



A-588-874
Administrative Review
03/22/2016 - 9/30/2017
Public Document
Office VII: JJZ/ML

DATE: November 1, 2018

MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Edward Yang
Senior Director, Office VII
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review and Preliminary
Determination of No Shipments: Certain Hot-Rolled Steel Flat
Products from Japan; 2016-2017

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from Japan for the period of review (POR) March 22, 2016, through September 30, 2017. This review covers 20 producers/exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination, Nippon Steel & Sumitomo Metal Corporation (Nippon Steel) and Tokyo Steel Manufacturing Co., Ltd. (Tokyo Steel). We preliminarily determine that sales of the subject merchandise were made below normal value (NV) during the POR.

II. BACKGROUND

On October 3, 2016, Commerce published in the *Federal Register* the AD order on hot-rolled steel from Japan.¹ On October 4, 2017, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² On October 31, 2017, the

¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request*

petitioners³ requested an administrative review of 20 Japanese hot-rolled steel producers/exporters.⁴ Based on those timely requests, on December 7, 2017, we initiated an administrative review on these 20 companies.⁵

In the *Initiation Notice*, we stated that, in the event we limited the number of respondents selected for individual examination, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR.⁶ On December 13, 2017, Commerce released U.S. import data from CBP for the purpose of respondent selection, and provided an opportunity for interested parties to comment on these data.⁷ No interested parties commented on the information contained in the CBP Data Memorandum.

As required by the *Initiation Notice*, four companies timely notified Commerce that they made no shipments of subject merchandise during the POR.

On January 16, 2018, we selected the two producers or exporters accounting for the largest volume of subject merchandise during the POR, in alphabetical order, Nippon Steel and Tokyo Steel as mandatory respondents.⁸ On January 19, 2018, we issued standard AD questionnaires to Nippon Steel and Tokyo Steel.⁹ Nippon Steel and Tokyo Steel submitted timely responses to Section A of the Initial Questionnaire on February 20, 2018,¹⁰ and to the remaining sections of the Initial Questionnaire on March 15, 2018 and March 8, 12 and 19, 2018, respectively.¹¹

On July 11, 2018, Commerce issued a supplemental questionnaire to Tokyo Steel regarding its responses to sections A through C of the Initial Questionnaire, and Commerce received responses to this supplemental questionnaire on August 1, 2018.¹² Commerce issued two supplemental questionnaires to Tokyo Steel regarding its response to section D of the Initial

Administrative Review, 82 FR 46217 (October 4, 2017).

³ The petitioners are AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

⁴ See the petitioners' October 31, 2017 Letter "re: Certain Hot-Rolled Steel Flat Products from Japan: Request for Administrative Review."

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 57705 (December 7, 2017) (*Initiation Notice*).

⁶ See *Initiation Notice*, 82 FR at 57706.

⁷ See December 13, 2017 Memorandum "Administrative Review of the Antidumping Duty Order on Hot-Rolled Steel Flat Products from Japan: Release of U.S. Customs Entry Data for Respondent Selection," dated December 13, 2017 (CBP Data Memorandum). The deadline was then extended to December 22, 2017.

⁸ See January 16, 2018 Memorandum "Re: Respondent Selection for the Administrative Review of the Antidumping Duty Order of Certain Hot-Rolled Steel Flat Products from Japan".

⁹ See Commerce's January 19, 2018 Letters to Nippon Steel and Tokyo Steel (Initial Questionnaire).

¹⁰ See Nippon Steel's February 20, 2018 Section A Questionnaire Response (Nippon Steel AQR) and Tokyo Steel's February 20, 2018 Section A Questionnaire Response (Tokyo Steel AQR).

¹¹ See Nippon Steel's March 15, 2018 Sections B-E Questionnaire Response (Nippon Steel BQR, CQR, DQR and EQR), and Tokyo Steel's March 8, 12 and 19, 2018 Section B-D Questionnaire Response (Tokyo Steel BQR, CQR, DQR).

¹² See Tokyo Steel's August 1, 2018 Letter "re: Tokyo Steel's First Supplemental Section A-C Questionnaire Response, *Certain Hot-Rolled Steel Flat Products from Japan*."

Questionnaire on June 19, and August 16, 2018, respectively, and Commerce received responses to these supplemental questionnaires on July 5, and August 23, 2018, respectively.¹³

On July 11, 2018, Commerce issued a supplemental questionnaire to Nippon Steel regarding its responses to sections A through C of the Initial Questionnaire, and Commerce received responses to this supplemental questionnaire on August 10, 2018.¹⁴ Commerce issued sections E and D supplemental questionnaires to Nippon Steel on July 9, and July 13, 2018, respectively, and Commerce received responses to these supplemental questionnaires on July 30, and August 10, 2018, respectively.¹⁵

The petitioners commented on Nippon Steel's questionnaire responses on March 9, May 29, and September 27, 2018.¹⁶ The petitioners commented on Tokyo Steel's questionnaire responses on March 8 and April 18, 2018.¹⁷ On October 15, 2018, Nippon Steel responded to the petitioners' comments on Nippon Steel's supplemental questionnaire responses.¹⁸ On October 16, the petitioners submitted pre-preliminary comments for Tokyo Steel.¹⁹ On October 22, Tokyo Steel responded to the petitioners' pre-preliminary comments for Tokyo Steel.²⁰ On October 22, the petitioners submitted pre-preliminary comments for Nippon Steel.²¹

On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.²² On June 20 and September 27, 2018, Commerce extended the deadline for the preliminary results of this review to no later than November 2, 2018.²³

¹³ See Tokyo Steel's July 5 and August 23, 2018 Letters "re: Tokyo Steel's Section D Supplemental Questionnaire Response, *Certain Hot-Rolled Steel Flat Products from Japan*," and "re: Tokyo Steel's Second Supplemental Section D Questionnaire Response, *Certain Hot-Rolled Steel Flat Products from Japan*" (Tokyo Steel 2SDR).

¹⁴ See Nippon Steel's August 10, 2018 Letter "re: Certain Hot-Rolled Steel Flat Products from Japan: Nippon Steel's Response to Commerce's Sections A, B, and C Supplemental Questionnaire."

¹⁵ See Nippon Steel's July 30 and August 10, 2018 Letters "re: Certain Hot-Rolled Steel Flat Products from Japan: Nippon Steel's Response to Commerce's Section E Supplemental Questionnaire," and "re: Certain Hot-Rolled Steel Flat Products from Japan: Nippon Steel's Response to Commerce's Section D Supplemental Questionnaire" (Nippon Steel SDR).

¹⁶ See the petitioners' letters commenting on Nippon Steel's questionnaire responses on March 9, May 29, and September 27, 2018, respectively.

¹⁷ See the petitioners' letters commenting on Tokyo Steel's questionnaire responses on March 8 and April 18, 2018, respectively.

¹⁸ See Nippon Steel's October 15, 2018 Letter, "Re: Certain Hot-Rolled Steel Flat Products from Japan: Response to Petitioner's Comments on Nippon Steel's Questionnaire Responses."

¹⁹ See the petitioners' October 16, 2018 Letter "re: Certain Hot-Rolled Steel Flat Products from Japan: Pre-Preliminary Comments on Tokyo's First Supplemental Questionnaire Responses."

²⁰ See Tokyo Steel's October 22, 2018 Letter "re: Tokyo Steel's Response to Petitioners' Pre-Preliminary Comments Certain Hot-Rolled Steel Flat Products from Japan."

²¹ See Nippon Steel's October 22, 2018 Letter "re: Certain Hot-Rolled Steel Flat Products/rom Japan: Pre-Preliminary Comments on Nippon Steel's Questionnaire Responses."

²² See January 23, 2018 Memorandum re: Deadlines Affected by the Shutdown of the Federal Government. All deadlines in this segment of the proceeding affected by the closure of the Federal Government have been extended by three days.

²³ See June 20, 2018 Memorandum "Certain Hot-Rolled Steel Flat Products from Japan: Extension of Deadline for

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. PERIOD OF REVIEW

The POR is March 22, 2016, through September 30, 2017.

IV. SCOPE OF THE ORDER

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and 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 thickness, and 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 of 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 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 unless the resulting measurement makes the product covered by the existing antidumping²⁴ or countervailing duty²⁵ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), 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.

Preliminary Results of Antidumping Duty Administrative Review – 2016-2017”; and September 27, 2018 Memorandum “Certain Hot-Rolled Steel Flat Products from Japan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review – 2016-2017”.

²⁴ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

²⁵ See *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

Steel products included in the scope of this order 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, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, 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, the substrate for 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. The substrate for motor lamination steels contains 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 hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the hot-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 order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;²⁶
- Ball bearing steels;²⁷
- Tool steels;²⁸ and
- Silico-manganese steels;²⁹

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

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

²⁶ For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

²⁷ 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.

²⁸ 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.

²⁹ 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.

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Hitachi Metals, Ltd. (Hitachi), Honda Trading Canada, Inc. (Honda), Mitsui & Co. Ltd. (Mitsui), and Panasonic Corporation (Panasonic), each submitted a no shipments certification.³⁰ Customs and Border Protection (CBP) confirmed that Hitachi, Honda, and Panasonic had no shipments during the POR.³¹ Based on the evidence on the record, we preliminarily determine that Hitachi, Honda, and Panasonic did not have shipments during the POR. Consistent with our practice, we find that it is not appropriate to rescind the review in part, but rather, to complete the review with respect to the above-mentioned companies and issue appropriate instructions to CBP based on the final results of the review.

Based on information received from CBP, we will continue to include Mitsui with the companies under review and make a determination for the final results.

VI. SINGLE ENTITY ANALYSIS

Section 771(33) of the Act identifies persons that shall be considered “affiliated” or “affiliated persons,” if: (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person. Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. Commerce’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.³²

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

³⁰ See Hitachi Letter, “Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products: Hitachi No Shipment Letter,” dated December 18, 2017; *see also* Honda Letter, “Administrative Review of Certain Hot-Rolled Steel Flat Products from Japan: Honda Trading Canada, Inc.’s No Shipment Certification,” dated December 22, 2017; *see also* Mitsui Letter, “Antidumping Administrative Review of Certain Hot-Rolled Steel Flat Products: Mitsui No Shipment Notification,” dated January 5, 2018; *see also* Panasonic Letter, “Administrative Review of Certain Hot-Rolled Steel Flat Products from Japan: Panasonic Corporation No Shipment Certification,” dated January 5, 2018.

³¹ See Public Memorandum, “Re: No shipment inquiry with respect to the company below during the period 03/22/2016 through 09/30/2017,” dated October 23, 2018; *see also* Business Proprietary Memorandum, “Re: No shipment inquiry with respect to the company below during the period 03/22/2016 through 09/30/2017,” dated October 23, 2018.

³² *See also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 2727298 (May 19, 1997).

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.³³

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.³⁴ While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, Commerce has treated exporting companies as a single entity,³⁵ as well as producers and exporters as a single entity.³⁶ In the investigation, Commerce found that producer Nippon Steel and exporter Nippon Steel and Sumikin Bussan Corporation are affiliated pursuant to section 771(33)(E) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).³⁷ For this administrative review, we will continue to treat Nippon Steel and Sumikin Bussan Corporation as a single entity based as on the evidence in the record of this

³³ See 19 CFR 351.401(f).

³⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5

³⁵ *Id.*

³⁶ *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

³⁷ See *Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15222 (March 22, 2016) (*Preliminary Determination*) and accompanying *Preliminary Decision Memorandum* at the “Single Entity Analysis” section, unchanged in *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016).

proceeding. No new information has been provided to indicate that the status of these two companies' relationship has changed.

Nippon Steel and Nisshin Steel Co., Ltd.

We have preliminarily determined that Nisshin Steel Co., Ltd. (Nisshin) is affiliated with Nippon Steel, pursuant to section 771(33)(E) of the Act and that these companies should be treated as a single entity for AD purposes, pursuant to 19 CFR 351.401(f). Nippon Steel stated in its Section A questionnaire response that, on March 13, 2017, it acquired additional shares in Nisshin, and increased its ownership to 51 percent of Nisshin's total outstanding shares.³⁸ Prior to March 13, 2017, Nippon Steel owned 8.31 percent of Nisshin's shares.³⁹ Both Nippon Steel and Nisshin are the producers of the subject merchandise and exported subject merchandise to the United States during the POR.⁴⁰ These companies, therefore, are affiliated in accordance with section 771(33)(E) of the Act.

Due to the fact that Nippon Steel owns a majority of Nisshin's stocks, we preliminarily find that, in accordance with 19 CFR 351.401(f), it is appropriate to collapse Nippon Steel and Nisshin, effective March 13, 2017, because: (1) these two entities are affiliated pursuant to section 771(33)(F) of the Act as the level of the common ownership is significant; (2) Nippon Steel and Nisshin have the facilities to produce identical or similar products, such that substantial retooling would not be required to restructure manufacturing priorities; and (3) we find that there exists a significant potential for manipulation of price or production if Nippon Steel and Nisshin do not receive the same antidumping duty rate, in a way that the producer with the lower rate would increase production and export to the United States.⁴¹ With respect to the significant potential for manipulation, we find, in accordance with 19 CFR 351.401(f)(2), that: (1) there is common ownership through Nippon Steel's majority stake of Nisshin's shares which legally and operationally would allow Nippon Steel to be in a position to exercise restraint or direction over Nisshin;⁴² (2) Nippon Steel and Nisshin have intertwined operations, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between these two affiliated producers.⁴³ Therefore, in accordance with 19 CFR 351.401(f) and Commerce's practice,⁴⁴ effective March 13, 2017, the

³⁸ See Nippon Steel's SAQR, at A-1.

³⁹ See Letter from Nippon Steel, "Re: Certain Hot-Rolled Steel Flat Products from Japan: Response to Petitioners' Comments on NSSMC's Questionnaire Responses," dated October 15, 2018.

⁴⁰ *Id.* and U.S. sales database.

⁴¹ See, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24885 (May 6, 2010) and accompanying Issues and Decision Memorandum, unchanged for the final.

⁴² See Nippon Steel's SAQR, at A-1.

⁴³ See Nippon Steel's SAQR, at Exhibit A-5 (the list of directors of consolidated subsidiaries), Exhibit A-6 (the combined list of subsidiaries and affiliates), and Exhibit A-16 (the combined list of affiliated customers).

⁴⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

date as of which Nippon Steel owned 51 percent of Nisshin, we determine to treat Nippon Steel and Nisshin as a single entity for the purposes of the preliminary results.⁴⁵ We intend to assign these companies the same cash deposit rate.

VII. USE OF FACTS AVAILABLE AND ADVERSE FACTS AVAILABLE

A. Legal Authority

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

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

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

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among 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, Commerce is not

⁴⁵ See November 2, 2018 Memorandum, re: Preliminary Results Margin Calculation for Nippon Steel & Sumitomo Metal Corporation (Nippon Steel Preliminary Calculation Memorandum).

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.⁴⁶ Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁷ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁴⁸ The Court of Appeals for the Federal Circuit, in *Nippon Steel*, explained that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.⁴⁹ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁵⁰

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁵¹

B. Application of Facts Available to Nippon Steel

As noted further below in this section, Nippon Steel did not provide certain requested information necessary for Commerce to calculate dumping margins for Nippon Steel in this review. Specifically, Nippon Steel did not submit the downstream sales of certain affiliated home market resellers whose sales failed the arm’s-length test. As such, necessary information is not on the record of this review. In addition, Nippon Steel withheld information requested by Commerce, failed to provide such information by the deadlines for submission of the information or in the form and manner requested by Commerce, and significantly impeded this proceeding. Accordingly, the use of facts available is warranted in determining AD margin for Nippon Steel, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act.

⁴⁶ See Section 776(b)(1)(B) of the Act.

⁴⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA) at 870.

⁴⁸ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

⁴⁹ See *Nippon Steel*, 337 F.3d at 1382.

⁵⁰ *Id.* at 1382-83; see also *Preamble*, 62 FR at 27340.

⁵¹ See 19 CFR 351.308(c)(1).

C. Application of Facts Available with an Adverse Inference

In the initial and supplemental questionnaires, Commerce requested that Nippon Steel report sales of all its home market affiliated downstream resellers for the sales between Nippon Steel and the affiliates were not made at arm's length.⁵² Nippon Steel's sales to these affiliated customers accounted for more than five percent of its total sales of foreign-like product in the home market.⁵³ In its supplemental questionnaire response, Nippon Steel stated that it was unable to obtain the downstream sales for certain affiliated resellers, although it expended a significant amount of time and resources attempting to collect all downstream sales data.⁵⁴ Nippon Steel stated it had made multiple round of requests and put the correspondence in which it requested the resell information from its affiliated resellers on the record.⁵⁵ Nippon Steel reported that certain affiliated resellers could not and/or would not provide this information in the detail and format required by Commerce.⁵⁶

The fact that the record shows that Nippon Steel contacted all of its affiliated resellers with multiple rounds of correspondence and telephone calls, even before the review was initiated, does not change the fact that the necessary home market price data are missing from the record. The home market sales information is fundamental data, without which Commerce cannot perform the dumping calculation required by the statute. Respondents cannot be allowed to shield certain home market sales prices from disclosure and use in the dumping calculations in situations where it made non-arm's-length sales to affiliated parties. Putting respondents in a position to pick and choose which affiliated party downstream sales will be reported would create significant potential and incentives to manipulate margin calculations. In addition to ownership leverage, respondents have absolute veto power over whether to sell to, or continue to do business with, an affiliate. In fact, Nippon Steel is the one that establishes the prices to its affiliates, and is in a position to make them at arm's-length prices or not. We have preliminarily determined that Nippon Steel is in a position to induce these companies to report their downstream sales.⁵⁷ As such, Nippon Steel has failed to cooperate to the best of its ability in obtaining these companies' downstream sales. Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available, because Nippon Steel has failed to cooperate to the best of its ability to comply with our request for information. As adverse facts available, we have preliminarily applied the highest Nippon Steel home market product matching control number (CONNUM)-specific price for unaffiliated customers to these unreported affiliated resellers' resales.⁵⁸

⁵² See Commerce's initial questionnaire and supplemental questionnaires, dated July 11, 2018 at question 6.

⁵³ See Nippon Steel's BQR and Home Sale database.

⁵⁴ See Nippon Steel's SQR at 3-5.

⁵⁵ See Nippon Steel's SQR at Revised Exhibit B-23.

⁵⁶ See Nippon Steel's SQR at 3-5.

⁵⁷ See Nippon Steel's SQR at Revised Exhibit B-23.

⁵⁸ See Nippon Steel Preliminary Calculation Memorandum.

VIII. REVIEW-SPECIFIC AVERAGE RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "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 determined entirely {on the basis of facts available}."

In this review, we have preliminarily calculated weighted-average dumping margins for Nippon Steel and Tokyo Steel that are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to companies not individually examined a margin of 1.46 percent, which is the weighted average of Nippon Steel's and Tokyo Steel's calculated weighted-average dumping margins.⁵⁹

IX. DISCUSSION OF THE METHODOLOGY

A. Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Nippon Steel's and Tokyo Steel's sales of subject merchandise were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP), as appropriate, to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews,

⁵⁹ See August 3, 2018 Memorandum re: Review-Specific Average Rate for Non-Examined Companies.

Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁶⁰

In recent investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁶¹ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the

⁶⁰ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff’d*, 862 F.3d 1337 (Fed. Cir. 2017); see also *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363-65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

⁶¹ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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

2. *Results of the Differential Pricing Analysis*

Nippon Steel

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 37.01 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test.⁶²

Tokyo Steel

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 94.33 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the alternative comparison methods. Thus, for these preliminary results, Commerce is applying the average-to-transaction comparison method to all U.S. sales to calculate the weighted-average dumping margin for Tokyo Steel.⁶³

B. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, normally, we will use invoice date as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. Furthermore, if the shipment date precedes the invoice date, then Commerce will use the shipment date as the date of sale. The regulation provides that we may use a date other than the invoice date if Commerce is satisfied that a different date better reflects the data on

⁶² See Nippon Steel Preliminary Calculation Memorandum.

⁶³ See November 2, 2018 Memorandum, re: Preliminary Results Margin Calculation for Tokyo Steel (Tokyo Steel Preliminary Calculation Memorandum).

which the material terms of sale are established.⁶⁴ Furthermore, if the shipment date precedes the invoice date, then Commerce will use the shipment date as the date of sale.⁶⁵

Nippon Steel

Nippon Steel reported the date of invoice for home market sales as date of sale, and reported date of invoice for U.S. market sales for its EP sales and certain Steelscape's CEP sales.⁶⁶ Consistent with our regulations and record evidence, we are using the invoice date as the date of sale for most of the sales. For certain Steelscape's CEP sales with shipment date prior to the date of invoice, Nippon Steel reported the date of shipment as the date of sale.⁶⁷ Consistent with Commerce's practice of using the earlier of shipment or invoice date as the date of sale, we used shipment date as the date of sale in such instances.

Tokyo Steel

Tokyo Steel reported the date of invoice as the date of sale for its sales in the home market as well as the U.S. market.⁶⁸ For the U.S. market, Tokyo Steel reported that it had only EP sales, and changes do occur in the material terms of sales between the purchase order date and the invoice date although they are rare.⁶⁹ Consistent with Commerce's regulation and record evidence, we used the invoice date as the date of sale for both markets.

C. PRODUCT COMPARISONS

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

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristics reported by the respondents in the following order of importance: paint, carbon, quality, strength, thickness, width, form, pickled and pattern.

⁶⁴ See 19 CFR 351.401(i); see also *Yieh Phui Enterprise Co. v. United States*, 791 F. Supp. 2d 1319 (CIT 2011) (affirming that Commerce may use invoice date unless a party demonstrates that the material terms of its sale were established on another date); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001).

⁶⁵ See *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

⁶⁶ See Nippon Steel's March 25, 2018 Section B response at B-25, and Section C response at C-25.

⁶⁷ *Id.*

⁶⁸ See Tokyo Steel's March 12, 2018 Section B response at 22, and Section C response at 19.

⁶⁹ See Tokyo Steel's March 12, 2018 Section C response at 16 and August 1, 2018 supplemental response at 3.

For Nippon Steel's and Tokyo Steel's sales of hot-rolled steel in the United States, the reported control number (*i.e.* CONNUM) identifies the characteristics of the hot-rolled steel as exported by Nippon Steel and Tokyo Steel.

D. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).” As explained below, we based the U.S. price on EP and CEP for Nippon Steel and on EP for Tokyo Steel.

Nippon Steel

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

We calculated the CEP based on the price to the first unaffiliated purchaser in the United States. We made deductions from the starting price for any movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. inland freight), in accordance with section 772(c)(2)(A) of the Act.⁷⁰ In addition, we made an adjustment to price for the cost of any further manufacturing or assembly for sales used in the calculations, in accordance with section 772(d)(2) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses, bank charges, and other direct selling expenses) and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Nippon Steel and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.⁷¹

⁷⁰ See Nippon Steel Preliminary Calculation Memorandum.

⁷¹ *Id.*

Tokyo Steel

We based EP on the price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, for foreign brokerage and handling expenses. We also made adjustments for billing adjustments, where appropriate.

E. NORMAL VALUE

1. Home Market Viability

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

In this review, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for both respondents, in accordance with section 773(a)(1)(B) of the Act.

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁷² Commerce excludes home market prices to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "Commerce may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁷³

In this review, Nippon Steel sold foreign like product to affiliated customers in the home market as defined in section 771(33) of the Act. Consequently, we conducted the arm's-length test on these sale between Nippon Steel and its affiliated customers and determined that the prices were

⁷² See 19 CFR 351.403(c).

⁷³ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

not arm's-length prices and will not use them in the normal value calculation because we considered the failed-test sales to be outside the ordinary course of trade.⁷⁴ Once the prices to the affiliated parties fail the arm's-length test, we will generally rely on the affiliate resellers' prices to its customers for NV for the margin calculations.

3. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. According to 19 CFR 351.412(c)(2), sales are made at different LOTs if they are made at different marketing stages (or their equivalent), and substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷⁵ In order to determine whether the home market sales are at different marketing stages than the U.S. sales, we examine the distribution chain in each market, including selling functions and customer categories, and the level of selling activities for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs, we consider the starting price before adjustments for EP and home market sales,⁷⁶ and the starting price as adjusted under section 772(d) of the Act for CEP sales.⁷⁷

When Commerce is unable to match U.S. sale to sales in the home market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the home market. In comparing EP or CEP sales at a different LOT in the home market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of CEP but the data available do not provide a basis to determine whether the difference in LOTs is demonstrated to affect price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷⁸

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

⁷⁴ See section 771(15) of the Act and 19 CFR 351.102(b).

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

⁷⁶ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁷⁷ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁷⁸ See *OJ Brazil* IDM at Comment 7.

Nippon Steel

In the home market, Nippon Steel sells merchandise under consideration through three channels of distribution.⁷⁹ In channel 1, Nippon Steel negotiates sales with affiliated and unaffiliated primary customers through affiliated and unaffiliated trading companies, this channel of distribution accounts for the vast majority of the group's home market sales.⁸⁰ In channel 2, Nippon Steel sells to affiliated and unaffiliated trading companies that re-sell the steel in quantities and prices negotiated by the trading companies.⁸¹ In channel 3, Nippon Steel sells directly to affiliated and unaffiliated primary customers without the assistance of the trading companies.⁸² In connection with all three types of sales, Nippon Steel performed the following categories of selling functions: production planning, strategic planning & marketing, order evaluation, order/invoice system, end-user sales contact, advertising, warranty, technical services, administration, packing, freight & delivery.⁸³ Further, Nippon Steel reported performing the essentially the same functions at the same relative level of intensity for all of its home market sales. On this basis, we preliminary determine that all home market sales are at the same LOT.⁸⁴

Nippon Steel reported that it made U.S. sales through one channel of distribution. However, we find that Nippon Steel made sales through two channels of distribution: EP sales through unaffiliated trading companies for sales to unaffiliated U.S. customers and CEP sales by Nippon Steel's affiliated U.S. further manufacturers to unaffiliated customers. We find that Nippon Steel performed all selling functions at the same relative level of intensity,⁸⁵ as Nippon Steel negotiates prices with the assistance of the trading companies, and the trading companies arrange transport to the primary customers.⁸⁶ Thus, we preliminarily determined that Nippon Steel's U.S. sales are made at the same LOT.

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

⁷⁹ See Nippon Steel IQR Section A at A-24

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ See Nippon Steel IQR Section A at Exhibit A-10.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See Nippon Steel IQR Section A at A-29.

Tokyo Steel

In the home market, Tokyo Steel sells merchandise under consideration through three channels of distribution.⁸⁷ In channel 1, Tokyo Steel sells to a trading company who then sells the merchandise to distributors or end users. In channel 2, Tokyo Steel sells directly to distributors, and in channel 3, Tokyo Steel sells directly to end users. In connection with all three types of sales, Tokyo Steel performed the following categories of selling functions: sales forecasting, sales promotion, packing, order input/processing, direct sales personnel, sales/marketing support, market research, freight and delivery.⁸⁸ Further, Tokyo Steel reported performing essentially the same functions at the same relative level of intensity for all of its home market sales. On this basis, we preliminarily determine that all home market sales are at the same LOT.⁸⁹

Tokyo Steel reported that it made U.S. sales through a Japanese trading company.⁹⁰ The selling functions performed were nearly the same as those performed for home market customers. Thus, we find that Tokyo Steel had one channel of distribution in the U.S. market and preliminarily determine that all Tokyo Steel's U.S. sales are made at the same LOT.

We then compared the home market LOT to the U.S. LOT and found that the selling functions Tokyo Steel performed for its home market customers are nearly the same as those performed for its U.S. customers at a similar level of intensity. Therefore, we preliminarily determine that home market sales and the U.S. were made at the same LOT, and that no LOT adjustment was warranted.

4. Cost of Production Analysis

In accordance with section 773(b)(2)(A) of the Act, we requested cost information from the respondents in this review to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices less than the COP of the product.⁹¹ We examined Nippon Steel's and Tokyo Steel's cost data and preliminarily determine that our quarterly cost methodology is not warranted. Accordingly, we are applying our standard methodology of using annual costs based on the reported data.

a. Calculation of COP

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

⁸⁷ See Tokyo Steel IQR Section A at 11.

⁸⁸ See Tokyo Steel IQR Section A at Exhibit A-8.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See Nippon Steel DQR and Tokyo Steel DQR.

Nippon Steel

We relied on the COP data submitted by Nippon Steel except as follows:⁹²

- We adjusted the reported transfer prices of lump iron ore, fine iron ore and iron ore pellets to reflect higher market prices in accordance with section 773(f)(2) of the Act.⁹³
- We revised the financial expenses of Nisshin to reflect Nippon Steel's financial expense rate calculated at the highest level of consolidation.⁹⁴
- We adjusted Steelscape LLC's reported cost of services obtained from an affiliated party to reflect transfer prices, in accordance with section 773(f)(3) of the Act, because the transfer prices were higher in comparison to the affiliate's reported cost and market prices.⁹⁵

Tokyo Steel

We relied on the COP data submitted by Tokyo Steel except as follows:⁹⁶

- We increased Tokyo Steel's total cost of manufacturing (TOTCOM) for the reconciliation difference between the company's TOTCOM reflect in its normal course of business and the total extended TOTCOM reported in its cost data file.⁹⁷
- We increased the numerator of Tokyo Steel's general and administrative expense rate to include certain expenses related to idled assets.⁹⁸

b. COP Test

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

⁹² See Nippon Steel SDR at exhibit SD-1.

⁹³ See Nippon Steel Preliminary Calculation Memorandum.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See Tokyo Steel 2SDR at exhibit SD2-1.

⁹⁷ See Memorandum to Neal M. Halper, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Tokyo Steel Manufacturing Co., Ltd., dated November 2, 2018, at 1.

⁹⁸ *Id.*

c. Results of the COP Test

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

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

5. Calculation of NV Based on Home Market Prices

Nippon Steel

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

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

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

For comparisons to both EP and CEP sales, we deducted home-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the

merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁹⁹

Tokyo Steel

With respect to Tokyo Steel, we made adjustments to the starting price for billing adjustments, discounts, and sales promotion expenses, where appropriate. We also made a deduction from the starting price for certain movement expenses under section 773(a)(6)(B)(ii) of the Act.¹⁰⁰

In addition, we made adjustments for differences in COS, pursuant to section 773(a)(6)(C)(iii) of the Act, by deducting direct selling expenses incurred for home-market sales (*e.g.*, imputed credit) and adding U.S. direct selling expenses (*e.g.*, imputed credit), where appropriate.

We deducted home-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.¹⁰¹

X. CURRENCY CONVERSION

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

⁹⁹ See 19 CFR 351.411(b).

¹⁰⁰ See Tokyo Steel Preliminary Calculation Memorandum.

¹⁰¹ See 19 CFR 351.411(b).

XI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

11/1/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations