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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
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 Russian Federation

Summary

We have analyzed the case and rebuttal briefs of interested parties in the less-than-fair-value (LTFV) investigation of grain-oriented electrical steel (GOES) from the Russian Federation (Russia). As a result of our analysis, we have not made changes to the Preliminary Determination.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this LTFV investigation for which we received comments from the interested parties:

Issues

1. Application of Adverse Facts Available (AFA) to Novolipetsk Steel/VIZ-Steel LLC (NLMK)
2. Issues Regarding the Corroboration Analysis
3. Verification of NLMK’s Reported Data
4. Critical Circumstances Analysis for NLMK
5. Proposed Suspension Agreement

¹ See Grain-Oriented Electrical Steel From Germany, Japan, Poland, and the Russian Federation: Preliminary Determinations of Sales at Less Than Fair Value, Certain Affirmative Preliminary Determinations of Critical Circumstances, and Postponement of Russian Final Determination, 79 FR 26941 (May 12, 2014) (Preliminary Determination).

Background

On May 12, 2014, the Department of Commerce (the Department) published the preliminary determination in the LTFV investigation of GOES from Russia.² The mandatory respondent in this case is NLMK. The period of investigation (POI) is July 1, 2012, through June 30, 2013.

We invited parties to comment on the Preliminary Determination. On June 11, 2014, we received case briefs from NLMK and the Ministry of Economic Development of the Russian Federation (the Russian Ministry). On June 16, 2014, we received a rebuttal brief from the domestic industry.³ After analyzing the comments received, we have not changed the margins from those presented in the preliminary determination.

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 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).

Discussion of the Issues

Comment 1: Application of AFA to NLMK

NLMK argues that the Department's decision in the Preliminary Determination to assign it a margin based on AFA was not in accordance with section 776(a)(2) of the Tariff Act of 1930, as amended (the Act). Specifically, NLMK argues that substantial evidence does not support the Department's contentions that necessary cost of production (COP) information is not available on the record and that NLMK withheld information requested by the Department, failed to provide information by the specified deadlines, and significantly impeded the proceeding. NLMK argues that, rather than considering the relevance of each question posed to NLMK in a supplemental cost questionnaire, the Department simply dismissed NLMK's responses because the responses did not explicitly address each of the Department's questions. NLMK asserts that

² *Id.*

³ 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).

the Court of International Trade (CIT) has held that the Department may only apply facts available if the record contains a gap “that requires filling.”⁴ However, NLMK contends that, because it provided complete and verifiable COP information for all of its merchandise under consideration, it was unnecessary for the Department to resort to facts available.

NLMK argues that the Department neither explained why NLMK’s COP information was deficient nor stated that it found NLMK’s COP data to be incomplete or unverifiable. According to NLMK, the Department should have released an AFA memorandum⁵ to provide an explanation based on substantial evidence as to why the Department could not calculate a margin. NLMK argues that, instead, the Department merely provided in the preliminary determination a list of deficiencies. NLMK contends that this list does not constitute a reasoned explanation for the use of AFA and the lack of such an explanation hinders NLMK’s ability to fully respond to the Preliminary Determination.

NLMK argues that it provided all relevant information, and the deficiencies identified by the Department in the Preliminary Determination are either contradicted by record evidence or reflect a superficial review of the record. NLMK asserts that, while some of its responses to the Department’s original section D questionnaire might not have been clear, it nevertheless responded to every “relevant question.” NLMK also argues that the Department’s concerns about its response to question III.C in section D of the Department’s original questionnaire were rendered moot when it thoroughly explained its calculations in its first supplemental questionnaire response. NLMK also asserts that, because it adjusted its control number (CONNUM)-grouping methodology in response to the Department’s Second Section D Supplemental Questionnaire,⁶ several of the questions in that supplemental questionnaire became irrelevant.

NLMK also disagrees that it failed to demonstrate how its submitted costs tied to its books and records, asserting that it provided documentation concerning its cost reconciliation. According to NLMK, this revised reconciliation obviated the need to address specific questions which it considered related to its previous cost reconciliation. Concerning the Department’s request for monthly inventory movement summaries, NLMK states that, even though it originally had provided a COP base report which summarized monthly costs, it subsequently revised its COP base report and provided costs on a POI basis which were not broken out monthly. NLMK asserts that it provided POI production totals and “rather than blindly adhere to the letter of a directive it thought no longer relative, NLMK submitted the inventory movement information in conformance with its revised reporting in an effort to adhere to the purpose behind the request.”

⁴ See Agro Dutch Industries Ltd. v. United States, 31 CIT 2047, 2061 (CIT 2007).

⁵ Specifically, NLMK asserts that it is the Department’s practice to release a separate AFA memorandum. See the AFA memoranda accompanying: Welded Stainless Pressure Pipe From Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014); and Small Diameter Graphite Electrodes from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: 2012-2013, 79 FR 15944 (March 24, 2014).

⁶ See the Department’s February 25, 2014, Sections A and D Supplemental Questionnaire (Second Section D Supplemental Questionnaire).

Similarly, NLMK argues that it submitted information to clarify apparent conflicting production quantity information. Concerning the Department's unanswered request for detailed cost build-up packages for specific CONNUMs, NLMK argues that, because of the "changes in its methodology and re-calculation of costs for all CONNUMs, NLMK no longer grouped the CONNUMs in the same groupings." As a result, NLMK explains that it expected that the request was no longer relevant because its revisions made the specific CONNUMs no longer "informative." Finally, concerning the Department's requests for worksheets showing the calculation of NLMK's factors for general and administrative (G&A) and financial expenses, NLMK asserts that worksheets which included the relevant data had been submitted previously and that, even though the annual ratios had not been calculated, the calculation could be performed using the information in those worksheets.

NLMK argues that, because sufficient time remained prior to the preliminary determination, section 782(d) of the Act obligated the Department to issue NLMK a third supplemental questionnaire to address any remaining questions. NLMK argues that the CIT has explained that section 782(d) of the Act is "designed to prevent the unrestrained use of facts available to a firm which makes its best efforts to cooperate with the Department."⁷

Moreover, NLMK argues that the Department should have used its data to calculate a margin even if the Department considered the submissions unsatisfactory. Specifically, NLMK argues that section 782(e) of the Act requires the Department to consider information submitted by an interested party even if it "does not meet all the applicable requirements," provided that: 1) the information is timely, verifiable, and not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; 2) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and, 3) the information can be used without undue difficulties. NLMK asserts that the Department neither deemed the information incomplete nor demonstrated that its use would present undue difficulties. NLMK concludes that the only deficiency in its responses was that the responses did not meet all the "applicable requirements established" insofar as they did not contain the requested, but inapplicable or unnecessary, information noted above.

NLMK argues that, because substantial evidence demonstrates that it acted to the best of its ability, the Department may not apply an adverse inference pursuant to section 776(b) of the Act. NLMK argues that, not only has the Court held that there is a presumption of non-adversity in the case of a cooperative respondent,⁸ but also the Department must be explicit in its explanation as to why it concluded that a party failed to act to the best of its ability.⁹ NLMK argues that the Court of Appeals for the Federal Circuit (CAFC) has held that the Act requires "the respondent to do the maximum it is able to do" and "{w}hile the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."¹⁰ NLMK argues that, prior to applying an adverse inference, the

⁷ See Borden, Inc. v. United States, 4 F. Supp. 2d 1221, 1245 (CIT 1998).

⁸ See Carpenter Tech. Corp. v. United States, 26 CIT 830, 842-843 (2002) (Carpenter Tech.).

⁹ See Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1331 (CIT 1999) (Ferro Union).

¹⁰ See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (Nippon Steel).

Department has an obligation to “examine a respondent’s actions and assess the extent of the respondent’s abilities, efforts, and cooperation”¹¹ and that “{a}n adverse inference may not be drawn merely from a failure to respond.”¹²

NLMK argues that, because the Department did not consider NLMK’s actions and abilities, the Department did not satisfy its legal obligation when it simply stated that NLMK failed to provide complete COP information when it possessed the requested information. NLMK asserts that facts in this proceeding are similar to those in Ferro Union, where the CIT admonished the Department for simply stating that the respondent impeded the review by “failing to comply with {Commerce’s} requests for complete information on affiliates” because the court found that “mere recitation of the relevant standard is not enough for Commerce to satisfy its obligation under the Statute.”¹³ NLMK argues that the Department had an obligation to explain why it applied AFA to a respondent which had worked diligently to submit timely original and supplemental questionnaire responses that were approximately 3,500 pages in total, including almost 1,000 pages of information related to NLMK’s COP.

NLMK argues that the record as a whole demonstrates that it acted to the best of its ability, especially since, over a three-month period, it responded in a timely manner to all of the Department’s requests, many of which coincided with holidays both in the United States and Russia. Moreover, NLMK asserts that, in those instances where it did not respond, it believed that changes to its cost base rendered the questions moot; nonetheless, it offered to respond to questions in future supplemental questionnaires, if the Department disagreed, and to participate in verification. NLMK argues that the record indicates that any deficiencies were due to the inability of a first-time respondent to explain, in a foreign language, its record keeping and methodology. According to NLMK, the CIT has generally found that such “general diligence and responsiveness to Commerce’s requests for information” indicates that a respondent acted to the best of its ability despite the imperfect provision of information.¹⁴ Thus, NLMK requests that the Department verify its reported information and then calculate NLMK’s margin for purposes of the final determination using the verified data.

The Russian Ministry argues that the Department’s application of AFA to NLMK in the Preliminary Determination is not in accordance with the United States’ international legal obligations. Specifically, the Russian Ministry argues that the Department violated the requirements of paragraphs 3, 5, 6, and 7 of Annex II in connection with Article 6.8 of the Antidumping Agreement.¹⁵

The Russian Ministry asserts that NLMK cooperated with the Department throughout the course of this investigation by submitting timely and verifiable responses to each of the Department’s

¹¹ Id., at 1381.

¹² Id., at 1383.

¹³ See Ferro Union, 44 F. Supp. 2d at 1330.

¹⁴ See Carpenter Tech., 26 CIT at 836.

¹⁵ See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (Antidumping Agreement) at Article 6.8.

requests for information concerning NLMK's sales and COP information. The Russian Ministry argues that the Department imposed an unnecessary burden on NLMK by issuing overlapping supplemental questionnaires. Concerning NLMK's response to the Department's Second Section D Supplemental Questionnaire, the Russian Ministry claims that the fact that NLMK stated in its response that it considered the remaining questions to be no longer relevant, but that it would be willing to respond to future supplemental questionnaires or answer questions at verification, demonstrates that it acted in good faith to the best of its ability. The Russian Ministry argues that the principle of good faith was recognized by the World Trade Organization (WTO) Appellate Body in U.S. – Hot Rolled Steel.¹⁶ The Russian Ministry argues that the Department should have issued NLMK an additional supplemental questionnaire so that it could provide further explanation and clarification concerning its COP information. Finally, the Russian Ministry argues that the Department's rejection of all of NLMK's previously submitted data and the application of total AFA to it unfairly treats fully non-cooperative respondents the same as actively cooperative respondents with partial deficiencies.

The domestic industry disagrees that NLMK cooperated to the best of its ability, asserting that, throughout the course of the investigation, NLMK's responses were vague and incomplete even though the Department provided NLMK ample opportunities to remedy its deficiencies and explicitly warned it of the consequences of failing to submit the requested information. The domestic industry identifies several examples of the fundamental deficiencies in NLMK's submissions and explains that many of the questions in the Department's supplemental questionnaires sought critical information which should have been included in NLMK's original section D questionnaire response.¹⁷ The domestic industry states that it is for the Department to decide which of its questions are relevant, not NLMK. Moreover, the domestic industry argues that, in addition to NLMK's outright dismissal of the last several pages of the Department's Second Section D Supplemental Questionnaire, NLMK's failure to submit an electronic COP database along with this response made it essentially impossible for the Department to calculate a margin. The domestic industry argues that, despite NLMK's contention to the contrary, the Department has explained previously that the respondent bears the burden of creating an adequate record and that a large volume of information does not equate with a complete and adequate response that can be relied upon to calculate a margin.¹⁸

¹⁶ See United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R (July 24, 2001) (U.S. – Hot Rolled Steel), at paras. 101-102.

¹⁷ The domestic industry notes that, even though the Department focused its analysis on deficiencies in NLMK's section D response, significant deficiencies also exist with respect to NLMK's reported U.S. sales. See the domestic industry's rebuttal brief at page 16. While the domestic industry agrees that NLMK's cost deficiencies justified the Department's application of AFA, they assert that the existence of U.S. sales deficiencies provide yet another reason to continue to apply AFA to NLMK in the final determination.

¹⁸ See Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 32539 (June 1, 2012) (Pipe from the UAE Preliminary Determination), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates, 77 FR 64475 (October 22, 2012).

The domestic industry argues that the Department's decision not to issue NLMK a third supplemental questionnaire is consistent with the requirements of section 782(d) of the Act, as well as the Department's practice.¹⁹ Concerning NLMK's offer to respond to questions during verification, the domestic industry argues that the Department has previously determined that verification is not the time for a respondent to present new information.²⁰ The domestic industry also argues that the courts have upheld the Department's decision not to verify submitted information.²¹

The domestic industry argues that the Department clearly articulated its rationale for applying AFA in the Preliminary Determination, considering the totality of NLMK's response and concluding that it could not assess the reasonableness and reliability of the cost data because basic, crucial information was missing. According to the domestic industry, it is immaterial that the Department did not separately discuss each question to which NLMK failed to respond; rather, as the Preliminary Determination made clear, the Department did not include a specific analysis of NLMK's costs because the reported information prevented the Department from conducting such an analysis. Further, the domestic industry disagrees that the Department is required to issue a separate AFA memorandum; nonetheless, it notes that the Preliminary Determination contains the type of analysis included in the AFA memoranda cited by NLMK. Indeed, the domestic industry explains that the major difference between the analysis contained in the memoranda referenced by NLMK and the analysis included in the Preliminary Determination is that the memoranda referenced by NLMK contain business proprietary information which could not be discussed publicly, a concern not present in the instant investigation.

Finally, the domestic industry finds without merit NLMK's contention that its responses are unclear because it is a first-time respondent, stating that this argument ignores the fact that NLMK is represented by experienced counsel. The domestic industry notes that the Department has not excused other respondents in similar circumstances, finding that the guidance of experienced counsel should have enabled the respondent to comply with the Department's requests for information.²²

¹⁹ See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum at Comment 1 (Garlic from the PRC), which states that the "purpose of supplemental questionnaires is to clarify initial questionnaire responses so that we more fully understand the responses. When the responses to the original and supplemental questionnaires are so inadequate that the questions must be repeated, we are given little reason to believe that a second supplemental questionnaire will yield complete detailed responses to the questions."

²⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Lined Paper from India, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 14 (Lined Paper from India).

²¹ See NSK Ltd. v. United States, 346 F. Supp. 1312, 1337 (2004) aff'd 510 F.3d 1375 (Fed. Cir. 2007).

²² See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003), and accompanying Issues and Decision Memorandum at Comment 6 (Steel Wire Strand from Mexico).

The domestic industry argues that, even though the Department is permitted to apply facts available if only one of the prerequisites in section 776(a)(2) of the Act is present, all four of the prerequisites have been met in this investigation. Specifically, the domestic industry argues that NLMK withheld requested information by failing to answer original and supplemental questionnaires to the best of its ability and failing to provide the requested cost data. The domestic industry also argues the data which were submitted were not in the proper form and so incomplete that it hindered the verification of the data. According to the domestic industry, NLMK's failure to provide the data significantly impeded the proceeding because the failure prevented the Department from calculating a margin.

The domestic industry asserts that it is the Department's practice to apply AFA to respondents which have submitted questionnaire responses but have failed to do so to the best of their ability. Moreover, the domestic industry argues that the Department has explained that "{i}n cases involving a sales-below-cost investigation, as in this case, lack of accurate COP/constructed value (CV) information renders a company's response so incomplete as to be unusable."²³ The domestic industry also argues that the Department has applied AFA in situations where any attempt to correct discrepancies and unsupported allocations would require the respondent's sales and cost responses to be recreated and completely transformed.²⁴

The domestic industry contends that the Department assesses whether a respondent has cooperated to the best of its ability by considering both the accuracy and completeness of the submitted data, as well as whether the respondent has hindered the calculation of an accurate dumping margin.²⁵ Moreover, the domestic industry states that the CAFC has held that "the Department need not show intentional conduct on the part of the respondent, but merely that 'a failure to cooperate to the best of a respondent's ability' existed (i.e., information was not provided 'under circumstances in which it is reasonable to conclude that less than full cooperation has been shown')." ²⁶ Additionally, the domestic industry states that the CAFC has explained that "{c}ompliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation."²⁷ Thus, the domestic industry asserts that, because NLMK failed to cooperate to the best of its ability, the Department was justified in applying AFA to it in the Preliminary Determination, and it should continue to do so for purposes of the final determination.

²³ See Notice of Final Results of Antidumping Duty Administrative Review, Stainless Steel Bar from India, 70 FR 54023 (September 13, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (Stainless Steel Bar from India).

²⁴ Id.

²⁵ See, e.g., Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 FR 2049 (January 14, 2009), and accompanying Issues and Decision Memorandum at Comment 1 (SDGE from the PRC).

²⁶ See Nippon Steel, 337 F.3d at 1380.

²⁷ Id., at 1382.

Department's Position:

We disagree with NLMK and have continued to apply AFA to NLMK for this final determination. Contrary to NLMK's assertions, the Department does not have reliable information on the record of this investigation pertaining to NLMK's cost of producing the merchandise under consideration (MUC). Rather, as explained more fully below, due to NLMK's failure to act to the best of its ability in responding to the Department's requests for information, the Department did not receive from NLMK the necessary explanations and documentation of how costs are calculated in NLMK's normal cost accounting system – including the degree of specificity to which product-specific costs are calculated and the extent to which its submitted costs reflect the product-specific manufacturing costs – and other information that is necessary for the Department to meaningfully analyze NLMK's section D response to calculate a reliable margin.

The Department requires accurate and complete information pertaining to a respondent's cost of producing MUC because such information: 1) provides the basis for determining whether comparison market sales were made in the ordinary course of trade and can be used to calculate normal value (*i.e.*, comparison market sales made at prices above COP) pursuant to section 773(b)(1) of the Act; 2) is used in the difference-in-merchandise analysis pursuant to section 773(a)(6)(C) of the Act; and 3) in certain instances (*e.g.*, where there are no comparison market sales made at prices above the COP), is used as the basis for normal value itself.²⁸ The Department has previously explained that in the cases involving a sales-below-cost investigation, such as the current investigation, the failure to provide accurate cost information renders a company's response so incomplete as to be unusable.²⁹ Additionally, the CIT has recognized that, because cost information is essential for multiple calculations, "cost information is a vital part of {the Department's} dumping analysis."³⁰ Accordingly, the Department examines and confirms not only that a respondent has reported that the aggregate pool of costs which the respondent reports as being attributable to the MUC is accurate and complete, but also that the costs are reasonably and accurately allocated to individual CONNUMs. The CIT has recognized that the Department " 'must ensure that {a respondent's} reported costs capture all of the costs incurred by the respondent in producing the subject merchandise' before it can appropriately use that respondent's cost allocation methodology."³¹ The CIT has also recognized that a respondent must provide the information and documentation necessary for the Department to gain an understanding of a respondent's reporting methodology.³²

²⁸ See Stainless Steel Bar from India at Comment 1.

²⁹ *Id.*, at Comment 1.

³⁰ See Mukand, Ltd. v. United States, Court No. 11-00401, Slip Op. 13-41 (CIT March 25, 2013) (Mukand), at 15.

³¹ See Sidenor Indus. SL v. United States, 664 F. Supp. 2d 1349 (CIT 2009) (Sidenor), (quoting Myland Indus., Ltd. v. United States, 31 Ct. Int'l Trade 1696, 1703 (CIT 2007)).

³² *Id.*, at 1357.

Section 773(f)(1)(A) of the Act provides that, for the purposes of calculating COP and CV, costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and *reasonably* reflect the costs associated with the production and sale of the merchandise.³³ Because of the statutory directive to ensure that a respondent's submitted costs are based on the costs recorded in the normal course of business if such records are kept in accordance with the GAAP of the producer's home country and reasonably reflect the cost of producing MUC, it is critical that the Department examine and fully understand the allocation methodologies used by the respondent to allocate costs to individual products in its normal course of business. As a part of this analysis, the Department requires that, in addition to demonstrating that overall production costs at the aggregate level tie to a respondent's records, a respondent must demonstrate that the individual components (*e.g.*, direct materials (DIRMAT), direct labor (DIRLAB), *etc.*) of its total cost of manufacturing (TOTCOM) also tie to its normal records at both the CONNUM-specific and product-specific levels.³⁴ The CIT has recognized that a respondent's failure to provide documentation to support the individual cost components of its TOTCOM prevented the Department from ensuring that the reported costs capture all of the costs the respondent incurred in producing MUC.³⁵

Because the Department has a responsibility to ensure that a respondent's submitted costs are based on its normal books and records and reasonably reflect the cost of producing MUC, the Department's standard section D questionnaire contains multiple questions aimed at eliciting critical information pertaining to a respondent's cost accounting system, the degree and manner in which a respondent calculates product-specific costs in the normal course of business, and, if necessary, the manner and extent to which a respondent's product-specific costs submitted to the Department differ from the product-specific costs maintained in the respondent's normal books and records. For example, section II.C requests essential information about a respondent's normal cost accounting system such as whether the respondent uses a job order, process, or operations accounting system, the manner in which the cost accounting system allocates costs, and whether the system relies on standard or budgeted costs.³⁶ Additionally, question III.A.3 explains that submitted costs must reflect the cost differences attributable to each physical characteristic identified by the Department and that, unless a respondent can quantify and explain the insignificant nature of cost differences attributable to specific physical characteristics, the respondent must develop a reasonable method of adjusting the product-specific costs recorded in

³³ See section 773(f)(1)(A) of the Act (emphasis added).

³⁴ See Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review, 72 FR 42395 (August 2, 2007) (Stainless Steel Bar from Spain), and accompanying Issues and Decision Memorandum at Comment 2 (stating that “[t]hroughout this review Sidenor has declined to provide us with requested documentation in support of its reported direct-materials cost at both the control-number and specific-product levels” and explaining that the “primary reason for the Department’s finding that Sidenor did not cooperate to the best of its ability . . . is Sidenor’s failure to provide adequate explanations and requested documentation linking its reported direct-materials cost to cost-accounting records it maintains in the normal course of business”).

³⁵ See Sidenor, 664 F. Supp. 2d at 1356 (noting that “. . . the fact remains that Sidenor did not provide to Commerce the information necessary ‘to gain an understanding of Sidenor’s reporting methodology’”).

³⁶ See, *e.g.*, questions II.C.1.a, II.C.1.c, and II.C.8 of the Department’s original section D questionnaire.

the normal cost accounting system to reflect the cost differences attributable to each individual characteristic not tracked regularly. Furthermore, question III.A.4 instructs respondents to list and describe all differences between costs computed under their normal cost and financial accounting systems and the reported COP and CV figures. Moreover, because it is critical that the Department understand a respondent's normal cost accounting system and its submitted costs, question III.C contains detailed instructions about some of the mandatory illustrative documentation required to demonstrate the calculation of a respondent's submitted COP and CV figures. Specifically, among other things, question III.C instructs respondents to identify the CONNUMs with the highest sales volume in each market and to provide illustrative worksheets which demonstrate how unique products included within those CONNUMs were weight-averaged together to calculate CONNUM-specific costs and how the product-specific amounts within each data field (e.g., DIRMAT, DIRLAB, etc.) were calculated. Finally, question III.C instructs respondents to submit illustrative product-specific costing documentation for each data field (e.g., DIRMAT, DIRLAB, etc.).

The Application of Facts Available

Section 776(a)(1) of the Act states, subject to section 782(d) of the Act, that the Department shall use facts otherwise available if necessary information is not available on the record of a proceeding. In addition, section 776(a)(2) of the Act also provides that the Department shall, subject to section 782(d) of the Act, use facts otherwise available if an interested party or any other person: A) withholds information that has been requested by the Department; B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; C) significantly impedes a proceeding; or, D) provides such information but the information cannot be verified, as provided in section 782(i).

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

Section 782(c)(1) of the Act provides that if an interested party, after receiving a request from the Department, promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which it is able to submit the information, the Department shall consider the ability of the interested party to submit the information in the requested form and manner and may modify its requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

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.

As explained in the Preliminary Determination, the Department was not provided necessary information on the record of this investigation that would enable it to carry out its statutory obligation to meaningfully analyze NLMK's submitted costs. While it is a well-settled principle that NLMK has the burden of creating an accurate and complete record during the course of the investigation,³⁷ NLMK failed to meet this burden despite multiple opportunities to provide the Department with the information required to calculate an accurate margin. In addition to issuing its standard section D questionnaire, the Department issued two supplemental questionnaires to NLMK in an effort to obtain basic information regarding the accounting system that the Department requires of all individually-examined respondents. Nearly four months elapsed between the issuance of the original standard section D questionnaire, in which the Department initially requested the information, and the receipt of NLMK's response to the Second Section D Supplemental Questionnaire. As discussed in detail below, NLMK failed to submit the requisite explanations and documentation from its normal books and records of how costs are calculated and allocated in its cost accounting system, the degree of specificity to which product-specific costs are calculated in the normal course of business, the extent to which NLMK's submitted costs reflect the product-specific costs calculated in its normal course of business, and other information such as the methodology used by NLMK to assign individual products to CONNUMs. Indeed, because of NLMK's general ambiguity and unresponsiveness in its reporting, and its decision to adjust its methodology and recalculate its costs for all CONNUMs in its second supplemental questionnaire response, the Department does not have a clear understanding as to whether NLMK has based the latest version of its submitted costs on its POI production quantities and costs.³⁸ In other words, we do not know how NLMK calculates product-specific costs in its normal books and records, nor do we know how NLMK calculated its costs for reporting purposes. These deficiencies hinder the Department's ability to analyze NLMK's submitted costs. NLMK's refusal to submit even basic source documentation from its SAP accounting system³⁹ to demonstrate how the individual cost components (e.g., DIRMAT, DIRLAB, etc.) of its TOTCOM at the product-specific level tie to its accounting system make it impossible for the Department to assess whether the costs recorded in its system reasonably reflect NLMK's cost of producing MUC.⁴⁰

³⁷ See, e.g., Pipe from the UAE Preliminary Determination, 77 FR at 32544, quoting Essar Steel Ltd. v. United States, 2012 U.S. App. LEXIS 8621 at *22 (Fed. Cir. Apr. 27, 2012) (citing Zenith Elecs. Corp. v. United States, 988 F.2d 1573, 1583 (Fed. Cir. 1993)).

³⁸ See *infra* footnotes 71 through 74 and accompanying text.

³⁹ See page 34 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014 (explaining that NLMK uses an SAP system). See also Exhibit 33 of NLMK's response to the Department's February 25, 2014, Sections A and D Supplemental Questionnaire, dated March 20, 2014 (Second Section D Supplemental Questionnaire Response) (explaining the SAP system) and page 25 of NLMK's Second Section D Supplemental Questionnaire Response (where NLMK declined to provide the Department with the requested product-costing documentation from its SAP system for specified CONNUMs).

⁴⁰ The Department also notes that NLMK's failure to submit an electronic version of its revised COP database not only hinders our ability to analyze NLMK's submitted data, but renders the calculation of an antidumping margin virtually impossible.

Further, as previously explained in the Preliminary Determination, even though the Department granted NLMK a three-week extension of the deadline to file its original response to section D of the Department's questionnaire, NLMK filed only a partial response and failed to respond to several critical questions. Rather than providing information requested in the standard questionnaire, NLMK offered vague and sparse responses to some of the questions which did little to explain critical elements of its cost accounting system and product-costing calculations. While NLMK contends that it responded to what it deemed to be the "relevant" questions in section D of the Department's questionnaire, NLMK's responses to questions aimed at obtaining critical information pertaining to NLMK's cost accounting system and submitted costs were insufficient to explain NLMK's cost accounting system and submitted costs. For example, in response to question II.C.1.a of the standard section D questionnaire, which instructs respondents to state whether they utilize a job-order, process, or operations cost-accounting system, NLMK discussed its chart of accounts, acknowledged that job order and process costing are two different costing methods, and explained general accounting concepts such as recognition.⁴¹ However, NLMK failed to answer the basic question regarding what type of accounting system it used (e.g., job order, process or operations cost accounting system), information the Department needs so that it can understand and follow a respondent's cost calculations.

Additionally, rather than explain how its system allocates costs to individual products in the normal course of business as instructed by questions II.C.1.c and II.C.8.a of the standard section D questionnaire, NLMK simply stated that it relied on standard costs and provided a brief overview of materials variances. NLMK did not demonstrate how conversion costs or variances are allocated to specific products in its normal books and records or for reporting purposes.⁴² Also, while NLMK did provide a list of direct cost centers related to the production of MUC, NLMK simply stated that "{o}n the basis of primary documents, costs are allocated to cost centers (workshops, sections, units) and product/service types" even though question II.C.5 of the section D questionnaire instructed NLMK to state the allocation basis applicable to each direct cost center.⁴³ Without knowing the allocation basis in the allocation methodology employed by NLMK, the Department is not able to determine whether the allocation methodology is non-distortive and reasonably reflects the cost associated with production. Additionally, in response to the Department's critical question concerning the degree to which submitted product-specific costs reflect the model-matching physical characteristics, NLMK provided a cursory statement that, because all types of electrical anisotropic steel are manufactured on the same equipment, it does not separately calculate costs for different types of electrical anisotropic steel but that it did so to the extent warranted by the model match characteristics.⁴⁴ Once again, rather than providing basic information that the Department

⁴¹ See page 33 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014.

⁴² See pages 34 and 45 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014.

⁴³ See pages 37-38 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014.

⁴⁴ See page 55 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014.

requests in its standard questionnaire from all respondents, NLMK provided an inadequate response that does not permit the Department to meaningfully evaluate NLMK's calculations. Moreover, rather than explain how it adjusted its costs to reflect the Department's product characteristics, identify which product characteristics were reflected in its product-specific costs, or even describe the differences between the costs calculated in the normal cost accounting system and the submitted COP and CV figures, NLMK stated that the cost accounting system is an integral part of the broader financial accounting system and that the data generated by the cost accounting system are used to prepare NLMK's financial statements.⁴⁵ Finally, NLMK did not include worksheets which illustrated the calculation of its G&A and financial expense ratios and, thus, failed to explain how it arrived at these components of its COP calculation.⁴⁶ Despite receiving a 22-day extension of time to prepare its responses to the standard questionnaire, on top of the 38 days originally granted, NLMK provided inadequate responses to several critical questions.

NLMK's incomplete "responses" to the above questions in the original section D questionnaire hindered the Department's ability to begin analyzing NLMK's submitted costs. In addition, NLMK's partial "response" to question III.C of the Department's section D questionnaire made it very difficult, if not impossible, to understand NLMK's CONNUM-specific and product-specific cost calculations. Specifically, instead of providing a meaningful response, NLMK referred the Department to Exhibits D-1 and D-2 of its questionnaire response, even though the referenced exhibits only contained unexplained Excel worksheets without any illustrative product-costing documents.⁴⁷ We disagree with NLMK's argument that its reference to unexplained Excel worksheets should be viewed as meeting the standard of cooperating to the best of its ability even if the worksheets themselves were not, as admitted by NLMK, "sufficiently clear." When the Department asks a specific question in its standard questionnaire, it is not enough to provide Excel worksheets with raw data without any explanation, narrative or supporting documents, as the questionnaire requests. Exhibits D-1 and D-2 of NLMK's section D questionnaire response only contain summary information at the overarching CONNUM level, rather than information pertaining to the factory-specific production quantities and costs of individual products within the individual CONNUMs. Additionally, despite the specific instructions included in the original questionnaire, the worksheets in Exhibits D-1 and D-2 neither show information related to the individual data fields of specific individual products within any of the CONNUMs nor contain product-specific documentation to support and/or explain product-specific cost calculations so that the Department could begin to analyze

⁴⁵ See page 56 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014.

⁴⁶ Because section 773(b)(3)(B) of the Act mandates that a respondent's COP include "an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question," question III.D of the Department's standard section D antidumping questionnaire instructs a respondent to submit worksheets illustrating its calculation of its G&A and financial expense ratios. In response to the question III.D of the Department's original section D questionnaire, NLMK referred the Department to Exhibit D-3. However, Exhibit D-3 does not contain the requested worksheets. See page 59 and Exhibit D-3 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014.

⁴⁷ See page 58 and Exhibits D-1 and D-2 of NLMK's response to section D of the Department's questionnaire, dated January 23, 2014.

NLMK's methodology. Finally, we observe that NLMK had not complied with the Department's standard instructions in sections I and IV of the section D questionnaire concerning the submission of its cost database.⁴⁸

Because of the gross deficiencies noted above in NLMK's initial section D questionnaire response, the Department promptly issued NLMK a supplemental questionnaire aimed at obtaining information which would enable the Department to begin to assess NLMK's cost calculations. Specifically, the Department repeated question III.C of the Department's original questionnaire and also directed NLMK to file its cost database in accordance with the Department's instructions.⁴⁹ While NLMK's First Section D Supplemental Questionnaire Response appeared to contain slightly more information regarding NLMK's methodology for weight-averaging and grouping CONNUMs together for cost calculations, the response fell well short of constituting the "thorough explanation" of its submitted costs and product-specific cost calculations as NLMK now claims.⁵⁰ For example, due to the sparse narrative explanation and column labeling, it was unclear whether the exhibit which NLMK claims demonstrated its cost calculations was prepared based on NLMK's normal books and records or some other method for reporting purposes, and whether the costs were calculated based on production quantities, as required, or sales quantities. Moreover, the confusion about the nature of the information contained in the worksheet was augmented because the CONNUM quantities in the sample cost calculation worksheet conflicted with the CONNUM quantities in NLMK's cost database; in addition, the product-specific quantities appeared to conflict with the product-specific quantities contained in another exhibit which NLMK claimed showed the variances calculated by the cost accounting system.⁵¹ Also, even though NLMK acknowledged the difference between cost of goods sold and cost of goods produced in its narrative, it was unclear how NLMK used a report referred to as a "COP Base" report to derive a purported breakdown of the product-specific POI production costs. Moreover, because the exhibit which contained information on the variances appeared to contain information concerning product-specific production costs and quantities, it

⁴⁸ For example, NLMK grouped multiple CONNUMs on a single line and then presumably reported an aggregate production quantity and average per-unit amount for each cost component (e.g., DIRMAT, DIRLAB, etc.). Because NLMK reported multiple CONNUMs on a single line, the data were not in a usable format. Additionally, NLMK did not include data fields to report each of the physical characteristics.

⁴⁹ See letter to NLMK, dated January 29, 2014 (First Section D Supplemental Questionnaire).

⁵⁰ See NLMK's case brief at page 6.

⁵¹ See Exhibits 5, 7, and 8 of NLMK's response to the First Section D Supplemental questionnaire, dated February 5, 2014 (First Section D Supplemental Questionnaire Response). Exhibit 5 contains NLMK's purported cost buildup worksheet. The column labeled "materials" in this worksheet appears to designate individual finished goods as opposed to material inputs. Many of the same "material" codes appear in Exhibit 7, which NLMK stated contained information about the variances from the SAP system. See page 6 of the First Section D Supplemental Questionnaire Response. Although the Department subsequently requested that NLMK explain the nature of these codes and provide a key to them, so that the Department could understand NLMK's accounting system, the degree to which NLMK normally calculates product-specific costs which reflect the Department's product characteristics, and NLMK's CONNUM groupings, NLMK did not respond to the Department's questions on this matter. See page 24 of NLMK's Second Section D Supplemental Questionnaire Response, where NLMK did not respond to question 36. We note that the existence of these codes appears to contradict NLMK's previous statement that it does not calculate different costs for different types of anisotropic electrical steel. See *supra* footnote 44 and accompanying text.

was unclear why NLMK did not use the information in that exhibit to compile its submitted costs. Further and critically important, NLMK failed to submit product-specific costing documentation from its normal books and records to illustrate how each data field within TOTCOM (e.g., DIRMAT, DIRLAB, etc.) was calculated even though the Department specifically requested this information in the original questionnaire and had repeated its request for this information in the supplemental questionnaire. Moreover, NLMK appeared to contradict its previous explanation that, at least with respect to materials, it used a standard cost system when it reported that “the variances are not relevant for calculation of COP because the COP Base file upon which the costs were derived is based on actual costs.”⁵² Consequently, this contradictory information makes it virtually impossible to gain crucial and fundamental knowledge of how NLMK calculates product-specific costs in its normal books and records, as well as for reporting purposes.

As explained in the preceding paragraph, NLMK did not submit source documentation from its accounting system to demonstrate how product-specific costs are calculated in its normal books and records. We note that, although NLMK maintains that its “Report on Accounting Results” submitted in its First Section D Supplemental Questionnaire Response contains information on a product-code specific basis,⁵³ the report is better characterized as containing summary-level information related to product groups (e.g., GOES) rather than specific products as NLMK maintains.⁵⁴ Moreover, because information contained in NLMK’s First Section D Supplemental Questionnaire Response appeared to indicate that NLMK’s normal cost accounting system might, in fact, calculate costs on either a production-run or more refined product-specific basis,⁵⁵ it is not clear why NLMK needed to group CONNUMs together for generalized cost allocation purposes rather than grouping individual production runs or individual products into single CONNUMs.⁵⁶ Indeed, in the Second Section D Supplemental Questionnaire, the Department specifically asked NLMK to explain the degree to which products are grouped together for cost allocation purposes in the normal course of business, but NLMK did not respond to questions concerning its product and CONNUM groupings.⁵⁷ Finally, despite NLMK’s claim that it “took extra steps to attempt to simplify the analysis for the Department,”⁵⁸ NLMK’s answers to the initial and the first supplemental questionnaires were incomplete, non-responsive, fraught with contradictions and provided little insight into NLMK’s accounting system and its allocation methodologies. NLMK did not even submit revised versions of the sparse CONNUM cost build-ups it had submitted previously when it subsequently submitted a

⁵² See page 6 of NLMK’s First Section D Supplemental Questionnaire Response.

⁵³ See page 3 of NLMK’s First Section D Supplemental Questionnaire Response.

⁵⁴ *Id.* (stating that the relevant product codes for GOES are A0087 and A0087_2).

⁵⁵ See *supra* footnote 51 and accompanying text.

⁵⁶ See *supra* footnote 51 and accompanying text.

⁵⁷ See pages 23-24 of NLMK’s Second Section D Supplemental Questionnaire Response (not responding to questions 34 and 35 of the Department’s Second Section D Supplemental Questionnaire).

⁵⁸ See page 8 of NLMK’s case brief.

revised cost reconciliation and cost base, adjusted its methodology, and recalculated the costs for all CONNUMs.⁵⁹

On February 25, 2014, the Department issued NLMK a second section D supplemental questionnaire. The second supplemental questionnaire contained detailed questions related to the purported cost build-ups contained in NLMK's First Section D Supplemental Questionnaire Response and requests for inventory movement schedules to clarify the unclear and contradictory information previously submitted. Additionally, rather than simply repeat question III.C from the Department's original section D questionnaire for a third time, the Department posed a series of questions directed at clarifying how NLMK calculated product-specific costs, both in its normal books and records and for reporting purposes, and to obtain the necessary illustrative product-costing source documentation. The questions posed by the Department referenced specific CONNUMs and specifically identified the nature of the documentation required to illustrate the manner in which product-specific costs are calculated by NLMK's cost accounting system, the degree to which such product-specific cost calculations reflect the Department's product characteristics, the extent to which NLMK's submitted costs deviated from such product-specific costs, and the methodology used by NLMK to group products into individual CONNUMs. Additionally, because of apparent inconsistencies concerning NLMK's production quantities, the Department requested that NLMK submit documentation to demonstrate that the product-specific production quantities agreed with summary inventory-movement schedules discussed above. The Department explained that the information was needed so that it could understand NLMK's cost calculations. Finally, among other things, the supplemental questionnaire also contained questions pertaining to apparent errors in NLMK's cost reconciliation and requests for worksheets illustrating the calculation of NLMK's G&A and financial expense ratios, because these worksheets had not been submitted previously.

On March 20, 2014, NLMK submitted its response to the Department's Second Section D Supplemental Questionnaire. Although many of the questions in this supplemental questionnaire requested information which should have been provided in NLMK's original section D questionnaire response (which was issued on November 25, 2013), NLMK's response did little to explain or clarify its cost accounting system and submitted costs. Specifically, while NLMK responded to some of the questions in the supplemental questionnaire, NLMK unilaterally dismissed many of the critical questions by stating that the questions are no longer relevant because NLMK had revised its cost reconciliation and cost base.⁶⁰ Additionally, while NLMK

⁵⁹ The Department notes that, even though NLMK acknowledges on page 11 of its case brief that it significantly altered its COP database in response to the Department's Second Section D Supplemental Questionnaire, it never explained the nature of the changes. Rather, NLMK simply stated in its supplemental questionnaire response that "{p}ursuant to comments in this supplemental, NLMK has revised its cost reconciliation and cost base." See page 21 of NLMK's Second Section D Supplemental Questionnaire Response. The COP Base report is a lengthy Excel spreadsheet. The CIT has recognized that a respondent must provide the information and documentation for the Department to gain an understanding of the respondent's reporting methodology. See Sidenor, 664 F. Supp. 2d at 1357.

⁶⁰ See page 21 of NLMK's Second Section D Supplemental Questionnaire Response. The questions dismissed by NLMK related to NLMK's cost reconciliation, production quantities, inventory movement schedules, CONNUM-specific cost calculations, illustrative product-costing system documentation to clarify and demonstrate how each data field (e.g., DIRMAT, DIRLAB, etc.) are calculated on a product-specific basis in NLMK's cost

stated that revisions to its cost reconciliation and cost base were due to questions in the supplemental questionnaire, NLMK did not explain the nature of its revisions and referred the Department to exhibits, which did not contain any apparent explanation or response to the Department's questions.⁶¹ Additionally, although NLMK directed the Department to an exhibit which appeared to contain a revised COP database, NLMK neither explained the nature of the changes to the database nor provided an electronic version of this database.

NLMK did not demonstrate that its submitted costs trace back to source data from its SAP system. The Department acknowledges that NLMK submitted source documentation from its system which supported the POI sales quantities and cost of goods sold figure for the GOES product group.⁶² However, NLMK did not submit the product-group POI cost of manufacturing (COM) statements from its system as requested.⁶³ Instead, NLMK submitted a lengthy Excel worksheet (*i.e.*, its COP Base report for the overall GOES product group) and stated that the report contained information which had been downloaded from its system. Although NLMK stated that its system necessitated the use of its Report on Accounting Results and COP Base report to derive information on product-specific production quantities and costs, information contained in an exhibit pertaining to production variances and standard costs appears to indicate that NLMK's system did in fact permit it to retrieve information pertaining to product-specific costs and production quantities at a more refined level.⁶⁴

As discussed previously, prior to the submission of its Second Section D Supplemental Questionnaire Response, NLMK had twice failed to submit source documentation from its system to demonstrate how, at the product-specific level, it calculated each individual field within TOTCOM (*e.g.*, DIRMAT, DIRLAB, *etc.*). In response to the Department's Second Section D Supplemental Questionnaire, NLMK dismissed as irrelevant the question which requested detailed cost build-up packages for specified CONNUMs.⁶⁵ The question specifically identified the nature of the source documentation required to demonstrate how each individual field within TOTCOM was calculated and tied to the product-specific costs in NLMK's accounting system.⁶⁶ The Department's request for detailed cost build-up packages, which was focused primarily on obtaining critical information originally requested in question III.C of the original section D questionnaire, would also have enabled the Department to gain a better understanding of NLMK's cost accounting system and attempt to resolve previous

accounting system, and missing G&A and financial expense ratio calculation worksheets.

⁶¹ *Id.*

⁶² *See* Exhibits 1 and 2 of NLMK's First Section D Supplemental Questionnaire Response.

⁶³ The Department notes that periodic COM statements are common reports which can be obtained from an SAP system.

⁶⁴ *See supra* footnote 51 and accompanying text.

⁶⁵ *See* page 25 of NLMK's Second Section D Supplemental Questionnaire Response (declining to respond to question 37 of the Department's Second Section D Supplemental Questionnaire).

⁶⁶ The question to obtain detailed cost build-up packages also instructed NLMK to submit documentation to support product-specific production quantities, NLMK's weight-averaging of products produced at multiple factories, and NLMK's CONNUM-grouping methodology. *Id.*

inconsistencies in NLMK's responses.⁶⁷ NLMK's argument that it was justified in not responding to the Department's request for detailed cost build-up packages because the question was no longer relevant "{b}ecause of changes to its methodology and the re-calculation of costs for all CONNUMs"⁶⁸ and its decision to "no longer group CONNUMs in the same groupings as previously"⁶⁹ is belied by the fact that the CONNUMs remained in the database after NLMK's revisions.⁷⁰ Moreover, much of the requested documentation was aimed at obtaining information related to the product-specific costs calculated in the normal course of business, which should not have changed as a result of NLMK's decision to regroup CONNUMs for reporting purposes. In addition to failing to explain adequately its accounting system and allocation methodologies, NLMK failed to address adequately deficiencies concerning its cost reconciliation and resolve conflicting information concerning production quantities. While NLMK did submit documentation directed at addressing some of the questions posed by the Department,⁷¹ it did not submit sufficient documentation to resolve apparent errors in its cost reconciliation and conflicting information concerning its POI production quantities. Specifically, in response to the question in the Department's Second Section D Supplemental Questionnaire regarding whether NLMK had based its submitted costs on its cost of goods sold or COM for the POI and directing NLMK to ensure that its database reflected POI product-specific COM amounts,⁷² NLMK simply referred the Department to Exhibits 54 and 55 without providing a narrative explanation.⁷³ Although one portion of Exhibit 54 indicates that NLMK's aggregate MUC POI sales quantity and cost of goods sold value differs from its aggregate MUC POI production quantity and COM, the other portion of the exhibit indicates that NLMK might have based its reported costs on POI sales quantities and cost of goods sold.⁷⁴ While NLMK argues that it explained in its supplemental questionnaire response that its system only permitted it to determine CONNUM costs by using its Report on Accounting Results,⁷⁵ it is not credible to

⁶⁷ See, e.g., *supra* footnotes 51 and 52 and accompanying text.

⁶⁸ See page 11 of NLMK's case brief.

⁶⁹ *Id.*

⁷⁰ See page 25 and Exhibit 56 of NLMK's Second Section D Supplemental Questionnaire Response (demonstrating that each of the CONNUMs for which the Department requested detailed cost build-up packages remained in NLMK's COP database).

⁷¹ The Department notes that, even though NLMK identifies several questions and argues that they were obviated by its revised reconciliation, several of the questions referenced by NLMK had been asked in the context of understanding NLMK's weight-averaging and CONNUM-grouping methodology, such that the submission of revised worksheets would have aided in the Department's understanding of NLMK's submitted costs.

⁷² It is the Department's long-standing practice to calculate COP and CV based on the POI MUC COM rather than POI MUC cost of goods sold because COM represents the cost to manufacture the product during the period. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia, 63 FR 72268 (December 31, 1998), and accompanying Issues and Decision Memorandum at Comment 3.

⁷³ See page 21 of NLMK's Second Section D Supplemental Questionnaire Response.

⁷⁴ See Exhibit 54 of NLMK's Second Section D Supplemental Questionnaire Response. It is unclear because, even though the columns in the database summaries indicate that NLMK's database contains CONNUM-specific production quantities and TOTCOM amounts, the aggregate figures correspond to another portion of the exhibit which are labeled as sales volume and cost of sales.

⁷⁵ See page 20 of NLMK's Second Section D Supplemental Questionnaire Response. The Report on

maintain that a company which uses a sophisticated SAP system is unable to determine its POI production quantities and costs and must rely on a report pertaining to sales quantities to calculate its POI CONNUM-specific production quantities and costs.⁷⁶

We also disagree with NLMK's argument that it was justified in its rejection of the Department's requests for monthly inventory-movement schedules on the grounds that, because it chose to revise its COP Base report and report POI figures rather than monthly figures, it chose not to "blindly adhere to the letter of a directive it thought no longer relative."⁷⁷ As discussed above, NLMK did not submit information which was important and necessary to resolve the Department's concerns about the reported production quantities. While NLMK submitted figures concerning the overall POI change in finished goods for GOES, these figures did nothing to resolve concerns about CONNUM-specific production quantities.

We also disagree with NLMK's argument that its First Section D Supplemental Questionnaire Response contained worksheets which included the data needed for the calculation of its G&A and financial expense ratios. Specifically, NLMK argues that while it admittedly did not calculate the data for fiscal year 2012 exclusively, the Department can easily perform the calculation because NLMK did include the data for fiscal year 2012, the first half of fiscal year 2012, and the second half of fiscal year 2013. However, the worksheet to which NLMK referenced was not included in the .pdf version of NLMK's supplemental questionnaire response. Accordingly, we presume that NLMK is referring to a summary table included in the Excel file accompanying its response. Contrary to NLMK's assertion that the worksheets included all necessary data, the worksheets included only aggregate figures for cost of goods sold, administrative expenses, interest receivable, and interest payable.⁷⁸ The worksheets did not include information expressly requested by the Department such as a schedule of items included in the calculations, confirmation that packing and freight-in expenses had been removed from the denominator of the calculation, an explanation of any items for which NLMK was requesting an offset to its G&A expenses, and documentation that any interest income offsets were short-term in nature. Moreover, the burden is on NLMK to provide the requested G&A and financial expense ratio calculations, not for NLMK to provide data it believes are sufficient to allow the Department to calculate the requested ratios.

The foregoing discussion demonstrates that, even though the Department requested supporting source documents that were essential to understanding the fundamentals of NLMK's normal books and records versus its reporting methodology and demonstrating NLMK's product-

Accounting Results only contains information pertaining to sales quantities and values. It does not contain information pertaining to production quantities and values. See Exhibit 2 of NLMK's First Section D Supplemental Questionnaire Response.

⁷⁶ See Exhibit 33 of NLMK's Second Section D Supplemental Questionnaire Response (explaining the functionality of NLMK's SAP system). Moreover, as discussed previously, information submitted by NLMK demonstrates that it does, in fact, track POI production quantities and costs. See footnote 51 and accompanying text.

⁷⁷ See page 10 of NLMK's case brief.

⁷⁸ See tab labeled "Exhibit SD-9" in the Excel file titled "NLMK_Exhibit_5_section_D_supp_CONNUM-1_CONNUM-2_(Calculation)," which was submitted with NLMK's First Section D Supplemental Questionnaire Response.

specific cost calculations in each of its three section D questionnaires, necessary information is not available on the record. See section 776(a)(1) of the Act. Further, NLMK repeatedly withheld information within the meaning of section 776(a)(2)(A) of the Act. Moreover, by choosing to ignore a significant portion of the Department's Second Section D Supplemental Questionnaire and unilaterally dismissing these questions as irrelevant, NLMK failed to provide requested information by the established deadline within the meaning of section 776(a)(2)(B) of the Act. In addition, because the information which NLMK withheld and failed to submit within the established deadline was crucial to the Department's ability to understand and analyze meaningfully NLMK's submitted costs, NLMK significantly impeded the investigation within the meaning of section 776(a)(2)(C) of the Act.

The foregoing discussion also demonstrates that, consistent with section 782(d) of the Act, the Department afforded NLMK three opportunities to submit product-costing documentation from NLMK's cost accounting system to demonstrate how each individual data field in TOTCOM (e.g., DIRMAT, DIRLAB, variable overhead, etc.) was calculated and traced back to source data from the cost accounting system. The foregoing discussion demonstrates, as well, that many of the questions which NLMK dismissed as irrelevant in its response to the Department's Second Section D Supplemental Questionnaire had been aimed at obtaining critical information originally requested in the Department's standard section D questionnaire pertaining to NLMK's cost accounting system, the degree to which it calculates product-specific costs in the normal course of business, and the extent and degree to which its submitted costs differed from the costs calculated in the normal course of business. Moreover, NLMK is incorrect that "there was more than sufficient time" for the Department to, once again, notify NLMK of its deficiencies. While section 782(d) of the Act represents a general obligation of the Department to allow a party the opportunity to remedy or explain deficiencies, that section also recognizes that the Department has statutory deadlines within which to make its determination. Specifically, section 782(d) of the Act only requires such additional efforts by the Department *to the extent practicable*.

In this investigation, the Department spent almost four months attempting to obtain critical information from NLMK that NLMK should have provided in its original response to the standard questionnaire. The Department provided NLMK with a three-week extension for submitting its original section D response and two opportunities to remedy or explain deficiencies in that response. Accordingly, the Department has already fulfilled its obligations under section 782(d) of the Act. In fact, section 782(d) of the Act expressly provides that where, as here, a person submits further information in response to a deficiency and the Department determines that the supplemental response is not satisfactory, the Department may disregard all or part of the original and subsequent responses. NLMK's repeated failures to respond adequately to the three questionnaires (the standard section D questionnaire and two supplemental section D questionnaires) aimed at eliciting basic crucial information which should have been obtained months earlier and its unilateral decision not to respond to some of the questions by characterizing them as irrelevant wasted almost four months of valuable time and significantly impeded this investigation. The information at issue would have, at best, provided the Department with the starting point for analyzing NLMK's cost accounting system, the manner and degree to which NLMK calculates product-specific costs in the normal course of business, and the degree to which its submitted costs deviated from those costs calculated in the normal course of business. Given NLMK's deficient responses to the original section D standard questionnaire and the first supplemental questionnaire, NLMK's decision to ignore a significant

portion of the Department's Second Section D Supplemental Questionnaire does not warrant a third supplemental questionnaire to try yet again to get responses to the same questions.

NLMK is incorrect that section 782(e) of the Act requires that the Department use its submitted information to calculate an antidumping margin. Section 782(e) of the Act only obligates the Department to consider information that meets the following five statutory tests of whether: 1) the information was submitted by the established deadline; 2) the information could be verified; 3) the information is not so incomplete that it cannot serve as a reliable basis for making the applicable determination; 4) the interested party demonstrated that it acted to the best of its ability; and 5) the information could be used without undue difficulties. In this investigation, NLMK's submitted information does not meet all of these tests.

As discussed previously, NLMK simply chose not to respond to many of the critical questions contained in the Department's Second Section D Supplemental Questionnaire.⁷⁹ NLMK's failure to respond to numerous questions in the Department's Second Section D Supplemental Questionnaire, coupled with its pattern of providing vague, sparse, and, at times contradictory, responses to other questions rendered NLMK's responses incomplete⁸⁰ and, because the deficiencies cut across most aspects of the submitted cost data, the information was unreliable⁸¹ within the meaning of section 782(e)(3) of the Act. As discussed in the section below, these responses also demonstrate that NLMK did not act to the best of its ability within the meaning of section 782(e)(4) of the Act.⁸² Moreover, the Department has explained previously that a respondent's failure to submit explanations for its product-costing methodology and supporting source documentation renders its submitted costs unverifiable within the meaning of section 782(e)(2) of the Act.⁸³

Use of Adverse Inference

The Department continues to find that NLMK did not act to the best of its ability. Section 776(b) of the Act provides that the Department may use an adverse inference in applying facts otherwise available pursuant to section 776(a)(1)-(2) of the Act when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The best-of-its-ability standard asks whether the respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in a proceeding.⁸⁴ More

⁷⁹ See *supra* footnote 60 and accompanying text.

⁸⁰ The CIT has recognized that a respondent must submit explanations and documentation necessary for the Department to gain an understanding of its reporting methodology. See *Sidenor*, 664 F. Supp. 2d at 1357.

⁸¹ See *Mukand*, Slip Op. 13-41 at 12 (quoting *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011), and explaining that “[t]otal AFA is appropriate ‘where none of the reported data is reliable or usable’ because, for example, all of the ‘submitted data exhibited pervasive and persistent deficiencies that cut across all aspects of the data.’”)

⁸² See *infra* footnotes 84 and 94 and accompanying text.

⁸³ See *Stainless Steel Bar from Spain* at Comment 4 (explaining that “[i]n this case complete and proper reconciliations were never provided, product-specific costs based on [respondent's] normal books and records have not been provided and explanations of how they derived the submitted costs remain unclear, which renders the reported costs unverifiable and unusable”).

⁸⁴ See *Nippon Steel*, 337 F.3d at 1382.

specifically, the CAFC has considered that the best-of-its-ability standard asks whether, in addition to failing to promptly produce the requested information, “the failure to fully respond is the result of the respondent’s lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.”⁸⁵

As an initial matter, the Department notes that NLMK does not deny that it chose not to respond to many of the Department’s questions. Nor does NLMK contend that it sought to obtain clarification from the Department regarding whether it could disregard any questions from the supplemental questionnaire that NLMK considered irrelevant. Rather, NLMK argues that the information requested in the questions was, in fact, either provided elsewhere in the response (*i.e.*, not in the answer to the question itself) or that NLMK was justified in not responding to the questions. For example, even though question 28 of the Department’s Second Section D Supplemental Questionnaire specifically instructed NLMK to submit separate cost reconciliation summary worksheets for Novoliptesk Steel and VIZ-Steel LLC so that the Department could understand and follow NLMK’s overall cost reconciliation, NLMK declined to submit the requested worksheets,⁸⁶ arguing instead that the information necessary to understand its cost reconciliation can be extracted from various exhibits.⁸⁷ As discussed previously, NLMK did not adequately address the Department’s concerns about its cost reconciliation and production quantities.⁸⁸ Moreover, concerning the Department’s request for monthly inventory-movement schedules, NLMK argues that it chose not to “blindly adhere to the letter of a directive it no longer thought relative.”⁸⁹ Additionally, concerning the Department’s repeated request that NLMK provide a detailed explanation of its product-specific cost calculations and source documentation from its system, NLMK argues that “{b}ecause of the changes to its methodology and the re-calculation of its costs for all CONNUMs, NLMK no longer grouped the CONNUMs in the same grouping as previously, and expected that this question directed toward these specific CONNUMs was no longer relevant.”⁹⁰ These actions and statements demonstrate that NLMK unilaterally chose not to respond to the Department’s requests for information.

Also, as discussed above, NLMK did not provide the Department with a system-generated COM statement, requested inventory-movement schedules, and illustrative product-costing documentation from its system to demonstrate how product-specific costs are calculated in the normal course of business.⁹¹ Record evidence demonstrates that NLMK does maintain such information; for example, NLMK submitted sample cost center reports and SAP reports which demonstrate that NLMK does, in fact, maintain detailed product-costing records.⁹² Additionally,

⁸⁵ *Id.*

⁸⁶ *See* page 22 of NLMK’s Second Section D Supplemental Questionnaire Response.

⁸⁷ *See* page 9 of NLMK’s case brief.

⁸⁸ *See* footnote 71 through 77 and accompanying text.

⁸⁹ *See* page 10 of NLMK’s case brief.

⁹⁰ *See* page 11 of NLMK’s case brief.

⁹¹ *See, e.g., supra* footnotes 63, 66, and 75 and accompanying text.

⁹² *See, e.g.,* Exhibits 45 and 46 of NLMK’s Second Section D Supplemental Questionnaire Response. The

although NLMK inexplicably claimed that the information contained in Exhibit 8 of its First Section D Supplemental Questionnaire Response was not relevant, NLMK did report that the information had been calculated by its SAP system.⁹³ While NLMK chose not to respond to the Department's request for an explanation of the information contained in the exhibit, the exhibit appears to contain summary information on monthly production quantities and production costs at a product-specific level.⁹⁴ The fact that NLMK was able to download and provide such product-specific information in some of the exhibits within the allotted timeframe demonstrates that NLMK can retrieve information from its SAP system when it chooses to do so. Under these circumstances, it is reasonable to expect that more forthcoming responses should have been made by NLMK. Accordingly, we find that NLMK did not put forth its maximum efforts to investigate and retrieve requested information from its books and records.⁹⁵

Although NLMK argues that the Department should take into consideration the fact that it is a first-time respondent unfamiliar with the Department's reporting requirements, NLMK is represented by experienced counsel that is capable of providing necessary guidance. Additionally, we do not find NLMK's argument persuasive that the sheer volume of its responses to the Department's original section D questionnaire and subsequent section D supplemental questionnaires demonstrates that it acted to the best of its ability. Indeed, a significant portion of the information contained in NLMK's Second Section D Supplemental Questionnaire Response consisted of its affiliates' financial statements and should have been submitted previously as part of its response to section A of the Department's original questionnaire. We do not consider the length of a response to be the primary factor in our evaluation; rather, the relevant inquiry is whether the answer provides the necessary information that the Department requested. Moreover, because a large number of respondents involved in proceedings before the Department maintain their books and records in a language other than English, we do not consider NLMK's argument that it faced translation difficulties persuasive. Furthermore, NLMK's argument that it was forced to respond to overlapping supplemental

Department notes that, while the documents included in these exhibits demonstrate that NLMK does maintain detailed product-specific costing calculations, the records in these exhibits are not linked to NLMK's submitted costs and are not sufficient to explain/demonstrate how: 1) NLMK calculates product-specific costs in the normal course of business; and 2) product-specific costs tie to submitted costs.

⁹³ See page 6 of NLMK's First Section D Supplemental Questionnaire Response.

⁹⁴ The Department notes that the information contained in the exhibit appears to contradict NLMK's initial statement that it does not calculate product-specific costs or that its system necessitates that it calculate its cost by reference to the Report on Accounting Results. See e.g., *supra* footnotes 44 and 76 and accompanying text. The Department also notes that, albeit in the context of discovery at verification of contradictory information, in *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1345 (CIT 2005), the CIT found that purposefully withholding or providing misleading information is in itself grounds for the application of AFA under section 776(b) of the Act.

⁹⁵ Further, we find NLMK's reliance on *Ferro Union* misplaced. In *Ferro Union*, the CIT held that "Commerce must be explicit in its reasoning" before applying AFA. See *Ferro Union*, 44 F. Supp. 2d at 1331. As discussed in both the *Preliminary Determination* and in further detail, above, information on the record demonstrates that NLMK failed to act to the best of its ability throughout the course of this investigation and, as a result, the Department was unable to analyze whether NLMK's submitted costs reasonably reflect the cost of producing MUC during the POI. The Department has set forth a detailed explanation of why NLMK has not cooperated to the best of its ability; as a result, we find NLMK's arguments based on *Ferro Union* to be unavailing.

questionnaires is unavailing not only because of the fact that the Department is required to adhere to strict statutory deadlines, but also because the Department's need to issue repeated supplemental questionnaires to obtain basic critical information is a reflection of the deficient nature of NLMK's initial and previous supplemental questionnaire responses. Finally, as discussed in response to Comment 4, below, NLMK's offer to respond to questions at verification does not obviate its need to respond to the Department's requests for information in a written questionnaire response within the deadlines established by the Department. Verification is not the place for the Department to begin to collect new information and explanations regarding a respondent's cost reporting methodology or to reconcile reported figures. Verification is a spot check of information already provided.

Finally, regarding the Russian Ministry's argument regarding the United States' international obligations, we note that U.S. law, as implemented through the Uruguay Round Agreements Act, is consistent with the WTO obligations of the United States.⁹⁶ Further, as noted above, NLMK's decision to ignore a significant portion of the Department's Second Section D Supplemental Questionnaire does not warrant a third supplemental questionnaire to again try to get responses to the same questions. We also note that section 782(c)(1) of the Act provides a statutory mechanism for respondents to promptly notify the Department of difficulties they expect to encounter in submitting the requested information in the manner and form requested. Rather than avail itself of the provisions of section 782(c)(1) of the Act, NLMK chose to determine unilaterally that it need not submit the requested information by the established deadline. We disagree with the Russian Ministry that NLMK cooperated with the Department throughout the course of the investigation or that it is accurate to characterize NLMK's deficiencies as minor or "partial." Moreover, concerning the Russian Ministry's arguments that it is unfair for the Department to treat NLMK the same as a fully non-cooperative respondent, it is the Department's practice to reject a respondent's submitted information in total when a significant portion of the response is missing or unusable.⁹⁷ As discussed further in Comment 3, below, failure to follow such a practice would place respondents in a position to manipulate potentially the calculation of their dumping margins by only submitting that information which the respondent wishes the Department to use in the margin calculation. Accordingly, as discussed in detail above, it was appropriate for the Department to apply AFA to NLMK under U.S. law, which is consistent with our WTO obligations.

In conclusion, for the reasons discussed above, the Department finds that NLMK failed to act to the best of its ability in responding to the Department's requests for information concerning NLMK's cost of producing MUC during the POI and, therefore, continues to apply AFA for this final determination. The Department does not have critical information pertaining to NLMK's cost accounting system and submitted costs. Because NLMK withheld this necessary information, the Department is unable to analyze meaningfully whether NLMK's submitted costs reasonably reflect the cost of producing MUC during the POI. Moreover, because the Department is unable to analyze whether NLMK's submitted costs reasonably reflect the cost of producing MUC during the POI, the Department is unable to conclude that any dumping margin

⁹⁶ See generally, Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol.1 (1994) at 870.

⁹⁷ See, e.g., Stainless Steel Bar from Spain at Comment 3 and Lined Paper from India at Comment 15.

calculated using these costs would be reliable. Therefore, the Department has continued to base NLMK's dumping margin on AFA for purposes of the final determination.

Comment 2: Issues Regarding the Corroboration Analysis

NLMK alleges that the Department failed to corroborate the AFA rate applied to NLMK in the Preliminary Determination in accordance with section 776(c) of the Act, which directs the Department to perform an analysis using independent sources reasonably at the Department's disposal. According to NLMK, the Department could have used NLMK's reported sales data, which the Department did not find to be deficient, in its corroboration exercise.⁹⁸ However, NLMK notes that the Department did not do so, instead relying on information contained in the petition.

NLMK finds misleading the Department's statement in the Preliminary Determination that the AFA rate assigned to NLMK is relevant because this petition information is specific to NLMK. NLMK notes that the petition contained three rates: two based on price-to-price comparisons and one based on CV. NLMK points out that the Department applied only the margin based on CV as AFA to NLMK, although the petitioners based CV on a combination of their own production experience and input costs derived from public sources, rather than NLMK's information. According to NLMK, the 119 percent AFA rate assigned to it in the Preliminary Determination means that NLMK's ex-works U.S. price would be less than half the ex-works price in the home market. However, NLMK argues that an examination of its reported sales information, as well as the U.S. price quotes and home market sales information for NLMK contained in the petition, demonstrates that NLMK did not price its U.S. sales in this way. Consequently, NLMK contends that this result is not consistent with NLMK's commercial reality.

NLMK notes that the CV margin calculated in the petition was over two and half times larger than the price-to-price margins in the petition which were calculated using information specific to NLMK. NLMK contends that the Department must explain why this significant difference in magnitude does not call into question the reliability of the AFA margin used and/or contradict the Department's statement in the Preliminary Determination that it obtained no information which would make it "question the validity" of the sources used to calculate the AFA margin.⁹⁹ Thus, NLMK argues that the Department's refusal to use NLMK's submitted data to corroborate the AFA margin is not supported by the Act and should be remedied in the final determination.

The domestic industry disagrees, asserting that the Department's corroboration analysis in the Preliminary Determination complied with the requirements of the Act. According to the domestic industry, before initiating this case, the Department reviewed the adequacy and accuracy of the information contained in the petition and found it to be reliable, consistent with its established practice.¹⁰⁰ Moreover, the domestic industry notes that the Department has not

⁹⁸ NLMK also claims that the COP information it submitted to the Department tied to its books and records and, thus, could have been used to corroborate the AFA margin.

⁹⁹ See Preliminary Determination, 79 FR 26941, and accompanying Preliminary Issues and Decision Memorandum at 10.

¹⁰⁰ See, e.g., Certain Oil Country Tubular Goods From Thailand: Preliminary Determination of Sales at

received any information since the time of the initiation which calls into question the relevance, reliability, adequacy, or accuracy of the information contained in the petition, and, as a result, it should consider the information contained in the petition on which the AFA rate is based to be corroborated.¹⁰¹

The domestic industry also disagrees that the Department should use NLMK's reported data to corroborate the petition rate. According to the domestic industry, NLMK ignores the fact that it failed to cooperate to the best of its ability and, thus, the data it submitted are unreliable and could not be used. The domestic industry points out that, while the focus of the Department's preliminary AFA determination related to NLMK's cost response, it is the Department's long-standing practice to reject all of a respondent's submissions if it finds that key data are unreliable.¹⁰² The domestic industry asserts that, because NLMK's submitted information is unreliable, the Department cannot consider it for purposes of corroboration. Therefore, the domestic industry maintains that for purposes of the final determination the Department should continue to corroborate the AFA rate assigned to NLMK using information from the petition.

Department's Position:

We have continued to rely on our corroboration of the AFA rate assigned to NLMK from the Preliminary Determination, using information obtained from the petition. While NLMK claims that the Department should have used its own reported information for purposes of corroboration, we disagree that such an approach would be appropriate. It is the Department's practice to reject a respondents' submitted data in total when we determine that a portion of it is so deficient as to be unusable.¹⁰³ In this case, NLMK's failure to provide necessary information in response to the Department's section D questionnaire and two section D supplemental questionnaires rendered NLMK's submitted data unusable. If the Department were to continue to rely on a respondent's submitted information in certain circumstances after making an AFA determination, respondents would be in a position to manipulate the calculation of the dumping margin.

Less Than Fair Value, and Postponement of Final Determination, 79 FR 10487, 10488 (February 25, 2014); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland, 69 FR 77216, 77218 (December 27, 2014), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland, 79 FR 28279 (May 17, 2005).

¹⁰¹ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan, 72 FR 52349, 52353 (September 13, 2007), unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan, 72 FR 67271, 67272 (November 28, 2007).

¹⁰² See Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 37970, 37988 (July 15, 1997) (citing Final Determination of Sales At Less Than Fair Value: Grain-Oriented Electrical Steel from Italy, 59 FR 33952 (July 1, 1994) (GOES from Italy); Final Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges from Taiwan, 58 FR 68859 (December 29, 1993); Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled Lead & Bismuth Carbon Steel Products from France, 58 FR 6203 (January 27, 1993)); and SDGE from the PRC at Comment 3.

¹⁰³ See, e.g., See Stainless Steel Bar from Spain at Comment 3 and Lined Paper from India at Comment 15.

Further, we disagree with NLMK that the reliability or validity of the AFA margin is called into question by either: 1) the fact that this margin was based on CV; or 2) the magnitude of the CV margin when compared to the other margins in the petition. As we stated in the Preliminary Determination, it is the Department's practice to select as an AFA rate the highest dumping margin alleged in the petition, where there are no higher calculated dumping margins.¹⁰⁴ When making this determination, the Department does not consider as part of its analysis the underlying comparison method used to calculate the AFA margin. In any case, the use of CV in determining normal value is authorized by statute.¹⁰⁵ Further, because the Department's practice is to select as the AFA rate the highest dumping margin in the petition, it is not surprising that the rate assigned to NLMK is higher than the other rates in the petition.

Finally, we also disagree with NLMK that the AFA rate is not consistent with its commercial reality. As we noted in the Preliminary Determination, the petition margin used as AFA was based on U.S. offer-for-sale quotes from NLMK.¹⁰⁶ While we find it inappropriate to rely on NLMK's reported information in this investigation for the reason noted above, the fact that the rate in the petition is calculated using offers for sale specific to NLMK ties it to the company's commercial reality. As a result, we have not modified the corroboration analysis performed in the Preliminary Determination.

Comment 3: Verification of NLMK's Reported Data

NLMK contends that the Department abused its authority by not verifying NLMK's reported information in this investigation. NLMK notes that section 782(i) of the Act requires the Department to verify all information on which it relies in a final determination, and the Department's refusal to verify NLMK's responses prohibits it from basing its final determination on NLMK's reported information. NLMK contends that, as a result, the Department has not fulfilled its obligation under the Act and its regulations to consider and address the arguments raised in NLMK's case brief, rendering this final determination moot.

The domestic industry asserts that the Department does not have a statutory obligation to conduct verification, noting that NLMK has failed to cite a single case in support of its contention. According to the domestic industry, the Department has stated in previous cases that it cannot conduct verification without first developing a complete record prior to verification.¹⁰⁷ The domestic industry maintains that the facts in the instant investigation are analogous to those of both Stainless Steel Bar from Spain¹⁰⁸ and Garlic from the PRC,¹⁰⁹ where the lack of complete

¹⁰⁴ See Preliminary Results, and accompanying Preliminary Issues and Decision Memorandum at 9. See also Certain Stilbenic Optical 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).

¹⁰⁵ See, e.g., sections 773(a)(4) and 773(b)(1) of the Act.

¹⁰⁶ See Preliminary Results, and accompanying Preliminary Issues and Decision Memorandum at 11.

¹⁰⁷ See Stainless Steel Bar from Spain at Comment 3 (citing GOES from Italy, 59 FR 33952); Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 76, 77-78 (January 4, 1999); and Steel Wire Strand from Mexico, 68 FR 68350).

¹⁰⁸ See Stainless Steel Bar from Spain at Comment 3.

information on the record prevented the Department from either calculating a margin or conducting verification. The domestic industry also cites numerous other cases where the Department declined to conduct verification when faced with circumstances similar to those present here.¹¹⁰ Therefore, the domestic industry asserts that the Department has acted consistently with its practice by not verifying NLMK's reported information in this investigation.

Department's Position:

We disagree with NLMK that the Department has a statutory obligation to conduct verification under the circumstances present in this case. While we agree that section 782(i) of the Act requires the Department to verify the information it relies upon in making a final determination, we have not relied on NLMK's reported information here. As discussed in Comment 1, above, we continue to find that the application of AFA to NLMK is warranted for purposes of the final determination. In making this decision, we carefully considered NLMK's arguments; however, we disagree that any of these arguments was so persuasive as to change the outcome of the final determination.¹¹¹ Our decision not to verify NLMK's reported information in this investigation is in accordance with both the Act and the Department's practice.

Verification is the process by which the Department checks, reviews, and confirms factual information previously submitted by a respondent. Verification is not the place for the Department to begin to collect new information and explanations regarding a respondent's cost reporting methodology or to reconcile reported figures.

In this case, NLMK's reported cost data suffer from severe defects, including missing information related to: 1) how NLMK calculates its costs in its normal cost accounting system; 2) the degree of specificity to which product-specific costs are calculated in its normal books and records; and 3) the extent to which its submitted costs reflect the product-specific manufacturing costs recorded in NLMK's normal books and records. Because this missing information is fundamental to the Department's understanding of NLMK's cost reporting

¹⁰⁹ See Garlic from the PRC at Comment 1.

¹¹⁰ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Electrolytic Manganese Dioxide from Australia, 73 FR 15982, 15988 (March 26, 2008), unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Termination of Critical-Circumstances Investigation: Electrolytic Manganese Dioxide from Australia, 72 FR 47586 (August 14, 2008); Lined Paper from India at Comment 14; Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 4; Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 11; Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine, 66 FR 50401, 50402 (October 3, 2001); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164 (December 29, 1999).

¹¹¹ We note that the case briefs in this investigation were submitted on June 11, 2014. Thus, had we agreed with NLMK that verification was appropriate after considering its arguments, there was time to conduct verification before the final determination.

methodology, we found NLMK's response to be so incomplete as to be unusable, and we determined that verification would be unwarranted here.

As noted above, it is the Department's practice to reject a respondent's submitted information in total when a significant portion of the response is missing or unusable.¹¹² Failure to follow such a practice would place respondents in a position to manipulate potentially the calculation of their dumping margins by permitting the Department to verify only that information which the respondent wishes it to use in the margin calculation. Consistent with this practice, we have also rejected NLMK's reported sales information.

Comment 4: Critical Circumstances Analysis for NLMK

On March 10, 2014, at the Department's request, NLMK provided data regarding the volume and value of its imports of subject merchandise. However, because we determined in the Preliminary Determination that NLMK had not acted to the best of its ability in responding to our requests for information, we did not rely on NLMK's reported critical circumstances data. Instead, we based our analysis for NLMK on AFA, preliminarily finding that NLMK's imports of subject merchandise were massive.

NLMK contends that its submitted import data demonstrate that its imports of subject merchandise were not massive over a relatively short time. NLMK argues that the Department failed to explain in the Preliminary Determination: 1) why NLMK's submitted import data are unusable for purposes of this analysis; or, 2) how the Department is relieved of its obligations under section 733(e)(1) of the Act or 19 CFR 351.206(h)(2) to conduct a critical circumstances analysis for NLMK. NLMK claims that, because of these deficiencies, the Department's preliminary critical circumstances analysis is unsupported by substantial evidence and is not in accordance with law.

The domestic industry maintains that the Department's decision in the Preliminary Determination not to rely on any of NLMK's submitted data, including its import data, is in accordance with its long-standing practice of not relying on any of a respondent's questionnaire responses when it deems a portion of them to be unreliable.¹¹³ Thus, the domestic industry asserts that the Department should continue to find that critical circumstances exist with respect to imports of GOES from Russia for purposes of the final determination.

Department's Position:

As noted in Comment 1, above, we have continued to base our final determination for NLMK on AFA. We disagree with NLMK that we should revise our critical circumstances analysis to use NLMK's reported shipment data. It is the Department's practice to reject a respondent's submitted data in total when we determine that a portion of it is so deficient as to be unusable.¹¹⁴

¹¹² See, e.g., Stainless Steel Bar from Spain at Comment 3 and Lined Paper from India at Comment 15.

¹¹³ See, e.g., SDGE from the PRC at Comment 3.

¹¹⁴ See, e.g., Stainless Steel Bar from Spain at Comment 3 and Lined Paper from India at Comment 15.

If the Department were to continue to rely on a respondent's submitted information in certain circumstances after making an AFA determination, respondents would be in a position to manipulate potentially the proceeding. As a result, we have continued to base our final critical circumstances analysis for NLMK on AFA. Therefore, for purposes of the final determination, we continue to determine that critical circumstances exist with respect to imports of GOES from NLMK.

Comment 5: Proposed Suspension Agreement

On May 20, 2014, NLMK submitted a letter to the Department requesting consultations regarding a possible suspension agreement. On May 23, 2014, the Department responded to NLMK, declining to enter into such negotiations.¹¹⁵ According to the Russian Ministry, the Department in its May 23 letter did not provide a valid reason for its refusal to hold consultations, in contradiction to Article 8.3 of the Antidumping Agreement. Therefore, the Russian Ministry claims that the Department should now enter into negotiations regarding an agreement to suspend this investigation.

The domestic industry disagrees, noting that Article 8.3 of the Antidumping Agreement does not require that suspension agreement consultations be held or even that the Department consider a suspension agreement. The domestic industry points out that Article 8.3 of the Antidumping Agreement provides that “{u}ndertakings offered need not be accepted if the authorities consider their acceptance impractical...or for other reasons, including reasons of general policy.”¹¹⁶ The domestic industry also disagrees that the Department failed to provide a valid reason for its refusal to enter into consultations, noting that the Department's May 23 letter indicated that NLMK had not “demonstrated circumstances to warrant the unusual action of entering into negotiations.”¹¹⁷ In any event, the domestic industry maintains that Article 8.3 of the Antidumping Agreement also does not require authorities to provide justification when declining to enter into consultations. Therefore, the domestic industry asserts that the Department's decision not to enter negotiations regarding a suspension agreement in this case is consistent with Article 8.3 of the Antidumping Agreement.

Department's Position:

The Department is governed by U.S. law. The Department's decision not to enter into negotiations with NLMK regarding a suspension agreement¹¹⁸ is in accordance with U.S. law, no party contends otherwise, and the U.S. law is consistent with our WTO obligations.

¹¹⁵ See the May 23, 2014, letter from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to NLMK (Response to Proposed Suspension Agreement).

¹¹⁶ Id.

¹¹⁷ See the Response to Proposed Suspension Agreement.

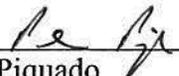
¹¹⁸ Id.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this LTFV investigation in the Federal Register.

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 SEPTEMBER 2014
(Date)