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Investigation
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
For Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of Grain-
Oriented Electrical Steel from the Czech Republic

Summary

We have analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of grain-oriented electrical steel (GOES) from the Czech Republic. As a result of our analysis, and based on our findings at verification, we have made changes to the margin calculations for ArcelorMittal Frydek-Mistek (AMFM), one of the two respondents in this case. Moreover, after considering the facts on the record as well as the comments received, we are basing the final margin for Sujani Enterprises, Ltd. (Sujani), the other respondent, on adverse facts available (AFA). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

General Comments

1. Affiliation between AMFM and Sujani
2. The Knowledge Test

Company- Specific Comments

AMFM

3. Home Market Sale Outside the Ordinary Course of Trade
4. Indirect Selling Expenses
5. Packing Expenses
6. CEP Offset

7. Electricity
8. Rolls and Roller Adjustment to Cost of Manufacturing (COM)
9. Verification Changes to AMFM's Cost Data
10. Profit

Sujani

11. Total Facts Available for Sujani
12. Other Sujani Adjustments

Background

On May 9, 2014, the Department of Commerce (the Department) published the Preliminary Determination in the LTFV investigation of GOES from the Czech Republic.¹ The period of investigation (POI) is July 1, 2012, through June 30, 2013. In May and June 2014, the Department conducted sales verifications at the offices of the two mandatory respondents, AMFM and its U.S. affiliate ArcelorMittal International America LLC (AMI) and Sujani, in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act). In June 2014, the Department also conducted a cost verification of AMFM. No interested party requested a hearing.

We invited parties to comment on the Preliminary Determination. On July 28 and August 4, 2014, the domestic industry,² AMFM, and Sujani submitted case and rebuttal briefs, respectively. Based on our analysis of the comments received, as well as our findings at verification, we recalculated the weighted-average dumping margin for AMFM from the Preliminary Determination. For Sujani, based on our analysis of the comments received, as well as our finding at verification that this company was unable to substantiate its reported sales data, we have based the final dumping margin for this company on AFA.

Scope of the Investigation

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Excluded are flat-rolled products not in coils that, prior

¹ See Grain-Oriented Electrical Steel From the Czech Republic: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 26717 (May 9, 2014) (Preliminary Determination).

² The domestic industry includes AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (i.e., the parties filing the petition), as well as one additional domestic interested party, the International Union, United Automobile, Aerospace, and Agricultural Implemental Workers of America (UAW).

to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (i.e., laminations).

Margin Calculations

We calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology stated in the Preliminary Determination,³ except as follows:

- We revised our margin calculations for AMFM to take into account our findings from the sales and cost verifications.⁴ See Comments 4 and 9 for further discussion of certain of these changes.
- We based AMFM's packing expenses on AMFM's revised packing expenses calculation, which is derived from actual per-ton coil weights and POI packing expenses on the record.⁵ See Comment 5.
- We revised AMFM's cost of production adjustment calculation for rolls and rollers to use AMFM's COM in the denominator instead of cost of goods sold (COGS). See Comment 8.

Discussion of the Issues

General Comments

Comment 1: *Affiliation between AMFM and Sujani*

During the POI, AMFM sold GOES to the U.S. market in two ways: 1) via an affiliated U.S. reseller, ArcelorMittal International (AMI); and 2) direct to U.S. customers. AMFM also sold GOES to the U.S. reseller Sujani, which in turn shipped some of this merchandise to the United States and the remainder to other countries. Both AMFM and Sujani maintain that AMFM has no knowledge of the market to which specific shipments of its GOES are destined at the time of sale to Sujani. In the Preliminary Determination, we treated AMFM and Sujani as unaffiliated parties, and we assigned each a separate dumping margin.

³ See Preliminary Determination, 79 FR at 26717, and accompanying Preliminary Decision Memorandum at pages 10-16.

⁴ See Memorandum to the File regarding "Verification of ArcelorMittal Frýdek-Místek in the Less-Than-Fair-Value Investigation of Grain-Oriented Electrical Steel from the Czech Republic," dated July 3, 2014 (AMFM Sales Verification Report) at page 2 and Exhibit 1 for discussion of an adjustment to shipment date for AMFM's U.S. direct sale and at pages 25-26 and Exhibit 28 for discussion of an adjustment to AMFM's indirect selling expenses; see also Memorandum to the File regarding "Verification of the Cost Response of ArcelorMittal Frýdek-Místek in the Antidumping Duty Investigation of Grain Oriented Electrical Steel from The Czech Republic," dated April 22, 2014 (Cost Verification Report) at pages 2, and 21-22; see also Memorandum to the File regarding "Verification of ArcelorMittal International America LLC in the Less-Than-Fair-Value Investigation of Grain-Oriented Electrical Steel from the Czech Republic," dated June 11, 2014, at pages 2 and 3.

⁵ See id. at pages 25-27 and Exhibit 30 and AMFM's July 28, 2014, Case Brief (AMFM Case Brief) at Attachment 1.

The domestic industry contends that this treatment is incorrect because record evidence demonstrates that AMFM and Sujani are affiliated via a close supplier relationship.⁶ According to the domestic industry, Sujani is affiliated with AMFM because it had both the ability to control, and actually exercised control, over the GOES AMFM produced, the cost of AMFM's GOES, and the prices AMFM charged Sujani. Based on the alleged affiliation, the domestic industry argues that the Department should classify Sujani's U.S. resales of AMFM's GOES as CEP sales of AMFM and calculate a single dumping margin for the two companies.⁷

The domestic industry argues that, in determining whether parties are affiliated, the legislative history behind section 771(33) of the Act leads the Department to look not only at ownership between companies, but also control. The domestic industry contends that the Department's regulations echo the legislative history, but require that the relationship have the potential to impact production, pricing, or cost of the subject merchandise.⁸ Accordingly, the domestic industry contends that the Department should analyze whether circumstances exist in this case which put Sujani or AMFM in a position to exercise restraint or direction over the other to the extent that one becomes reliant on the other.⁹

According to the domestic industry, once the Department conducts this analysis, it will find that AMFM and Sujani are affiliated on two bases: through a debt-financing scheme and via a close-supplier arrangement. With respect to debt-financing, the domestic industry finds it particularly significant that Sujani paid for its purchases of GOES in advance.¹⁰ The domestic industry alleges that these "massive" advance payments provided AMFM with the working capital to finance its production,¹¹ a fact particularly relevant given AMFM's and ArcelorMittal Flat Carbon Europe's (FCE) losses in recent years. The domestic industry speculates that this arrangement (albeit in a different form) is a continuation of a prior arrangement¹² between the companies, and that the existence of both arrangements reveal the respondents' long history of interdependency.

The domestic industry maintains that the Department should consider Sujani's advance payments to be de facto loans to AMFM, and it further questions where Sujani obtained the funds for these

⁶ See AMFM Case Brief at pages 3-16.

⁷ See *id.* at page 16.

⁸ See 19 CFR 351.102(b)(3).

⁹ See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1, at 838 (SAA 1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4174-75.

¹⁰ See AMFM's December 19, 2013, section A questionnaire response at page 8 (refiled by AMFM as part of its February 5, 2014, supplemental section A questionnaire at Exhibit SA-2). The domestic industry asserts that the size of these advance payments is extraordinary when considered in the context of the payments of AMFM's other customers or Sujani's 2012 total sales revenue. See the domestic industry's Case Brief at pages 12-13.

¹¹ The domestic industry alleges that AMFM's and Sujani's descriptions of their payment arrangements, as well as their position on how AMFM acquires working capital, have been confusing and inconsistent. Nonetheless, the domestic industry claims that, regardless of how AMFM characterizes its payment or working capital, AMFM and Sujani collaborated closely with each other by means of complicated commercial arrangements that are typical of affiliated parties.

¹² The details of AMFM's and Sujani's history are not public in nature. See the domestic industry's Case Brief at page 9 for the details of its argument.

loans, given that Sujani's balance sheet showed a significant accounts payable balance.¹³ The domestic industry attempts to answer this question by speculating that another ArcelorMittal group member may have provided Sujani with the money to fund AMFM's production, again demonstrating the interdependency between the companies.

According to the domestic industry, the Department has previously encountered similar financing arrangements, and it has found these arrangements to be not at arm's length. The domestic industry contends that, in market economy cases, the Department adjusts the producer's net financial expense in the cost of production (COP).¹⁴ The domestic industry notes that in non-market economy cases, the presence of such dealings may disqualify a company's financial statements for use as surrogate values.¹⁵ The domestic industry asserts that this precedent, coupled with AMFM's request to treat its advanced payment relationship with Sujani as proprietary (something unaffiliated companies would not request), undermines AMFM's and Sujani's claim that they are unaffiliated.

With respect to the issue of close-supplier relationship, the domestic industry bases its conclusion that this relationship exists on the following facts: 1) Sujani is a long-term customer; 2) AMFM sold subject merchandise to Sujani at below-cost prices (even though the company as a whole has not been profitable for a number of years) and Sujani resold it at a significant mark-up; and 3) AMFM has a U.S. affiliate, AMI, to which it could have assigned a knowledgeable employee required to sell GOES for a lower commission than that realized by Sujani. According to the domestic industry, these facts in combination are not consistent with unaffiliated party transactions.

Notwithstanding the above arguments, the domestic industry contends that payment information collected during the Sujani sales verification contradicts certain payment details obtained during the AMFM sales verification. Specifically, the domestic industry alleges that Sujani's payment ledger shows that Sujani paid AMFM directly (contradicting both parties' statements that Sujani paid FCE), and it also does not show a payment for subject merchandise purchased from FCE which was recorded in FCE's books. The domestic industry argues that these facts cast doubt on whether the financial arrangements described by Sujani and AMFM accurately reflected the payment and movement of goods between them, leading the domestic industry to question whether other undisclosed entities took part in AMFM's sales of GOES to Sujani. The domestic industry contends that the Department should apply AFA to both Sujani and AMFM as a result of the tainted credibility of the record caused by these confusing financial transactions.

¹³ See Memorandum to the File from Dennis McClure, Senior Analyst and Stephen Banea, Analyst, to James Maeder, Director, Office II, Office of AD/CVD Operations regarding "Verification of Sujani Enterprises in the Less-Than-Fair-Value Investigation of Grain-Oriented Electrical Steel from the Czech Republic," dated July 16, 2014 (Sujani Sales Verification Report) at Exhibit 6.

¹⁴ See, e.g., Stainless Steel Bar From India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 52294 (September 9, 2008) (Stainless Steel Bar from India), and the accompanying Issues and Decision Memorandum at page 9.

¹⁵ See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Administrative Review: 2011-2012, 79 FR 26712 (May 9, 2014) (Wood Flooring from China), and the accompanying Issues and Decision Memorandum at Comment 22.

In summary, the domestic industry argues that AMFM and Sujani are affiliated because they are interdependent, in that AMFM needed Sujani to finance production, and Sujani needed AMFM's below-cost GOES to maintain its high profit rate. The domestic industry contends that the Department should therefore assign both respondents a single dumping rate using AFA, for the reasons noted above.

AMFM and Sujani disagree that they are affiliated, arguing that the domestic industry's allegation is inconsistent with Department precedent in this area. According to the respondents, the Department's practice is to require near exclusivity of supply before it will find that parties are affiliated by reason of control. As support for this statement, the respondents cite Washers from Korea,¹⁶ where the Department found a respondent and its largest input supplier not to be affiliated despite a high degree of cooperation between them, because there was no evidence that the suppliers could not sell to other companies, had long-term supply agreements with the respondent, or sold exclusively to it.¹⁷

The respondents contend that, as in Washers from Korea, there is no evidence on the record of this case that either AMFM or Sujani is reliant on¹⁸ (or can control¹⁹) the other. The respondents state that the Department noted at verification that Sujani's payment arrangements with FCE were not unusual, given that other FCE customers maintain this type of payment method.²⁰ Further, AMFM disputes the domestic industry's claim that Sujani provides AMFM with working capital, pointing out that AMFM only receives payment from FCE when Sujani picks up the GOES that it purchased. Finally, AMFM alleges that the Department found no evidence at the sales verification conducted at its offices in the Czech Republic to support the domestic industry's financing claims.²¹

With respect to the domestic industry's close-supplier arguments, the respondents assert that they have no contracts or binding supply agreements requiring AMFM to supply GOES to Sujani, that AMFM sold the majority of its products to other customers, and that Sujani was not AMFM's only U.S. customer. The respondents disagree that Sujani's ability to sell GOES in the United States for profit establishes reliance; rather, they contend that, to the contrary, this only shows that AMFM is not able to influence or control Sujani's pricing. AMFM further notes that Sujani does not divulge to AMFM the names of its U.S. customers, the prices it charged them, or the transportation expenses it incurred, among other things. Thus, the respondents argue that there is no basis for finding affiliation between them for purposes of the final determination.

¹⁶ See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea, 77 FR 75,988 (December 26, 2012) (Washers from Korea), and accompanying Issues and Decision Memorandum at Comment 8.

¹⁷ See id.

¹⁸ The respondents note that the SAA 1994 describes a close supplier relationship as when "the supplier or buyer becomes reliant upon another." See SAA 1994 at 838.

¹⁹ The respondents note that, under the Act, "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." See section 771(33)(G) of the Act.

²⁰ See AMFM Sales Verification Report at page 11.

²¹ The details underlying conclusion are business proprietary in nature. See AMFM's Rebuttal Brief at page 19 for further discussion.

Finally, Sujani contends that the domestic industry's argument that Sujani is "too leveraged" is internally inconsistent with its argument that Sujani is "too profitable" and, thus, the Department should not be swayed by these arguments. In any event, Sujani avers that this type of financial situation is not unusual for a service-oriented company with no production, plant, or shareholders, and it is likely that U.S. tax laws encourage this sort of financial position. With respect to the domestic industry's argument that unexplained line items in Sujani's payments ledger renders the ledger unreliable, Sujani asserts that it provided the Department unfettered access to its payments ledgers, and the Department did not examine the transactions in question. However, Sujani asserts that there was no reason for the Department to examine them, given that they were outside the POI, unrelated to sales of GOES in the United States or Mexico, or associated with real estate transactions.

Department's Position:

After analyzing the evidence on the record with respect to this issue, we continue to find that AMFM and Sujani are not affiliated within the meaning of section 771(33)(G) of the Act. As explained more fully below, there is no evidence on the record that a debt-financing arrangement existed between the parties during the POI. Moreover, we find that the business dealings between AMFM and Sujani fail to reach the level of a close-supplier relationship.

In accordance with section 771(33) of the Act, affiliated persons are: (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, controlled by, or holding with power to vote, five percent or more of the 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. To determine affiliation between two companies, the Department must find that at least one of the criteria above is applicable.

Section 771(33) of the Act further provides that "{f}or purposes of this paragraph, 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." The Department's regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, the Department will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing, and, (iv) close supplier relationships. Control between persons may exist in close supplier relationships in which either party becomes reliant on the other.²² With respect to close supplier relationships, the Department has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other. Only if such reliance exists does the Department then determine whether one of the parties is in a position to exercise restraint or direction over the other.²³ The Department will not, however, find affiliation on the

²² See, e.g., SAA 1994 at 838.

²³ See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) (Wood Flooring LTFV), and accompanying Issues & Decision Memorandum at Comment 21.

basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁴

During the POI, AMFM was one of Sujani's main suppliers of steel products, and its sole supplier of GOES; moreover, Sujani was one of AMFM's major customers. However, we do not find that these facts alone demonstrate "reliance" for purposes of finding affiliation through control under section 771(33)(G) of the Act. There is no evidence on the record that AMFM could not look to other buyers of its goods, nor is there evidence that Sujani could not sell products manufactured by other producers.²⁵ In fact, the evidence clearly shows that both parties did so, because AMFM sold GOES not only to numerous home market customers but also to other customers in the United States besides Sujani,²⁶ and Sujani sold merchandise not produced by AMFM.²⁷ As a result, we conclude that any appearance of closeness arising from the relationship between Sujani and AMFM is not the result of exclusive dependence on Sujani by AMFM (or vice versa). Rather, it is the result of the long-standing history of commercial transactions between the two companies. The Department's determination is consistent with the Court of International Trade's (CIT) decision in TIJD²⁸ where the Court acknowledged that a close supplier relationship does not exist, even where one company sells 100 percent of its merchandise to the other, if the supplier is free to sell to other customers and there is no record evidence that the customer had the ability to exercise restraint or direction over its supplier.

We also disagree with the domestic industry that Sujani or AMFM is able to control the other or that the parties are interdependent. With respect to control, we note that there are no selling or supply agreements between the two companies,²⁹ and all transactions between them are limited to the sale or purchase of GOES. Further, we find no linkage between AMFM's and Sujani's pricing practices in this case and, thus, we disagree that these practices provide any basis to deem the parties affiliated.³⁰ The fact that AMFM may sell to Sujani at below-cost prices and that Sujani resells the merchandise at a profit³¹ is not a clear indication of affiliation, despite the domestic industry's claim to the contrary. Rather, the record establishes that AMFM is not involved in the setting of Sujani's resale prices at all, given that it does not know the destination of the GOES that it sells to Sujani (see Comment 2, below), nor does it know the identity of Sujani's customers or the prices that Sujani charges to them.

²⁴ See 19 CFR 351.102(b)(3).

²⁵ See Certain Oil Country Tubular Goods From Taiwan: Final Determination of Sales at Less Than Fair Value, 79 FR 41979 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 1 (finding parties not affiliated because the buyer could, and did, look to other unaffiliated suppliers of the input).

²⁶ See AMFM's December 19, 2014, section A questionnaire response at Exhibit A-1.

²⁷ See Sujani Sales Verification Report at Exhibit 6.

²⁸ See TIJD, Inc. and Palm Beach Home Accents, Inc. v. United States, 366 F. Supp. 2d 1286, 1299 (CIT 2005) (TIJD) ("Commerce reasonably concluded that Fay Candle {(the supplier)} was not bound to only sell the subject merchandise to TIJD {(the customer)}").

²⁹ See, e.g., AMFM Sales Verification Report at page 9.

³⁰ See TIJD, 366 F. Supp. 2d at 1300 (noting the Department's finding that the customer did not set the price of sales between the two companies, and holding that the customer failed to demonstrate that the supplier relied on the customer for decisions concerning the production, pricing or cost of the subject merchandise).

³¹ That said, we note that the Department found that Sujani sold GOES in its third country market at below-cost prices, and, thus, it did not make "extraordinary" profits on every sale during the POI. See Preliminary Determination at page 21.

More generally, we disagree that a high degree of profitability in and of itself is sufficient to render a reseller reliant on a supplier or to indicate that the supplier is in control of the reseller's actions. Many companies make high profits, and the Department does not consider them to be affiliated with their suppliers as a result. The same conclusion holds true for the existence of below-cost sales. While the domestic industry posits that AMFM's decision to sell to Sujani at below-cost prices must result from Sujani's ability to exercise undue influence on AMFM, the domestic industry has offered no actual evidence to support this supposition.

With respect to the domestic industry's arguments that Sujani is in a position to control AMFM via a debt-financing arrangement, we similarly find that there is no evidence on the record supporting such an arrangement. During the course of this investigation, we found that Sujani makes advance payments to FCE to cover its purchases of GOES from FCE, and FCE, in turn, uses these funds to pay AMFM for the GOES produced for Sujani.³² These payment arrangements are not unusual or unique to Sujani; FCE and AMFM have similar pre-payment arrangements with other customers.³³ Further, we disagree that these pre-payments are de facto loans to AMFM which AMFM uses to finance its working capital. While in theory any pre-payment could be characterized as a de facto "loan," the size of the advanced payments here are sufficient to fund AMFM's production of GOES for sale to Sujani, but not sufficient to fund the production of the company as a whole.³⁴

Similarly, the record contains no evidence of formal debt-financing between AMFM and Sujani. Specifically, we found no loans from Sujani to AMFM on either company's balance sheet.³⁵ Moreover, during the sales verification conducted at AMFM, we reviewed the Acelor Mittal Group's loan policy and noted that this policy does not support the domestic industry's allegation of debt financing.³⁶

Further, we disagree that the cases cited by the domestic industry are relevant. In Stainless Steel Bar from India, the Department adjusted a respondent's production costs to include imputed financing expenses associated with interest-free loans made by an affiliate.³⁷ In Wood Flooring from China, the Department did not rely on the financial statements of potential surrogate producers because they showed non-interest bearing loans from shareholders.³⁸ However, in

³² See AMFM Sales Verification Report at pages 9-10 (where AMFM explained that GOES is not produced until it verifies with FCE that Sujani can cover payment for the finished merchandise). See also id. at Exhibit 23, demonstrating this payment arrangement for various sales transactions examined at verification.

³³ See id. at page 11. The Department notes that the domestic industry appears to misunderstand the record when it references the sum of Sujani's advance payments. Instead of a single payment, the amount of Sujani's advance payment references the cumulative amount on a given day. Thus, the payments are not in fact "massive." See id. at Exhibit 4.

³⁴ See, e.g., AMFM Sales Verification Report at 11 (showing that AMFM received payment covering a particular invoice) and pages 6 and 7 of Exhibit 4 showing Sujani's advanced payments against total advanced payments from all customers.

³⁵ See id. at pages 3 and 4 and Sujani Sales Verification Report at page 5.

³⁶ See AMFM Sales Verification Report at page 10 and Exhibit 26.

³⁷ See Stainless Steel Bar from India at Comment 7.

³⁸ See Wood Flooring from China at Comment 2.

both of these cases, affiliation was established and not an issue in and of itself. Because the requirements for affiliation have not otherwise been met in this case, these cases are not on point.

Finally, we disagree that there is any merit in: 1) the domestic industry's speculation regarding Sujani's accounts payable balance; 2) its claim that information obtained at Sujani's verification contradicts information obtained at AMFM's verification;³⁹ or, 3) its arguments related to transactions not examined during the verification process at Sujani. We found no evidence during the Sujani and the AMFM verifications to support the domestic industry's arguments. To infer a relationship without record evidence, and that does not appear to exist, runs counter to the law and the Department's regulations.⁴⁰

Comment 2: The Knowledge Test

As noted above, during the POI, Sujani purchased GOES from AMFM and resold it in the North American market (i.e., Canada, Mexico and the United States) to unaffiliated customers. Prior to the Preliminary Determination, the domestic industry alleged that AMFM had knowledge at the time of sale that the GOES purchased by Sujani was destined for the United States and, thus, AMFM was the "true price setter and price discriminator" for those sales.⁴¹ After analyzing the data on the record, however, we found that all evidence on the record supports the finding that Sujani is the first company in the chain of distribution with knowledge of ultimate destination for the GOES that it resells in the United States and, thus, we found that Sujani was the potential price discriminator for sales of this merchandise, not AMFM.⁴²

The domestic industry disagrees with this finding, claiming that AMFM knew, or should have known, that the GOES in question was destined for the United States. The domestic industry bases its argument on the following "facts": 1) AMFM knew at the time of sale that Sujani was a U.S. company and, as a result, it recorded all sales to Sujani in its accounting records as U.S. sales (signifying that it was conceivable that AMFM knew the merchandise was destined for the United States); 2) AMFM sold the majority of its transactions to Sujani at below-cost prices (signifying that AMFM dumped indiscriminately throughout North America); and, 3) the respondents withheld email traffic at verification (signifying that their statements have not been

³⁹ We disagree that any of the payment information collected during the Sujani verification contradicts payment information collected during the AMFM sales verification. With regard to the argument that Sujani made payments directly to AMFM, Exhibit 6 of the Sujani Sales Verification Report contains Sujani's payment ledger for 2012. In this ledger is a payment from Sujani to "AMFM," which ties to a Sujani order and also to a sales trace performed during AMFM's verification for the sale of GOES to Sujani. The payment amount from Sujani ties to the payment amount received in the AMFM sales trace. Exhibit 6 of AMFM Sales Verification Report demonstrates that Sujani's reference to a payment to AMFM notwithstanding, the payment from Sujani went to FCE, then to AMFM from FCE. See Sujani Sales Verification Report at page 11 of Exhibit 6, page 2 of Exhibit 5, and AMFM Sales Verification Report at page 6 of Exhibit 6.

⁴⁰ With respect to the domestic industry's argument that the respondents' initial request for business proprietary treatment for their payment arrangements is suggestive of affiliation, we note that both AMFM and Sujani have since placed that information on the public record of this case. Further, we disagree that the request for business proprietary treatment for the information in question has any bearing on the issue of affiliation. A respondent is entitled to treat information as business proprietary as long as it satisfies the requirements of 19 CFR 351.304(a) and (b).

⁴¹ See, e.g., the domestic industry's March 24, March 31, and April 3, 2014, submissions.

⁴² See the Memorandum from Stephen Bailey, Senior Case Analyst, Office II, to James Maeder, Director, Office II, entitled "Antidumping Duty Investigation of Grain Oriented Electrical Steel: Allegation Involving a Particular Market Situation for Sujani," dated May 2, 2014 (PMS Memorandum).

substantiated). According to the domestic industry, if the Department continues to assign separate dumping margins to AMFM and Sujani under these circumstances, substantial potential exists for the evasion of antidumping duties. The domestic industry notes that, not only will the Department be unable to capture the dumping on the below-cost sales via a middleman dumping analysis, but other foreign producers and resellers could use this case as a road map for future dumping of their own. The domestic industry asserts that this type of circumvention is contrary to congressional intent and thus the Department should not permit it to occur.

According to the domestic industry, the Department does not need to apply its “knowledge test” here, given that it can be reasonably inferred from AMFM’s actions that AMFM had reason to know that a significant volume of its below-cost sales to Sujani would be resold in the United States. Nonetheless, the domestic industry contends that AMFM would pass the knowledge test when it is viewed in the framework of the Department’s precedent. Specifically, the domestic industry cites to Department precedent to argue that: 1) the standard for knowledge is what the producer knew or should have known;⁴³ 2) the Department looks at all facets of a case, in part to capture any middleman dumping that is occurring;⁴⁴ and, 3) in the absence of a statutory directive, the Department has the discretion to determine whether a producer knew or had reason to know that merchandise was destined for the United States on a case-by-case basis.^{45,46}

The domestic industry argues that using these precedents permits the Department to interpret and enforce the knowledge test more broadly and, thus, the Department is able to consider the complex and intertwined relationship between the two companies to find that AMFM is the true price discriminator.

Finally, the domestic industry contends that failure to assign AMFM and Sujani separate margins will adversely impact the appropriate collection of antidumping duty deposits and assessments. The domestic industry asserts that, not only would the accurate collection of deposits be complicated in a two-rate scenario, but having two rates could result in the undercutting of the Department’s current reseller practice (but in reverse). With regard to this latter point, the domestic industry asserts that, contrary to the Department’s intent in establishing this practice, AMFM would be able to sell below its costs and mask its dumping, enabling the reseller Sujani to dump further. Thus, the domestic industry contends that the Department should assign these companies a single margin in the final determination.

AMFM argues that, under the Department’s practice, it cannot be the price discriminator for Sujani’s sales in the United States because AMFM lacked specific knowledge of the ultimate

⁴³ See Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China; Final Results of Administrative Review of Antidumping Order, 55 FR 42599 (October 22, 1990) (Paint Brushes from the PRC).

⁴⁴ See Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value, 51 FR 5572 (February 14, 1986).

⁴⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan, 64 FR 15493 (March 31, 1999) (SSPC from Taiwan).

⁴⁶ The domestic industry also cites the 1979 Statement of Administrative Action (SAA 1979), HR Doc. No. 96-153, Part II, pp. 411-412 (1979) as support for its assertion that, when a producer has reason to know that its merchandise is destined for the United States, Congress intended for the Department to use “purchase price” (now export price) methodology to determine the producer’s margin of dumping on sales of that merchandise.

destination of the merchandise at the time of sale, a fact verified by the Department. AMFM notes that the Department reviewed sales-specific documentation, company email accounts,⁴⁷ and customer account folders, all without observing any customer destination information; the Department also met with employees in AMFM's Logistics Office and reviewed packing lists and other documentation with the same result.⁴⁸ AMFM maintains that the domestic industry has not disputed the Department's verification findings, record evidence, or the applicability of the facts of this case to the knowledge test.

According to AMFM, the knowledge test sets a high bar for demonstrating that a party knew, or should have known, that goods were destined for the United States.⁴⁹ AMFM contends that, under the Department's standard, the producer must have knowledge at the time of sale (*i.e.*, it knew or should have known) that specific shipments were destined for the United States;⁵⁰ a general knowledge of destination is not sufficient.⁵¹ AMFM notes that this principle was upheld by the CIT, which stated that the knowledge test was "not, whether, in theory, the merchandise could have arrived in the United States, but rather whether the {producer} knew or should have known where the merchandise was destined."⁵²

According to AMFM, the Department has squarely faced the question in previous cases as to whether a sale to one country in North America constitutes sufficient knowledge of destination, and it has consistently found that it has not.⁵³ AMFM maintains that the Department's findings in those cases did not "eviscerate the antidumping duty laws" as the domestic industry claimed, but rather they confirmed that the Department will only examine the party responsible for setting the prices to the U.S. market, in accordance with the Act. Similarly, AMFM argues that

⁴⁷ AMFM contends that the domestic industry must have missed this passage in the AMFM Sales Verification Report, given that they contended that AMFM failed to supply this information.

⁴⁸ See AMFM Sales Verification Report at pages 10-11. According to AMFM, the Department's review of these types of documents was consistent with its practice. See Oil Tubular Goods from Canada: Final Results of Antidumping Duty Administrative Review, 55 FR 50739 (December 10, 1990) (OCTG from Canada), and accompanying Issues and Decision Memorandum at Comment 3; and Certain Small Business Telephone Systems and Subassemblies Thereof from Korea: Final Determination of Sales at Less than Fair Value, 54 FR 53141 (December 27, 1989) (SBTS from Korea).

⁴⁹ To support this assertion, the domestic industry cites Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 55 FR 42599 (October 22, 1990) (Paint Brushes from the PRC).

⁵⁰ See Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review, 76 FR 36086 (June 21, 2011) (CWP from Mexico), and accompanying Issues and Decision Memorandum at Comment 1.

⁵¹ See Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

⁵² See Timken Co. v. United States, 166 F. Supp. 2d 608, 633-34 (CIT 2001). See also *e.g.*, Wonderful Chemical Industrial, Ltd. v. United States, 259 F. Supp. 2d 1273, 1279-80 (CIT 2003); GSA, S. R. L. v. United States, 77 F. Supp. 2d 1349, 1355 (CIT 1999); LG Semicon Co., Ltd. v. United States, 23 CIT 1074 (CIT 1999); NSK Ltd. v. Koyo Seiko Co., 190 F. 3d 1321 (Fed. Cir. 1999); Yue Pak, Ltd. v. United States, 20 CIT 495 (CIT 1996), *aff'd*, Yue Pak, Ltd. v. International Trade Administration, 111 F. 3d 142 (Fed. Cir. March 21, 1997) (Yue Pak). According to AMFM, this principle is implicit in the definition of "export price" under section 772 of the Act, which requires that the producer know that the specific merchandise would be exported to the United States.

⁵³ See Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014) (Aluminum Extrusions from the PRC); Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Duty Administrative Review, 58 FR 11211 (February 24, 1993).

assigning separate cash deposit rates to Sujani and AMFM will not defeat the purpose of the reseller policy, but will instead effectuate its purpose (i.e., to ensure that resellers do not benefit from a low rate of the producer who did not know the merchandise was destined for the United States).

Finally, AMFM disagrees that the Department may impute knowledge of dumping solely based on the existence of below-cost sales, arguing that such a claim defies logic. AMFM asserts that the domestic industry's premise is equally invalid on the grounds that it is untrue – below-cost sales must be made in substantial quantities before they are disregarded (and, thus, a producer who sells at below-cost prices may not, in fact, be dumping under the Act). Finally, AMFM notes that the Department's established practice of using the producer's actual costs plus the reseller's selling, general and administrative (SG&A) expenses⁵⁴ addresses and remedies the domestic industry's concerns that the Department must account for the full amount of dumping in its margin calculations. Therefore, AMFM contends that there is no basis to depart from the knowledge test by imputing knowledge of destination here.

Sujani also contends that the Department's preliminary finding was correct. Sujani disagrees that it failed to provide any emails between it and AMFM, claiming that it accorded the Department's verifiers full access to this email traffic. Further, Sujani maintains that the Department examined all POI emails at AMFM's verification and, thus, the Department has the required data to reject the domestic industry's arguments. Finally, Sujani asserts that there is no information on the record to contradict Sujani's certified statements that it is the first party with knowledge of ultimate destination for the GOES in question.

Department's Position:

After examining the information on the record and considering the arguments, we continue to find that, at the time that it sold GOES to Sujani, AMFM did not know the final destination of the merchandise. Thus, we disagree with the domestic industry that AMFM is the potential price discriminator for Sujani's U.S. sales.

Under section 772(a) of the Act, the basis for export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be investigated.

Under the Department's practice and court precedent, the appropriate standard for making a knowledge determination is that the producer "knew or should have known at the time of sale that the merchandise was being exported to the United States."⁵⁵ In other words, the

⁵⁴ See Elemental Sulphur From Canada: Final Results of Antidumping Finding Administrative Review, 61 FR 8239, 8251 (March 4, 1996) (Elemental Sulphur from Canada).

⁵⁵ See, e.g., Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014); Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3; see also Yue Pak, 20 CIT 495, 500 (1996), aff'd, 111 F.3d 142 (Fed. Cir. 1997).

Department's knowledge test is linked to specific sales, rather than to a company's general export practices.⁵⁶ In applying this test, the Department's practice has generally been to consider documentary or physical evidence that the party knew or should have known its goods were destined for the United States, because this type of evidence is more probative, reliable and verifiable than unsubstantiated statements or declarations.⁵⁷ This is not the only type of evidence that the Department will consider. An admission by the producer or a representative of the producer to the Department that it knew of the ultimate U.S. destination can also establish knowledge.⁵⁸ In some situations, the Department might find other evidence to be relevant to the knowledge issue. In prior determinations, for example, the Department has considered whether the relevant party prepared or signed certificates, shipping documents, contracts, or other such documents stating that the merchandise was destined for the United States.⁵⁹ The Department has also considered whether the relevant party used packaging or labeling stating that the merchandise was destined for the United States.⁶⁰ Additionally, the Department has examined whether the features, brands, or specifications of the merchandise indicated that it was destined for the United States.⁶¹

In this case, we have applied this standard, and have not found any evidence indicating that AMFM knew or should have known at the time of sale that any specific sales made to Sujani were ultimately destined for the United States.

During the course of this proceeding, the Department issued numerous supplemental questionnaires to both AMFM and Sujani regarding the issue of knowledge of destination for AMFM's sales of GOES to Sujani, and we also received various interested party submissions filed independently of supplemental questionnaires.⁶² Prior to the Preliminary Determination, we analyzed these submissions and found no evidence that AMFM knew that the shipments in question were destined for the United States. Specifically, we stated:

⁵⁶ See CWP from Mexico, at Comment 1; Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran, 70 FR 7470 (Feb. 14, 2005) (Pistachios from Iran), and accompanying Issues and Decisions Memorandum at Comment 1; Timken, 166 F. Supp. 2d at 633-34.

⁵⁷ See Wonderful Chemical Industrial, Ltd. v. United States, 259 F. Supp. 2d 1273, 1279-80 (CIT 2003).

⁵⁸ In Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part, 64 FR 69694 (December 14, 1999), the individual who had been the world-wide sales manager for the relevant company during the POR told the Department that he knew that the merchandise was destined for the United States. Customs and Border Protection (CBP) entry information corroborated the admissions of this individual. Therefore, based on this information, including the statements of admission, the Department found that the company had knowledge of the ultimate U.S. destination.

⁵⁹ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China, 64 FR 697236, 69727 (December 14, 1999).

⁶⁰ See Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review, 62 FR 66602 (December 19, 1997).

⁶¹ See, e.g., GSA, S.R.L. v. United States, 77 F. Supp. 2d 1349, 1355 (CIT 1999).

⁶² See supplemental questionnaires from the Department to AMFM dated January 30, 2014, February 5, 2014, February 11, 2014, and March 27, 2014; see supplemental questionnaires to Sujani dated February 20, 2014, March 19, 2014, and March 31, 2014; and see submissions from the domestic industry, AMFM and Sujani regarding the knowledge issue dated February 6, 2014, February 14, 2014, April 8, 2014, and April 30, 2014; see also AMFM's responses dated February 5, 2014, February 7, 2014, February 27, 2014, and April 7, 2014 and Sujani's responses dated February 18, 2014, March 14, 2014, and April 9, 2014.

AMFM and Sujani have both responded to the Department's questionnaires and complied with our requests for documentation with respect to this issue. Both parties have consistently maintained that Sujani does not disclose to AMFM the ultimate destination of the GOES it purchases in the Czech Republic beyond the fact that the merchandise will be exported to the North American market. Moreover, both parties maintain that Sujani does not inform AMFM of the names of its U.S. customers, nor are there any labeling requirements that are specific to the United States.

Contrary to the petitioners' assertions, all evidence on the record supports the finding that Sujani is the first company in the chain of distribution with knowledge of ultimate destination for the GOES that it resells in the United States. As a result, there is no basis to disregard Sujani's U.S. or third country sales, nor is there any basis to find that AMFM controlled the relevant U.S. sale for dumping purposes (and, by extension, that AMFM acted as the potential price discriminator/respondent with respect to those sales). Indeed, it is not possible for AMFM potentially to dump the GOES that it sold to Sujani in the United States if it had no knowledge that those sales would be shipped here.⁶³

We examined this issue during the sales verification at AMFM's offices in the Czech Republic. Not only did we interview numerous company officials at AMFM regarding the company's sales and shipment process for sales to Sujani, but we also conducted an exhaustive review of AMFM's records to gather information related to the question of knowledge.⁶⁴ We examined documents generated during the order and sales process and shipping documents prepared in the ordinary course of business, and we also obtained emails between FCE (AMFM's parent company and selling arm) and Sujani.⁶⁵ We found no indication that AMFM or FCE personnel knew the final destination of the GOES they sold to Sujani, and none of the documents examined at verification contained customer destination information.⁶⁶

We disagree with the domestic industry that the Department's "knew or should have known" standard is satisfied here, given the above facts. While AMFM understood that some portion of the GOES that it sold to Sujani would ultimately end up in the United States, there is no evidence on the record demonstrating that it had specific knowledge of destination at the time of sale for specific shipments.⁶⁷ It is not sufficient that Sujani is a U.S. company or that AMFM recorded sales to it in its accounting records as U.S. sales.⁶⁸ Contrary to the domestic industry's

⁶³ See PMS Memorandum at page 9 (footnotes omitted).

⁶⁴ See AMFM Sales Verification Report at pages 9 through 11 and Sales Verification Exhibits 4 through 6.

⁶⁵ See AMFM Sales Verification Report at page 11. We disagree with the domestic industry that AMFM withheld emails at verification; indeed, the record supports the opposite conclusion, given that AMFM and FCE accorded the Department full access to its email system, and we reviewed all emails in the account of FCE's selling agent responsible for sales to Sujani. See *id.*

⁶⁶ See *id.* at page 9 (stating that AMFM and FCE do not normally obtain destination information from Sujani, nor do they speak to Sujani outside of the sales process) and pages 10 and 11 (listing some of the documents examined at verification and finding that none of them contained destination information).

⁶⁷ See AMFM's December 19, 2013, section A questionnaire response at page 6.

⁶⁸ See *id.*; Timken, 166 F. Supp. 2d at 633-34.

assertions, the Department cannot infer knowledge in this situation because not all sales ultimately were destined for the United States and AMFM, according to record evidence, did not have knowledge of destination for specific sales.

As the domestic industry acknowledges, the standard for imputed knowledge, “should have known,” is high. For example, the Department imputed knowledge of U.S. destination in Fuel Ethanol from Brazil when it determined that 100 percent of the exports of fuel ethanol were to the United States during the POI.⁶⁹

Our determination that AMFM had no knowledge of destination with respect to the GOES it sold to Sujani is consistent with our finding in Paint Brushes from the PRC. In Paint Brushes from the PRC, the argument before the Department was whether, given that a large volume of sales were to the United States and produced to different country standards, the respondent should have known the brushes were destined for the United States. In that case, the Department found that the producer did not have knowledge of destination because, even though the foreign reseller ordered paint brushes made to certain standards, these standards provided no information regarding the destination.⁷⁰ Similarly, in this case, only a portion of Sujani’s sales to North America go to the United States, and there is no record evidence indicating that the standards or specifications for GOES sold in the United States differ from the specifications for GOES sold to other countries.

Further, we disagree with the domestic industry that, because AMFM sold certain GOES to Sujani at below-cost prices, it is appropriate to impute knowledge of destination to AMFM. It is axiomatic that AMFM cannot dump its merchandise in the United States if it does not know that the merchandise is destined for the United States. Thus, in determining whether AMFM had knowledge of U.S. destination, it is immaterial that AMFM sold GOES to Sujani at below-cost prices in North America.⁷¹

For the same reason, we also disagree that, by assigning Sujani a margin, we are permitting AMFM to mask dumping in the United States. As noted above, if AMFM does not know that particular sales of GOES to Sujani are destined for the United States, it cannot by definition dump these sales in the United States. Moreover, while we recognize the domestic industry’s concern regarding middleman dumping, this concern has been adequately addressed here. As we explained in the PMS Memorandum,⁷² the vehicle for capturing any unfairly traded low prices at the producer level is a cost investigation, and the Department initiated a cost investigation for Sujani’s sales to Mexico in April 2014. Had we found it appropriate to continue to calculate a dumping margin for Sujani in the final determination (see Comment 11, below), we would have

⁶⁹ See Fuel Ethanol from Brazil, 51 FR at 5573-74.

⁷⁰ See Paint Brushes from the PRC, at Comment 1.

⁷¹ The Department has a long history of relying on sales to Canada and Mexico as valid comparison markets. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004); Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico, 77 FR 76288 (December 27, 2012). Thus, we disagree with the domestic industry’s implicit argument that the United States, Canada, and Mexico should be treated as a single market and that knowledge of destination to North America is the same as knowledge of destination to the United States.

⁷² See PMS Memorandum at pages 7-8.

determined the extent to which Sujani was selling GOES in Mexico at prices below AMFM's COP (subject to the conditions set forth in section 773(b) of the Act). Then, we would have disregarded those sales and, instead, based NV on above-cost Mexican sales or CV, as appropriate. In this case, however, we are basing Sujani's final dumping margin on AFA and, thus, this concern is no longer present.

Finally, we disagree with the domestic industry that the assignment of separate margins to AMFM and Sujani will: 1) hinder the appropriate collection of antidumping duty deposits in this case; or 2) undercut the Department's reseller practice. Because both AMFM and Sujani made U.S. sales during the POI (and were the price discriminators for those sales), it is appropriate to assign them individual cash deposit rates; thus, the collection of respondent-specific cash deposits is not only warranted, but appropriate. Further, the assignment of individual cash deposit rates is consistent with the Department's current reseller policy. This policy is intended to prevent entries of subject merchandise into U.S. customs territory made by non-producing resellers (like Sujani) from being liquidated at the producer's rate when the producer (like AMFM) had no knowledge the sales were made to the United States. In this case, assuming that an antidumping duty order is issued, it would not be appropriate to assess duties on Sujani's entries of GOES at AMFM's rate if AMFM had no knowledge that the GOES was destined for the United States.

After examining the facts in this case, we continue to find that AMFM did not know or have reason to know that specific shipments to Sujani ultimately were destined for the United States. Consequently, we have continued to treat Sujani as the potential price discriminator for those sales for purposes of the final determination.

Comment 3: *Home Market Sale Outside the Ordinary Course of Trade*

AMFM argues that the Department should exclude one of AMFM's reported home market sales from the final determination as outside the ordinary course of trade pursuant to section 773 of the Act. AMFM maintains that, while the sale is neither below cost nor made to an affiliate, the Department "shall" consider other circumstances in determining whether a sale is outside the ordinary course of trade. AMFM contends that under the SAA 1994,⁷³ the Department may consider sales outside the ordinary course of trade when sales are considered "not ordinary" when compared to sales or transactions made in the same market. AMFM states that the Department's regulations allow it to disregard sales having characteristics that are "extraordinary" for the market in question.⁷⁴

AMFM contends that the Department should look at the following criteria when making a determination of whether the sale in question is outside the ordinary course of trade: profit, price, volume, whether the product is a specialty product or has unusual terms of sale, and whether the sale is used to match to sales in the United States.⁷⁵ According to AMFM, although

⁷³ SAA 1994 at 834, reprinted in 1994 U.S.C.C.A.N. 4040, 1471.

⁷⁴ See 19 CFR 351.105(b)(35).

⁷⁵ AMFM cites to Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, 52 FR 30700, 30704 (August 17, 1987) (TRBs from Japan) and Notice of Final

the Department failed to analyze AMFM's claim in the Preliminary Determination, it cannot continue to do so for the final determination, because the analysis is required under the Act, the regulations, and the Department's past practice. AMFM claims that, when the Department undertakes the required analysis, it will find that the sale in question is outside the ordinary course of trade with respect to each of the criteria noted above.

Specifically, AMFM maintains that the profit⁷⁶ and price of the sale in question are aberrationally high when compared to other POI home market sales, the quantity sold is "significantly" lower than the average home market sales quantity, the width of the subject merchandise in question was a specialty size unique in the home market, and there were no U.S. sales of an identical width. Additionally, AMFM contends that the sale in question was the only one to this customer, and AMFM incurred a substantial opportunity cost due to the retooling required to produce this merchandise. Thus, AMFM contends that, because there are no other sales in the either the U.S. or home market databases that are similar to the sale in question, the Department should exclude this sale from its final analysis.

The domestic industry disagrees that the sale in question is outside the ordinary course of trade. According to the domestic industry, the primary distinguishing characteristic of this sale was that it was profitable.⁷⁷ The domestic industry characterizes the sale as "value-added production," and it claims that this is precisely the type of sale that AMFM needs to sell its products at a profit. The domestic industry argues that it cannot be outside the ordinary course of trade to operate in a manner where a degree of specialized services permits a profitable return, as that result would "turn the statute on its head." In any event, the domestic industry maintains that significant below-cost sales to an affiliated party should not be the benchmark for making this determination.

The domestic industry also contends that the sale is not unusual with respect to any of the other criteria proposed by AMFM. Specifically, the domestic industry notes that: 1) AMFM made other home market sales with unique prices, and the small number of home market sales make this type of price analysis difficult (especially when considering that most home market sales were made to an affiliate); 2) AMFM made other low-volume sales in the home and U.S. markets, comparing a sales-specific weight to average weights distorts the analysis, and (as with price) the limited pool of sales to unaffiliated home market sale customers does not provide a meaningful benchmark; 3) the record does not contain actual width information for AMFM's home market sales apart from those in sales trace documents, and there is no indication of what widths are the Czech commercial norm; 4) AMFM's argument on its retooling cost makes no sense, given that AMFM would have had to retool for other GOES products; and, 5) there is no

Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon- Quality Steel Products from Brazil, 64 FR 38756, 38770 (July 19, 1999) (Hot Rolled Steel – Brazil) for these criteria.

⁷⁶ AMFM argues that the profit margin of the sale is relevant because: 1) abnormally high profits denote abnormally high prices, which are not an acceptable NV when, using constructed value (CV), according to the SAA 1994 (and, thus, it follows that abnormally high-priced sales should not be used when calculating priced-based NV); and 2) just as sales with abnormally low profits (*i.e.*, sales below cost) are excluded, sales with abnormally high profits should also be excluded.

⁷⁷ The domestic industry notes that AMFM had significant losses in 2011 and 2012, and many of its home market sales were made at below-cost prices.

record support for AMFM's claims that it only ever made one sale to this customer and that it made a similar number of sales to another customer during the POI.⁷⁸

Finally, the domestic industry contends that TRBs from Japan is not on point as that case is not only dated, but it also only dealt with small quantity sales, most of which were returned prior to invoicing. Thus, the domestic industry contends that the Department should continue to include this sale in its analysis for purposes of the final determination.

Department's Position:

The Department's margin analysis program retains any home market sales that are identical or similar to U.S. sales for matching purposes. Sales that are retained are weight-averaged and compared to similar or identical weight-averaged U.S. sales to calculate the margin. Sales that are not similar or identical are not used in the program, except for the calculation of CEP profit.⁷⁹ For the final determination, there are both identical and similar home market sales which are matched to U.S. sales and used to calculate a margin; none of those identical or similar sales is the sale in question. Because the Department's margin analysis program does not use the home market sale in question to determine NV and calculate AMFM's margin, this issue is moot.

As AMFM acknowledged in its case brief:

It is true that in the *Preliminary Determination* margin calculation using price-to-price comparisons, this particular sale was not used because it did not match to any U.S. sale and, accordingly, did not contribute to a finding of dumping. That fact does not obviate the need for the Department to conduct the type of analysis mandated by the statute, the Department's regulations, and the Department's practice and exclude this sale from consideration.⁸⁰

In its case brief AMFM quotes from the statute and Department regulations that govern the factors that the Department may use in its analysis, but does not cite anything that requires the Department to conduct this analysis if the sale(s) at issue are not matched to U.S. sales and, thus, are not used to calculate a margin.⁸¹ Section 773 of the Act defines NV as "the price at which the foreign like product is first sold...for consumption in the exporting country...in the ordinary course of trade...." However, the Act does not require that the Department conduct an outside-the-ordinary-course-of-trade analysis for sales that are not used to calculate a respondent's margin, nor is there any statement of such an intention in the SAA.⁸²

⁷⁸ The domestic industry contends that the best one can infer is that this was the only sale to the customer during the POI.

⁷⁹ The Department notes that the sale in question has no effect on the CEP profit calculation.

⁸⁰ See AMFM's Case Brief at footnote 5 of page 6.

⁸¹ See *id.* at pages 7-9.

⁸² The SAA 1994 identifies examples where the Department may find sales outside the ordinary course of trade but does not indicate Congress' intention that the Department conduct an analysis on sales that are not used to calculate a respondent's margin simply because one is requested. See the SAA 1994 at 834; 1994 U.S.C.C.A.N. at 4171 ("Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have

Section 351.102(b)(35) of the Department’s regulations defines “ordinary course of trade,” stating only that:

The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question.

The regulations make clear that the Secretary “may” consider sales or transactions outside the ordinary course of trade based on extraordinary characteristics, but they do not require this analysis. Because the home market sale at issue is not matched to any U.S. sale and, therefore, does not contribute to a finding of dumping, there is no requirement that the Department examine whether the sale is outside the ordinary course of trade. Therefore, we are not conducting this analysis for purposes of the final determination.

Comment 4: Indirect Selling Expenses

At verification, AMFM notified the Department that its reported indirect selling expenses incurred in the Czech Republic were incorrect, because they included certain items in both the numerators and denominators that were unrelated to the sale of GOES.⁸³ As a result, at verification AMFM provided a calculation worksheet showing revised indirect selling expense ratios for both home market and U.S. sales.⁸⁴

AMFM argues that the Department should use the revised ratios in its calculations for the final determination because the Department verified that they are accurate. AMFM maintains that acceptance of these ratios is consistent with Department precedent, which is to include only those expenses associated with sales of subject merchandise.⁸⁵

The domestic industry requests that, if the Department uses the revised ratios, it confirm that: 1) AMFM properly excluded from the denominators any sales values unrelated to the sales of GOES; and, 2) expenses related to AMFM’s parent company, ArcelorMittal Ostrava A.S. (AM Ostrava), were, in fact, captured in AMFM’s reported cost of production.

Department’s Position:

At verification, we discussed with company officials each of the changes proposed by AMFM to its indirect selling expense calculations.⁸⁶ AMFM claimed that these changes result in a more

characteristics that are not ordinary as compared to sales or transactions generally made in the same market.” (emphasis added)).

⁸³ See AMFM Sales Verification Report at page 23.

⁸⁴ See AMFM Sales Verification Report at Exhibit 30 and AMFM’s Case Brief at Attachment 1.

⁸⁵ See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31961 (June 5, 2008); see also United States Steel Corporation v. United States, 712 F. Supp. 2d 1330, 1335 (CIT).

⁸⁶ See AMFM Sales Verification Report at pages 23-25 and Exhibit 29.

accurate indirect selling calculation, as they remove amounts related to non-subject merchandise from the calculation. After reviewing the nature of these amounts in AMFM's SAP system, we were satisfied that these changes remove only those expenses related to non-subject merchandise or revenues received for miscellaneous (non-product-related) activities.⁸⁷ Thus, for purposes of the final determination, we have used the revised indirect selling expense ratios obtained at verification in our final calculations.

With regard to the domestic industry's concerns, we disagree that it would be appropriate to exclude sales of non-subject merchandise from the denominator altogether. The expenses in the numerators of the calculations pertain to sales of GOES and non-GOES products equally because they are indirect in nature and, thus, it is appropriate to include sales of GOES and non-GOES in the denominators. However, we confirm that revenue unrelated to sales of AMFM's products was properly excluded from the calculation. For a description of the items excluded from the denominators, see the AMFM Sales Verification Report at page 24.

Finally, with respect to AM Ostrava's expenses, we confirmed at verification that these expenses are not related to selling activities and that all other non-selling expenses are captured in general and administrative expenses.⁸⁸

Comment 5: Packing Expenses

AMFM computed its U.S. and home market packing expenses using the packing material costs recorded by one of its production departments. For U.S. packing, AMFM reported the average per-ton cost incurred by this department (*i.e.*, it divided the total POI packing expenses by the total quantity of merchandise packed by the company).⁸⁹ For home market packing, however, AMFM used a different methodology to compute packing expenses: 1) it calculated the per-ton cost to pack an average-sized coil in the overseas market, using the materials specific to exported products; 2) it performed the same calculation for an average-sized coil sold in the home market; 3) it computed a ratio of these two figures; and, then, 4) it applied the ratio to the average cost and reported the resulting figure in the home market sales listing.⁹⁰

AMFM argues that the Department verified all of the essential elements of the above calculation, albeit with some minor corrections. AMFM notes that the Department questioned the coil weights used to compute the allocation ratio for home market expenses (which were based on estimates) and, thus, it provided in its case brief a chart compiling all coil-weight information contained on the administrative record. AMFM uses this chart to argue that its coil-weight allocation is reasonable and does not cause distortions, because incorporating the more comprehensive information into its calculation yields only a slight difference in the reported expenses. According to AMFM, the domestic industry's contention (*see below*) that the Department found AMFM's home market packing expenses to be "incorrectly overstated" and its U.S. packing expenses "greatly understated" is an exaggeration. Therefore, AMFM argues

⁸⁷ *See id.* at pages 23-24.

⁸⁸ *See id.* at pages 24 and Cost Verification Report at CVE-9.

⁸⁹ *See* AMFM Sales Verification Report at page 25.

⁹⁰ *See id.* at pages 25-26.

that the Department should continue to rely on the packing expenses used in the Preliminary Determination.

The domestic industry maintains that the Department found at verification that AMFM significantly understated its home market packing expenses, and overstated its U.S. packing expenses. The domestic industry asserts that the Department found that the reported expenses were distorted and, thus, there is no justification for it to disregard the verification findings and use inaccurate amounts instead. Further, the domestic industry asserts that the courts have consistently upheld the Department's established policy with respect to the burden of proof in an administrative proceeding, and under this policy, AMFM should be required to submit accurate data. Therefore, the domestic industry argues that the Department should base the packing figures used in the final determination on the information collected at verification and other actual per-ton coil weights and POI packing expenses on the record.

Department's Position:

At verification, the Department reviewed AMFM's calculation of home market and U.S. packing expenses. After concluding this review, we expressed the following concerns in the AMFM Sales Verification Report:

We noted that AMFM's U.S. packing expenses were based on the average of its POR {sic} costs (even though AMFM used more materials to pack products for shipment overseas). We also noted that AMFM's home market packing expenses were calculated using estimated coil sizes and material consumption amounts, both of which AMFM was unable to support at verification.⁹¹

Therefore, we disagree with AMFM that we verified "all of the essential elements" of its calculation. We appreciate that, in its case brief, AMFM provided a more complete analysis of the coil weight data on the record of this investigation than was undertaken at verification, and we agree that this analysis shows that AMFM's estimates are not unreasonable. However, this analysis does nothing to address our primary concern that AMFM's reporting methodology shifts the expenses away from overseas sales to home market ones. As noted above, AMFM used more packing materials to pack merchandise for export than it did to pack merchandise for sale in the home market. While AMFM adjusted its average expenses down in an attempt to account for this fact pattern in the home market, it did not make a corresponding adjustment upward to the average to account for the additional U.S. costs. For this reason, we disagree with AMFM that we should continue to use the packing expenses as reported in its responses.

We also disagree with the domestic industry that it is appropriate to rely on the revised packing expenses that are reflected in the AMFM Sales Verification Report.⁹² While these expenses incorporate the Department's specific findings with respect to certain inaccuracies observed at

⁹¹ See id. at page 2.

⁹² See AMFM Sales Verification Report at Attachment 1 (revised packing expense calculation worksheet).

verification,⁹³ they similarly do not account for the under-reporting of U.S. expenses and over-reporting of home market expenses.

After reviewing the packing data on the record, we find that the most accurate calculations are the revised figures presented in AMFM's case brief, not the figures in AMFM's responses, which AMFM argues we should use. The revised figures in AMFM's case brief are based on data collected at verification and other actual per-ton coil weights and POI packing expenses on the record.⁹⁴ Although these figures are based on the anticipated cost to pack a ton of GOES, they are the best approximation of market-specific amounts contained on the record of this investigation. Moreover, they are based on actual packing expenses incurred, and coil sizes sold, during the POI. Therefore, we have relied on these expenses for purposes of the final determination.

Comment 6: CEP Offset

In the Preliminary Determination the Department analyzed the selling functions in both the U.S. and home markets for AMFM's sales, finding no significant differences in selling activities performed in both markets. Therefore, the Department did not grant AMFM a CEP offset.⁹⁵

AMFM argues that it is entitled to a CEP offset under both the Act and the Department's regulations⁹⁶ because its affiliate AMI performs most of the selling functions in the United States for AMFM's CEP sales. According to AMFM, the Department completely overlooked AMI's role when it analyzed AMFM's U.S. channels of trade. Further, AMFM argues that, because its sales channel through AMI is more advanced than its home market sales channel, and because the data do not allow the Department to make a level of trade adjustment, a CEP offset is warranted. AMFM claims that the Department has made a CEP offset when similar facts have occurred in other cases.⁹⁷

The domestic industry contends that AMFM has misapplied the statutory provision governing CEP offsets. According to the domestic industry, the Act requires that home market sales be made at a more advanced level of trade than in United States.⁹⁸ The domestic industry cites two cases, one in which the Department granted a CEP offset and one in which it did not, to support its contention.⁹⁹ Thus, the domestic industry argues that a CEP adjustment is not warranted here.

⁹³ See id. at page 26-27 discussing changes to the reported throughput and material costs.

⁹⁴ See AMFM Case Brief at Attachment 1, page 1 lines F and G and AMFM Sales Verification Report at pages 25-27 and Exhibit 30.

⁹⁵ See Preliminary Determination, and accompanying Decision Memorandum at pages 15-18.

⁹⁶ See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412(c)(2).

⁹⁷ See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 73 FR 52267, 52271 (September 9, 2008), unchanged in Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009).

⁹⁸ See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1305 (CAFC 2001) (Micron) (citing 19 U.S.C. § 1677b(a)(7)(B)).

⁹⁹ See Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less

However, the domestic industry contends that, if the Department agrees with AMFM that the CEP level of trade is significantly more advanced than AMFM's home market level of trade, the Department should adjust NV upward to introduce level of trade parity.

Department's Position:

The Department agrees with the domestic industry and has not granted a CEP offset to AMFM for purposes of the final determination. Section 773(a)(7)(B) of the Act and section 351.412(f) of the Department's regulations govern the CEP offset. Section 773(a)(7)(B) states, in relevant part:

When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses¹⁰⁰

Similarly, 19 CFR 351.412(f)(ii) provides that the Department may only make a CEP offset adjustment when the Department determines that NV is at a "more advanced level of trade than the level of trade of the constructed export price."

AMFM does not argue that NV is at a more advanced level of trade than the level of trade of its CEP sales; rather, it argues just the opposite, stating that sales through AMI are made at a more advanced level of trade than AMFM's home market sales. For this reason, and because there is no record evidence to rebut our finding in the Preliminary Determination that no CEP offset was warranted, we continue to find that it is not appropriate to make a CEP offset in this final determination.

Finally, we disagree with AMFM that it is appropriate to consider AMI's role in the sales process or consider its selling activities in our level of trade analysis. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade 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. This interpretation of the Act has been upheld by the CAFC.¹⁰¹

Comment 7: Electricity

For the Preliminary Determination, the Department used the average of two publicly-available sources of electricity as benchmarks for the market price used to test affiliated purchases of

Than Fair Value, 75 FR 45097 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 2 and 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).

¹⁰⁰ See section 773(a)(7)(B) of the Act (emphasis added).

¹⁰¹ See Micron, 243 F.3d at 1314-16.

electricity: 1) the POI cost of electricity for the Czech industry published by the International Energy Agency (IEA); and, 2) the average Czech exchange value of electricity from the *Power Exchange Central Europe* (PECE).¹⁰² At the cost verification, AMFM provided two other sources for market price: 1) a transaction between its affiliated supplier of electricity and an unaffiliated distributor of electricity, provided prior to verification; and, 2) a transaction between its affiliated supplier and an industrial company, provided at verification.¹⁰³

The domestic industry argues that the data obtained prior to verification, regarding sales of electricity by AMFM's affiliate, AM Ostrava, to an unaffiliated distributor of electricity, should not be relied upon. Furthermore, the domestic industry states that the PECE data submitted by AMFM are not country-specific for energy origin or consumption, reflect tenders on an exchange, and represent the wholesale price on future trades among energy producers, utilities, and traders, not the cost of electricity to end-users. Thus, the domestic industry argues for the use of the IEA data, which it claims are accurate, are representative, and have been relied upon by the Department as a matter of policy and practice.

The domestic industry states that the invoice information provided by AMFM in its June 3, 2014, section D questionnaire response is neither accurate nor representative as a market price benchmark and should, therefore, be rejected. The domestic industry contends that invoices by AM Ostrava to this distributor are at the wrong level of trade (*i.e.*, they are not to an end user of electricity), do not take into account complete invoice pricing (*i.e.*, they excluded certain surcharges), and do not represent arm's-length transactions. The domestic industry's assertion that the transaction with the distributor was not at arm's-length is based on the fact that the distributor is both a customer of, and vendor to, AM Ostrava and AMFM respectively.

The domestic industry maintains that AMFM's average POI undelivered price paid to AM Ostrava, excluding transmissions charges, is lower than both AM Ostrava's unaffiliated sale of electricity to the distributor of electricity (*i.e.*, when a surcharge is added) and the wholesale price (with distribution charges) at which electricity is traded on PECE. The domestic industry also argues that, on a delivered basis, both AMFM's average POI transfer price and average sample transfer price including the surcharge are only above the wholesale *undelivered* trading value at the electricity exchange, thus resulting in a completely inapposite comparison.

AMFM argues that the Department should not apply an adjustment to its affiliated-party purchase of electricity under the transactions disregarded provision because the Department's verification establishes that AM Ostrava's electricity prices to unaffiliated parties were lower than the prices paid by AMFM. In addition, AMFM asserts that there is no requirement in the transactions disregarded rule that the market price being examined must be at the same level of trade as the price between the affiliates, and that the domestic industry does not cite to any such requirement.

¹⁰² See Memorandum to Neal M. Halper, Director, Office of Accounting, from Christopher J. Zimpo, Analyst, entitled "Cost of Production Constructed Value Calculation Adjustments for the Preliminary Determination – ArcelorMittal Frydek-Mistek," (Prelim Cost Calc Memo) at pages 2-3.

¹⁰³ However, the record evidence shows the second source (*i.e.*, the industrial company) is, in fact, affiliated to AMFM and, therefore, cannot be used as a test for the arm's-length price; see AMFM's February 5, 2014, supplemental section A questionnaire response at page 4 and Exhibit SA-3.

AMFM also argues that, should the Department decide not to use the invoices tested at verification, the PECE prices are valid benchmarks because they represent market prices for which an industrial consumer actually purchased electricity and, thus, they should be used in the final determination. AMFM also contends that the IEA benchmark is incomplete because it fails to provide the questionnaire completed by the Czech Republic that formed the basis of the report, failed to provide the definition of “industry” as the term is used in the averaged aggregate prices, and failed to provide any detail regarding the phrase “including cost of transport to consumer and related costs” as it is used to describe the prices in the report.

AMFM contends that AM Ostrava’s electricity sales to the unrelated purchaser are not at the wrong level of trade because the unaffiliated customer and AMFM are both consumers of electricity.

Finally, AMFM argues that the excluded surcharge adjustment to which the domestic industry refers is a reference to its letter dated June 11, 2014, that explains “{t}he Electricity Market Operator (OTE) was established by the State” to “resolv{e} imbalances between contracted and consumed energy.”¹⁰⁴ AMFM asserts that it did not pay AM Ostrava or any party the alleged surcharge price.

Department’s Position:

For the final determination, we continue to use the average of the two publicly-available benchmark sources of market prices, IEA and PECE, as was used in the Preliminary Determination.¹⁰⁵ Since electricity is not a major input in this investigation, pursuant to section 773(f)(2) of the Act, we compared AMFM’s transfer price with market prices to determine whether the transactions were made at arm’s-length prices. Because both public sources of electricity prices provided by the parties appear representative of actual electricity market prices in the Czech Republic during the POI, we used the average price of both sources. Since the calculated market price exceeded the affiliated party transfer price between AMFM and AM Ostrava, we adjusted the reported costs accordingly.¹⁰⁶

In a transactions disregarded situation, such as this, we normally obtain the price the respondent paid to unaffiliated suppliers of the input. However, because AMFM does not procure electricity from another supplier, we looked at the affiliated supplier’s price to an unaffiliated third party as a benchmark for market value. While we disagree with the domestic industry that the sale of electricity by AM Ostrava to the distributor is not an arm’s-length transaction, or that a level of trade argument is relevant in this context,¹⁰⁷ we agree that the price to the distributor should not

¹⁰⁴ See the domestic industry’s June 11, 2014, submission at Enclosure 3.

¹⁰⁵ See Prelim Cost Calc Memo at pages 2-3.

¹⁰⁶ See Memorandum to Neal M. Halper, Director, Office of Accounting, from Christopher J. Zimpo, Analyst, entitled “Cost of Production Constructed Value Calculation Adjustments for the Final Determination – ArcelorMittal Frydek-Mistek,” at page 2 (Final Cost Calc Memo).

¹⁰⁷ Section 773(a)(7)(A) of the Act defines a LOT adjustment; thus LOT has a specific meaning in antidumping proceedings.

be used in this case for determining the market value of electricity. The record is unclear as to the purpose of the distributor's purchase of electricity, as it appears to be neither an industrial user nor a reseller of electricity. In addition, AM Ostrava sold the electricity to the same distributor that delivers electricity to, and in turn charges, AMFM for distribution of AM Ostrava's direct electricity sales to AMFM.¹⁰⁸

As the case record contains publicly-available market price information that appears representative of actual electricity market prices in the Czech Republic (*i.e.*, the IEA and PECE data), we believe it is reasonable to continue to rely on this information for the final determination. We agree with the domestic industry that the IEA data represent a reasonable valuation of the market price of electricity in the Czech Republic for industrial end users. The IEA data represent actual historical market prices for Czech Republic end users of electricity for the POI. The domestic industry provided the country notes, which provide an explanation of the data collection.¹⁰⁹ While AMFM claims that the domestic industry did not provide the questionnaire completed by the Czech Republic to form the basis of the report, AMFM did not provide any specific information to discredit the IEA questionnaire. We consider the sources used to derive the IEA data (*i.e.*, the Ministry of Industry and Trade of the Czech Republic, the Ministry of Finance of the Czech Republic, and the Czech Statistical Office) to be reputable and adequate. Finally, while AMFM questions the term "transport to consumer and related costs,"¹¹⁰ we believe that this phrase refers to distribution, and that the IEA data in this report represent the cost of electricity to end users during the POI, inclusive of costs relating to the procurement of electricity in the Czech Republic.¹¹¹

We disagree with the domestic industry that the PECE data is not a representative source for electricity prices for this investigation. Specifically, while the domestic industry claims that the data are not country-specific, we disagree. Information provided by AMFM in its letter to the Department indicates that the data was sourced from the Czech Republic.¹¹² We also disagree with the domestic industry's claim that the origin of the source of the input precludes the Department from using the PECE data as a benchmark. The exchange prices presented are for electricity delivered to the Czech grid.¹¹³ While the purchasers may be located outside of the Czech Republic, they purchased the electricity on Czech deliveries and, thus, the prices nonetheless represent the market value of the input for a producer in the Czech Republic.¹¹⁴

¹⁰⁸ We note that in its June 3, 2014, supplemental section D response at page 7, AMFM stated that AM Ostrava made sales of electricity to additional unaffiliated parties other than the third party distributor. However, when requested at verification for an additional third party electricity invoice, AMFM provided an invoice to a company that later turned out to be an AM Ostrava affiliate.

¹⁰⁹ See domestic industry's March 26, 2014, letter to the Department at Attachment 1.

¹¹⁰ See AMFM August 4, 2014, Rebuttal Brief (AMFM Rebuttal Brief) at page 10.

¹¹¹ See domestic industry's March 26, 2014, letter to the Department at Attachment 1 (stating "Electricity Wholesale: Indices of producer prices of electricity excluding VAT and including cost of transport to consumer and related costs).

¹¹² See AMFM's rebuttal letter of April 2, 2014, revised on July 9, 2014, to the Department at Exhibit 1.

¹¹³ See https://www.pxe.cz/Pxe_downloads/Rules_Regulation/Eng/PXE_standardisation_commodity_contracts.pdf

¹¹⁴ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61,716, 61,717-19 (October 19, 2006).

Finally, we disagree with the domestic industry's concern that the invoices for electricity purchases provided by AMFM should include a surcharge, and that this surcharge was not included. Although this concern is not relevant because we have not relied on the invoices for market price, we note that there is no evidence that supplemental price elements, including a surcharge, actually exist for the invoices in question. At verification, we tied the invoices for electricity purchases into AMFM's books and records and into its cost accounting system used to derive reported costs.¹¹⁵

Comment 8: *Rolls and Rollers Adjustment to COM*

The domestic industry states the Department should adjust AMFM's COM for the expense line-item "rolls and rollers" shown in the trial balance, per the Department's verification findings. The domestic industry also contends that the Department's adjustment should be based on COM and not COGS (the denominator of the adjustment calculation).

AMFM contends that it reported costs associated with "rolls and rollers" in its depreciation expense and, thus, if the Department included these costs separately, it would double count them in COM, and proposes its own adjustment.¹¹⁶ AMFM's proposed adjustment allocates the rolls and rollers costs using a GOES-to-total production ratio, so as not to overstate depreciation expenses. In addition, AMFM argues that the domestic industry's proposed assignment of 100 percent of the rolls and rollers costs to GOES improperly attributes the costs incurred on all steel production exclusively to GOES. Finally, AMFM argues that if the Department increases AMFM's COM, the Department must also: 1) reduce AMFM's depreciation to avoid double counting; and, 2) allocate the costs across all steel products to account for the fact that rolls and rollers are used in total steel production.

Department's Position:

We disagree with AMFM's conclusion that the Department should not make this adjustment to increase AMFM's COM for the cost of rolls and rollers for the final determination. AMFM states that expenses related to rolls and rollers were capitalized and, therefore, included in the POI costs as a depreciation expense. However, the rolls and rollers expenses in question are a line item expense in the POI trial balance that was not included in reported costs.¹¹⁷ Further, AMFM failed to explain and demonstrate, when reconciling its accounting books (maintained under international financial reporting standards (IFRS)) to its financial statements (prepared for local authorities based on the Czech Republic Accounting Standards Board (CASB)), how including the rolls and rollers line item expenses included in its trial balance and COGS would result in double counting.

The Department finds that AMFM's argument -- that it knowingly overstated its reported costs by allocating substantially more costs to GOES under its selected methodology than if it would

¹¹⁵ See Cost Verification Report at pages 17-18 and 21.

¹¹⁶ AMFM maintains that it over-allocated depreciation to account for the costs of rolls and rollers and the depreciation figure, therefore, includes these costs.

¹¹⁷ See AMFM's March 18, 2014, supplemental section D response at Exhibit SD-2.

have otherwise, had it allocated depreciation costs based on a production or revenue value -- is not a valid reason for excluding the non-depreciation-related COGS expenses. AMFM failed to demonstrate how these rolls and rollers costs would result in double counting, and had ample time in this investigation to determine a more suitable method of allocating depreciation than just assigning all depreciation expenses at the Frydek-Mistek facility to GOES production.

We also disagree with AMFM's proposed adjustment regarding rolls and rollers expenses.¹¹⁸ AMFM provided an alternative adjustment in case the Department determined that it would add the expenses in question to reported costs. AMFM's proposed adjustment allocated the rolls and rollers costs using a GOES-to-total production ratio, allegedly so as not to overstate depreciation expenses. But, as noted above, the expenses in question are not included in depreciation expenses; they are their own specific line item in the trial balance. AMFM confirms, and we agree, that all production at AMFM required the use of rolls and rollers. The Department's adjustment is based on total production and, thus, is appropriate.

Finally, we agree with the domestic industry that the Department's adjustment for rolls and rollers should be derived based on AMFM's POI COM rather than COGS as calculated by the Department. Because these rolls and rollers expenses are related to the steel products rolled and manufactured during the POI, and bear a closer relationship to what was produced rather than sold in the POI, the adjustment should be based on COM and applied to COM in the reported database. As a result, for the final determination, we recalculated the rolls and rollers adjustment using COM in the denominator.

Comment 9: Verification Changes to AMFM's Cost Data

The domestic industry notes that AMFM provided a revision at verification which increased its major input adjustment from the rate used at the Preliminary Determination¹¹⁹ and that the Department verified this revision.¹²⁰ The domestic industry argues that the Department should use this revised major-input adjustment amount for purposes of the final determination.

The domestic industry also argues that the Department should use AMFM's revised fiscal year 2013 general and administrative (G&A) rate, as determined at verification and detailed in the Cost Verification Report at pages 2 and 21-22, in its final cost calculations.

AMFM did not comment on these issues.

Department's Position:

We agree with the domestic industry. For the final determination, we have adjusted AMFM's COM to reflect the revised major input information submitted as a minor correction during verification, and we have revised AMFM's G&A rate to reflect the revised fiscal year 2013 rate. For the details of this latter calculation, see the Cost Verification Report at pages 2 and 21-22.

¹¹⁸ See AMFM Rebuttal Brief at page 15.

¹¹⁹ See Prelim Cost Calc Memo.

¹²⁰ See Cost Verification Report at page 2 and CVE-1.

Comment 10: Profit

AMFM argues that if the Department calculates AMFM's margin based on CV, the Department should use a value for profit which is no higher than the profit rate from the petition.

Department's Position:

Because the Department is using AMFM's sales to calculate a margin and, thus, is not using CV, this issue is moot and need not be addressed.

Comment 11: Total Facts Available for Sujani

In the Preliminary Determination, the Department calculated a weighted-average margin of 10.35 percent for Sujani. The domestic industry argues that calculating a margin for Sujani for the final determination is no longer appropriate, given the significant problems that the Department encountered during the verification of Sujani's sales data. Therefore, the domestic industry contends that the Department should base Sujani's final dumping margin on AFA.¹²¹

Specifically, the domestic industry maintains that Sujani: 1) failed to provide relevant email communications between the owner of the company and AMFM personnel, despite the fact that it admitted that such communications existed, thereby preventing the Department from examining information germane to the "knowledge" question and confirming various other "facts" presented at verification;¹²² 2) was unable to reconcile the sales revenue in its sales ledger to the revenue shown on its federal tax return; 3) refused to provide information to substantiate certain claims made at verification, many of them involving substantial monetary amounts, payments that could have a significant margin impact, or affiliations with companies that could be involved in the sale of GOES;¹²³ 4) did not report warehousing and inventory carrying costs, despite the fact that it incurred them for both U.S. and third country sales;¹²⁴ and, 5) provided information contradicting its financing methods and arrangements, leading the domestic industry to question whether Sujani, AMFM, and/or FCE had multiple sets of books, and whether it was "truly a small trading company."¹²⁵

¹²¹ The domestic industry also argues that the Department should base the final dumping margin for AMFM on AFA because AMFM and Sujani are affiliated parties and it is reasonable to infer that AMFM knew that the merchandise sold by Sujani in the United States was destined here. The Department has determined that AMFM and Sujani are not affiliated parties, and that AMFM did not have knowledge that the ultimate destination of its GOES was the United States. See Comments 1 and 2, above. Accordingly, this argument is moot.

¹²² The information cited by the domestic industry is not publicly available and thus, it cannot be discussed further here. See the domestic industry's case brief at pages 38-39.

¹²³ The information cited by the domestic industry is not publicly available and thus, it cannot be discussed further here. See the domestic industry's case brief at pages 41-42.

¹²⁴ The domestic industry asserts that the discovery of these costs contradicts statements made both in Sujani's section C questionnaire response and during the course of verification.

¹²⁵ Much of the information cited by the domestic industry is not publicly available and thus, it cannot be discussed further here. See the domestic industry's case brief at pages 47-50.

With respect to the first point, the domestic industry contends that Sujani did not supply the Department with email exchanges during the POI, which may have demonstrated that Sujani shared the knowledge of final destination with AMFM and/or FCE.¹²⁶ The domestic industry notes that, although Sujani provided samples of post-POI email correspondence at verification, it refused to provide POI emails because they “were archived in another location.”¹²⁷ According to the domestic industry, post-POI emails are not an acceptable substitute for contemporaneous emails during the POI, especially where, like here, the emails could have helped the Department ascertain the truthfulness of submitted information which was contradicted by information collected during verification. For example, the domestic industry points to AMFM Verification Exhibit 4, which contains an email from Sujani’s freight company referencing a U.S. destination, and sample emails showing that a family member of the owner was not only involved in Sujani’s day-to-day operations, but he also sold GOES to third countries. The domestic industry argues that Sujani failed to provide information to the best of its ability and its non-cooperation significantly impeded the administrative proceeding.

With respect to the second point, the domestic industry contends that Sujani’s inability to reconcile the sales revenue between the sales ledger and federal tax return for 2012¹²⁸ is a fatal flaw. According to the domestic industry, the information in Sujani’s federal tax return is official and authoritative because the federal tax return was submitted to a federal agency. The domestic industry contends that this is significant, given that Sujani does not prepare audited financial statements, and the federal tax return is the only document prepared by a public accountant familiar with generally accepted accounting principles and federal tax laws. In addition, the domestic industry notes that the 2012 federal tax return represents the only financial document Sujani kept that was not prepared for purposes of this investigation. The domestic industry speculates that the difference could relate to unreported U.S. sales (thereby rendering the U.S. sales listing inaccurate and unreliable) or third country sales (thereby calling into question the selection of Mexico as the appropriate comparison market).

Further, the domestic industry contends that documents examined at verification contradict AMFM’s and Sujani’s explanation of the payments arrangements for Sujani’s purchases of GOES, and various discrepancies discovered in Sujani’s invoice numbers and shipment dates raise the possibility that Sujani had multiple invoices for individual sales. Thus, the domestic industry contends that the Department cannot ascertain whether Sujani’s reported sales are complete and the sales information reliable. Additionally, the domestic industry claims that Sujani withheld its balance sheet until verification, preventing the Department from investigating the company’s sizeable accounts payable balance, again calling into question the reliability of the reported data.

The domestic industry provided additional examples of instances where Sujani allegedly withheld information, as well as examples where it provided information at verification which either was internally inconsistent or contradicted statements in Sujani’s questionnaire

¹²⁶ See Comment 2 for further discussion.

¹²⁷ See Sujani Sales Verification Report at page 2.

¹²⁸ See *id.* at pages 2 and 4.

responses.¹²⁹ According to the domestic industry, Sujani company officials refused to discuss much of this information with the Department’s verifiers. Thus, the domestic industry argues that Sujani failed verification with respect to its corporate structure and organization, and it also failed to cooperate to the best of its ability. The domestic industry contends that refusals to answer the verifiers’ questions are quintessential examples of withholding important information and, thus, Sujani’s responses are not accurate and cannot be relied upon for the Department’s final determination.

Finally, the domestic industry argues that the Department collected information at verification which may indicate that the Department selected an unreliable third country market.¹³⁰ Specifically, the domestic industry claims that the Department discovered at verification that Sujani withheld information on sales to additional third countries and, thus, the Department has no way of determining whether another third country comparison market was more suitable than Mexico. According to the domestic industry, the withholding of these sales renders Sujani’s responses unusable.

Sujani argues that there is no basis in law or fact to apply AFA in the final determination because all necessary information is verified and on the administrative record. Specifically, Sujani contends that its sales totals and expenses were verified, any additional questions raised at verification were resolved through an extensive examination of Sujani’s records, and any “gaps” on this record can be filled by verified data. Sujani contends that, although its responses were imperfect, the imperfections do not warrant the application of total AFA.

According to Sujani, the fact that it revised its data over the course of this investigation provides no basis for AFA. Sujani maintains that data revisions are common in antidumping proceedings, a fact repeatedly recognized by the Department when it stated that “it is not uncommon for respondents to revise or correct information previously submitted to the Department,”¹³¹ and that “the Department has repeatedly recognized that cooperative respondents may need time to correct originally submitted data without being penalized by application of adverse facts available.”¹³²

Sujani similarly disagrees with the domestic industry that its failure to supply information related to its federal tax return and other financial transactions is significant. With respect to the federal tax return “discrepancy,” Sujani asserts that the amount in question represents only a small percentage of the company’s 2012 sales revenue, and this discrepancy possibly could be explained when its books are closed, and its federal tax return filed, in 2013.¹³³ Sujani further

¹²⁹ The information cited by the domestic industry is not publicly available and thus it cannot be discussed further here. See the domestic industry’s case brief at pages 50-55.

¹³⁰ The information cited by the domestic industry is not publicly available and thus it cannot be discussed further here. See the domestic industry’s case brief at pages 56-57.

¹³¹ See Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review, 71 FR 42802 (July 28, 2006) and accompanying Issues and Decision Memorandum at Comment 2 (Stainless Steel Bar from Germany).

¹³² See Washers from Korea, and accompanying Issues and Decision Memorandum at Comment 10.

¹³³ In any event, Sujani asserts that, as a small S Corporation, there are no requirements under the applicable federal tax laws that its federal tax return tie one-for-one to its sales ledger.

disagrees that its federal tax return is the only document prepared for purposes of this investigation, noting that it routinely maintains sales and payment ledgers in the ordinary course of business, and it gave the Department's verifiers full access to these documents. Thus, Sujani contends that the reconciliation of its federal tax return is reliable. Nonetheless, Sujani argues that, if the Department finds that it must account for this reconciling item, it should treat the entire reconciling difference as a U.S. sale and apply the highest transaction-specific margin to it as a proposed facts available plug.

Sujani also disagrees that it failed to supply information at verification concerning a substantial payment. According to Sujani, this payment involved a real estate transaction outside the POI and, thus, is irrelevant to the Department's analysis. Sujani contends that, contrary to the domestic industry's assertions, it did not attempt to evade the Department's questions about this transaction or hide it from the verifiers; rather, it provided "ample information" along with a reasonable explanation consistent with information discussed at other times during the verification process. Sujani characterizes its actions as "collaborative," and contends that it worked with the verifiers to acquire additional information. Therefore, Sujani argues that the application of AFA in regards to this transaction would be contrary to law. Nonetheless, Sujani argues, if the Department determines that the application of facts available is appropriate, the Department should assume that the payment in question is a selling expense, and include it in Sujani's U.S. and third country indirect selling expense ratios.

Sujani argues that, despite the domestic industry's assertions, its affiliated companies are irrelevant to this investigation. Sujani contends that the domestic industry's arguments are based on supposition, instead of being based on verified evidence which shows that: 1) the son of the company's owner is not officially employed by Sujani;¹³⁴ 2) one of the companies cited by the domestic industry made no sales of GOES to North America;¹³⁵ and, 3) the other affiliated company is a real estate company uninvolved in the sale of GOES.¹³⁶ Sujani asserts that there is no "network of companies" which was not examined at verification, nor any "behind the scenes" financing network. Thus, Sujani contends that the domestic industry's argument that AFA is appropriate is contrary to law.

Finally, Sujani argues that the domestic industry fails to point to any gaps on the record with regard to the reported data that would warrant the application of AFA. According to Sujani, the domestic industry's argument that the Department may have selected the wrong third country market is based on speculation, which is unfounded in light of the fact that: 1) Mexico is Sujani's largest third country market by volume; 2) the volume of the sales to other third countries is significantly smaller than the volume of sales to Mexico; and, 3) AMFM informed

¹³⁴ Sujani does not deny that the owner's son is involved in the technical and administrative aspects of the business, but it claims that a son helping his father is hardly indicative of obstructionist behavior. Moreover, Sujani maintains that the Department acquired complete information from its owner, who is the individual ultimately responsible for Sujani's sales and finances.

¹³⁵ According to Sujani, this company is a trading company of steel products which occasionally exported GOES to third country markets. Sujani asserts that the Department verified these facts using both Sujani's and the affiliate's sales listings, as well as a complete sales listing of invoices for the affiliate.

¹³⁶ Sujani asserts that the Department has been aware of this particular company since the beginning of this investigation.

the Department that it knew of Sujani's sales to additional third country markets,¹³⁷ making those sales AMFM's exports and not Sujani's. Further, Sujani argues that the domestic industry's claim concerning Sujani's accounts payable is internally inconsistent with its argument regarding Sujani's ability to generate revenue from other businesses, loans, and advances, and its allegations regarding the payments in Sujani's ledgers are equally unfounded. Sujani asserts that its financial position is not unusual for a service-oriented company that has no production, plant, or shareholders. Sujani adds that it provided adequate supporting documentation to the Department's verifiers and that no questions remain regarding its ledgers. Sujani argues that there is no basis to apply facts available when the Department's verifiers did not examine in detail a specific transaction cited by the domestic industry.

In summary, Sujani argues that, because it believes the Department successfully verified Sujani's data, it should calculate an antidumping margin for Sujani based on the information on the record for purposes of the final determination.

Sujani notes that the domestic industry included AMFM as part of the title for this issue in its case brief, but it made no arguments as to why the Department should apply AFA to AMFM. AMFM contends that, irrespective of whether this is an omission or an error, there are no gaps in AMFM's reported information, nor is there any evidence on the record that AMFM failed to cooperate in this investigation. Thus, AMFM asserts that assigning AMFM a final margin based on AFA would be contrary to law.

Department's Position:

The Use of Facts Available and Adverse Inferences

For this final determination, we are using AFA to determine Sujani's dumping margin. 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 an interested party withholds information requested by the Department; 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; significantly impedes a proceeding; or 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 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 demonstrated that it acted to the best of its ability; and, (5) the information can be used without undue difficulties.

¹³⁷ See AMFM's February 7, 2014, supplemental questionnaire response at page 4 and Attachment 1.

As detailed below, in this case, among other things, Sujani: 1) failed to provide information at verification concerning its corporate structure (including documentation demonstrating that it had no undisclosed affiliations with companies involved in the sale or production of GOES); 2) failed to provide information related to its sales process (including POI emails with AMFM/FCE related to the knowledge question); 3) refused to discuss a substantial financial transaction with the Department's verifiers or to provide supporting documents relating to it; 4) failed to reconcile its reported sales to its federal tax return at verification, calling into question the integrity of its accounting system; and, 5) failed to report significant charges and adjustments. As a consequence, we find that necessary information is not on the record, that Sujani withheld information requested by the Department, provided information that could not be verified, and significantly impeded the proceeding.¹³⁸ Further, section 782(c)(1) of the Act does not apply, because Sujani did not notify the Department that it was unable to submit the information requested in the requested form and manner, with a full explanation, nor did it suggest alternative forms in which to provide this information. Additionally, to the extent that some information was provided, it was unverifiable, and so incomplete that it could not serve as a reliable basis for reaching the determination in this investigation.¹³⁹

Contrary to Sujani's assertions, the Department was not able to verify the completeness or accuracy of Sujani's reported sales information. Rather, as explained more fully below, at verification the Department was unable to substantiate Sujani's accounting system using any independent source, thereby calling into question the integrity of the information recorded in it. Moreover, Sujani failed to provide essential information requested by the Department's verifiers despite being afforded multiple opportunities to do so, and Sujani refused to discuss certain topics altogether. Further, the Department discovered at verification that Sujani had also failed to report altogether potentially significant movement and selling expenses. Based on these facts, pursuant to sections 776(a)(1) and 776(a)(2)(A), (C), and (D) of the Act, we find that necessary information is not available on the record, that Sujani withheld information requested by the Department, impeded the proceeding, and provided certain information that could not be verified.

Sujani is an S Corporation with two employees.¹⁴⁰ At verification, we discussed Sujani's accounting system with the company's owner, who indicated that the system included only a sales and payment ledger kept in Microsoft Excel.¹⁴¹ Sujani further indicated that the company retains an independent accountant who provides payroll services and prepares the company's federal tax returns (including an income statement and a balance sheet).¹⁴² The company does not maintain a general ledger, nor does it prepare audited financial statements in the ordinary course of business.¹⁴³ In order to validate the accounting system, we attempted to reconcile the data recorded in it for 2012 to Sujani's 2012 federal tax return; however, we noted that the

¹³⁸ See sections 776(a)(1) and 776(a)(2)(A), (C), and (D) of the Act.

¹³⁹ See section 782(e)(2)-(3) of the Act.

¹⁴⁰ See Sujani Sales Verification Report at page 3.

¹⁴¹ See *id.* at page 6.

¹⁴² See *id.*

¹⁴³ See *id.*

revenue reported to the U.S. government differed significantly from the aggregate amount in its sales ledger.¹⁴⁴ Although we requested that Sujani explain this difference, it could not.¹⁴⁵

In order for the Department to have confidence that a respondent company's reported information is accurate and complete, the Department must be satisfied that the accounting system from which the information is drawn is reliable. Thus, the ability of a company to demonstrate the integrity of its accounting system is essential to the verification process. Normally, the Department validates a company's accounting system by reconciling the data in the company's ledgers to its audited financial statements. Where audited financial statements are not available, however, the Department may use tax returns as an independent source.¹⁴⁶ Because we were unable to reconcile the data in Sujani's accounting system to its federal tax returns or any other independent source, there is no basis to conclude that Sujani's accounting system is reliable or that the information drawn from it is accurate and not subject to manipulation. As we are unable to confirm the quantity and value of all sales made and reported by Sujani during the POI, we find that Sujani's reported sales data are unusable in its entirety.

With respect to Sujani's argument that the discrepancy in the revenue on its federal tax return and in its sales ledger is insignificant, we disagree. While the magnitude of this discrepancy is not on the public record, the business proprietary information on the record indicates that this difference is material and sufficiently significant¹⁴⁷ that Sujani should be reasonably expected to be aware of such a discrepancy and be fully prepared to explain it at verification. Further, we find Sujani's speculation that it may be able to provide an explanation for the discrepancy at some point in the future is irrelevant; the fact is that Sujani had no explanation at the time that one was required, despite being on notice of the importance of this discrepancy.

We further disagree with Sujani that it supplied all necessary information at verification or that it has cooperated to the best of its ability in this investigation. On multiple occasions, the Department's verifiers requested that Sujani provide specific documents, explain particular transactions, or discuss relevant facts related to the company's corporate structure. While Sujani did provide selected information to Department verifiers, it failed to make all documents available to the verifiers, despite repeated requests that it do so. Specifically, the Sujani Sales Verification Report states:

¹⁴⁴ See *id.* at pages 2 and 12.

¹⁴⁵ See *id.* at page 12. We note that the Department provided Sujani with several opportunities to reconcile its sales databases to its federal tax return in this investigation, including via two supplemental questionnaires. However, Sujani was equally unable to reconcile its sales databases to its 2012 federal tax return pursuant to those requests. See the Department's Questionnaire, dated January 24, 2013, at B-6 and C-4; the Department's Supplemental Questionnaire, dated March 19, 2013, at 1; and the Department's Supplemental Questionnaire, dated March 31, 2013, at 1 and 2.

¹⁴⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427, 51428 (October 1, 1997) (Collated Roofing Nails from Taiwan) (stating “[i]n situations where a respondent does not have audited financial statements, the Department may use the company's tax return as an independent source to substantiate the company's questionnaire responses” and “[w]hile the Department attempts to work within the limitations presented by the respondent's normal accounting systems, as a threshold matter, the Department must ensure that the total amount of reported sales and costs during a particular investigation are fully captured in the information submitted to the Department”); Final Results of Antidumping Administrative Review: Fresh Cut Flowers from Mexico; 60 FR 49569, 49570 (September 26, 1995) (stating “In the absence of audited financial statements in this review, we required that the respondents submit their tax returns as a way to independently substantiate their questionnaire responses”).

¹⁴⁷ See Sujani's August 4, 2014, Rebuttal Brief (Sujani Rebuttal Brief) at page 8.

To demonstrate that Sujani was the first company in the chain of distribution that knew that specific shipments of GOES were destined for the United States, Sujani provided e-mail correspondence between Mr. Singh and AMFM personnel which was generated after the period of investigation (POI). However, when we requested to review e-mail correspondence generated during the POI, Mr. Singh stated that these e-mails were archived in another location and that he would have to retrieve them. Despite several requests for access to the e-mail correspondence, it was not provided by the end of the verification. See the “Sales Process” section of this report.^{148,149}

Moreover, Sujani refused to provide documents supporting its explanation for significant financial transactions, and it refused to demonstrate that it had disclosed the existence of all affiliated companies (or even to discuss this topic beyond the verifiers’ initial questions). Specifically, the Sales Verification Report states:

At verification, we requested that Sujani officials provide additional data to support the accuracy of the reported information. On several occasions, Sujani was unwilling to provide the information and/or to discuss the topic at hand with verification officials. Specifically, Sujani refused to: 1) discuss a January 2014 transaction in the amount of []; although Sujani claimed the amount was related to a real estate company, it declined to provide us with the company’s name and documentation to support this explanation (see the “Corporate Structure and Organization” and “Indirect Selling Expenses (INDIRST/U)” sections of this report); and 2) disclose the existence of all companies owned by Mr. Jagbir Singh, one of the owners of Sujani (see the “Corporate Structure and Organization” section of this report).¹⁵⁰

With regard to the January 2014 transaction noted above, we disagree with Sujani that it would be appropriate to assume that this amount is a selling expense or to include it in the U.S. and third country indirect selling expense ratios. Because we were unable to validate Sujani’s accounting system, we find that all of its reported data are unusable. Further, we disagree that there is any basis for making assumptions about its unreported data, given that Sujani failed to provide supporting documentation about these data at verification when it had the opportunity to do so. Similarly, we disagree with Sujani that the information requested by the Department regarding certain real estate transactions and affiliated companies is necessarily irrelevant to this investigation. We are unable to wholly disregard such information based solely on Sujani’s self-serving characterizations provided in its case brief. As noted above, Sujani refused to discuss certain topics at verification, and it further declined to provide documentation supporting its

¹⁴⁸ See Sujani Sales Verification Report at page 2.

¹⁴⁹ While Sujani failed to supply emails that could have been used to further substantiate its and AMFM’s claims that Sujani was the first company in the chain of distribution that knew that specific shipments of GOES were destined for the United States, the absence of this information does not undermine all of the other overwhelming record evidence supporting the Department’s finding with respect to this issue. See Comment 2 above.

¹⁵⁰ See Sujani Sales Verification Report at page 2 (public version).

limited explanations. Thus, Sujani impeded this investigation and denied the Department the ability to verify that the information is indeed unrelated to this case.

We also disagree with Sujani that the record contains no gaps in the reported data. At verification, we discovered that Sujani had failed to report warehousing and inventory carrying costs, despite the fact that it incurred these expenses.¹⁵¹ Sujani also misreported the date of shipment (and potentially the universe of sales transactions) for both its U.S. and Mexico sales.¹⁵² Because of these failures, we did not obtain accurate information in any of these areas at verification and this information continues to be missing from the record of this investigation.

Section 776(b) of the Act provides that, if the Department finds that an interested party 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.¹⁵³ In addition, the SAA 1994 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.”¹⁵⁴ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.¹⁵⁵ 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.¹⁵⁶

We find that Sujani has not acted to the best of its ability in providing requested information because Sujani failed to provide complete information concerning its organization, sales process,

¹⁵¹ See *id.* at pages 3 and 20. In the verification report at page 20, we note that:

Sujani stated in its March 12, 2014, section B and C questionnaire response that it believed that it did not incur inventory carrying costs not otherwise captured by the reported transportation costs. However, at verification, we discovered that Sujani rents space in warehouses located in the United States, and it keeps inventory in those warehouses.

This information also contradicts Sujani’s statement in its section A questionnaire response that it only shipped GOES “to the port of entry in the given market where the customer is located.” See Sujani February 18, 2014, section A questionnaire response at page 11.

¹⁵² See *id.* at pages 3 and 10. We noted the following in our verification report at page 10:

Sujani reported the earlier of its reported invoice or shipment date as the date of sale. With respect to shipment date, we noted that Sujani reported the date of the shipping company’s freight invoice; however, we found that the date of the freight invoice often differed from the bill of lading date. In addition, we noted that Sujani used the invoice date as the shipment date when it was unable to locate the freight invoice.

¹⁵³ See also 19 CFR 351.308(a); 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).

¹⁵⁴ See SAA 1994 at 870, reprinted in 1994 U.S.C.C.A.N. at 4199; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007).

¹⁵⁵ 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); Antidumping Duties; Countervailing Duties, 62 FR 27296, 27340.

¹⁵⁶ 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 Issues and Decision Memorandum at page 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).

accounting records, selling expenses, movement expenses, and date of sale when it possessed the information requested by the Department. In addition, Sujani was unable to reconcile its reported sales from its sales ledger to its federal tax return. Accordingly, the Department concludes that Sujani failed to cooperate to the best of its ability to comply with a request for information by the Department, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), and determines that it is appropriate to use an adverse inference when selecting from among the facts otherwise available.¹⁵⁷

Finally, we are unpersuaded by the precedent cited by Sujani and find that the cases cited are not applicable here. Both Stainless Steel Bar from Germany and Washers from Korea are cases involving fully-cooperative respondents that could explain and correct certain identified errors or discrepancies presented to the Department. As stated above, the Department was not able to verify the completeness or accuracy of Sujani's reported sales information because Sujani failed to cooperate to the best of its ability in this investigation.

Therefore, for the foregoing reasons, the Department is using the facts available with an adverse inference to determine Sujani's dumping margin.

AFA Rate Assigned to Sujani

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.¹⁵⁸ In selecting a rate based on 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.¹⁵⁹ In addition, "Commerce may not select unreasonably high rates having no relationship to the respondent's actual dumping margin."¹⁶⁰ 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 dumping margin of any respondent in the investigation.¹⁶¹

Under section 776(c) of the Act, when the Secretary relies on secondary information, the Secretary will, to the extent practicable, corroborate that information from independent sources that are reasonably at the Secretary's disposal. Independent sources may include, but are not limited to, published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review. Corroborate means

¹⁵⁷ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 65 FR at 51427 (where the Department applied total AFA when the respondent failed to reconcile its financial statements to its tax return at verification).

¹⁵⁸ See also 19 CFR 351.308(c).

¹⁵⁹ See SAA 1994 at 870, reprinted in 1994 U.S.C.C.A.N. at 4199.

¹⁶⁰ See Gallant Ocean (Thailand) Co. v. United States, 602 F.3d 1319, 1323 (Fed. Cir. 2010) (Gallant Ocean) (citing F.LLI de Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (De Cecco)).

¹⁶¹ See Certain Stilbenic Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17436, 17438 (March 26, 2012).

that the Secretary will examine whether the secondary information to be used has probative value.

In this case, the highest dumping margin in the petition is 235.50 percent, and this rate is higher than the final dumping margin of 13.76 percent calculated for AMFM, the other mandatory respondent selling GOES in the United States. However, we have not selected this rate as AFA because we find that it cannot be corroborated, within the meaning of section 776(c) of the Act, because it falls considerably outside the range of individual model-specific margins calculated for AMFM and, thus, it is insufficiently reliable and relevant for purposes of corroboration. Additionally, we find that the lowest dumping margin in the petition (*i.e.*, 68.46 percent) also is considerably greater than AMFM's model-specific margins and, thus, it cannot be corroborated within the meaning of section 776(c) of the Act for the same reason.

Furthermore, we find that it would not be appropriate to use as AFA the weighted-average dumping margin calculated for AMFM because this rate is almost the same as the dumping rate of 10.35 percent computed for Sujani in the Preliminary Determination.¹⁶² Therefore, we find that this rate is not sufficiently adverse, "so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner."¹⁶³

Given these facts, we find that the highest rate that reflects commercial reality in this investigation is 35.93 percent, which is the highest margin of any individual model sold during the POI by AMFM. This margin is a reasonably accurate estimate of Sujani's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance.¹⁶⁴ Thus, consistent with our practice, we selected this rate as the AFA rate applicable to Sujani.

AFA is Supported by Substantial Evidence

As discussed above, we are using the highest model-specific margin from a cooperating respondent, AMFM, as the AFA rate applied to Sujani. The highest model-specific margin is based on sales and cost information AMFM submitted to the Department in the underlying investigation, which the Department ensured was accurate through supplemental questionnaires and verification.

We have considered information reasonably at our disposal as to whether there are circumstances that would render this margin inappropriate. The courts acknowledge that the consideration of the commercial behavior in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.¹⁶⁵ In this particular case, the highest model-specific margin is specific to AMFM, the producer of the

¹⁶² See Preliminary Determination, 79 FR at 26718.

¹⁶³ See *e.g.*, Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative in Part, 71 FR 65082, 65084 (November 7, 2006).

¹⁶⁴ See De Cecco, 216 F.3d at 1032

¹⁶⁵ See, *e.g.*, Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

GOES sold by Sujani. Accordingly, substantial evidence supports the application of an AFA rate of 35.93 percent.

Comment 12: Other Sujani Adjustments

The domestic industry argues that, based on its findings at verification, the Department should make several adjustments to Sujani's reported sales expenses if the Department does not apply facts available with an adverse inference to Sujani.¹⁶⁶ Sujani disagrees with the domestic industry's proposed adjustments.¹⁶⁷

Sujani contends that the Department should adjust its indirect selling expenses ratios based on verification findings. The domestic industry disagrees, arguing that Sujani failed to substantiate the requested changes.

Department's Position:

Because of the Department's decision to base Sujani's final dumping margin on AFA, any issues relating to Sujani's sales expenses are moot. Therefore, we have not addressed these issues for purposes of the final determination.

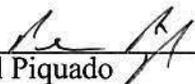
Recommendation

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



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 SEPTEMBER 2014
(Date)

¹⁶⁶ See domestic industry's Case Brief at pages 76-82.

¹⁶⁷ See Sujani Rebuttal Brief at pages 20-27.