non-prime product cannot be used while a prime product is used," TSIJ explained that "{s}pecific applications all require prime product because they require that the hot-rolled material input is certified by TSIJ" and non-prime product is not certified by TSIJ.⁵⁸

Based on our review of the record, we find there is no evidence that TSIJ's non-prime merchandise can be used in the same general applications as its prime counterparts. Further, we note that section 773(f)(1)(a) of the Act mandates that a respondent's costs should be based on the company's normal books and records if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production of the merchandise. TSIJ, in its normal books and records, assigns non-prime products a lower standard cost to reflect the lower market value and differing end use from prime products. As such, we find that TSIJ's normal treatment of non-prime products to be reasonable and consistent with GAAP and the lower of cost or market principle. Therefore, we find no basis for departing from TSIJ's normal treatment of these products in its books and records. As such, consistent with the *Preliminary Determination*, we continue to exclude the adjustments for the non-prime products.

⁵² *Id.*

⁵³ See TSIJ initial section D questionnaire response at 23.

⁵⁴ *Id.* at 23.

⁵⁵ See TSIJ initial section B questionnaire response, dated November 20, 2015, at 9.

⁵⁶ *Id.*

⁵⁷ See TSIJ section D supplemental questionnaire response at 25.

⁵⁸ *Id.*, at 26.

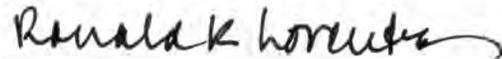
VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final weighted-average dumping margins in the *Federal Register*.

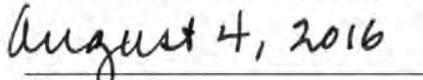
✓

Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



(Date)