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AD/CVD, Office IV: TT/BF

May 22, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Issues and Decision Memorandum for the Final Affirmative
Determination of the Antidumping Duty Investigation of Welded
Stainless Pressure Pipe from Thailand

I. Summary

We analyzed the case and rebuttal brief of interested parties in this antidumping duty investigation of welded stainless pressure pipe from Thailand. As a result of our analysis, we made changes to the margin calculation¹ from the *Preliminary Determination*² and *Amended Preliminary Determination*.³ We recommend that you approve the conclusions described in the "Discussion of Issues" section of this memorandum. The issues for which we received comments are discussed below.

II. Background

On January 7, 2014, the Department of Commerce ("the Department") published the *Preliminary Determination* in the *Federal Register*.⁴ This investigation covers two producers/exporters of the subject merchandise, (1) Thai-German Products Public Company Limited ("TGP") and (2)

¹ See Memorandum from Abdelali Elouaradia, Office Director for Office IV, Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Antidumping Duty Investigation of Welded Stainless Pressure Pipe from Thailand: Thai-German Products Public-Limited Company: Unreported Home Market Sales and the Use of Adverse Facts Available" dated May 22, 2014 ("TGP's Total AFA Memo").

² See *Welded Stainless Pressure Pipe from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 812 (January 7, 2014) ("*Preliminary Determination*") and accompanying Preliminary Decision Memorandum.

³ See *Welded Stainless Pressure Pipe from Thailand: Amended Preliminary Determination of Sales at Less Than Fair Value*, 79 FR 10772 (February 26, 2014) ("*Amended Preliminary Determination*").

⁴ See *Preliminary Determination*.



Ametai Co., Ltd. and Thareus Co., Ltd. (“Ametai/Thareus”): Petitioners in this proceeding are Bristol Metals, LLC, Felker Brothers Corp., and Outokumpu Stainless Pipe, Inc. (collectively, “Petitioners”). On January 3, 2014, Ametai/Thareus notified the Department that it was withdrawing its participation from the less than fair value (“LTFV”) investigation.⁵ On February 26, 2014, the Department published its *Amended Preliminary Determination*.⁶

From January 20, 2014 through January 24, 2014, Department officials conducted TGP’s sales verification. During verification, Department officials found that TGP only provided home market sales that are identical to the U.S. sales.⁷ As a result, TGP failed to report the vast majority of its similar home market sales of subject merchandise.⁸ In light of that, we cancelled TGP’s scheduled cost verification.⁹

We invited parties to comment on the *Preliminary Determination* and *Amended Preliminary Determination*.¹⁰ We received a case brief from Petitioners on March 13, 2014,¹¹ and a rebuttal brief from TGP on March 18, 2014.¹²

III. Period of Investigation

The period of investigation (“POP”) is April 1, 2012, through March 31, 2013.

IV. Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of this investigation, references to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (“ASTM”) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining

⁵ See Letter from Thareus Co., Ltd. and Ametai Co., Ltd. to the Secretary of Commerce, dated January 3, 2014.

⁶ See *Amended Preliminary Determination*.

⁷ See Memorandum from Trisha Tran and Brandon Farlander, Senior International Trade Compliance Analysts, AD/CVD Operations, Office IV, to the File, “Antidumping Duty Investigation of Welded Stainless Pressure Pipe from Thailand: Verification of the Questionnaire Responses of Thai-German Products Public Company Limited,” (March 5, 2014) (“TGP Sales Verification Report”) at 13.

⁸ *Id.* at 3.

⁹ Memorandum from Trisha Tran International Trade Analyst, AD/CVD Operations, Office IV, to the File, “Welded Stainless Pressure Pipe from Thailand: Cancellation of Thai-German Products Public Company Limited’s Cost Verification,” (January 31, 2014).

¹⁰ See Memorandum to All Interested Parties, “Antidumping Duty Investigation of Welded Stainless Steel Pressure Pipe from Thailand: Deadline for Briefs and Rebuttal Briefs,” (March 6, 2014).

¹¹ See Letter from Petitioners to the Secretary of Commerce, dated March 13, 2014 (Petitioners’ Case Brief).

¹² See Letter from Thai-German Products Public Company Limited to the Secretary of Commerce, dated March 18, 2014 (TGP’s Rebuttal Brief).

furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (“HTSUS”). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

V. Adverse Facts Available

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (“the Act”) provide that the Department shall apply “facts otherwise available” if necessary information is not on the record or an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may disregard all or part of the initial and subsequent responses, subject to section 782(e) of the Act, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (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.

Pursuant to sections 776(a)(2)(A) and (C) of the Act, facts available is warranted because record evidence indicates that TGP withheld necessary information and significantly impeded the proceeding when it failed to report a vast majority of its home market sales. TGP has the burden of reporting complete and accurate responses.¹³ In the initial dumping questionnaire, we requested that TGP report all of its sales in the home and U.S. markets.¹⁴ Throughout the investigation, TGP only reported home market sales of products it considered identical to its U.S. sales without prior disclosure to, or approval by, the Department. At verification, the Department discovered this failure to provide a complete home market sales listing.¹⁵ TGP acknowledges that it did not report all of its home market sales based on its incorrect

¹³ See *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291, 1306 (CIT 2004).

¹⁴ See Department’s initial questionnaire dated July 30, 2013 at B-2.

¹⁵ See TGP’s Sales Verification Report at 3.

understanding of the questionnaire requirements.¹⁶ TGP's failure to fully report all of its home market sales of subject merchandise precludes us from finding more similar matches for a significant portion of its U.S. sales and from obtaining accurate and complete cost of production information.¹⁷ For these reasons, we find that the use of total facts available, pursuant to sections 776(a)(2)(A) and (C) of the Act (withholding requested information and significantly impeding the proceeding), is appropriate in determining the applicable dumping margin for TGP. Moreover, pursuant to section 782(e) of the Act, we find that the information submitted by TGP cannot be used in this investigation because it is incomplete, cannot be fully verified, and cannot serve as a reliable basis for calculating an accurate dumping margin for the final determination.¹⁸

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.¹⁹ In the instant case, we determined that applying section 776(b) of the Act is warranted for TGP. This determination is based on the fact that TGP did not act to the best of its ability when it consistently provided to the Department incomplete responses. In addition to requesting that TGP report all of its home market sales and cost of production information, the Department's initial antidumping questionnaire requested that TGP provide a complete foreign market sales reconciliation.²⁰ TGP did not provide any foreign market sales reconciliation in its Section B response.²¹ We issued two additional supplemental questionnaires asking TGP to provide a complete foreign market sales reconciliation that explained how it identified the sales it reported to the Department in its home market database.²² TGP did not notify the Department that it identified the sales it reported to the Department in its home market database using only the 27 product codes/control numbers ("CONNUMs") sold in the U.S. market.²³ As such, we find that TGP failed to cooperate to the best of its ability to provide the Department with a complete foreign market reconciliation even after the Department's numerous attempts to obtain the information prior to verification.

Selection of an AFA Rate

Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination from the LTFV investigation, a previous administrative

¹⁶ See TGP's Rebuttal Brief at 3-4.

¹⁷ See Memorandum to the File, through Robert Bolling Program Manager, Office IV, from Trisha Tran, International Trade Compliance Analyst, Office IV, entitled "Antidumping Duty Investigation of Welded Stainless Pressure Pipe from Thailand: Thai-German Products Public-Limited Company: Unreported Home Market Sales and the Use of Adverse Facts Available" dated May 22, 2014 ("TGP's Total AFA Memo").

¹⁸ *Id.*

¹⁹ See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819-20 (October 16, 1997); see also *Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316, 870 (1994) ("SAA").

²⁰ See Department's initial questionnaire dated July 30, 2013 at B-6.

²¹ See TGP's Section B submission dated September 18, 2013 at 10.

²² See Department's Supplemental B questionnaire dated October 23, 2013 at 3; see also Department's Sections B and C third supplemental questionnaire dated December 13, 2013 at 4.

²³ See TGP's Third Supplemental Sections ABC response dated December 20, 2013 at 10-11.

review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”²⁴ It is the Department’s practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest weighted-average calculated rate for any respondent in the investigation.²⁵ However, in this instance, we do not have weighted-average calculated margins for TGP and the other mandatory respondent (*i.e.*, Ametai Co., Ltd. and Thareus Co., Ltd. (“Ametai/Thareus”)) in this final determination as both have been assigned total AFA. Accordingly, to ensure that the non-cooperative party, TGP, does not benefit from its lack of participation, and to select a sufficiently adverse rate to induce cooperation in the future, we selected the highest margin alleged in the petition, which was 24.01 percent, as TGP’s AFA rate for the final determination.²⁶

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted “corroborate” to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted to satisfy ourselves that the secondary information has probative value.²⁷ In this instant case, to corroborate the 24.01 percent margin used as AFA for TGP, we relied on the pre-initiation analysis of the adequacy and accuracy of the information in the petition. During the initiation stage, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioners to determine the probative value of the margins alleged in the petition.²⁸ During our pre-initiation analysis, we examined the information used as the basis of export price (“EP”) and normal value (“NV”) in the petition, and the calculations used to derive the alleged margins.²⁹ Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the EP and NV calculations.³⁰ Therefore, for the final determination, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to TGP.

²⁴ See *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).

²⁵ See *Amended Preliminary Determination of Sales at 10774* (February 26, 2014) (as AFA, the Department selected the higher of either the highest margin alleged in the petition or the highest weighted-average calculated rate for any respondent in the investigation.)

²⁶ See *Welded Stainless Pressure Pipe from Thailand Investigation Initiation Checklist*, dated June 5, 2013, at 8, citing *Welded Stainless Pressure Pipe from Thailand: Correction to Supplemental Response*, dated May 30, 2013, at Exhibit III-8.

²⁷ See *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000).

²⁸ See Thailand Checklist at 6-8.

²⁹ *Id.*

³⁰ *Id.*

VI. Discussion of Issues

Comment 1: Whether to Apply Total AFA with respect to TGP

Petitioners' Comments

- TGP must be regarded as having failed verification and that facts available need to be applied.³¹
- The magnitude of the unreported home market sales and the underlying circumstances make this case similar to *Roller Chain, Other Than Bicycle From Japan*, where the Department determined that total adverse facts available (“AFA”) was warranted because verification failures indicated that the information provided was so incomplete that it could not serve as a reliable basis for calculating an accurate dumping margin and the respondent did not demonstrate that it acted to the best of its ability in providing the necessary information.³²

TGP's Rebuttal Comments

- Acknowledges that it did not report all home market sales based on a misunderstanding of the questionnaire requirements.³³
- Claims it acted in good faith in this investigation. TGP argues that punishing TGP with adverse inferences in spite of its substantial compliance efforts would unreasonably fail to distinguish between cooperative respondents such as TGP and non-cooperative respondents such as Ametai/Thareus, and in effect would discourage cooperation with the Department's information requests.³⁴ TGP cites to *Reiner Brach GmbH & CO.KG v. United States* for the proposition that “where a respondent has not submitted complete and accurate information but does have the ability to comply with a request for information, the Department ‘must demonstrate ‘a willingness on the part of the respondent or behavior below the standard of a reasonable respondent in order to apply adverse inference.’”³⁵ As evidence of TGP's willingness to participate in the proceeding, TGP points to the “voluminous, timely filed questionnaire responses within a tight timeframe” made by TGP in this investigation.³⁶

Department's Position: We determine that the use of total AFA with respect to TGP is warranted. Pursuant to section 776(a)(2)(A) of the Tariff Act of 1930, as amended (the “Act”), record evidence indicates that TGP withheld necessary information that had been requested by the Department. The Department's initial antidumping questionnaire requested that the respondent report *all* of its home market sales:

{r}eport all sales of the foreign like product, whether or not you consider particular merchandise to be that which is most appropriately compared to your sales of the subject merchandise. The Department will then select the appropriate comparison sales from your sales listing.³⁷

³¹ See Petitioners' Case Brief at 2.

³² *Id.* at 2-3.

³³ See TGP's Rebuttal Brief at 3.

³⁴ *Id.* at 1.

³⁵ See *Reiner Brach*, 206 F. Supp. 2d at 1337.

³⁶ See TGP's Rebuttal Brief at 2-3.

³⁷ See Department's initial AD questionnaire at B-2.

Foreign like product is defined in the glossary of the initial antidumping questionnaire as follows:

The term foreign like product refers to merchandise that is sold in the foreign market and that is identical or similar to the subject merchandise. When used in the questionnaire, foreign like product means all merchandise that is sold in the foreign market and that fits within the description of merchandise provided in Appendix III to the questionnaire.³⁸

With regard to the term identical merchandise, the glossary of the initial antidumping questionnaire states:

The Department prefers to compare U.S. sales to foreign market sales of identical merchandise. The identical merchandise is merchandise that is produced by the same manufacturer in the same country as the subject merchandise, and which the Department determines is identical or virtually identical in all physical characteristics with the subject merchandise, as imported into the United States.³⁹

As to similar merchandise, the glossary of the initial antidumping questionnaire explains:

In deciding which sales of the foreign like product to compare to sales of the subject merchandise, the Department first seeks to compare sales of identical merchandise. If there are no sales of the identical foreign like product, the Department will compare sales of the foreign like product similar to the subject merchandise.⁴⁰

TGP's response to the Department's initial questionnaire demonstrates that it withheld necessary information requested by the Department. In its initial response, TGP provided only information regarding what *it* considered to be identical merchandise sold in the home market.⁴¹ TGP, however, was obligated to provide information regarding both identical merchandise and similar merchandise pursuant to: (1) the Department's request for "all" sales of the foreign like product, (2) the definition of foreign like product as "identical or similar merchandise," and (3) the Department's statement that it will determine itself which sales are appropriate for comparison purposes from those reported. Moreover, as stated in the definition of identical merchandise, *the Department determines* which merchandise is identical.

The Department did not give TGP discretion to determine which sales were the proper sales for comparison purposes. Thus, TGP had the obligation to submit information regarding home market sales of both identical *and* similar merchandise.⁴² Nowhere in the Department's questionnaire does it state that respondents have the option of only providing home market sales

³⁸ See Initial Questionnaire, Appendix I, at 9.

³⁹ *Id.* at 9.

⁴⁰ *Id.* at 14-15.

⁴¹ See TGP's December 6, 2013 Home Market Sales Database submission.

⁴² See, e.g., *Reiner Brach GmbH & CO.KG v. United States*, 206 F. Supp. 2d 1323, 1331 (CIT 2002), citing 206 F. Supp. 2d at 1331 citing *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1339-1341 (CIT 2000) (*Reiner Brach*).

that are identical to the U.S. sales. Also, TGP never requested that the Department permit it to report only home market sales of identical merchandise. Additionally, TGP never explained that it was only reporting home market sales of identical merchandise. Finally, TGP never requested clarification from the Department as to whether reporting only home market sales of identical merchandise was sufficient with respect to the Department's reporting requirements. Nevertheless, TGP reported only home market sales of products identical to the products sold in the United States without prior disclosure to or approval by the Department.

TGP's failure to provide the necessary information, as requested, and to report all of the home market sales of the foreign like product also significantly impeded the proceeding under section 776(a)(2)(C) of the Act. TGP officials explained that its home market sales during the POI included a greater number of product codes of subject merchandise than it had reported.⁴³ The unreported home market sales are necessary to calculate an accurate normal value ("NV"). Specifically, TGP's failure to fully report all of its home market sales of subject merchandise precludes us from finding more similar matches for its U.S. sales that no longer had identical matches to its home market sales database as a result of certain home market sales failing the cost test.

Further, at verification, the Department discovered that TGP failed to provide accurate and complete cost of production information. TGP stated at verification that it applied the same methodology to create its cost of production database, namely that it only reported costs for home market sales that it believed were identical matches to its U.S. sales.⁴⁴ As a result, TGP underreported the majority of its product codes or control numbers ("CONNUMs") sold in the home market.⁴⁵ Additionally, at verification, TGP excluded cost data for an entire steel grade of subject merchandise⁴⁶ as well as for product codes for other steel grades.⁴⁷ In the course of this investigation, TGP never stated that it could not provide cost data for these unreported CONNUMs. As a result of TGP's significant omission, our cost test could not be applied properly and the model matching results are inaccurate. Accordingly, we also find that TGP's omission significantly impeded the proceeding.

Therefore, pursuant to sections 776(a)(1) (necessary information is not on the record) and 776(a)(2)(A) and (C) of the Act (withholding requested information and significantly impeding the proceeding), we have based TGP's final dumping margin on facts otherwise available. For the full analysis of this determination, *see* TGP's Total AFA Memo.⁴⁸

Use of Adverse Inferences

Once the Department determines that the use of facts available is warranted, section 776(b) of

⁴³ *Id.* at 11.

⁴⁴ TGP's Sales Verification Report at 13.

⁴⁵ *Id.* Each product code has a unique CONNUM that the Department uses for the cost test.

⁴⁶ *Id.*

⁴⁷ *Id.* at 12.

⁴⁸ Memorandum from Abdelali Elouaradia, Director Office IV, AD/CVD Operations to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, entitled "Antidumping Duty Investigation of Welded Stainless Pressure Pipe from Thailand: Thai-German Products Public Limited Company: Unreported Home Market Sales and the Use of Adverse Facts Available" (May 22, 2014) (Facts Available Memo).

the Act permits the Department to apply an adverse inference if it makes the additional finding that “an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.” To examine whether the respondent “cooperated” by “acting to the best of its ability” under section 776(b) of the Act, the Department considers, among other things, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins.⁴⁹ In determining whether a party has cooperated to the best of its ability, “Commerce may make justifiable inferences based on the record.”⁵⁰

Pursuant to section 776(b) of the Act, we find that TGP did not act to the best of its ability because TGP repeatedly provided to the Department incomplete responses despite the fact that TGP had the obligation to submit information regarding home market sales of both identical and similar merchandise.⁵¹ In addition to requesting that TGP report all its home market sales and cost of production information, the Department requested that TGP provide a complete foreign market sales reconciliation in the Department’s July 30, 2013 initial antidumping questionnaire at page B-6:

Please provide a complete package of documents and worksheets demonstrating how you identified the sales you reported to the Department and reconciling the reported sales to the total sales listed in your general ledger. Include a copy of all computer programs used to separate the reported sales from your total sales and to calculate expenses.⁵²

We found that TGP’s responses were incomplete. Specifically, TGP did not provide any home market sales reconciliation or an explanation for the deficiencies in its September 18, 2013 Section B response.⁵³ Pursuant to section 782(d) of the Act, the Department issued a supplemental questionnaire requesting TGP provide its home market sales reconciliation in order to provide TGP with the opportunity to remedy or explain the deficiency:⁵⁴

At page B-6 of the Department’s July 30, 2013, the Department requested that TGP provide a foreign market reconciliation. It appears, however, that TGP did not provide a foreign market reconciliation in its September 18, 2013, submission.

- a. Please provide a complete package foreign market sales reconciliation. The reconciliation should include documents and worksheets demonstrating how TGP identified the sales it reported to the Department and reconciling the reported sales to the total sales listed in TGP’s general ledger.
- b. Include a copy of all computer programs used to separate the reported sales from TGP’s total sales and to calculate expenses.

⁴⁹ See, e.g., *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819-53821 (October 16, 1997).

⁵⁰ See *Reiner Brach*, 206 F. Supp. 2d at 1338. See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA) at 870.

⁵¹ See *Reiner Brach*.

⁵² See Department’s initial questionnaire dated July 30, 2013 at B-2.

⁵³ See TGP’s Section B submission dated September 18, 2013 at 10.

⁵⁴ See Department’s Supplemental B questionnaire dated October 23, 2013 at 3.

In TGP's December 6, 2013 submission, TGP did not notify the Department that it identified the home market sales it reported to the Department using only product codes for subject merchandise that were sold in the U.S. market. In responding to the Department's supplemental questionnaire, TGP explained that it "ran a report of the subject merchandise during the POI from its system using product codes as a key."⁵⁵

In the Department's December 13, 2013 second supplemental questionnaire, the Department provided TGP with an additional opportunity to explain how TGP derived the "SM Sales Amount" used in identifying the sales it reported to the Department in its home market database.⁵⁶ In the December 13, 2013 supplemental questionnaire, the Department explicitly asked:

At page 8 of TGP's December 6, 2013 submission, TGP states that it derived the "SM Sales Amount" by running the report of the subject merchandise during the POI from its system using product codes as key. Please provide the list of product codes and a sample of an inquiry report using one of the product codes for subject merchandise.⁵⁷

In its December 20, 2013 submission, TGP provided the list of 27 product codes it used to identify and derive the "SM Sales Amount." However, TGP did not notify the Department that the 27 product codes/CONNUMs it identified for its home market database only included product codes/CONNUMs for sales made in the U.S. market instead of all product codes/CONNUMs of products actually sold in the home market.⁵⁸ TGP did not request that the Department permit it to report only the 27 product codes/CONNUMs of merchandise it considered to be identical to its U.S. sales. Further, TGP never requested clarification from the Department as to whether reporting only home market sales of identical merchandise was sufficient for the Department's reporting requirements. As such, we find that TGP failed to cooperate to the best of its ability to provide the Department with a complete foreign market reconciliation even after the Department's numerous attempts to obtain the information prior to verification.

TGP claims that it acted in good faith during this investigation and that the use of adverse inferences in spite of its substantial compliance efforts would unreasonably fail to distinguish between cooperative respondents such as TGP and non-cooperative respondents such as Ametai/Thareus. This would, in effect, discourage cooperation with the Department's information requests.⁵⁹

Contrary to TGP's assertions, the application of adverse facts available does not require the Department to establish that the respondent intended to not cooperate with the Department. In *Nippon Steel Corporation v. United States*, the Court of Appeals for the Federal Circuit ("CAFC") explained that, for the "failure to act to the best of its ability" standard the Department need not show intentional conduct existed on the part of the respondent, but merely that a

⁵⁵ See TGP's Second Supplemental Sections ABC submission dated December 6, 2013 at 8.

⁵⁶ See Department's Sections B and C third supplemental questionnaire dated December 13, 2013.

⁵⁷ See Department's Supplemental B questionnaire dated December 13, 2013, at 4.

⁵⁸ See TGP's Third Supplemental Sections ABC response dated December 20, 2013 at 10-11.

⁵⁹ See TGP's Rebuttal Brief at 1.

“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”).⁶⁰ The CAFC also noted that the test is “the degree to which the respondent cooperates in investigating (its) records and in providing Commerce with the requested information.”⁶¹

Here, the Department finds that our language is clear in the initial questionnaire requiring the respondent to report the sales of both identical and similar products. TGP failed to report home market sales for similar product codes/CONNUMs despite the fact that TGP had the obligation to submit information regarding home market sales of both identical merchandise and similar merchandise.⁶² TGP possessed the necessary records regarding these sales. At verification, the Department observed that TGP had the capability to report these sales, but failed to cooperate to the best of its ability. TGP never requested clarification from the Department as to whether reporting only home market sales of identical merchandise was sufficient with respect to the Department’s reporting requirements.

As demonstrated above, the Department provided TGP with numerous opportunities to either submit the complete universe of its home market sales, cost of production information, and foreign market sales reconciliation, or explain why it was unable to do so. TGP did not report all of its home market sales, or indicate that it lacked the ability to report such sales. Moreover, TGP’s failure to report a significant quantity of its home market sales hindered the calculation of an accurate dumping margin. As such, we find TGP’s argument unpersuasive because it is the quality and completeness of the information submitted, not the quantity, that matters for the Department’s determination. The sales and cost data TGP submitted is deficient because it could not be used to calculate an accurate dumping margin. Hence, the record shows a pattern of behavior on the part of TGP which indicates that, TGP did not cooperate to the best of its ability within the meaning of section 776(b) of the Act. For the full analysis of this determination, *see* TGP’s Total AFA Memo.

Issue 2: AFA Rate To Apply to TGP

Petitioners’ Comments

- It is appropriate to give TGP the highest transaction-specific margin that can be calculated from the information on the record.⁶³

TGP’s Comments

- The Department should use TGP’s preliminary rate of 10.92 percent in the final determination.⁶⁴
- There is sufficient information on the record to calculate a reasonably accurate dumping rate

⁶⁰ *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1380 (Fed. Cir. 2003) (*Nippon Steel*).

⁶¹ *Id.* at 1383.

⁶² *See Reiner Brach*, 206 F. Supp. 2d at 1331 citing *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1339-1341 (CIT 2000).

⁶³ *See* Petitioners’ Case Brief at 3-7.

⁶⁴ *See* TGP’s Rebuttal Brief at 4.

for TGP.⁶⁵

- The use of facts available in this investigation should be proportional to the situation at hand with regard to TGP's efforts to cooperate in this proceeding.⁶⁶

Department's Position: We find that 24.01 percent, the highest margin alleged in the petition, is the appropriate rate to apply to TGP. Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁶⁷ It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest weighted-average calculated rate for any respondent in the investigation.⁶⁸

Accordingly, to ensure that the non-cooperative party, TGP, does not benefit from its lack of participation, and to select a sufficiently adverse rate to induce cooperation in the future, we selected the higher of either the highest margin alleged in the petition or the highest weighted-average calculated rate for any respondent in the investigation. The petition rates are 23.77 percent and 24.01 percent.⁶⁹ No weighted-average margins have been calculated in this final determination because the Department applied total facts available to both mandatory respondents. Therefore, consistent with its practice, the Department selected the highest margin alleged in the petition, which is 24.01 percent, as the AFA rate assigned to TGP because it is sufficiently adverse to ensure that TGP does not benefit from failing to cooperate to the best of its ability.

Petitioners and TGP argue that the Department should use a calculated rate using TGP's information on the record. Petitioners contend that the Department should use the highest transaction-specific calculated rate because TGP did not cooperate to the best of its ability.⁷⁰ TGP argues that the Department should use the preliminary determination rate of 10.92 percent because there is sufficient information on the record to calculate a reasonably accurate dumping rate for TGP.⁷¹

We disagree with TGP and the Petitioners that there is sufficient information on the record in this investigation to calculate an accurate margin for TGP. In *Certain Pasta from Italy*, the Department found at verification that a respondent had failed to report two-thirds of its home

⁶⁵ *Id.*

⁶⁶ *Id.* at 5.

⁶⁷ See *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).

⁶⁸ See *Amended Preliminary Determination*, 79 FR at 10774 (as AFA, the Department selected the higher of either the highest margin alleged in the petition or the highest weighted-average calculated rate for any respondent in the investigation).

⁶⁹ See *Welded Stainless Pressure Pipe From Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 35253, 35257 (June 12, 2013) ("Initiation Notice").

⁷⁰ See Petitioners' March 13, 2014 Case Brief at 3.

⁷¹ See TGP's March 18, 2014 Rebuttal Brief.

home market sales renders its home market database unusable.⁷³ Given the magnitude of the deficiencies, the Department found the response was unreliable for purposes of calculating a dumping margin.⁷⁴ Therefore, the Department applied total facts available in both the preliminary and final results and applied an AFA rate based upon data from prior reviews.⁷⁵

Similarly, in this instant investigation, TGP's failure to report the vast majority of its home market sales renders its responses and home market database unusable. We find the information provided by TGP is so incomplete that it cannot serve as a reliable basis for constructing an accurate dumping margin. Given the magnitude of the unreported sales, the Department's ability to calculate a margin using data reported by TGP has been compromised. Although we recognize that certain minor data deficiencies may occur in antidumping cases, the absence of such a significant volume of the home market data would make it unduly difficult to establish an accurate and reliable normal value using TGP's home market data. Accordingly, pursuant to section 782(e) of the Act, we determine that the Department should decline any use of TGP's home market database and cost database from the investigation to calculate a dumping margin because it is incomplete, unreliable, and cannot be fully verified because TGP did not cooperate to the best of its ability.

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "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."⁷⁶

We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted to satisfy ourselves that the secondary information has probative value.⁷⁷ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.⁷⁸ The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁷⁹ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

We determined that the petition margin of 24.01 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the

Memorandum at Comment 10.

⁷³ *Id.*

⁷⁴ *Id.* at Comment 11.

⁷⁵ *Id.*

⁷⁶ SAA at 870.

⁷⁷ See *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000).

⁷⁸ SAA at 870.

⁷⁹ *Id.*

We determined that the petition margin of 24.01 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 final determination.⁸⁰

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 final determination. During our pre-initiation analysis, we examined the key elements of the export price (“EP”) and NV calculations used in the petition to derive an estimated margin.⁸¹ During our pre-initiation analysis, we also examined information from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborates key elements of the export price and normal value calculations used in the petition to derive an estimated margin.⁸²

Based on our examination of the information, as discussed in detail in the Thailand Checklist, we consider the Petitioners’ EP and NV calculations to be reliable. 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 find 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 determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant.⁸³ The courts acknowledge that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.⁸⁴ We find that the petition rate is relevant because the rate has not been discredited as being unrelated to the commercial practices of the welded stainless pressure pipe industry. The Department notes that the record does not contain reliable transaction-specific calculated rates to further corroborate the petition rate because both mandatory respondents (TGP and Ametai/Thareus) failed to provide complete and reliable information and therefore did not cooperate to the best of their ability. Therefore, for the final determination, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to TGP. For the full analysis of this determination, *see* TGP’s Total AFA Memo.

⁸⁰ *See* Antidumping Duty Investigation Initiation Checklist: Welded Stainless Pressure Pipe from Thailand (“Thailand Checklist”). *See also* *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167, 29171 (June 19, 2009) (reviewed the pre-initiation analysis to conclude that the petition dumping margin is corroborated).

⁸¹ *Id.* at 6-8

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See, e.g., Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (1999).

Comment 3: Whether to Apply a Higher AFA Rate to Ametai/Thareus

Petitioners' Comments:

- The Department should update the AFA rate for Ametai/Thareus and follow the Department's practice of using the highest transaction-specific rate for TGP, as the Department did in *WSPP from Malaysia*.⁸⁵ The Department's practice is to select, as AFA, the higher of the: (a) highest margin alleged in the petition; or (b) the highest calculated rate for any respondent in the investigation.⁸⁶
- TGP's highest transaction-specific rate is neither unusual nor atypical in terms of transaction quantities or product sold and further contend the highest transaction-specific rate is not an outlier.⁸⁷

Ametai/Thareus did not provide any comments on this issue.

Department's Position: We disagree with Petitioners. In the Department's amended preliminary determination, we assigned Ametai/Thareus an AFA rate based on our practice, which is to select as AFA the higher of the: (a) highest margin alleged in the petition, or (b) the highest weighted-average margin calculated rate for any respondent in the investigation.⁸⁸ The calculated weighted-average margins for TGP and Ametai/Thareus in the preliminary determination were 10.92 percent and 7.16 percent, respectively. Therefore, because TGP's and Ametai/Thareus' weighted-average calculated margins were less than the highest margin in the petition (*i.e.*, 24.01 percent),⁸⁹ we selected the highest margin from the petition as the AFA rate for Ametai/Thareus in the *Amended Preliminary Determination*. However, no weighted average-margins have been calculated in this final determination because we applied total facts available to both mandatory respondents. In this instance, consistent with our practice, we selected the highest margin alleged in the petition, which is 24.01 percent, as the AFA rate for Ametai/Thareus.

Petitioners' reference to *WSPP from Malaysia* as support for selecting the highest transaction-specific margin from the investigation as an AFA rate to assign Ametai/Thareus is misplaced. In the *WSPP from Malaysia* investigation, the Department noted that the statutory purpose of AFA is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if

⁸⁵ See *Welded Stainless Pressure Pipe From Malaysia: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 808 (January 7, 2014) ("*WSPP from Malaysia*"). See also, memorandum from Abdelali Elouaradia, Director, Office IV Antidumping and Countervailing Duty Operations to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding "Welded Stainless Pressure Pipe from Malaysia: Application of Facts Available and Selection of Adverse Facts Available Rate," dated December 30, 2013.

⁸⁶ See Petitioners' Case Brief at 3-7.

⁸⁷ *Id.* at 5-7.

⁸⁸ See *Amended Preliminary Determination*, 79 FR at 10774 (as AFA, the Department selected the higher of either the highest margin alleged in the petition or the highest weighted-average calculated rate for any respondent in the investigation).

⁸⁹ See Thailand Checklist at 8, citing *Welded Stainless Pressure Pipe from Thailand: Correction to Supplemental Response*, dated May 30, 2013, at Exhibit III-8.

it had cooperated fully.”⁹⁰ The dumping margins in the *WSPP from Malaysia* petition, as adjusted at initiation, ranged from 22.67 percent to 22.73 percent, and the weighted-average dumping margin calculated from respondent Superinox’s own information submitted in its questionnaire responses prior to its withdrawal from participation was 55.94 percent.⁹¹ In addition, the highest transaction-specific dumping margin calculated from the information submitted by respondent Superinox was 167.11 percent.⁹² Because Superinox’s weighted-average calculated rate, which would have been 55.94 percent, was higher than the highest rate from the petition (and there were no other weighted-average calculated margins from any respondent in the investigation), the Department selected the highest transaction-specific margin calculated from information submitted by Superinox. This ensured that Superinox would not benefit by receiving a petition rate which was lower than what would have been Superinox’s preliminary weighted-average calculated rate. In contrast, in the instant case, Ametai/Thareus’s and TGP’s weighted-average calculated rates of 7.16 percent and 10.92 percent in the preliminary determination were lower than the highest petition rate (*i.e.*, 24.01 percent) and therefore the concern in *WSPP from Malaysia*, that a party may obtain a more favorable result by not cooperating, does not exist in this case. Therefore, following our practice, for the final determination, we assigned to Ametai/Thareus the AFA rate which was the higher of either the highest dumping margin alleged in the petition or the highest weighted-average (not transaction-specific) rate calculated for any respondent in the investigation.

Comment 4: Whether to Revise the “All Others” Rate And, If Yes, What Rate to Select

Petitioners’ Comments:

- The Department should update the “All Others” rate after applying AFA to TGP.⁹³
- When there are no calculated margins (all respondents get AFA), the Department’s practice for the “All Others” rate is to average the rates in the petition.

Ametai/Thareus and TGP did not provide any comments on this issue.

Department’s Position: We agree with Petitioners. Because we are now applying AFA to TGP, the “All Others” rate needs to be revised, as the current “All Others” rate is TGP’s calculated rate from the preliminary determination.⁹⁴ Section 735(c)(5)(A) of the Act provides that the estimated “All Others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins

⁹⁰ See SAA, at 870; *Ta Chen Stainless Steel Pipe Inc., v. United States*, 24 CIT 841, 848, 850 (CIT 2000).

⁹¹ See Memorandum from Abdelali Elouaradia, Director, Office IV Antidumping and Countervailing Duty Operations to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding “Welded Stainless Pressure Pipe from Malaysia: Application of Facts Available and Selection of Adverse Facts Available Rate,” dated December 30, 2013, at 3.

⁹² *Id.*

⁹³ See Petitioners’ Case Brief at 8.

⁹⁴ See *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013) (“*Steel Threaded Rod from Thailand*”); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909 (April 23, 2008); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986 (July 8, 2008).

determined entirely under section 776 of the Act. TGP and Ametai/Thareus are the only companies being individually examined in this investigation, but both of their margins are determined entirely under section 776 of the Act. In cases where there are no weighted-average calculated dumping margins besides zero or *de minimis*, or where the rates established for individually investigated entities have been determined entirely under section 776 of the Act, the Department's practice is to average the margins calculated in the petition and apply the result to "All Other" entities not individually examined.⁹⁵ The average of the two margins (*i.e.*, 23.77 percent and 24.01 percent) from the petition is 23.89 percent.⁹⁶ Therefore, the "All Others" rate, which is applied to all other entities not individually examined, is 23.89 percent.

RECOMMENDATION:

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

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 MAY 2014
Date

⁹⁵ See *Steel Threaded Rod from Thailand*.

⁹⁶ See *Thailand Checklist* at 8, citing *Welded Stainless Pressure Pipe from Thailand: Correction to Supplemental Response*, dated May 30, 2013, at Exhibit III-8.