



A-570-029

Investigation

POI: 1/01/2015-06/30/2015

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February 29, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Decision Memorandum for the Preliminary Determination in the  
Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat  
Products from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain cold-rolled steel flat products (cold-rolled steel) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margin is shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On July 28, 2015, the Department received an antidumping duty (AD) petition covering imports of cold-rolled steel from the PRC, which was filed in proper form by United States Steel Corporation, Nucor Corporation, ArcelorMittal USA LLC, AK Steel Corporation, and Steel Dynamics Inc., (collectively, Petitioners) covering cold-rolled steel from the PRC.<sup>1</sup> The Department initiated this investigation on August 18, 2015.<sup>2</sup>

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<sup>1</sup> See "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, Netherlands, Russia, and the United Kingdom," July 28, 2015 (Petition).

<sup>2</sup> See *Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 51198 (August 24, 2015) (*Initiation Notice*).



In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in non-market economy (NME) LTFV investigations.<sup>3</sup> The process requires exporters to submit a separate rate application (SRA)<sup>4</sup> and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, which fell on September 23, 2015.<sup>5</sup> No party filed timely SRAs with the Department during this proceeding.

Additionally, in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of cold-rolled steel to be reported in response to the Department's AD questionnaire.<sup>6</sup> From September through December 2015, the following parties that are interested parties in the companion investigations on cold-rolled steel submitted comments on the scope of the investigation: Caparo Precision Strip, Ltd.; Sumitomo Corporation of America; POSCO; Hitachi Metals America, Ltd.; Electrolux Home Products, Inc.; Electrolux Home Care Products, Inc.; Nippon Steel & Sumitomo Metal Corporation; Nissan North America, Inc.; the Ministry of Economic Development of the Russian Federation; JFE Steel Corporation; and Ameri-Source Specialty Products, Inc. On September 18, 2015, December 1, 2015, and January 6, 2016, Petitioners submitted rebuttal comments in response to the scope comments filed by each of the interested parties.

On September 9, 2015, the Petitioners, Caparo Precision Strip, Ltd., Tata Steel UK Ltd., and Tata Steel IJmuiden BV, respondents in the companion AD investigations on cold-rolled steel, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On September 16, 2015, Petitioners filed rebuttal comments on product characteristics in response to the submissions filed by Caparo Precision Strip, Ltd., and Tata Steel UK Ltd. In addition, on September 16, 2015, Usinas Siderurgicas de Minas Gerais – Usiminas S.A., JSW Steel Ltd. and JSW Steel Coated Products Ltd., respondents in the companion AD investigations on cold-rolled steel, filed rebuttal comments to comments on product characteristics comments filed by the petitioners.

We also stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to potential respondents named in the Petition.<sup>7</sup> On September 8, 2015, the Department issued Q&V questionnaires to 21 companies that Petitioners identified as potential producers/exporters of cold-rolled steel from the PRC that matched companies listed in Customs and Border Protection data for the period of investigation (POI).<sup>8</sup> In addition, the Department posted the Q&V questionnaire on its website and, in the *Initiation Notice*, invited parties that did not receive a Q&V questionnaire from the Department to file a response to the Q&V questionnaire by the

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<sup>3</sup> See *Initiation Notice*, 80 FR at 37233.

<sup>4</sup> See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005 (Policy Bulletin 05.1), available at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

<sup>5</sup> See *Initiation Notice*, 80 FR at 37233.

<sup>6</sup> *Id.*, at 51199.

<sup>7</sup> *Id.*, at 37233.

<sup>8</sup> See Petition at Exhibit I-7; see also Memorandum to The File, "Quantity and Value Questionnaire: Certain Cold Rolled Steel flat Products from the People's Republic of China," September 8, 2015 (Q&V Recipients Memo).

applicable deadline. By October 1, 2015, the applicable deadline, the Department had not received Q&V questionnaire responses from any of the 21 exporters/producers.<sup>9</sup> On October 8, 2015, per the Department's request Petitioners provided new addresses for four of the five companies for which we had incorrect addresses.<sup>10</sup> Also, on October 8, 2015, the Department re-issued Q&V questionnaires to four of the five companies for which we had incorrect addresses.<sup>11</sup> By October 27, 2015, the Department had not received any responses to the re-issued Q&V questionnaires.<sup>12</sup> On November 5, 2015, the Department placed on the record its search results for the companies for which we had incorrect addresses.<sup>13</sup>

On September 11, 2015, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injured by reason of imports of corrosion-resistant steel from the PRC.<sup>14</sup>

On October 30, 2015, Petitioners filed a critical circumstances allegation.<sup>15</sup>

On November 30 2015, and pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than February 23, 2016.<sup>16</sup>

On January 27, 2016, the Department tolled all E&C deadlines for four business days due to the Government closure during Snowstorm "Jonas."<sup>17</sup> Accordingly, the revised deadline for this preliminary determination is February 29, 2016.

The Department is conducting this investigation in accordance with section 733(b) of the Act.

### **III. PERIOD OF INVESTIGATION**

The POI is January 1, 2015, through June 30, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was July 2015.<sup>18</sup>

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<sup>9</sup> See Memorandum to: the file "Quantity and Value Questionnaire Responses: Certain Cold Rolled Steel Flat Products from the People's Republic of China," October 1, 2015 (Q&V Recipients Memo 2).

<sup>10</sup> See Letter from Petitioners, dated October 8, 2015.

<sup>11</sup> See Memorandum to: the file "Quantity and Value Questionnaire Responses: Certain Cold Rolled Steel Flat Products from the People's Republic of China," October 8, 2015 (Q&V Recipients Memo 3).

<sup>12</sup> See Memorandum to: the file "Quantity and Value Questionnaire Responses: Certain Cold Rolled Steel Flat Products from the People's Republic of China," October 27, 2015 (Q&V Recipients Memo 4)

<sup>13</sup> See Memorandum to: the file "Certain Cold Rolled Steel Flat Products from the People's Republic of China: Addresses," November 5, 2015 (Q&V Recipients' Addresses)

<sup>14</sup> See *Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom*, 80 FR 55872 (September 17, 2015).

<sup>15</sup> See Letters from Petitioners, dated October 30, 2015 (Critical Circumstances Allegation).

<sup>16</sup> See *Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 80 FR 74764 (November 30, 2015).

<sup>17</sup> See Memorandum to: the Record "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm "Jonas," dated January 27, 2016.

<sup>18</sup> See 19 CFR 351.204(b)(1).

#### IV. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

As noted above, on October 30, 2015, Petitioners timely filed a critical circumstances allegation, pursuant to 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise.<sup>19</sup>

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

##### Legal Framework

Section 733(e)(1) of the Act, provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

##### Critical Circumstances Allegation

In support of its allegation, Petitioners contend that there is a history of injurious dumping by Chinese cold-rolled steel producers, and cite to the AD orders in Mexico, Indonesia, Thailand, and the European Union (EU). Petitioners state that Mexico has maintained AD duties since June 2015.<sup>20</sup> Petitioners state that Indonesia has maintained AD duties since 2013,<sup>21</sup> while Thailand has maintained AD duties since June 2014.<sup>22</sup> Petitioners state that the EU has maintained AD duties since May 2015.<sup>23</sup> For these reasons, petitioners conclude, there is ample record evidence to demonstrate that there is a history of dumping and material injury by reason of dumped cold-rolled steel from China.

Petitioners also state that producers/exports and U.S. importers “had reason to believe that proceedings were likely” as early as March 2015 and Petitioners provide a series of six newspaper articles dated between February 26, 2015 and March 26, 2015 which indicate the potential filing of a petition pertaining to cold-rolled steel.<sup>24</sup> As such, Petitioners suggest that the base period should extend from January 2015 to March 2015, while the comparison period extends from April 2015 to June 2015. Petitioners included in its submission U.S. import data collected from the ITC’s Dataweb.<sup>25</sup> Based on these data, Petitioners claim that imports of cold-

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<sup>19</sup> See Critical Circumstances Allegation.

<sup>20</sup> See Petitioners’ Critical Circumstances Allegation at 5 and Exhibit 2.

<sup>21</sup> *Id.*, at 5-6.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, at 6.

<sup>24</sup> See Petitioners’ Critical Circumstances Allegation at 14.

<sup>25</sup> *Id.*, at 15.

rolled steel increased by over 24 percent during the comparison period over the base period. Thus, Petitioners conclude that there were massive imports during a relatively short period.<sup>26</sup>

### Analysis

We considered each of the statutory criteria for our preliminary affirmative finding of critical circumstances, as described in the following sections.

#### *Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise*

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.<sup>27</sup> We find the record indicates a history of dumping and material injury by reason of dumped imports elsewhere.

#### *Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period*

In determining whether imports of the subject merchandise have been “massive” for the PRC-wide entity, we make our preliminary determination with respect to whether or not there were massive imports on facts otherwise available, with an adverse inference, because the PRC-wide entity has been uncooperative with the Department as explained below. Specifically, with respect to critical circumstances, we are making an adverse inference that the PRC-wide entity dumped “massive imports” over a “relatively short period.”

Accordingly, we preliminarily determine that critical circumstances exist for the PRC-wide entity in accordance with sections 773(e) and 776(a) and (b) of the Act and 19 CFR 351.206

## **V. SCOPE OF THE INVESTIGATION**

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and

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<sup>26</sup> *Id.* at 15-16.

<sup>27</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008) (*Carbon Steel Pipe Final Determination*); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049 (January 14, 2009) (*SDGE Final Determination*).

measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

- Ball bearing steels;<sup>28</sup>
- Tool steels;<sup>29</sup>
- Silico-manganese steel;<sup>30</sup>
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.<sup>31</sup>
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.<sup>32</sup>

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<sup>28</sup> Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

<sup>29</sup> Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

<sup>30</sup> Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

<sup>31</sup> See Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances, 79 Fed. Reg. 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

<sup>32</sup> See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders, 79 Fed. Reg. 71,741, 71,741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (i.e., the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (i.e., parallel to) the rolling direction of the sheet (i.e., B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be

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

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

## VI. DISCUSSION OF THE METHODOLOGY

### A. Non-Market Economy Country

The Department considers the PRC to be an NME country.<sup>33</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

### B. The PRC-wide Entity

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and therefore, should be assessed a single weighted-average dumping.<sup>34</sup> The Department's policy to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>35</sup> The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*<sup>36</sup> and further developed in *Silicon Carbide*.<sup>37</sup> According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a

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applied.”

<sup>33</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

The record indicates there are PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive any responses to its Q&V questionnaire or separate rate applications from PRC exporters and/or producers of merchandise under consideration that were named in the Petition and to whom the Department issued Q&V questionnaires.<sup>38</sup> Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department considers them to be part of the PRC-wide entity. In addition, no other party has applied for a separate rate. We have preliminarily assigned the PRC-wide entity a weighted-average dumping margin of 265.79 percent, which is the Petition rate. As explained below, we have preliminarily determined the PRC-wide rate on the basis of adverse facts available (AFA).

### C. Application of Facts Available and Adverse Inferences

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from 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 subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to section 776(b) and 776(c) of the Act

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<sup>34</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

<sup>35</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

<sup>36</sup> *Id.*

<sup>37</sup> See *Notice of Final Determination of Sales at less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>38</sup> See Q&V Recipients Memo 4, *see also* Q&V Recipients Memo 2, *see also* Q&V Recipients Memo 3, *see also* Q&V Recipients Memo 4, *see also* Q&V Recipients Addresses. Of the 21 sent Q&V questionnaires, 11 were delivered, 7 were refused by recipients, and 3 were ultimately found to be delivered because of insufficient or incorrect addresses.

and the addition of section 776(d) of the Act.<sup>39</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>40</sup>

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

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of the proceeding 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 had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

#### *1. Use of Facts Available*

Information on the record of this investigation indicates that the PRC-wide entity was unresponsive to the Department's requests for information. Specifically, as discussed above, no company responded to our questionnaires requesting Q&V information. It is our standard practice to select respondents in NME investigations based on Q&V information we receive from potential respondents.<sup>41</sup> Without a Q&V response from a potential respondent, we are not able to select a respondent for individual examination in accordance with our normal methodology and calculate a rate. Accordingly, the Department preliminarily finds that the PRC-wide entity failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Moreover, because the PRC-wide entity failed to provide any information, section 782(d) of the Act is inapplicable. Accordingly,

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<sup>39</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

<sup>40</sup> *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>41</sup> See *Initiation Notice*.

the Department preliminarily determines that use of facts available is warranted in determining the rate of the PRC-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.<sup>42</sup>

## 2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that the Department, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department finds that because the PRC-wide entity failed to provide the requested information, the PRC-wide entity failed to cooperate by not acting to the best of its ability.<sup>43</sup> Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the PRC-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).<sup>44</sup>

## 3. *Selection and Corroboration of the AFA rate*

When using facts otherwise available, section 776(c) of the Act provides that, generally, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>45</sup> The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>46</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>47</sup> Finally, under section 776(d) of the Act, the

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<sup>42</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

<sup>43</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed (i.e., information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”)).

<sup>44</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>45</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, at 870 (1994) (SAA).

<sup>46</sup> See SAA at 870; see also 19 CFR 351.308(d).

<sup>47</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

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.<sup>48</sup>

The only rate on the record of this investigation is the rate in the Petition. We have no calculated margins based on respondents' submissions. Therefore, as AFA we are preliminarily assigning the highest petition margin of 265.79 percent as the rate applicable to the PRC-wide entity. The petition rate was a calculated by Petitioners following the Department's standard NME methodology using consumption rates from their own records in this segment of the proceeding compared to a price quote from a cold-rolled steel producer/exporter from China.

We determined that the petition margin of 265.79 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.<sup>49</sup>

We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export price (EP), based on a price quote from a Chinese cold-rolled steel producer, and normal value (NV) calculations used in the petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources (to the extent that such information was reasonably available) provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the key elements of the EP and NV calculations used in the petition to derive an estimated margin.<sup>50</sup>

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioner's EP and NV calculations to be reliable.<sup>51</sup> Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that this petition rate is reliable for the purposes of assigning an AFA rate as the PRC-wide rate in this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. No information has been placed on the record to indicate that the rates in the petition are unreflective of commercial practices of the cold-rolled steel industry. As such, we find the petition rate of 265.79 percent relevant to the PRC-wide entity. Furthermore,

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<sup>48</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

<sup>49</sup> See Enforcement and Compliance Office of AD/CVD Operations AD Investigation Initiation Checklist: "Certain Cold-Rolled Steel Flat Products from the People's Republic of China (PRC)" (August 17, 2015) (Initiation Checklist).

<sup>50</sup> See Initiation Checklist at 6-11 for details of our pre-initiation analysis and all source documents used.

<sup>51</sup> *Id.*

as there are no respondents in this investigation for which we are calculating a dumping margin, we relied upon the rates found in the petition, which is the only information regarding the cold-rolled steel industry reasonably at the Department's disposal.

Accordingly, the Department has corroborated the AFA rate of 265.79 percent to the extent practicable within the meaning of section 776(c) of the Act.

## **VII. ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT**

In applying section 777A(f) of the Act, the Department examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.<sup>52</sup> For a subsidy meeting these criteria, the statute requires the Department to reduce the AD by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.<sup>53</sup>

Because there has been no demonstration that an adjustment for domestic subsidies is warranted, the Department is not making any such adjustment to the rate being assigned to the PRC-wide entity.

## **VIII. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES**

For this proceeding, for the PRC-wide entity, which received an AFA rate as discussed above, we are adjusting the PRC-wide entity's AD cash deposit rate by the countervailing duty attributable to export subsidies. In this case, the Department in the corresponding CVD investigation initiated on 13 export-specific programs and determined as AFA all 13 programs to be countervailable.<sup>54</sup> Those programs were: Export Loans; Preferential Lending to Cold-Rolled Steel Producers and Exporters Classified As "Honorable Enterprises"; Preferential Income Tax Subsidies for Foreign Invested Enterprises – Export Oriented FIEs; Programs to Rebate Antidumping Legal Fees; Foreign Trade Development Fund Grants; Export Assistance Grants; Subsidies for Development of Famous Export Brands and China World Top Brands; Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands; Export Interest Subsidies; Export Seller's Credits; Export Buyer's Credits; Export Credit Insurance Subsidies; and Export Credit Guarantees".<sup>55</sup> Therefore, we are making an offset adjustment of

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<sup>52</sup> See section 777A(f)(1)(A)-(C) of the Act.

<sup>53</sup> See section 777A(f)(1)-(2) of the Act.

<sup>54</sup> See *Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations*, 80 FR 51206 (August 24, 2015), see also *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79562 (December 22, 2015) and accompanying Preliminary Decision Memorandum at 11-15 and Appendix 1.

<sup>55</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Preliminary Affirmative Determination, Preliminary Partial Affirmative Critical Circumstances*

66.03 percent for export subsidies in this preliminary determination. Accordingly, the adjusted cash deposit rate for the PRC-wide entity is 199.76 percent.

## **IX. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>56</sup> Case briefs may be submitted to Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS) no later than 50 days after the publication of this preliminary determination in the *Federal Register*.<sup>57</sup> Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>58</sup>

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>59</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.<sup>60</sup> Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.<sup>61</sup> Electronically-filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.<sup>62</sup>

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*Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79558 (December 22, 2015) and accompanying Preliminary Decision Memorandum at 11-15 and Appendix 1.

<sup>56</sup> See 19 CFR 351.224(b).

<sup>57</sup> See 19 CFR 351.309 (b)(2)(c)(i).

<sup>58</sup> See 19 CFR 351.309.

<sup>59</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>60</sup> See 19 CFR 351.310(c).

<sup>61</sup> See 19 CFR 351.303(b)(2)(i).

<sup>62</sup> See 19 CFR 351.303(b)(1).

**X. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

29 FEBRUARY 2016  
(Date)