DATE: October 24, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination and
Affirmative Determination of Critical Circumstances in the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from the United Kingdom

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that carbon and alloy steel wire rod (wire rod) from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The Department also preliminarily determines that critical circumstances exist for British Steel Limited (British Steel), Longs Steel UK Limited (Longs Steel), and all other exporters/producers of wire rod. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

II. BACKGROUND

On March 28, 2017, the Department received an antidumping duty (AD) petition covering imports of wire rod from the United Kingdom,1 which was filed in proper form on behalf of

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1 See the Petitions for the Imposition of Antidumping Duties on Imports of Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom; and Countervailing Duties on Imports from Turkey and Italy, dated
Charter Steel, Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation (Nucor) (collectively, the petitioners). The Department initiated this investigation on April 17, 2017.\(^2\)

In the *Initiation Notice*, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.\(^3\) Accordingly, on April 24, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.\(^4\) On May 1, 2017, we received comments on behalf of certain of the petitioners and from British Steel, a producer/exporter of wire rod from the United Kingdom regarding the respondent selection process.\(^5\) On May 9, 2017, the Department limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the subject merchandise by volume, British Steel and Longs Steel,\(^6\) and issued the AD questionnaire to them.\(^7\)

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of wire rod to be reported in response to the Department’s AD questionnaire.\(^8\) The Department received a number of timely scope comments on the record of this investigation, as well as on the records of the companion wire rod investigations involving Belarus, Italy, Korea, Spain, South Africa, Turkey, Ukraine, and the United Arab Emirates.\(^9\) On May 10, 2017, the petitioners and various other interested parties in this and/or the companion AD investigations submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be

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March 28, 2017 (the Petition).

\(^2\) *See Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

\(^3\) *See Initiation Notice* at 19211.

\(^4\) *See Department Letter re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the United Kingdom: Customs Data for Use in Respondent Selection*, dated April 24, 2017.

\(^5\) *See Petitioners’ Letter, “Carbon and Alloy Steel Wire Rod from the United Kingdom – Petitioners’ Comments on Respondent Selection,”* dated May 1, 2017; British Steel’s Letter, “Carbon and Alloy Steel Wire Rod from the United Kingdom: British Steel Limited’s Comments on Respondent Selection,” dated May 1, 2017, refiled to correct bracketing on May 8, 2017 (British Steel Respondent Selection Comments). In its letter, British Steel informed the Department that, during the POI, it acquired a company named Longs Steel. *See British Steel Respondent Selection Comments at page 2."

\(^6\) *See Respondent Selection Memorandum.* In this memorandum, we acknowledged that British Steel purchased Longs Steel during the POI. However, at that point in the investigation, the Department did not have sufficient information to determine whether British Steel was the successor-in-interest to Longs Steel, and, therefore, we issued the questionnaire to both companies via British Steel.

\(^7\) *See Department Letter to British Steel Limited re: Antidumping Duty Questionnaire*, dated May 9, 2017; and *Department Letter to Longs Steel UK Limited re: Antidumping Duty Questionnaire*, dated May 9, 2017 (Longs Steel AD Questionnaire).

\(^8\) *See Initiation Notice* at 19207-19208.

\(^9\) For further discussion of these comments, *see Memorandum, “Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determination,”* dated August 7, 2017 (Preliminary Scope Memorandum).
used for reporting purposes. On May 15, 2017, the petitioners and various other interested parties filed rebuttal comments. Based on the comments received, the Department issued a letter to interested parties which contained the product characteristics for this and the companion AD investigations. The Department also addressed the scope comments placed on the record of this investigation by interested parties.

On May 12, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire rod from the United Kingdom.

Longs Steel failed to meet the Department’s deadline for submission of its Section A response, and did not request an extension of the deadline. On June 6, 2017, British Steel submitted a timely response to section A of the Department’s AD questionnaire, i.e., the section relating to general information. In June and July 2017, British Steel responded to sections B, C, and D of the Department’s AD questionnaire, i.e., the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.

In June and July 2017, the petitioners filed comments related to the successor-in-interest issue. British Steel responded to the first of these comments in June 2017 but did not respond to the remainder. In its response, British Steel claimed that it is not the successor-in-interest to Longs Steel.

From June 2017 through October 2017, we issued supplemental questionnaires to British Steel and received responses to these supplemental questionnaires from July through October 2017.

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10 See Department Letter re: Product Characteristics for the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the United Kingdom, dated May 18, 2017.
11 See Preliminary Scope Memorandum.
12 See Certain Carbon and Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom; Determinations, 82 FR 22846 (May 18, 2017) (ITC Preliminary Determination); “International Trade Commission Preliminary Report Certain Carbon and Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom,” ITC Publication 4615, May 2016.
13 See British Steel’s June 6, 2017 Section A Questionnaire Response (British Steel June 6, 2017 AQR).
14 See British Steel’s June 15, 2017 Section B Questionnaire Response (British Steel June 15, 2017 BQR); British Steel’s June 23, 2017 Section C Questionnaire Response (British Steel June 23, 2017 CQR); and British Steel’s August 14, 2017 Section D Questionnaire Response (British Steel August 14, 2017 DQR).
16 See British Steel’s Letter, “Carbon and Alloy Steel Wire Rod from the United Kingdom: Response to Petitioners’ Comments on British Steel’s Successor-in-Interest Questionnaire Response,” dated June 22, 2017 (British Steel Rebuttal Comments).
17 See British Steel’s July 13, 2017 Supplemental Section A Questionnaire Response (British Steel July 13, 2017 SAQR); British Steel’s August 9, 2017 Supplemental Sections A, B, and C Questionnaire Response (British Steel August 9, 2017 SABCQR); British Steel’s August 17, 2017 Supplemental Section D Questionnaire Response (British Steel August 17, 2017 SDQR); British Steel’s September 25, 2017 Supplemental Section D Questionnaire Response.
In September 2017, we requested that both British Steel and Tata Steel UK Limited (Tata Steel), Longs Steel’s former parent company, provide COP and CV data for wire rod produced by Longs Steel and resold by British Steel during the period of investigation (POI). We received a response to this questionnaire from British Steel and Tata Steel in the same month.

On July 6, 2017, one of the petitioners (i.e. Nucor) filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c), alleging that critical circumstances exist with respect to imports of the merchandise under consideration. In this same month, the Department requested shipment data from British Steel with respect to the critical circumstances allegation. British Steel responded to the Department’s request for shipment data from July through September 2017.

On August 11, 2017, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days pursuant to section 733(c)(1)(A) of the Act and 351.205(b)(2). Thereafter, pursuant to section 733(c)(1)(A) of the Act, the Department published in the Federal Register a postponement of the preliminary determination until no later than October 24, 2017.

In September and October 2017, pursuant to 19 CFR 351.210(e)(1), British Steel requested that the Department postpone the final determination and that the provisional measures be extended to a period not to exceed six months.

We are conducting this investigation in accordance with section 733(b) of the Act.

Response (British Steel September 25, 2017 SDQR); British Steel’s October 2, 2017 Supplemental Sections B and C Questionnaire Response (British Steel October 2, 2017 SBCQR); and British Steel’s October 10, 2017 Supplemental Section D Questionnaire Response (British Steel October 10, 2017 SDQR).

18 See Department Letter to Tata Steel, dated September 6, 2017; and Department Letter to British Steel Limited, dated September 6, 2017.


24 See Certain Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations, 82 FR 39565 (August 21, 2017).

III. PERIOD OF INVESTIGATION

The POI is January 1, 2016, through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2017.26

IV. SCOPE COMMENTS

In accordance with the Preamble to the Department’s regulations, the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage, (i.e., “scope”). Certain interested parties from the companion wire rod investigations commented on the scope of the wire rod investigation, as published in the Initiation Notice. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.29 We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the Initiation Notice. In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties, and since the issuance of the Preliminary Scope Decision Memorandum, certain parties submitted scope case briefs or scope rebuttal briefs.31 We will issue a final scope decision on the records of the wire rod investigations after considering the comments submitted in the scope case and rebuttal briefs.

V. SUCCESSOR-IN-INTEREST

Successor-In-Interest Determination

During the POI, British Steel acquired Longs Steel, and Longs Steel ceased to exist as a separate company.32 In order to determine whether British Steel is the successor-in-interest to Longs Steel, we issued separate questionnaires to British Steel related to its acquisition of Longs Steel. British Steel responded to our requests for information, and in these submissions, it claimed

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26 See 19 CFR 351.204(b)(1).
27 See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) (Preamble).
28 See Initiation Notice at 19208.
29 See Preliminary Scope Decision Memorandum.
30 Id.
33 See British Steel’s May 24, 2017 Successor-in-Interest Questionnaire Response (British Steel May 24, 2017 SII SQR); British Steel’s June 7, 2017 Supplemental Successor-in-Interest Questionnaire Response (British Steel June 7, 2017 SII SQR); and British Steel’s July 14, 2017 Supplemental Successor-in-Interest Questionnaire Response (British Steel July 14, 2017 SII SQR). See also British Steel’s October 12, 2017, Response to Clarification Request (British Steel October 12, 2017 QR).
that it is not the successor-in-interest to Longs Steel. The petitioners filed comments related to this issue, in which they disagreed with British Steel’s analysis and argued that the Department should find British Steel to be the successor-in-interest to Longs Steel. The petitioners also argued that the Department should require British Steel to report all POI entries of subject merchandise made by Longs Steel.34

The Department generally considers a company to be the successor to a predecessor company if the resulting operations of the successor are not materially dissimilar to that of its predecessor. In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: 1) management; 2) production facilities; 3) supplier relationships; and 4) customer base. In performing a successor-in-interest analysis, no one factor is dispositive, and we rely on the totality of circumstances to determine if a company’s operations remain essentially unchanged.35

After evaluating the evidence on the record of this investigation, we preliminarily find that British Steel made significant changes to Longs Steel’s operations with respect to each of the above factors, and these differences represent fundamental changes since the formation of the new entity. We based this conclusion on the following facts: 1) key members on the company’s Board of Directors changed and the new board now has the sole authority to make decisions on the operations of the company; 2) British Steel reorganized its production and sales operations, the former by putting into place a managing director for wire rod operations and the latter by reorganizing the sales force; 3) British Steel undertook major capital improvements of the production facility as part of its extensive measures to relaunch the wire rod business; 4) British Steel now sells through a different distribution network in the United States; and 5) British Steel uses a different raw materials procurement process and different financing methods.

Accordingly, we preliminarily find that British Steel functions as an entirely different company and, thus, is not the successor-in-interest to Longs Steel. For further discussion of the analysis underlying our conclusions, see Preliminary SII Memorandum.

Effect of the Successor-In-Interest Determination

In various submissions to the Department, British Steel informed the Department that it fulfilled orders placed by Longs Steel’s former customers and accepted by Longs Steel prior to change in ownership. Because British Steel did not establish the material terms of sale for these transactions, we preliminarily find that British Steel did not make the sales relevant to the Department’s analysis.36 As a result, we have excluded these transactions from our preliminary analysis.

34 See Petitioners’ First SII Comments; and Petitioners’ Third SII Comments.
35 See Crystalline Silicon Photovoltaic Cells from China, and accompanying Issues and Decision Memorandum (IDM) at Comment 2; Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results and Termination, in Part, of the Antidumping Duty Changed Circumstance Review, 76 FR 64898 (October 19, 2011); and Tapered Roller Bearings, 79 FR 69424, 69425.
36 The Department closely examines the material terms of sale, and which party influences such terms, in considering which sales are relevant to its analysis. See, e.g., 19 CFR 351.401(i) (stating the importance of the date on which the exporter or producer establishes the “material terms of sale”).
Moreover, in instances where British Steel resold wire rod produced by Longs Steel prior to the change in ownership, we treated British Steel as a reseller of these products, rather than the producer of them. Consequently, we compared sales of this merchandise resold to the United States only to sales of similar or identical merchandise resold in the home market (or CV, as appropriate).

Finally, because Longs Steel failed to respond to our questionnaire, we have applied adverse facts available.

VI. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether British Steel’s sales of subject merchandise from the United Kingdom the United States were made at LTFV, the Department compared the export price (EP) to the normal value (NV), as described in the “Export Price,” and “Normal Value” sections of this memorandum.

A) Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)), i.e., the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department 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.

In recent investigations, the Department has 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.37 The Department 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 investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers,

37 See, e.g., Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 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).
regions, and time periods 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 code, 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 POI 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 the Department uses in making comparisons between EP or CEP 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 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, the Department
examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.  

B) Results of the Differential Pricing Analysis

For British Steel, based on the results of the differential pricing analysis, the Department preliminarily finds that 0.59 percent of the value of U.S. sales pass the Cohen's $d$ test, and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen’s $d$ and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for British Steel.

VII. DATE OF SALE

Section 351.401(i) of the Department’s regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Finally, the Department has a long-standing practice of finding that, where the
shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established. 41

Regarding home market sales, British Steel reported the date of invoice as the date of sale for home market sales, 42 and it demonstrated that this invoice date is the same date as the factory shipment date. 43 We preliminarily followed the Department’s long-standing practice of basing the date of sale for all home market sales on the earlier of the invoice date or the shipment date. 44

Regarding U.S. sales, British Steel also reported the invoice date as the date of sale. British Steel stated that this date is the appropriate date of sale because: 1) British Steel also issues the bill of lading on this date; and 2) British Steel does not consider the merchandise as shipped until it is loaded on the vessel for export to the United States. 45 At our request, British Steel also provided the factory shipment date for its reported U.S. sales. 46 After examining the information on the record, we preliminarily find that the material terms of sale are established when the merchandise is shipped from the factory. Accordingly, we used the earlier of factory shipment date or date of invoice as the date of sale for purposes of this preliminary determination, in accordance with our practice. 47

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by British Steel in the United Kingdom during the POI that fit the description in the “Scope of Investigation” section of the accompanying Federal Register notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales of merchandise produced by British Steel. In instances where British Steel resold in-scope merchandise in the United States produced by Longs Steel, we considered British Steel’s resales of the same or similar merchandise in the home market produced by Longs Steel to be foreign like products to those U.S. resold products.

We compared U.S. sales to sales of foreign like product made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the

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41 See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007) (Shrimp from Thailand), and accompanying IDM at Comment 11; see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany, 67 FR 35497 (May 20, 2002) (Steel Beams from Germany), and accompanying IDM at Comment 2.
42 See British Steel June 15, 2017 BQR at B-29; British Steel June 23, 2017 CQR at C-25 to C-26; British Steel June 6, 2017 AQR at 2; and British Steel’s August 8, 2017 Supplemental Sections A-C response (British Steel August 8, 2017 SQR) at 3.
43 See British Steel June 15, 2017 BQR at B-29, and B-32.
44 See, e.g., Shrimp from Thailand and Steel Beams from Germany.
45 See British Steel’s July 12, 2017 Supplemental Section A Questionnaire Response (British Steel July 12, 2017 SQR) at 7; and British Steel August 8, 2017 SQR at 3.
46 See British Steel August 8, 2017 SQR at 3-8, and Exhibits SAC-1 and SAC-2 and British Steel’s August 11, 2017 Supplemental Section C Response (British Steel August 11, 2017 SQR) at 3.
47 See, e.g., Shrimp from Thailand and Steel Beams from Germany.
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 or CV, as appropriate.

In making product comparisons, we matched subject merchandise and foreign like product based on whether the products were prime or non-prime and the physical characteristics reported by British Steel in the following order of importance: carbon content, type of metallic coating, chromium content, nickel content, vanadium content, combined maximum phosphorus and sulfur content, depth of decarburization, manganese content, molybdenum content, silicon content, sulfur content, nitrogen content, diameter range, and heat treatment. For British Steel’s sales of wire rod in the United States, the reported control number (CONNUM) identifies the characteristics of wire rod, as exported by Habas and Icdas.

IX. EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for British Steel’s U.S. sales because the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted based on the facts of the record.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments and rebates. We also made deductions from the starting price, where appropriate, for movement expenses, i.e., inland freight to the port of exportation, foreign inland insurance, international freight, marine insurance, U.S. inland freight, and brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act. In instances where British Steel’s reported freight expenses did not match the freight expenses shown on the supporting calculation worksheets, we relied on the worksheet information for purposes of the preliminary determination.48

X. NORMAL VALUE

A) 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 investigation, we determined that the aggregate volume of home market sales of the foreign like product for British Steel was greater than five percent of the aggregate volume of its

48 See British Steel Preliminary Calculation Memo, at 4.
U.S. sales of subject merchandise. Therefore, we used home market sales as the basis for NV for British Steel, in accordance with section 773(a)(1)(B) of the Act.

B)  **Level of Trade**

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, i.e., the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales i.e., NV based on either home market or third country prices, we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

When the Department is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison 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 the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, i.e., no LOT adjustment is possible, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

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

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49 See 19 CFR 351.412(c)(2).
50 Id.; see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7 (OJ from Brazil).
51 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 expenses (SG&A), and profit for CV, where possible. See 19 CFR 351.412(c)(1).
52 See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
53 See, e.g., OJ from Brazil, and accompanying IDM at Comment 7.
54 See British Steel June 6, 2017 AQR at 15-25, and Exhibits A-7 and A-8; see also British Steel July 12, 2017 SQR at 11-12.
In the home market, British Steel reported that it made sales through one channel of distribution, \textit{i.e.}, sales to end users/processors.\footnote{See British Steel June 6, 2017 AQR at 15; and British Steel June 15, 2017 BQR at B-28.} According to British Steel, it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; sales promotion; packing; inventory maintenance; order input/processing; sales/marketing support; market research; provision of technical assistance; provision of rebates; and arranging for freight and delivery.\footnote{See British Steel June 6, 2017 AQR at Exhibit A-8.}

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that British Steel performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its home market sales. Because we find that there were no differences in selling activities performed by British Steel to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for British Steel.

With respect to the U.S. market, British Steel reported that it made sales through two channels of distribution, \textit{i.e.}, sales through an unaffiliated commission agent to processors, and direct sales to a U.S. customer.\footnote{See British Steel June 23, 2017 CQR at C-24; and British Steel August 11, 2017 SQR at 5-6.} British Steel reported that it performed the following selling functions for sales in both distribution channels: strategic/economic planning; order input/processing; packing; provision of technical assistance; and arranging for freight and delivery.\footnote{See British Steel June 6, 2017 AQR at Exhibit A-8.} In addition, British Steel reported that it performed the following additional selling functions for sales via the commission agent: sales forecasting; distributor/dealer training; participation in meetings related to sales negotiation; provision of rebates; payment of commissions; and sales/marketing support.\footnote{Id.} However, British Steel failed to document that, or indicate how often, it performed most of these additional functions for its sales via the commission agent during the POI, and the record does not indicate how the remaining ones \textit{i.e.}, provision of rebates and payment of commissions were significant selling activities that should be considered separately in the Department’s LOT analysis.

Based on the selling function categories noted above, we find that British Steel performed sales and marketing, freight and delivery services, and warranty and technical support for all of its reported U.S. sales. According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Although British Steel claimed there were minor differences in the selling functions for sales in the two distribution channels as noted above, we do not find that these differences are significant enough to warrant finding that the two U.S. channels constitute different LOTs. Because we determine that substantial differences in British Steel’s selling activities do not exist between its U.S. channels, we determine that sales to the U.S. market during the POI were made at the same LOT.
Finally, we compared the U.S. LOT to the home market LOT, and we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly. Therefore, the Department preliminarily finds that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, an LOT adjustment is not warranted.

C) Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings. Accordingly, the Department requested this information from British Steel in this investigation. We examined its cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

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

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

1. We adjusted the by-product offset included in British Steel’s reported costs to reflect the quantities of ammonium, slag, and scrap generated during the POI, rather than the quantities sold during the POI; and

2. We revised British Steel’s G&A expense ratio to include in the numerator restructuring and impairment costs and the estimated current year depreciation expenses related to assets written-off.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) 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 billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

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3. 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 the respondent’s comparison 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 POI, 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 certain products, more than 20 percent of British Steel’s home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D) Calculation of NV Based on Comparison-Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for British Steel, we based NV on comparison market prices. We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and rebates in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act.

We deducted comparison-market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We based British Steel’s packing costs on the amounts shown on British Steel’s original packing calculation worksheets because, unlike the costs subsequently reported, these costs were product-type and market-specific.62

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, i.e., credit expenses, and added U.S. direct selling expenses, i.e., credit expenses and commission expenses. In instances where U.S. sales remained unpaid as of the date of British Steel’s latest response, we used the signature date of the preliminary determination, i.e., October 24, 2017, as the payment date, and we recalculated U.S. sales.

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62 See British Steel June 15, 2017 BQR at B-59 and Exhibit B-19; and British Steel August 8, 2017 SQR at 3 and Exhibit C-10; and British Steel Preliminary Calculation Memo at 2 and 4.
imputed credit expenses, in accordance with our practice.\textsuperscript{63}

We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market because commissions were granted on sales in only the U.S. market. Specifically, where commissions were incurred in the U.S. market, we limited the amount of such allowance to the amount of the indirect selling expenses incurred in the home market. This is the “commission offset.”

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, the Department also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. The Department based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.\textsuperscript{64}

E) \textit{Calculation of NV Based on Constructed Value}

For British Steel, where we were unable to find a home market match of identical or similar merchandise, we based NV on CV in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent’s material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the “Calculation of Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

For comparisons to British Steel’s EP sales, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses, to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We offset British Steel’s U.S. commissions with its home market indirect selling expenses, as noted above.

XI. \textbf{APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE}

As noted above, Longs Steel was selected as a mandatory respondent. Although this company received the Department’s questionnaire, it did not respond.\textsuperscript{65} For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Longs Steel.

\textsuperscript{63} \textit{See} Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.
\textsuperscript{64} \textit{See} 19 CFR 351.411(b).
\textsuperscript{65} \textit{See} Longs Steel AD Questionnaire.
A) Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Department; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that 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.

Longs Steel did not respond to our original questionnaire or otherwise participate in this investigation. As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that Longs Steel withheld information the Department requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding. Moreover, because Longs Steel failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Longs Steel’s preliminary dumping margin.

B) Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party

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66 See 19 CFR 351.308(a); see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); and Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002).

67 On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See Applicability Notice, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.
had complied with the request for information. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

We preliminarily find that Longs Steel has not acted to the best of its ability to comply with the Department’s request for information. This company failed to respond to the Department’s questionnaire. The failure of Longs Steel to participate in this investigation and respond to the Department’s questionnaire has precluded the Department from performing the necessary analysis to calculate a weighted-average dumping margin for it based on its own data. Accordingly, the Department concludes that Longs Steel failed to cooperate to the best of its ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.

C) Selection and Corroboration of the AFA Rate

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

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68 See section 776(b)(1)(B) of the Act.
70 See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); 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); Preamble, 62 FR at 27340.
71 See, e.g., Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476 (March 14, 2014).
72 See Longs Steel AD Questionnaire.
73 See, e.g., Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part, 79 FR 29423 (May 22, 2014), and accompanying IDM at 7-11, unchanged in Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part, 79 FR 61609 (October 14, 2014); see also Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the AD questionnaire); and Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil, South Africa, and the Republic of Turkey: Affirmative Preliminary Determinations of Sales at Less Than Fair Value, 81 FR 65337, and accompanying IDM at 3, unchanged in Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, South Africa, and the Republic of Turkey: Affirmative Final Determinations of Sales at Less Than Fair Value and Affirmative Final Determinations of Critical Circumstances for Brazil and the Republic of Turkey, 81 FR 87544.
74 See also 19 CFR 351.308(c).
In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. The Department’s practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.

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

With respect to the investigation covering wire rod from the United Kingdom, the highest dumping margin in the petition is 147.63 percent. In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margin of 147.63 percent to the transaction-specific dumping margins for the mandatory respondent, British Steel, we found product-specific margins at or above the petition rate and, as a consequence, we find that the rate alleged in the petition, as noted in the Initiation Notice, is within the range of transaction-specific margins computed for this preliminary determination.

In sum, the Department corroborated the AFA rate of 147.63 percent to the extent practicable within the meaning of section 776(c) of the Act, because the rate is relevant to the uncooperative

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75 See SAA at 870.
76 See Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.
77 See SAA at 870.
78 Id.; see also 19 CFR 351.308(d).
79 See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).
80 See sections 776(d)(3)(A) and (B) of the Act.
81 See Initiation Notice at 19211.
respondent. As the 147.63 percent rate is both reliable and relevant, we determine that it has probative value, and thus, it has been corroborated to the extent practicable, pursuant to section 776(c) of the Act. Thus, we preliminarily assigned this AFA rate to the subject merchandise from Longs Steel.

XII. CRITICAL CIRCUMSTANCES

On July 6, 2017, one of the petitioners, Nucor, alleged that critical circumstances exist with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1). In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A) Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

In addition, 19 CFR 351.206(h)(2) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” Under 19 CFR 351.206(i), the Department defines “relatively short period” generally as the period starting on the date the proceeding begins i.e., the date the petition is filed and ending at least three months later. This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to

83 See Critical Circumstances Allegation.
84 See 19 CFR 351.206(i); see also Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations, Policy Bulletin 98.4, 63 FR 55364 (Oct. 15, 1998) (“Commerce has traditionally compared the three-month period immediately after initiation with the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of-the subject merchandise”).
believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.\(^{85}\)

B) **Critical Circumstances Allegation**

The petitioner alleges that section 733(e)(1)(A) of the Act is met by virtue of the dumping margins alleged in the Petition, which could be as high as 147.63 percent on a transaction-specific basis.\(^{86}\) Thus, the petitioner asserts that certain dumping margins alleged in the Petition, which were up to 147.63 percent, exceed the 15 percent threshold used by the Department to impute knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.\(^{87}\) The petitioner further argues that importers of wire rod from the United Kingdom have been on notice that dumped imports are likely to cause injury since the ITC’s May 12, 2017, preliminary affirmative injury finding.\(^{88}\)

The petitioner argues that, regarding section 733(e)(1)(B) of the Act, which examines whether there have been “massive imports of the subject merchandise over a relatively short period,” the Department should use the minimum three-month base and comparison periods for shipment data, as provided under 19 CFR 351.206(i). This would result in a base period from January 2017 through March 2017 and a comparison period from April 2016 through June 2017.\(^{89}\) The petitioner alleges that import statistics released by the Department’s Steel Import Monitoring Group indicate shipments of merchandise under consideration during the comparison period increased significantly in terms of volume (99.99 percent) between the base period and the comparison period, and as a result, exceeded the threshold for “massive” imports of wire rod from the United Kingdom, as provided under 19 CFR 351.206(h) and (i).\(^{90}\)

C) **Analysis**

The Department’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioner’s critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.\(^{91}\)

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in

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\(^{85}\) See 19 CFR 351.206(i).

\(^{86}\) See Critical Circumstances Allegation at 6.

\(^{87}\) Id.

\(^{88}\) Id. at 7 (citing ITC Preliminary Determination).

\(^{89}\) Id. at 12.

\(^{90}\) Id. at 13.

question in the United States and current orders in any other country on imports of subject merchandise. The petitioners identify no such proceeding with respect to wire rod from the United Kingdom, nor are we aware of an AD order in any country on wire rod from the United Kingdom. Thus, we preliminarily find that there is not a history of injurious dumping of wire rod from the United Kingdom and that criterion is not met.

Because there is no prior history of injurious dumping, we next examine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, the Department normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping. For purposes of this investigation, the Department preliminarily determines that the knowledge standard is met because British Steel’s preliminary margin is greater than 25 percent for EP sales.

Because the other mandatory respondent in this investigation, Longs Steel, was uncooperative, we are assigning, as AFA, a rate of 147.63 percent, the highest margin which could be corroborated to the extent practicable, as noted above. Because the preliminary dumping margin exceeds the threshold sufficient to impute knowledge of dumping, this margin provides a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV by Longs Steel to the importers.

Accordingly, because the statutory criteria of section 733(e)(1)(A) of the Act have been satisfied, we examined whether imports from British Steel were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). It is the Department’s practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months. Based on these practices, the Department compared import data for the period April 2017 through September 2017 (the last month for which import data is currently available) with the preceding six-month period of October 2016 through March 2017. Consistent with 19 CFR 351.206(i)), we preliminarily find that imports based on British Steel’s reported shipments of merchandise under consideration during the

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92 Id.
94 See “Preliminary Determination” section of the accompanying Federal Register notice.
96 These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration.
comparison period increased by more than 15 percent over its respective imports in the base period.\textsuperscript{97} Therefore, we preliminarily find there to be massive imports for British Steel, pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).\textsuperscript{98}

Concerning Longs Steel, as noted above, we determined to apply total AFA with regard to the company, as described under section 776(b) of the Act. Thus, for purposes of the massive imports analysis, because we lack the necessary reliable shipment data from Longs Steel (see our analysis above, applying total AFA to Longs Steel), we determine that, pursuant to section 776(b) of the Act, Longs Steel shipped wire rod in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we preliminarily determine that critical circumstances exist with regard to Longs Steel.

For the companies subject to the “all others” rate, the rate for all other producers and exporters is the rate for British Steel, which exceeds the threshold to impute knowledge to the customers or importers that the subject merchandise was being sold at LTFV.\textsuperscript{99} Therefore, we attempted to analyze, in accordance with 19 CFR 351.206(i), monthly shipment data for the period November 2016 through August 2017, using shipment data from Global Trade Atlas, adjusted to remove shipments reported by British Steel.\textsuperscript{100} However, we find the resulting data unusable for purposes of our “massive quantities” analysis.\textsuperscript{101} Therefore, we based our analysis for “all other” producers/exporters of wire rod in the United Kingdom on British Steel’s data.\textsuperscript{102} As a result, we determine that there was a massive increase in shipments from these remaining companies, as defined by 19 CFR 351.206(h).\textsuperscript{103}

As a result, in accordance with section 733(e)(1) of the Act, we preliminarily find that critical circumstances exist for British Steel, Longs Steel, and “all other” producers/exporters of wire rod in

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\textsuperscript{97} See Memorandum, “Antidumping Duty Investigation of Wire Rod from the United Kingdom: Critical Circumstances Analysis,” dated concurrently with this memorandum (Critical Circumstances Memorandum).

\textsuperscript{98} For the Department’s analysis, which involves business proprietary information, see Critical Circumstances Memorandum.

\textsuperscript{99} Because the rate of Longs Steel was an AFA rate, Longs Steel’s rate was not included in the determination of the “all others” rate.


\textsuperscript{101} See Critical Circumstances Memorandum.


\textsuperscript{103} See Critical Circumstances Memorandum.
the United Kingdom. We will make a final determination concerning critical circumstances when we issue our final determination of sales at LTFV for this investigation.

XIII. CURRENCY CONVERSION

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

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☑ ☐

Agree Disagree

10/24/2017

Signed by: GARY TAVERMAN
Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance