



C-535-904
Investigation
Public Document
E&C/Office VII: KMW

DATE: April 1, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Circular Welded Carbon-Quality Steel Pipe from Pakistan:
Preliminary Affirmative Countervailing Duty Determination
Decision Memorandum

I. SUMMARY

We preliminarily determine that countervailable subsidies are being provided to exporters and producers of circular welded carbon-quality steel pipe (circular welded pipe) from Pakistan, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On October 28, 2015, antidumping duty (AD) and countervailing duty (CVD) petitions regarding imports of circular welded carbon-quality steel pipe (circular welded pipe) from, *inter alia*, Pakistan were properly filed with the U.S. Department of Commerce (the Department) by Bull Moose Tube Company, EXLTUBE, Wheatland Tube Company, and Western Tube and Conduit (collectively, Petitioners).¹ Supplements to the CVD Petition and our consultations with the Government of Pakistan (the GOP) are described in the Initiation Checklist.² On November 17, 2015, the Department initiated a CVD investigation of circular welded pipe from Pakistan.³ On December 28, 2015, the Department postponed its preliminary determination until March 28,

¹ See Letter from Petitioners, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the Republic of the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam," October 28, 2015 (alleging countervailable subsidies at Volume IV (CVD Petition)).

² See *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Initiation of Countervailing Duty Investigation*, 80 FR 73704 (November 25, 2015) (*Initiation Notice*), and accompanying Countervailing Duty Investigation Initiation Checklist (Initiation Checklist).

³ See *Initiation Notice*, 80 FR at 73706.

2016.⁴ On January 27, 2016, the Department uniformly tolled all administrative deadlines by four business days due to a government closure, which postponed the preliminary determination in this investigation until April 1, 2016.⁵

As stated in the *Initiation Notice*, we based our selection of a mandatory respondent on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁶ The Department released the CBP entry data under administrative protective order (APO) on November 17, 2015.⁷ We received no comments on the CBP entry data or respondent selection methodology.

On December 16, 2015, the Department selected International Industries Limited (IIL) as a mandatory respondent.⁸ On the same day, the Department issued a questionnaire to the GOP, requesting that it, along with the mandatory respondent, provide information regarding the subsidy programs alleged in the CVD Petition.⁹

On December 30, 2015, we received a timely affiliation questionnaire response from IIL,¹⁰ on which Petitioners subsequently commented.¹¹ Based on the information provided in IIL's affiliation questionnaire response, the Department requested that IIL provide a full questionnaire response on behalf of its affiliate, International Steels Limited (ISL). IIL provided a questionnaire response for ISL on February 22, 2016.¹²

As discussed in detail, below,¹³ IIL made several attempts to submit a questionnaire response regarding its own operations. These documents, however, were rejected and retained under 19 CFR 351.104(a)(2)(ii)(A) and (B) due to improper bracketing of business proprietary information (BPI) or impermissible revision of factual information, respectively.¹⁴ On February

⁴ See *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Postponement of Preliminary Determination in Countervailing Duty Investigation*, 81 FR 63 (January 4, 2016).

⁵ See Department Memorandum, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'," January 27, 2016.

⁶ See *Initiation Notice*, 80 FR at 73706-73707.

⁷ See Department Memorandum, "Release of Customs Entry Data for Respondent Selection in the Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan," November 17, 2015.

⁸ See Department Memorandum, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Respondent Selection," December 16, 2015 (Respondent Selection Memorandum).

⁹ See Letter from the Department, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Countervailing Duty Questionnaire," December 16, 2015.

¹⁰ Letter from IIL, "Countervailing Duty Questionnaire – Circular Welded Carbon Quality Steel Pipe from Pakistan Section III – Affiliated Companies," December 30, 2015.

¹¹ Letter from Petitioners, "Circular Welded Carbon-Quality Steel Pipe from Pakistan: Comments on IIL and ISL Cross-Ownership," January 8, 2016; see also Letter from IIL, "Circular Welded Carbon-Quality Steel Pipe from Pakistan: Comments on IIL and ISL, January 20, 2016 (responding to Petitioners' comments).

¹² See Letter from IIL, "CWP from Pakistan – Section III of CVD Questionnaire – Submission on behalf of ISL," February 22, 2016 (ISL Questionnaire Response).

¹³ See *infra*, at "VIII.A. IIL."

¹⁴ See Department Memorandum, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Rejection and Removal of Quarantined Documents," February 11, 2016 (Memorandum Rejecting February 4 Questionnaire Response); see also Department Memorandum, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Correction Regarding the Rejection of Quarantined

19, 2016, we provided IIL with its final opportunity to file a properly-bracketed questionnaire response.¹⁵ IIL failed to file a corrected document by the established deadline.¹⁶

On February 25, 2016, IIL requested that the Department accept its untimely questionnaire response, citing limited access to the record (*e.g.*, difficulty logging onto Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) due to connectivity issues and/or medical emergency).¹⁷ As outlined in our March 2, 2016, letter, however, the Department denied IIL’s request because we found no “extraordinary circumstances,” within the meaning of 19 CFR 351.302(c), that would warrant granting what amounted to an untimely request for an extension of time.¹⁸ IIL subsequently provided additional information pertaining to what it alleged were extraordinary circumstances and asked the Department to reconsider its March 2, 2016, decision.¹⁹ Specifically, IIL submitted medical records and company timesheets to support its claim that IIL’s designated representative “accessed the system and undertook what was absolutely required and then signed off.”²⁰ IIL also claimed that the differences between its February 17, 2016, questionnaire response and its February 4, 2016, questionnaire response were “immaterial” and “mere deletion{s}” of repeated information.²¹ For the reasons discussed below,²² we continue to find that IIL has not

Documents,” February 16, 2016 (Correction to Memorandum Rejecting February 4 Questionnaire Response); Department Memorandum “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Rejection and Retention of Documents Containing New Factual Information,” February 16, 2016 (Memorandum Rejecting February 9 Questionnaire Response); Department Memorandum, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Rejection and Retention of Duplicate Documents,” February 19, 2016 (Memorandum Rejecting Duplicate Documents); Department Memorandum, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Rejection and Retention of Documents Containing New Factual Information,” February 19, 2016 (Memorandum Rejecting February 17 Questionnaire Response); Department Memorandum, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Rejection and Retention of Documents,” February 24, 2016 (Memorandum Rejecting Questionnaire Response Exhibits).

¹⁵ See Letter from the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Questionnaire Responses from International Industries Limited,” February 19, 2016 (Third Request for Resubmission).

¹⁶ See Department Memorandum, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Rejection and Retention of Documents,” February 24, 2016.

¹⁷ See Letter from IIL, “CWP from Pakistan – Reasons for accepting CVD Section III late,” February 25, 2016; see also Department Memorandum, “Antidumping and Countervailing Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Ex Parte Correspondence Regarding Email and Telephone Communication,” February 25, 2016.

¹⁸ See Letter from the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Failure to Submit Timely Questionnaire Response,” March 2, 2016 (Department Extraordinary Circumstances Letter), and accompanying Attachments.

¹⁹ See Letter from IIL, “IIL’s Response to CVD Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Failure to Submit Timely Questionnaire Response,” March 11, 2016 (IIL Response Letter).

²⁰ See IIL Response Letter at 4 and Attachments. IIL initially filed a version of this letter on March 7, 2016, but that letter contained personally identifiable information of a company official and was rejected and removed from the record out of caution of possible identity theft. The Department provided IIL with an opportunity to resubmit this letter, which it did on March 11, 2016. See Letter from the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Request for Redaction of Personally Identifiable Information and Resubmission of Letter,” March 10, 2016.

²¹ See IIL Response Letter at 2-3.

²² See *infra*, at “VII. Use of Facts Otherwise Available and Adverse Inferences.”

demonstrated the existence of extraordinary circumstances that warrant reconsideration of its untimely request for an extension of time to file its initial questionnaire response in this investigation. We also disagree with IIL's assertion that the differences between its timely February 4, 2016, initial questionnaire response and its attempted February 17, 2016, resubmission are "immaterial." As such, there is no usable questionnaire response for the mandatory respondent, IIL, on the record of this investigation.

On February 4, 2016, we received a timely questionnaire response from the GOP.²³ The Department subsequently issued a supplemental questionnaire,²⁴ to which the GOP did not provide a response.

B. Period of Investigation

The period of investigation (POI) is July 1, 2014, through June 30, 2015.²⁵ In accordance with 19 CFR 351.204(b)(2), this period corresponds to the most recently completed fiscal year for the GOP and IIL.

III. ALIGNMENT

On the same day that the Department initiated this CVD investigation, the Department also initiated an AD investigation of circular welded pipe from Pakistan.²⁶ The AD and CVD investigations cover the same class or kind of merchandise from the same country. On March 29, 2016, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Petitioners requested alignment of the final CVD determination with the final AD determination of circular welded pipe from Pakistan.²⁷ Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of circular welded pipe from Pakistan. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently due no later than August 15, 2016, unless postponed.

IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage and encouraged all

²³ See letter from the GOP, "Countervailing Duty Questionnaire," February 4, 2016 (GOP Questionnaire Response).

²⁴ See Letter from the Department, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Supplemental Questionnaire," February 11, 2016.

²⁵ See Department Memorandum, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Period of Investigation," December 16, 2015; see also Letter from the Department, "Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Countervailing Duty Questionnaire," December 16, 2015, at I-4 (clarifying that the POI is July 1, 2014, through June 30, 2015).

²⁶ See *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73708 (November 25, 2015).

²⁷ See Letter from Petitioners, "Circular Welded Carbon-Quality Steel Pipe from Pakistan: Request for Alignment," March 29, 2016.

parties to submit comments within 20 calendar days of the signature date of the *Initiation Notice*.²⁸

We received several comments concerning the scope of the AD investigations of circular welded pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and the CVD investigation of circular welded pipe from Pakistan. The Department has evaluated these comments and addressed them in a separate memorandum, dated concurrently with and hereby adopted by this preliminary determination.²⁹ As discussed in the Scope Comments Memorandum, we have revised the scope language to clarify the inclusion of multi-stenciled pipe.³⁰ This modification also applies to the concurrent AD investigations.³¹

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is circular welded pipe from Pakistan. For a full description of the scope of this investigation, *see* Appendix I to the *Preliminary Determination*.

VI. RESPONDENT SELECTION

Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known exporter/producer of subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters/producers under section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters/producers involved in the investigation.

After careful consideration, as noted above, the Department determined that, in this investigation, it was not practicable to examine all of the exporters/producers of circular welded pipe in Pakistan because of the large number of identified exporters and producers relative to the resources available at the Department to conduct this investigation.³² Based upon CBP entry data, the Department selected the exporter/producer accounting for the largest volume of subject merchandise exported to the United States from Pakistan during the POI: IIL.³³

²⁸ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice*, 80 FR at 73704-73705.

²⁹ *See* Department Memorandum, “Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Scope Comments Decision Memorandum for the Preliminary Determinations,” April 1, 2016 (Scope Comments Memorandum).

³⁰ *Id.*; *see also Circular Welded Carbon-Quality Steel Pipe from Pakistan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 81 FR _____ (April __, 2016) (signed April 1, 2016) (*Preliminary Determination*), at Appendix I.

³¹ *See* Scope Comments Memorandum; *see also Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73708 (November 25, 2015).

³² *See* Respondent Selection Memorandum at 3-4.

³³ *Id.* at 4 (explaining that IIL is the only publicly-identified Pakistani exporter/producer of subject merchandise and accounted for virtually all exports of circular welded pipe from Pakistan to the United States during the POI).

VII. INJURY TEST

Because Pakistan is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Pakistan materially injure, or threaten material injury to, a U.S. industry. On December 14, 2015, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by imports of circular welded pipe from Pakistan.³⁴

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that if necessary information is not available on the record or if 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 section 782(c)(1) and (e) 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, then 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,” then the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

In accordance with Section 782(d) of the Act, if we determine 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 (5) the information can be used without undue difficulties.

³⁴ See *Circular Welded Carbon-Quality Steel Pipe from Oman, Pakistan, the Philippines, the United Arab Emirates, and Vietnam*, 80 FR 79093 (December 18, 2015).

On June 29, 2015, the President of the United States signed into law the *Trade Preferences Extension Act of 2015 (TPEA)*,³⁵ which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and (c) of the Act and the addition of section 776(d) of the Act.³⁶ The 2015 law does not specify dates of application for those amendments. Therefore, on August 6, 2015, the Department published an interpretive rule, in which it announced the applicability date for each amendment to the Act, except for amendments contained in section 771(7) of the Act, relating to determinations of material injury by the ITC.³⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.

Section 776(b) of the Act provides that the Department may use an adverse inference in selecting from among facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, pursuant to section 776(b)(1)(B) of the Act, as enacted by the *TPEA*, the Department is not required to determine or make any adjustments to a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) of Act 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 any 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.”³⁸ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.³⁹

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, conducted under section 751 of the, Act concerning the subject merchandise. Furthermore, pursuant to the new section 776(c)(2) of the Act, the Department is not required to corroborate any countervailing duty rate applied in a separate segment of the same proceeding.

Finally, in accordance with the new section 776(d) of the Act, the Department may use any

³⁵ See *TPEA*, Pub. L. 114-27, 129 Stat. 362 (2015); *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*).

³⁶ See *TPEA*; see also *Applicability Notice*

³⁷ See *Applicability Notice*.

³⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H. Rep. No. 103-316, vol. 1 at 870 (1994), reprinted in 1994 U.S.C.A.N. 4040, 4199; see also *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1338 (Fed. Cir. 2016).

³⁹ 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 at 27340; *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

countervailable subsidy rate from any segment of a proceeding under a CVD order when applying an adverse inference, including the highest of such rates. Additionally, the *TPEA* also makes clear that, when selecting an adverse facts available (AFA) rate, the Department is not required to estimate what the countervailable subsidy rate would have been if the uncooperative interested party had cooperated or to demonstrate that the subsidy rate reflects an “alleged commercial reality” of the interested party

For the reasons discussed below, we find that both IIL and the GOP are uncooperative in this investigation, and this preliminary determination is based on AFA.

A. IIL

As noted above,⁴⁰ there is no usable questionnaire response from IIL on the record of this investigation because IIL repeatedly failed to adhere to our instructions regarding the filing of such a response. Specifically, although IIL submitted a timely questionnaire response on February 4, 2016, it contained improperly bracketed BPI and was rejected and retained as a double-bracketed document, under 19 CFR 351.104(a)(2)(ii)(B).⁴¹ We requested that IIL resubmit its questionnaire response, modified only as necessary to protect BPI.⁴² On February 9, 2016, IIL filed a variation of its initial questionnaire response. Because the substantive content of IIL’s February 9, 2016, questionnaire response was significantly different from IIL’s timely February 4, 2016, questionnaire response, the Department rejected and retained the document in accordance with 19 CFR 351.104(a)(2)(ii)(A).⁴³ The Department again requested that IIL resubmit its February 4, 2016, questionnaire response, modified only for bracketing,⁴⁴ and, on February 17, 2016, IIL filed a third version of its initial questionnaire response. Upon review of the document, the Department determined that the February 17, 2016, questionnaire response was still substantively different from the requested February 4, 2016, questionnaire response.⁴⁵ Therefore, pursuant to 19 CFR 351.104(a)(2)(ii)(A), we rejected the document and provided IIL with a final opportunity to resubmit its properly-bracketed February 4, 2016, questionnaire response.⁴⁶ In our final request for resubmission, we reiterated that “{t}he answers provided in

⁴⁰ See *supra*, at “II.A. Initiation and Case History.”

⁴¹ See Memorandum Rejecting February 4 Questionnaire Response; see also Correction to Memorandum Rejecting February 4 Questionnaire Response.

⁴² See Department Memorandum, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan: Ex Parte Telephone Call,” February 8, 2016.

⁴³ See Memorandum Rejecting February 9 Questionnaire Response; see also Memorandum Rejecting Duplicate Documents; Letter from the Department, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Questionnaire Responses from International Industries Limited,” February 12, 2016 (Second Request for Resubmission) (listing the sections of IIL’s February 4, 2016, questionnaire response that were impermissibly modified and requesting resubmission).

⁴⁴ See Second Request for Resubmission; see also Letter from IIL, “Response to USDOC letter (barcode no. 3442113-01),” February 15, 2016 (objecting to the Department’s rejection and request for refile); Letter from IIL, “Section III CVD submission – reasons to retain some specific information provided in February 9th, 2016 vs that provided in February 4th, 2016,” February 19, 2016.

⁴⁵ In reaching this conclusion, the Department compared the content of the February 17, 2016, questionnaire response to a copy of the February 4, 2016, questionnaire response, which was retained under 19 CFR 351.104(a)(2)(ii)(A). See Third Request for Resubmission.

⁴⁶ See Third Request for Resubmission; see also Memorandum Rejecting February 17 Questionnaire Response; Memorandum Rejecting Questionnaire Response Exhibits.

IIL's resubmission must be identical to the answers provided in IIL's February 4 Questionnaire Response, except for changes to bracketing and exhibit numbers to reflect the protection of proprietary information."⁴⁷ IIL did not file a corrected document by the established deadline and, subsequently, failed to demonstrate "extraordinary circumstances," within the meaning of 19 CFR 351.302(c), that would warrant granting an untimely request for an extension of time to file a questionnaire response.⁴⁸

On March 11, 2016, IIL requested that the Department reconsider its March 2, 2016, decision not to grant IIL's untimely request for an extension of time to submit its initial questionnaire response.⁴⁹ We fully considered the arguments presented in IIL's March 11, 2016, letter, as well as the supporting documentation provided therein, and continue to find that the circumstances in this case do not qualify as extraordinary circumstances, within the meaning of 19 CFR 351.302(c), that warrant an extension of time for IIL to resubmit its original February 4, 2016, questionnaire response. In fact, as additional support for the Department's March 2, 2016, decision, IIL's March 11, 2016, letter clearly indicates that its company representative was active on the record of this investigation during the relevant time period (*i.e.*, February 19, 2016, through February 22, 2016).⁵⁰

The salient facts in this situation are undisputed. In particular, IIL, itself, has acknowledged that the company had the consistent ability to view and submit documents on the Department's online filing system, ACCESS, from February 19, 2016, through February 22, 2016.⁵¹ The Department's standard for extraordinary circumstances is concerned with such access and ability, rather than the facts asserted by IIL (*i.e.*, lack of legal counsel, concurrent filing deadlines in other investigations, and a "rush of work").⁵² Indeed, an "extraordinary circumstance" is defined as "an unexpected event that: (1) {c}ould not have been prevented if reasonable measures had been taken and (2) precludes a party or its representative from timely filing an extension request through all reasonable means."⁵³ However, extraordinary circumstances are "unlikely" to include "insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due."⁵⁴

Although IIL characterizes its representative's medical procedure as a "medical emergency,"⁵⁵ which may, in some circumstances, constitute extraordinary circumstances warranting an untimely extension of time,⁵⁶ the provided medical records indicate that the relevant procedure

⁴⁷ See Third Request for Resubmission at 2.

⁴⁸ See Memorandum Rejecting Questionnaire Response Exhibits; *see also* Department Extraordinary Circumstances Letter.

⁴⁹ See IIL Response Letter.

⁵⁰ See IIL Response Letter at Attachments.

⁵¹ See IIL Response Letter at 4 (stating, "The system was accessed for a specific purpose only *i.e.* either upload a document or to download something specific. Mr. Haseeb accessed the system and undertook what was absolutely required and then signed off").

⁵² *Id.* at 1-3.

⁵³ See *Extension of Time Limits*, 78 FR 57790, 57793 (September 20, 2013).

⁵⁴ *Id.*

⁵⁵ See IIL Response Letter at 3.

⁵⁶ See *Extension of Time Limits*, 78 FR at 57793.

was scheduled nine days in advance.⁵⁷ Thus, this medical procedure did not constitute an “unexpected event,” and it is not apparent from the record or from IIL’s explanation why the procedure for one company official precluded IIL from filing a timely extension request. Furthermore, this medical procedure was performed the day *before* the Third Request for Resubmission was uploaded by the Department to ACCESS.⁵⁸ IIL’s representative subsequently recorded working on three of the four days during which our Third Request for Resubmission was outstanding.⁵⁹ Finally, contrary to IIL’s assertions, it is not the Department’s responsibility to actively ensure that each interested party views each individual document once it has been made available on the ACCESS system.⁶⁰ For these reasons, the Department continues to find that no extraordinary circumstances exist and, as such, rejects IIL’s untimely extension request. As a result, the numerous versions of IIL’s initial questionnaire response, which were rejected and retained on the record pursuant to 19 CFR 351.104(a)(2)(ii), are available solely for purposes of establishing the bases for their rejection are not otherwise part of the official record.

Accordingly, there is no usable questionnaire response from IIL on the record of this investigation. IIL failed to provide the necessary information within the deadlines established by the Department. Consequently, necessary information is not available on the record. In addition, because IIL failed to properly file its initial questionnaire response, despite four opportunities to do so, and also failed to adhere to our deadline for submission of its response, we find that IIL significantly impeded this proceeding. Therefore, pursuant to sections 776(a)(1) and (2)(B)-(C) of the Act, the Department is resorting to “the facts otherwise available” for this preliminary determination with regard to IIL’s usage of the programs being investigated.

Furthermore, in selecting from among the facts available, we find that an adverse inference is warranted for IIL, pursuant to section 776(b)(1)(A) of the Act, because IIL has failed to cooperate to the best of its ability in this investigation. For example, IIL repeatedly failed to adhere to the Department’s instruction not to modify its initial questionnaire response and also failed to adhere to our deadline for the submission of its response. As stated in our requests for resubmission, any changes to the narrative content beyond what was necessary to protect BPI were impermissible.⁶¹ We are mindful of IIL’s repeated characterization of the questionnaire response modifications as immaterial or an attempt to correct information.⁶² However, although many of IIL’s modifications were, in fact, deletions, IIL’s descriptions are misleading and, in

⁵⁷ See IIL Response Letter at Attachment A, “Accommodation Request,” dated February 9, 2016 (indicating that, on February 9, 2016, the relevant medical procedure was scheduled for 9:00 AM on February 18, 2016).

⁵⁸ See IIL Response Letter at Attachment A (reflecting proposed date of procedure of “18/2/16”); see also Third Request for Resubmission at 1 (reflecting upload date to ACCESS of February 19, 2016); Department Extraordinary Circumstances Letter at Attachment V (reflecting service of Third Request for Resubmission to Public Service list on February 19, 2016).

⁵⁹ See IIL Response Letter at Attachment C.

⁶⁰ *Id.* at 4.

⁶¹ See Second Request for Resubmission at 2 (“IIL’s resubmissions must be identical to the answers provided in IIL’s February 4 Questionnaire Response, except for bracketing modifications”); see also Third Request for Resubmission at 1-2 (“The answers provided in IIL’s resubmission must be identical to the answers provided in IIL’s February 4 Questionnaire Response, except for changes to bracketing and exhibit numbers to reflect the protection of proprietary information”).

⁶² See IIL Response Letter at 2-3; see also Letter from IIL, “Section III CVD submission – reasons to retain some specific information provided in February 9th, 2016 vs that provided in February 4th, 2016,” February 19, 2016.

regard to transference of the standard questions appendix, inaccurate. In reality, the “mere deletions” were significant enough to change the substantive content of IIL’s narrative questionnaire response. Consequently, we find that IIL failed to cooperate to the best of its ability and that adverse inferences are warranted.⁶³

B. The GOP

The GOP failed to provide necessary information within the deadlines established by the Department. As a result, necessary information regarding the countervailability of the programs under investigation is not available on the record. Specifically, the GOP failed to provide a response to the Department’s supplemental questionnaire. The Department has considered whether the information contained in the GOP’s initial questionnaire response is usable. Without the additional explanation and supporting documentation requested in the supplemental questionnaire, however, we find that the GOP’s initial questionnaire response is wholly deficient under section 782(d) of the Act. We also find that, by not providing a timely response to our supplemental questionnaire, the GOP has significantly impeded this proceeding. Consequently, and pursuant to sections 776(a)(1) and (2)(B)-(C) of the Act, we are resorting to facts otherwise available regarding financial contribution and specificity for the programs under investigation.

Further, in selecting from among the facts available, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Because the GOP failed to provide a timely supplemental questionnaire response, the GOP has failed to act to the best of its ability to comply with the Department’s requests for necessary information in this investigation and, as such, is uncooperative.

C. Selection of the Adverse Facts Available Rate

As discussed above, in deciding which facts to use as AFA, section 776(b)(2) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review under section 751 of the Act or determination under section 753 of the Act, or (4) any information placed on the record. When selecting an AFA rate from among the possible sources of information, the Department’s practice is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”⁶⁴ As stated above, the Department’s practice further ensures “that the party does not obtain a more favorable result by failing to

⁶³ See *Nippon Steel Corp*, 337 F.3d at 1382 (stating: “Compliance with the ‘best of its ability’ standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.”).

⁶⁴ See, e.g., *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389 (August 19, 2013), and accompanying Issues and Decision Memorandum (IDM) at “IV. Use of Facts Otherwise Available and Adverse Inferences;” see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

cooperate than if it had cooperated fully.”⁶⁵

In this proceeding, the Department is examining the programs on which we originally initiated the investigation, as described in Attachment I to this memorandum. Because the GOP and IIL failed to act to the best of their ability, as discussed above, we are making an adverse inference that each of these programs provides a financial contribution within the meaning of section 771(5)(D) of the Act, is specific in accordance with section 771(5A) of the Act, and confers a benefit in accordance with section 771(5)(E) of the Act. Accordingly, in calculating a countervailable subsidy rate for IIL, we are applying AFA rates for all 16 programs under investigation.⁶⁶

When selecting AFA rates in a CVD investigation, section 776(d)(1)(A) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or a similar program in a CVD proceeding involving the same country or, if there is no same or similar program, a countervailable subsidy rate for a program from a proceeding that the Department considers reasonable to use, including the highest of such rates. Because IIL has failed to cooperate to the best of its ability in this investigation, consistent with section 776(d) of the Act and our established practice, we selected, to the extent possible, the highest calculated rate for programs that are the same or similar to the programs under investigation as AFA.⁶⁷ When selecting AFA rates, we first determine if there are any cooperative mandatory respondents in the same investigation, and, if one or more cooperative mandatory respondent benefited from an identical program, we use the highest calculated, above *de minimis* rate for the identical program. In this investigation, however, we do not have a cooperative mandatory respondent, as IIL is the only mandatory respondent. If there is no above *de minimis* calculated rate for an identical program in the same investigation, we then determine if an identical program was used in another CVD proceeding involving the same country and apply the highest calculated, above *de*

⁶⁵ See SAA; see also *Nan Ya Plastics Corp.*, 810 F.3d at 1338.

⁶⁶ The Department notes that “Rebates of Sales, Excise, and Withholding Taxes on Input Materials Used to Produce Exports” was alleged as a single program. In the three most recent CVD administrative reviews involving Pakistan, rebates of sales taxes, excise taxes, and customs duties were either examined as three separate programs or, similar to this investigation, labeled as a single program, within which the Department calculated a separate benefit for each tax rebate component (*i.e.*, a subsidy rate for rebates of sales tax, a subsidy rate for rebates of excise tax, and a subsidy rate for the rebate of customs duties). See *Cotton Shop Towels from Pakistan: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 67 FR 16718, 16720 (April 8, 2002) (treating sales tax rebates and excise tax rebates as two separate programs) (unchanged in *Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review*, 67 FR 52451 (August 12, 2002)); see also *Cotton Shop Towels from Pakistan: Preliminary Results of Countervailing Duty Administrative Reviews*, 61 FR 50273, 50724 (September 25, 1996) (calculating three separate rebate benefits within one program) (unchanged in *Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Reviews*, 62 FR 24082 (May 2, 1997) (*Cotton Shop Towels 1992/1993 Final Results*)); see also *Cotton Shop Towels from Pakistan: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 66 FR 18444, 18445 (April 9, 2001) (*Cotton Shop Towels 1999 Preliminary Results*) (calculating three separate rebate benefits within one program) (unchanged in *Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review*, 66 FR 42514 (August 13, 2001) (*Cotton Shop Towels 1999 Final Results*)). Therefore, based on our prior treatment of sales and excise tax rebates, we are countervailing rebates of sales taxes, rebates of excise taxes, and rebates of withholding taxes as three separate programs.

⁶⁷ See *Essar Steel, Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. June 12, 2014) (affirming the Department’s use of this AFA practice in a CVD proceeding).

minimis rate for the identical program, as determined in any such proceeding.⁶⁸ If no such rate exists, then we determine if there is a similar/comparable program and apply the highest calculated rate for the similar/comparable program.⁶⁹ Finally, when no calculated rate for a similar/comparable program is available, we apply the highest calculated rate for any non-company specific program, excluding rates from programs in which the company under examination could not have participated.⁷⁰

For all programs under investigation, we are applying, when available, the highest calculated subsidy rate for the same or similar program in a Pakistan CVD investigation or administrative review. In this preliminary determination, based on program name, description, and treatment of the benefit, we are able to match the following programs to identical programs from other Pakistan CVD proceedings:

- Rebates of Sales Taxes on Input Materials Used to Produce Exports,⁷¹
- Rebates of Excise Taxes on Input Materials Used to Produce Exports,⁷²
- Preferential Income Tax Rate on Foreign Proceeds,⁷³ and
- Short-term Export Financing under the State Bank of Pakistan Act.⁷⁴

Based on program type and treatment of the benefit, we are able to match the following programs to similar/comparable programs from other Pakistan CVD proceedings:

⁶⁸ See, e.g., *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at "Application of Total AFA to Non-Cooperative Companies." For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

⁶⁹ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

⁷⁰ *Id.*; see also *Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying IDM at "III. Use of Facts Otherwise Available and Adverse Inferences."

⁷¹ See *Cotton Shop Towels 1999 Preliminary Results*, 66 FR at 18445-18446 (calculating a rate for "Sales Tax Rebate Program") (unchanged in *Cotton Shop Towels 1999 Final Results* and accompanying IDM at "2. Sales Tax Rebate Program").

⁷² See *Cotton Shop Towels from Pakistan; Final Affirmative Countervailing Duty Determination*, 49 FR 1408, 1408 (January 11, 1984) (*Cotton Shop Towels Final Determination*) (calculating a rate for "Excise Tax Rebate"); see also *Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Review*, 53 FR 34340, 34340 (September 6, 1988) (*Cotton Shop Towels 1984/1985 Preliminary Results*) (calculating a rate for "Excise Tax Rebate") (unchanged in *Cotton Shop Towels from Pakistan; Final Results of Countervailing Duty Administrative Review*, 54 FR 14671 (April 12, 1989) (*Cotton Shop Towels 1984/1985 Final Results*))

⁷³ See *Cotton Shop Towels 1992/1993 Final Results*, 62 FR at 24084 (calculating a rate for "Income Tax Reductions"). Although a higher rate of 1.88 percent was calculated for "Income Tax Reductions" in a prior review, the Department finds that the rate calculated in the *Cotton Shop Towels 1992/1993 Final Results* reflects amendments made to the relevant law in 1992 and, as such, more accurately represents the current iteration of the "Preferential Income Tax Rate of Foreign Proceeds" program.

⁷⁴ *Id.* 24083-24084 (calculating a rate for "Export Financing").

- Input Material Import Duty Exemptions for Manufacturers Operating Bonded Warehouses,⁷⁵
- Input Material Import Duty Exemptions for Manufacturers Located in Export Processing Zones,⁷⁶
- Input Material Import Duty Exemptions/Discounts for Manufacturers in Certain Industries under SRO 565(I),⁷⁷
- Input Material Duty Drawback,⁷⁸
- Rebates of Withholding Taxes on Input Materials Used to Produce Exports,⁷⁹
- Plant Equipment and Machinery Import Duty Exemptions for Manufacturers Operating Bonded Warehouses,⁸⁰
- Plant Equipment and Machinery Import Duty Exemptions for Manufacturers Located in Export Processing Zones,⁸¹
- Withholding Tax Credit for Steel Product Manufacturers,⁸²
- Short-term Export Financing under Foreign Exchange Circular Nos. 25 and 05,⁸³ and
- Long-term Export Financing for Exporters from the State Bank of Pakistan.⁸⁴

Based on program type and treatment of the benefit, we were not able to match the alleged grant programs with identical or similar/comparable programs examined in prior Pakistan CVD proceedings. Accordingly, for the following programs, we are applying the highest calculated rate for a non-company specific Pakistani program:

- Assistance for Opening Exporters' Offices Abroad,⁸⁵ and
- Inland Freight Subsidy for Exporters.⁸⁶

D. Corroboration

As discussed above, section 776(c) of the Act provides that, in general, when the Department relies on secondary information, rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from

⁷⁵ See *Cotton Shop Towels Final Determination*, 49 FR at 1408 (calculating a rate for "Customs Duty Rebate").

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See *Cotton Shop Towels 1999 Preliminary Results*, 66 FR at 18445-18446 (calculating a rate for "Sales Tax Rebate Program") (unchanged in *Cotton Shop Towels 1999 Final Results* and accompanying IDM at "2. Sales Tax Rebate Program").

⁸⁰ See *Cotton Shop Towels Final Determination*, 49 FR at 1408 (calculating a rate for "Customs Duty Rebate").

⁸¹ *Id.*

⁸² See *Cotton Shop Towels 1999 Preliminary Results*, 66 FR at 18445-18446 (calculating a rate for "Sales Tax Rebate Program") (unchanged in *Cotton Shop Towels 1999 Final Results* and accompanying IDM at "2. Sales Tax Rebate Program").

⁸³ See *Cotton Shop Towels 1992/1993 Final Results*, 62 FR at 24083-24084 (calculating a rate for "Export Financing").

⁸⁴ *Id.*

⁸⁵ See *Cotton Shop Towels 1984/1985 Preliminary Results*, 53 FR at 34340 (calculating a rate for "Compensatory Rebate Scheme") (unchanged in *Cotton Shop Towels 1984/1985 Final Results*).

⁸⁶ *Id.*

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 concerning the subject merchandise.”⁸⁷ The SAA provides that, in order to “corroborate” secondary information, the Department will satisfy itself that the relevant secondary information has probative value.⁸⁸

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA, however, emphasizes that the Department need not prove the selected facts available to be the best alternative information.⁸⁹ Furthermore, pursuant to section 776(d)(3) of the Act, as enacted by the recent *TPEA* amendments, the Department is not required to estimate what the countervailable subsidy rate would have been if the uncooperative interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects the “alleged commercial reality” of an interested party.

With regard to the reliability aspect of corroboration, unlike other types of information (*e.g.*, publicly-available data on a specific country’s national inflation rate or national average interest rates), there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. We find the AFA rates applied here to be reliable based on their calculation and application in previous CVD proceedings involving Pakistan and, furthermore, because no information on the record calls their reliability into question.

With respect to the relevance aspect of corroboration, the Department will take information reasonably at its disposal into account when considering the relevance of information used to calculate a countervailable benefit. The Department will not use information that, as indicated by the particular circumstances, is not appropriate as AFA.⁹⁰ Because IIL failed to provide a usable questionnaire response within the established time limit, there is an absence of record evidence regarding IIL’s usage of the subsidy programs under investigation. Accordingly, the Department has reviewed Pakistani subsidy program information in other CVD proceedings involving Pakistan. In instances where we were able to match program types, we find that, because the programs are the same or similar, they are relevant to the programs in this case, such that these rates are actual, calculated CVD rates for the same or similar Pakistani programs from which IIL could receive a benefit. For the two programs which we are not able to match program types, we find the programs selected as AFA relevant to the extent that they are calculated rates from a CVD proceeding involving merchandise from Pakistan. However, due to the lack of participation by the company and the resulting lack of record information, the Department’s ability to corroborate this information is limited. For these reasons, the Department has corroborated the selected AFA rates to the extent practicable for this preliminary determination.

⁸⁷ See SAA at 870.

⁸⁸ *Id.*

⁸⁹ *Id.* at 869-870.

⁹⁰ See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996).

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for IIL to be 64.81 percent *ad valorem*.

E. Subsidy Rate Chart

PROGRAM UNDER INVESTIGATION	AFA RATE
Input Material Import Duty Exemptions for Manufacturers Operating Bonded Warehouses	0.37
Input Material Import Duty Exemptions for Manufacturers Located in Export Processing Zones	0.37
Input Material Import Duty Exemptions/Discounts for Certain Industries under SRO 565(I)	0.37
Input Material Duty Drawback	0.37
Rebates of Sales Taxes on Input Materials Used to Produce Exports	7.26
Rebates of Excise Taxes on Input Materials Used to Produce Exports	3.80
Rebates of Withholding Taxes on Input Materials Used to Produce Exports	7.26
Plant Equipment and Machinery Import Duty Exemptions for Manufacturers Operating Bonded Warehouses	0.37
Plant Equipment and Machinery Import Duty Exemptions for Manufacturers Located in Export Processing Zones	0.37
Preferential Income Tax Rate on Foreign Proceeds	1.84
Withholding Tax Credit for Steel Product Manufacturers	7.26
Short-Term Export Financing under the State Bank of Pakistan Act (Export Financing Scheme)	6.31
Short-Term Import/Export Financing under Foreign Exchange Circular Nos. 25 and 05	6.31
Long-Term Export Financing for Exporters from the State Bank of Pakistan	6.31
Assistance for Opening Exporters' Offices Abroad	8.12
Inland Freight Subsidy for Exporters	8.12
Total Ad Valorem Countervailable Subsidy Rate	64.81

VIII. CALCULATION OF THE ALL-OTHERS RATE

Section 703(d)(1)(A)(ii) of the Act states that, if the Department limits its investigation to particular respondents pursuant to section 777A(e)(2)(B) of the Act, the Department will determine a single estimated country-wide "all-others" rate, applicable to all exporters and

producers not individually-examined. Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for the exporters and producers that were individually investigated, excluding any rates that are *de minimis* and/or any rate based entirely on facts available. Section 705(c)(5)(A)(ii) of the Act, however, provides that, if the countervailable subsidy rates established for all individually-examined exporters/producers are *de minimis* or based entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters/producers that were not individually-examined, including averaging the weighted-average countervailable subsidy rates determined for the individually-examined exporters and producers. In this case, the countervailable subsidy rate calculated for IIL is based entirely on facts available pursuant to section 776 of the Act. Accordingly, we are using “any reasonable method” to establish the all-others rate. We find that it is reasonable to rely on the rate established for IIL as the all-others rate, particularly because there is no other information on the record that can be used to determine an all-others rate. This method is consistent with the Department’s past practice.⁹¹

IX. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

X. DISCLOSURE AND PUBLIC COMMENT

All calculations in this preliminary determination are based on public information and described in their entirety in this preliminary decision memorandum. As such, this preliminary decision memorandum constitutes disclosure of the calculations performed in connection with this preliminary determination to interested parties.⁹² Case briefs or other written comments for *all non-scope issues* may be submitted no later than 30 days after the publication of this preliminary

⁹¹ See, e.g., *Grain-Oriented Electrical Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying IDM at Comment 1 (assigning the sole mandatory respondent’s rate, which was based on AFA, as the all-others rate); see also *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468, 64470 (October 22, 2012) (averaging two total AFA respondents’ rates together to determine the all-others rate); see also *Certain Potassium Phosphate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry*, 75 FR 30375 (June 1, 2010) (assigning the rate for three total AFA companies as the all-others rate).

⁹² In accordance with 19 CFR 351.224(b), the Department is normally required to disclose calculations performed in connection with a preliminary determination within five days of its public announcement.

