



C-821-823

Investigation

POI: 01/01/2014 – 12/31/2014

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December 15, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Russian Federation (Russia), as provided in section 703 of the Tariff Act of 1930, as amended (the Act). Additionally, the Department determines that critical circumstances do not exist with regard to cold-rolled steel from Russia, as provided under section 703(e)(1)(A) of the Act.

II. BACKGROUND

A. Case History

On July, 28, 2015, the Department received countervailing duty (CVD) and antidumping duty (AD) Petitions concerning imports of cold-rolled steel from Russia, filed on behalf of the AK Steel Corporation, ArcelorMittal USA EEC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, Petitioners).¹ On August 17, 2015, the Department

¹ See "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, Netherlands, Russia, and the United Kingdom," July 28, 2015 (Petition).



initiated a CVD investigation of cold-rolled steel from Russia.² Supplements to the Petition and our consultations with the Government of Russia (GOR) are described in the Initiation Checklist.

In the “Respondent Selection” section of the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data.³ On August 18, 2015, we released CBP data to parties under the Administrative Protective Order (APO).⁴ On September 2 and September 3, 2015, we received comments on the CBP data from the GOR and Petitioners, respectively.⁵

On September 14, 2015, the Department determined to individually examine Novex Trading (Swiss) S.A. (Novex Trading) and Severstal Export GMBH (Severstal Export) in this investigation.⁶ On September 14, 2015, the Department issued the initial questionnaire to the GOR, Novex Trading, and Severstal Export.⁷ The Department instructed the GOR to forward the questionnaire to the selected mandatory respondents. Novolipetsk Steel OJSC (NLMK), on behalf of its wholly-owned affiliate, Novex Trading, and PAO Severstal (Severstal), on behalf of its wholly-owned affiliate, Severstal Export, submitted their respective responses to the company affiliation section of the Initial Questionnaire on September 28, 2015.⁸ On October 8, and October 9, 2015, we issued a supplemental questionnaire on affiliation to Severstal and NLMK, respectively, to which the companies submitted their responses on October 13, and October 14, 2015, respectively.⁹

On October 19, 2015, the Department found that given the large number of NLMK’s cross-owned affiliated input suppliers of scrap, it was not practicable to examine each of them. As such, we determined to limit our examination to NLMK’s two largest suppliers of scrap during the period of investigation (POI): LLC Vtorchermet NLMK Center and OJSC Vtorchermet.¹⁰ Concerning Severstal, on October 21, 2015, the Department confirmed that Severstal would

² See *Certain Cold-Rolled Steel Flat Products from Brazil, India, the People’s Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations*, 80 FR 51206 (August 24, 2015) (*Initiation Notice*) and accompanying checklist (Initiation Checklist).

³ See *Initiation Notice*, 80 FR at 51209.

⁴ See Department’s Letter, “Countervailing Duty (CVD) Investigation: Certain Cold-Rolled Steel Flat Products from the Russian Federation: Results of Customs and Border Protection Query Results,” August 18, 2015.

⁵ See Letter from the GOR, “Certain Cold-Rolled Steel Flat Products; Comments,” September 2, 2015; and Letter from Petitioners, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation - Petitioners’ Comments on Selection of Mandatory Respondents,” September 3, 2015.

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Countervailing Duty Investigation on Certain Cold-Rolled Steel Flat Products from the Russian Federation,” September 15, 2015 (Respondent Selection Memorandum).

⁷ See Department’s Letter, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Countervailing Duty Questionnaire,” September 14, 2015 (Initial Questionnaire).

⁸ See NLMK Companies’ submission, “Affiliation Response of Novolipetsk Steel OJSC (NLMK),” September 28, 2015 (NLMK Affiliation Response); and Severstal Companies’ submission, “Severstal’s Initiation Countervailing Duty Questionnaire Response,” September 28, 2015 (Severstal Affiliation Response).

⁹ See Severstal Companies’ submission, “Response to the Department’s October 8, 2015, Questionnaire,” October 13, 2015 (Second Severstal Affiliation Response); and NLMK Companies’ submission, “Supplemental Affiliation Response of Novolipetsk Steel OJSC (NLMK),” October 14, 2015 (Second NLMK Affiliation Response).

¹⁰ See Department Memorandum, “NLMK Input Suppliers of Scrap Required To Submit a Questionnaire Response,” October 19, 2015.

submit its primary initial questionnaire response on behalf of itself and Severstal Export, PAO Severstal, JSC Karelsky Okatysh, AO OLKON, AO Vorkutaugol, and JSC Vtorchermet.¹¹

On October 26, 2015, NLMK provided a response to Section II of the Department's initial questionnaire on behalf of itself and the following cross-owned affiliates: Altai-Koks OJSC, Dolomite OJSC, Stoilensky OJSC, Studenovskaya (Stagdok) OJSC, Trading House LLC, Vtorchermet NLMK LLC, Vtorchermet OJSC, and Vtorchermet NLMK Center LLC (collectively, the NLMK Companies).¹² On October 27, 2015, Severstal provided a response to Section II of the Department's initial questionnaire on behalf of itself and the following cross-owned affiliates: Severstal Export GmbH, JSC Karelsky Okatysh, AO OLKON, AO Vorkutaugol, and JSC Vtorchermet (collectively, the Severstal Companies).¹³ On October 26, 2015, the GOR submitted its response to the Department's initial questionnaire.¹⁴ On October 30, 2015, the NLMK Companies submitted their response to Section F of the Initial Questionnaire.¹⁵

On October 30, 2015, Petitioners submitted a critical circumstances allegation.¹⁶ On November 4, 2015, Petitioners submitted a new subsidy allegation concerning a value added tax (VAT) exemption for sales of steel scrap.¹⁷ On November 17, 2015, the Department met with GOR officials to discuss the allegation, and the GOR submitted written comments on the record regarding the allegation.¹⁸ The Department determined not to initiate an investigation on Petitioners' new subsidy allegation.¹⁹

On November 6, 2015, the Department placed on the record world market price data for natural gas, as maintained by Global Trade Information Services, Inc. (GTIS).²⁰ On November 16, 2015, the NLMK Companies and the Severstal Companies submitted factual information concerning the LTAR programs at issue in the investigation.²¹ On November 19, 2015,

¹¹ See Department Memorandum, "Initial Questionnaire Response of the Severstal Companies," October 21, 2015.

¹² See NLMK Companies' Primary Questionnaire Response, "NLMK's Response to the Department's Initial CVD Questionnaire," October 26, 2015 (NLMK PQR).

¹³ See Severstal Companies' Primary Questionnaire Response, "Severstal's Response to Section III of the Department's Countervailing Duty Questionnaire," October 27, 2015 (Severstal PQR). Due to difficulties the Severstal Companies experienced with the ACCESS system, the Department granted the Severstal Companies an additional day to submit its PQR.

¹⁴ See GOR's Primary Questionnaire Response, "Certain Cold-Rolled Steel Flat Products from Russia," October 26, 2015 (GOR PQR).

¹⁵ See NLMK Companies' submission, "NLMK's Response to Certain Questions in the Department's Initial CVD Questionnaire," October 30, 2015 (NLMK Section F PQR). On November 5, 2015, the NLMK Companies corrected Exhibit F-1 of its Section F PQR. See NLMK Companies' submission, "Request for Acceptance of Corrected Exhibit to NLMK's CVD Questionnaire Response," November 5, 2015 (NLMK Revised Section F PQR).

¹⁶ See Petitioners' submission, "Critical Circumstances Allegation," October 30, 2015 (Critical Circumstances Submission).

¹⁷ See Petitioners' submission, "New Subsidy Allegations," November 4, 2015 (NSA Submission).

¹⁸ See Department Memorandum, "Ex Parte Meeting with Government of Russian Federation Officials," November 17, 2015; see also GOR's submission, "Comments," November 17, 2015.

¹⁹ See Department Memorandum, "Decision Memorandum on New Subsidy Allegation," December 15, 2015 (NSA Memorandum).

²⁰ See Department Memorandum, "Placing GTIS Data on the Record," November 6, 2015 (GTIS Data Memorandum).

²¹ See NLMK Companies' submission, "Response to the Department's November 6, 2015, Benchmark Factual

Petitioners submitted certain additional factual information.²²

The Department issued supplemental questionnaires to the GOR, to which it responded on November 19, and December 10, 2015.²³ The Department issued supplemental questionnaires to the Severstal Companies, to which they responded on November 25, and December 8, 2015.²⁴ The Department issued supplemental questionnaires to the NLMK Companies, to which they responded on November 17, and November 25, 2015.²⁵

B. Postponement of Preliminary Determination

On October 8, 2015, the Department postponed the deadline for the preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from Petitioners.²⁶ The Department postponed the preliminary determination until December 15, 2015, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).²⁷

C. Period of Investigation

The POI is January 1, 2014, through December 31, 2014.

Submission,” November 16, 2015 (NLMK Factual Filing); *see also* Severstal Companies’ submission, “Severstal’s Submission of Factual Information to Measure the Adequacy of Remuneration,” November 16, 2015 (Severstal Factual Filing).

²² *See* Petitioners’ submission, “Petitioners’ Submission of Factual Information on Regarding Adequacy of Remuneration; Submission of Excel Workbook Containing European Gas Pricing Information,” November 19, 2015 (Petitioners Factual Filing).

²³ *See* GOR’s submission, “Response to First Supplementary Questionnaire,” November 19, 2015 (GOR First Supplemental PQR); *see also* GOR’s submission, “Response to Second Supplementary Questionnaire,” December 10, 2015 (GOR Second Supplemental PQR).

²⁴ *See* Severstal Companies’ submission, “Severstal’s Pre-Preliminary Determination Comments and Response to the Department’s Countervailing Duty Supplemental Questionnaire,” November 25, 2015 (Severstal First Supplemental PQR); *see also* Severstal Companies’ submission, “Severstal’s Response to the Department’s Second Countervailing Duty Supplemental Questionnaire,” December 8, 2015 (Severstal Second Supplemental PQR).

²⁵ *See* NLMK Companies’ submission, “NLMK’s First Supplemental Subsidy Questionnaire Response,” (November 17, 2015) (NLMK First Supplemental PQR); *see also* “Second Supplemental Questionnaire for Novolipetsk Steel OJSC (NLMK),” November 25, 2015 (NLMK Second Supplemental PQR).

²⁶ *See* Letters from Petitioners, “Cold-Rolled Steel Flat Products from Brazil, India, the People’s Republic of China, the Republic of Korea, and the Russian Federation: Petitioners’ Request to Extend the Countervailing Duty Preliminary Determination,” September 23, 2015.

²⁷ *See Certain Cold-Rolled Steel Flat Products from Brazil, India, the People’s Republic of China, the Republic of Korea, and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 80 FR 60881 (October 8, 2015).

III. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.²⁸

We received several comments concerning the scope of the AD and CVD investigations of cold-rolled steel from, *inter alia*, Russia and domestic purchasers of the subject merchandise. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadlines of which are February 23, 2016. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies. Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

²⁸ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); see also *Initiation Notice*.

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;²⁹

²⁹ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

- Tool steels;³⁰
- Silico-manganese steel;³¹
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.³²
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.³³

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to this investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030,

³⁰ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

³¹ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

³² See *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as “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.”

³³ See *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 Fed. Reg. 71741, 71741-42 (December 3, 2014). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

V. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On October 30, 2015, Petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise from Russia.³⁴ Pursuant to section 703(e)(1)(A) of the Act, an affirmative critical circumstances determination in a CVD proceeding is contingent upon respondents' use of benefits under a prohibited subsidy program. We preliminarily determine that the NLMK Companies and the Severstal Companies did not use, or receive benefits from, a prohibited subsidy (*e.g.*, a program subsidy program that was contingent upon export sales as described under section 771(5A)(B) of the Act). Therefore, we preliminarily determine that critical circumstances do not exist for the NLMK Companies, the Severstal Companies, and all other producers/exporters.

VI. ALIGNMENT

In accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), and based on the Petitioners' request,³⁵ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of cold-rolled steel from Russia. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than May 8, 2016, unless postponed.³⁶

VII. INJURY TEST

Because Russia is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Russia materially injure, or threaten material injury to, a U.S. industry. On September 17, 2015, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of cold-

³⁴ See Critical Circumstances Submission.

³⁵ See Letter from the Petitioners, "Countervailing Duty Investigations of Certain Cold-Rolled Steel Flat Products from Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation - Petitioners' Request to Align Final Determinations in Countervailing and Antidumping Duty Investigations," December 14, 2015.

³⁶ We note that the current deadline for the final AD determination is May 8, 2016, which is a Sunday. Pursuant to Department practice, the signature date will be the next business day, which is Monday, May 9, 2016. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

rolled steel products from Russia.³⁷

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.³⁸ The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.³⁹ The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputes this allocation period. Consistent with past practice, in order to appropriately measure any allocated subsidies, the Department will use a 15-year AUL period in this investigation.⁴⁰

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that

³⁷ See *Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom, Investigation Nos. 701-TA-540-544 and 731-TA-1283-1290 (ITC Preliminary Determination)*, 80 FR 55872 (September 17, 2015).

³⁸ See 19 CFR 351.524(b).

³⁹ See *Petitions*, Volume XIII at 9.

⁴⁰ See *Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 70 FR 40000 (July 12, 2005) and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁴¹

1. The NLMK Companies

Based on the criteria enumerated under 19 CFR 351.525(b)(6), the NLMK Companies submitted responses on behalf of NLMK, a producer of cold-rolled steel, Novex Trading (a Swiss-based trading company that handles NLMK’s export sales), Altai-Koks OJSC (an input provider of coke), Dolomite OJSC (an input provider of dolomite), Stoilensky OJSC (an input provider of iron ore), Studenovskaya (Stagdok) OJSC (an input provider of limestone), Trading House LLC (an input provider of such steel making inputs as alloying elements), Vtorchermet NLMK LLC (parent company of input providers of scrap), Vtorchermet OJSC (an input provider of scrap), and Vtorchermet NLMK Center LLC (an input provider of scrap).⁴² The submissions of the NLMK Companies indicate that NLMK is the sole or majority owner of the aforementioned companies and, thus, we find that the NLMK Companies mentioned above are cross-owned with one another within the meaning of 19 CFR 351.525(b)(6)(vi).⁴³

2. The Severstal Companies

Based on the criteria enumerated under 19 CFR 351.525(b)(6), the Severstal Companies submitted responses on behalf of Severstal, a producer of cold-rolled steel, Severstal Export (a Swiss-based company responsible for export sales), JSC Karelsky Okatysh (a provider of iron ore pellets), AO OLKON (a provider of iron ore concentrate), AO Vorkutaugol (a provider of coking coal concentrate), and JSC Vtorchermet (a provider of scrap).⁴⁴ The submissions of the Severstal Companies indicate that Severstal is the sole or majority owner of the aforementioned companies and, thus, we find that the Severstal Companies mentioned above are cross-owned with one another within the meaning of 19 CFR 351.525(b)(6)(vi).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents’ receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents’ export or total sales. As discussed in further detail below in the “Programs Preliminarily Determined to be Countervailable” section, where the program is determined to be countervailable as a domestic subsidy, we use the recipient’s total sales as the denominator (or the total combined sales of the cross-owned affiliates). Similarly, where the program is determined to be countervailable as an export subsidy, we use the recipient’s total export sales as the denominator (or the total export sales of the cross-owned affiliates). Because neither respondent used or benefitted from an export subsidy during the POI, we used total sales

⁴¹ See *Fabrique de Fer de Charleroi SA v. United States*, 66 F. Supp. 2d 593, 603 (CIT 2001).

⁴² See NLMK Affiliation Response at 6-7; see also NLMK Companies PQR at 1-2.

⁴³ See NLMK Affiliation Response at 6-7 and Exhibit 1.

⁴⁴ See Severstal Affiliation Response at 5; see also Severstal Companies PQR at 1.

denominators to calculate the countervailable subsidy rates for the various programs in this preliminary determination as discussed below. For more information see the Preliminary Calculation Memoranda prepared for this investigation.⁴⁵

1. The NLMK Companies

As indicated above, NLMK is a producer of subject merchandise and also a parent company of the firms that comprise the NLMK Companies. Therefore, pursuant to 19 CFR 351.525(b)(6)(iii), we have attributed any subsidies received by NLMK to the total consolidated sales of NLMK.⁴⁶ Because we find Altai-Koks OJSC, Dolomite OJSC, Stoilensky OJSC, Studenovskaya (Stagdok) OJSC, Trading House LLC, Vtorchermet NLMK LLC, Vtorchermet OJSC, and Vtorchermet NLMK Center LLC to be cross-owned input producers, we find, pursuant to 19 CFR 351.525(b)(6)(iv), that any subsidies received by these firms are attributable to the respective firm's total sales plus the sales of NLMK, net of intra-company sales.

The NLMK Companies reported that Novex Trading handles all sales of NLMK's sales of subject merchandise to the United States in back-to-back transactions with NLMK, and is the party responsible for invoicing the U.S. customer.⁴⁷ NLMK stated that the invoice and the entered value of the merchandise reflect a mark-up over the invoice value of the product as sold to Novex Trading by NLMK, and submitted on the record supporting sales documentation.⁴⁸ The NLMK Companies request that the Department make an adjustment to the calculated subsidy rate to account for the mark-up between the export value from Russia and the entered value of subject merchandise into the United States.

The NLMK Companies explain that the adjustment is appropriate because the circumstances meet the criteria established by the Department,⁴⁹ namely: 1) the price on which the alleged subsidy is based differs from the U.S. invoiced price; 2) the exporters and the party that invoices the customer are affiliated; 3) the U.S. invoice establishes the customs value to which countervailing duties are applied; 4) there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment; 5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.⁵⁰

⁴⁵ For the NLMK Companies, see Department Memorandum, "Certain Cold-Rolled Steel Products from the Russian Federation: Preliminary Determination, Calculation Memorandum for the NLMK Companies," dated concurrently with this preliminary decision memorandum (NLMK Preliminary Calculation Memorandum). For the Severstal Companies, see Department Memorandum, "Certain Cold-Rolled Steel Products from the Russian Federation: Preliminary Determination, Calculation Memorandum for the Severstal Companies," dated concurrently with this preliminary decision memorandum (Severstal Preliminary Calculation Memorandum).

⁴⁶ See, e.g., *Citric Acid and Certain Nitrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) and accompanying Decision Memorandum at 10.

⁴⁷ See NLMK Affiliation Response at 1, NLMK PQR at 12, and NLMK First Supplemental PQR at 4.

⁴⁸ See NLMK PQR at 12 and Exhibit GQ-8, and NLMK First Supplemental PQR at 4-6 and Exhibit S-5.

⁴⁹ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) and accompanying IDM at Comment 32.

⁵⁰ See NLMK PQR at 12.

The Department has a practice of making an adjustment to the calculated subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can provide data to demonstrate that the six criteria outlined above are met.⁵¹ In the instant case, we preliminarily find that the evidence submitted by NLMK supports its claim and the information also permits an accurate calculation of the adjustment. We, therefore, made the adjustment for this preliminary determination.⁵²

2. The Severstal Companies

As indicated above, Severstal is a producer of subject merchandise. Accordingly, pursuant to 19 CFR 351.525(b)(6)(ii), we have attributed any subsidies received by Severstal to the total, consolidated sales of Severstal. Because we find JSC Karelsky Okatysh, AO OLKON, AO Vorkutaugol, and JSC Vtorchermet to be cross-owned input producers, we have, pursuant to 19 CFR 351.525(b)(6)(iv), attributed any subsidies received by these firms to their respective total sales plus the sales of Severstal, net of intra-company sales. Concerning Severstal Export, it operates a Swiss-based trading company that handles sales to non-Commonwealth of Independent States (CIS) countries.⁵³ Additionally, the Severstal Companies did not submit any information concerning mark-ups on sales that Severstal Export transacts on behalf of the Severstal Companies. Thus, we have not included sales by Severstal Export in the sales denominators used in our preliminary subsidy rate calculations for the Severstal Companies.

D. Benchmarks and Discount Rates

Section 771(5)(E)(ii) of the Act states that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market” the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii). Further, pursuant to 19 CFR 351.524(d)(3), when allocating non-recurring benefits over time, the Department will utilize a long-term discount rate based upon data for the year in which the government agreed to provide the subsidy.

As explained below in the “Program for Which More Information is Required” section, we have postponed making a benefit determination with regard to the Severstal Companies’ use of the Mining Rights for LTAR program. As a result, our preliminary determination does not, at this time, require the use of any short-term or long-term benchmark interest or discount rates.

⁵¹ See *Multilayered Wood Flooring from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) and accompanying IDM at 7-8.

⁵² See NLMK Preliminary Calculation Memorandum.

⁵³ See NLMK Affiliation Response at 6-7 and Exhibit 1.

IX. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

A. Programs Preliminarily Determined To Be Countervailable

1. Provision of Natural Gas for LTAR

The Department is investigating whether Russian producers of cold-rolled steel received countervailable subsidies by purchasing natural gas from Public Joint Stock Company Gazprom (Gazprom) for LTAR during the POI. The NLMK Companies reported that NLMK and other members of the NLMK Companies purchased natural gas from Gazprom and its regional affiliates during the POI.⁵⁴ The Severstal Companies reported that none of its companies purchased natural gas from Gazprom or its affiliates during the POI.⁵⁵

The GOR reported that Gazprom is majority-owned by the government, with the Federal Agency for State Property Management holding 50.23 percent of Gazprom's shares.⁵⁶ The GOR stated that, in accordance with the Decree of the President of the Russian Federation N 1009 of August 4, 2004:

On approval of the list of strategic enterprises and strategic joint companies, the PJSC Gazprom is included in the list of the joint stock companies, the *shares of which are in the federal ownership and the participation of the Russian Federation in the management of which guarantees the strategic interest of the state and protection of the lawful interest of its citizens.*⁵⁷ {emphasis added}

Given its majority-ownership of Gazprom,⁵⁸ we preliminarily determine that the GOR is able to control decisions at the meeting of General Shareholders, which elects the board of directors that consists of 11 members.⁵⁹ The GOR further stated that, pursuant to Resolution of the Government of the Russian Federation N 738 of December 3, 2004,⁶⁰

the persons elected to the Board of Directors from the candidates nominated by the Russian Federation being the shareholder, represent the interests of the Russian Federation. Representatives of the interest of the Russian Federation in the Board of

⁵⁴ See NLMK Section F PQR.

⁵⁵ See Severstal PQR at 27-28.

⁵⁶ See GOR PQR at 40; see also GOR First Supplemental PQR at 11. The GOR holds 38.37 percent of Gazprom's shares directly, and 11.96 percent indirectly through the Federal Agency for State Property Management's ownership of PJSC Rosneftegaz (Rosneftegaz) and Rosneftegaz's majority-ownership of PJSC Rosgazifikazia (Rosgazifikazia). During the POI, Rosneftegaz owned 10.97 percent of Gazprom's shares and Rosgazifikazia owned 0.89 percent of Gazprom's shares.

⁵⁷ See GOR PQR at 30 and Exhibit III-18.

⁵⁸ The next largest owner of Gazprom shares are American Depositary Receipt holders, owning 28.05 percent of the company's shares. See GOR PQR at 40.

⁵⁹ See GOR PQR at 42-43 and Article 6 at Exhibit III-44. Under Gazprom's Articles of Association, shareholders are authorized to vote, commensurate with their shareholding.

⁶⁰ See GOR PQR at 30-31 and Exhibit III-19.

Directors shall vote on the agenda of the meeting of the Board of Directors *in accordance with the written directives issued by the Federal Agency for State Property Management.*⁶¹ {emphasis added}

The record shows that Gazprom's Chairman of the Board of Directors is a former Prime Minister and a former First Deputy Prime Minister of the Russian Federation.⁶² Additionally, government officials hold a majority of the positions on Gazprom's Audit Commission.⁶³ The Audit Commission is an elective body, which reports to the General Shareholders, and is responsible for functions in line with national legislation, Gazprom's charter, and the decision of the General Shareholders.⁶⁴

In addition to the GOR's control of Gazprom through its majority-ownership, the government, through the Federal Tariff Service (FTS) sets the prices for the natural gas produced and supplied by Gazprom and its affiliates for all consumers in the domestic market, including industrial consumers and households.⁶⁵ On the basis of this record evidence, we preliminarily find Gazprom to be a government authority that provides a financial contribution within the meaning section 771(5)(D)(iii) of the Act.

With regard to specificity, we preliminarily determine that there is no evidence on the record indicating that Gazprom sells natural gas to the cold-rolled steel industry in a manner that is *de jure* specific, as described under section 771(5A)(D)(i) of the Act. Concerning *de facto* specificity under section 771(5A)(D)(iii) of the Act, we requested purchase data (volume and value) for natural gas by industrial classification during the POI.⁶⁶ The GOR reported that it does not maintain statistics on industrial consumers that purchase natural gas.⁶⁷ In the first supplemental questionnaire, we requested the GOR to submit alternate data which could be used to evaluate natural gas purchases based on the statistics that the GOR does maintain.⁶⁸ In its supplemental response, the GOR again stated that it does not have such purchase data and referred us to Gazprom's 2014 annual report, which includes information on Gazprom's domestic natural gas sales, as an alternative data source.⁶⁹

Gazprom's 2014 annual report states that natural gas is heavily used in the metallurgical sector and indicates that metallurgy was in the top five natural gas consuming groups for 2014.⁷⁰ Only two other industrial sectors are listed in the top consuming groups: agro-chemistry and the cement industry. Together these three industrial sectors accounted for 15 percent of Gazprom's

⁶¹ See GOR PQR at 53.

⁶² *Id.*, at Exhibit III-38 (Gazprom's 2014 Annual Report) at 34.

⁶³ See GOR First Supplemental PQR at 12-13.

⁶⁴ See GOR PQR at 45-46.

⁶⁵ *Id.*, at 27 and 34-35, see also GOR First Supplemental PQR at 7-8.

⁶⁶ See Initial Questionnaire at Section II – Provision of Natural Gas for LTAR (Questions Regarding the Natural Gas Industry, question 8).

⁶⁷ See GOR PQR at 29.

⁶⁸ See Department's Letter to the GOR, "First Supplemental Questionnaire to GOR," November 12, 2015, at Provision of Natural Gas for LTAR (question 9) (GOR First Supplemental Questionnaire).

⁶⁹ See GOR First Supplemental PQR at 7.

⁷⁰ See GOR PQR at Exhibit III-38 (Gazprom's 2014 Annual Report), page 34.

total domestic natural gas sales for 2014.⁷¹ This group of industries' share of natural gas consumption is likely understated because it is calculated on the basis of data that includes non-manufacturing sectors such as households and housing/utilities, which comprise 38 percent of total natural gas consumption and are subject to different rate regulations.⁷² Therefore, we compared the three industries' consumption of natural gas to the "other" category, which accounted for 23 percent of Gazprom's 2014 sales.⁷³ The GOR stated that the "other" category includes gas consumers from all industries and sectors, and because the proportion of consumption for each group is insignificant more detailed information is not provided in Gazprom's annual report.⁷⁴ This comparison indicates that there is predominance in natural gas consumption by the metallurgy, agro-chemistry, and cement industries. On the basis of these facts, which show that the predominant user of natural gas is a group of industries that includes metallurgy (which in turn includes the Russian steel industry), we preliminarily determine that the provision of natural gas by Gazprom is specific under sections 771(5A)(D)(iii)(II) of the Act.⁷⁵

In order to determine the existence and amount of any benefit conferred by Gazprom to the NLMK Companies, pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for natural gas. Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy, we must first determine whether there are market prices from actual sales transactions that can be used to determine whether Gazprom sold natural gas to the NLMK Companies for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit. This is because where the government's role as provider of the good or service is so predominant, it in effect determines the prices for private sellers of the same or similar goods or services such that

⁷¹ *Id.* Agro-chemistry accounted for eight percent of Gazprom's 2014 domestic natural gas sales, followed by metallurgy with four percent and the cement industry with three percent.

⁷² *Id.* Households and housing/utilities accounted for 23 percent and 15 percent, respectively, of Gazprom's domestic sales in 2014.

⁷³ *Id.*

⁷⁴ See GOR First Supplemental PQR at 13-14.

⁷⁵ We will continue to examine the record data concerning specificity during the course of this investigation, including at verification.

comparing the government prices to those or private prices would amount to comparing the financial contribution to itself.⁷⁶

The GOR provided data on the total volume of domestic production of natural gas and the total volume of domestic production that is accounted for by companies in which the government maintains direct or indirect ownership/management interest. The percentage of domestic production of natural gas which was accounted for by such companies was 81.83 percent, 80.45 percent, and 77.30 percent for 2012, 2013, and 2014, respectively.⁷⁷ Gazprom accounts for a large majority of the annual percentages⁷⁸ and, therefore, it is reasonable to conclude that Gazprom accounts for “a substantial portion of the market.”⁷⁹

The GOR also stated that domestic natural gas market is divided into a “regulated” market and “unregulated” market. The GOR reported that the regulated market, in which Gazprom operates, accounts for 65 percent of the domestic natural gas market, and the remaining 35 percent is the unregulated market, where private natural gas producers/suppliers operate.⁸⁰ Further, the record shows that domestic consumption needs are met by domestic production as there are no imports of natural gas into Russia. In its initial response, the GOR reported that there was a small quantity of natural gas imported into Russia in 2014.⁸¹ The GOR later explained, in its first supplemental response, that the natural gas which was imported into the country in 2014 was not actually sold in the domestic market because the natural gas was designated for transit to third countries.⁸²

In addition, the GOR reported that an export customs duty of 30 percent is applicable on natural gas, and that export licenses are required for the export of natural gas.⁸³ The GOR added that, pursuant to Article 3 of the Federal Law N 117-FZ of July 18, 2006, “On Export of Gas,” an exclusive right for export of natural gas via pipeline is provided for Gazprom.⁸⁴

Based on this record evidence, we preliminarily determine that the market for natural gas is distorted through the GOR’s predominant role in the market via Gazprom, and through other interventions in the market, in particular its controls on imports and exports of natural gas.

As noted above, Gazprom supplied 77 to 82 percent of the natural gas consumed in Russia between 2012 and 2014, which represents a very high or predominant market share during those years. Through its predominant role as a supplier of natural gas in the market, Gazprom has sufficient market power to effectively determine the prices of private suppliers of natural gas in

⁷⁶ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*); see also *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*) and accompanying IDM at 38-39.

⁷⁷ See Department Memorandum, “Natural Gas Market – Russia,” dated concurrently with this memorandum (Natural Gas Memorandum).

⁷⁸ Gazprom’s domestic production figures are proprietary data. See Natural Gas Memorandum.

⁷⁹ See *CVD Preamble*, 63 FR at 65377.

⁸⁰ See GOR PQR at 23.

⁸¹ *Id.*, at 25.

⁸² See GOR First Supplemental PQR at 17; see also Natural Gas Memorandum.

⁸³ See GOR PQR at 28.

⁸⁴ *Id.*, at 28-29.

Russia. As we explained in *Softwood Lumber from Canada*:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.⁸⁵

For this reason, we preliminarily determine that Gazprom's predominant role as a supplier of natural gas in Russia results in the distortion of domestic private prices for natural gas such that they cannot be used as a tier-one benchmark pursuant to 19 CFR 351.511(a)(2)(i), because use of such private prices would be akin to comparing the government price to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence). We also find that the GOR's intervention with regard to imports and exports is further evidence that the market for natural gas in Russia is distorted because these government interventions impose additional limitations on competition in that market. Therefore, we find that prices stemming from private transactions for natural gas within Russia cannot give rise to a price that is sufficiently free from the effects of the GOR's actions and thus cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration. As such, we preliminarily determine that we cannot use for benchmarking purposes prices charged by domestic producers/suppliers of natural gas, such as the prices of Novatek, a private Russian natural gas company, submitted by the NLMK Companies, which advocates the use of tier-one benchmark,⁸⁶ or the prices from the St. Petersburg International Commodity Exchange, which did not commence operations until October 2014, two months before the end of the POI.⁸⁷

Because there are no viable "tier-one" benchmarks for our analysis, we next examined whether there are any prices on the record that are suitable for use under "tier two" of the hierarchy. Under 19 CFR 351.511(a)(2)(ii), if there is no useable market-determined price under which to make the comparison under "tier one," the government price is compared to a world market price where it is reasonable to conclude that such price is available to purchasers in the country in question, in this case Russia.

On the record are the following natural gas pricing datasets: (1) world natural gas export prices sourced from GTIS, placed on the record by the Department; (2) certain European natural gas export prices sourced from GTIS, placed on the record by Petitioners, and (3) natural gas export prices for Azerbaijan and Kazakhstan, sourced from the United Nations Comtrade, placed on the record by the NLMK Companies.⁸⁸

In its pre-preliminary comments, the NLMK Companies argue that, pursuant to 19 CFR

⁸⁵ See *Softwood Lumber from Canada*, and accompanying IDM 38-39.

⁸⁶ See NLMK Factual Filing at Exhibit 9; see also NLMK Companies submission, "Pre-Preliminary Comments," December 1, 2015 (NLMK Pre-Preliminary Determination Comments) at 7-10.

⁸⁷ See GOR PQR at 26, and NLMK Section F PQR at 2.

⁸⁸ See GTIS Data Memorandum; Petitioners Factual Filing; and NLMK Factual Filing.

351.511(a)(2)(ii), the Department must limit its tier-two benchmark to countries where it is reasonable to conclude that natural gas prices from those countries would be available to purchasers in Russia.⁸⁹ The NLMK Companies assert that a “world market” for natural gas does not exist given the nature of the commodity and, therefore, the Department’s world market export prices are not viable tier-two benchmark prices. The NLMK Companies further argue that there are no European gas pipelines that permit the flow of natural gas into Russia and, thus, the European gas prices on the record do not serve as a viable tier-two benchmark. The NLMK Companies add that, while natural gas from Azerbaijan and Kazakhstan pass through pipelines in Russia on the way to European markets, such exports from these countries are small volumes over limited networks that cannot provide viable commercial supply to Russia.⁹⁰

In *Rebar from Turkey*,⁹¹ the Department refrained from including natural gas prices from the United States because they represented prices that would not be available to purchasers in Turkey. Consistent with *Rebar from Turkey*, in this investigation, we preliminarily determine that natural gas export prices from markets in North America, South America, Africa, and Australia are not useable for benchmarking purposes under tier two of the hierarchy because they represent prices for natural gas that would not be available to purchasers in Russia. We preliminarily determine that natural gas prices from European and Asian markets (excluding Russia)⁹² are prices that would be potentially available to purchasers of natural gas in Russia and, therefore, such prices can be used for benchmarking purposes under tier two of the hierarchy, 19 CFR 351.511(a)(2)(ii).

Under 19 CFR 351.511(a)(2)(ii), the Department averages prices where there is more than one commercially available world market price. Because the datasets on the record contain volume and value information, we derived weighted-average monthly prices using the selected European and Asian export market prices.⁹³ Further, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties, *i.e.*, a “delivered” price to the company’s facility. Therefore, in order to ensure that the monthly benchmark prices reflect what the NLMK Companies would have paid if they had imported natural gas directly, the regulation stipulates that the monthly average prices are to be adjusted by adding the delivery charges for the transmission and distribution of natural gas in Russia, any import duties and taxes, and surcharges. The GOR reported that imports of natural gas into Russia would be subject to an 18 percent VAT and five

⁸⁹ See NLMK Pre-Preliminary Determination Comments.

⁹⁰ *Id.*

⁹¹ See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) (*Rebar from Turkey*) and accompanying IDM at “Provision of Natural Gas for LTAR.”

⁹² Based on our preliminary finding that the Russian domestic natural gas market is distorted, we excluded exports from and imports to Russia from the benchmark pricing datasets. We also excluded from the GTIS pricing data “partner country” described as “not determined extra EU trade.” Additionally, we did use any prices for which the unit of measurement was “TJ,” or terajoule, because of difficulties in the conversion process. For more information on the construction of the benchmark prices, see NLMK Preliminary Calculation Memorandum.

⁹³ See, e.g., *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2015) (*OCTG from Turkey*) and accompanying IDM (*OCTG from Turkey Decision Memorandum*) at 25.

percent import duty.⁹⁴ Therefore, to the monthly benchmark prices, we added VAT and the import duty.

Concerning delivery charges, the benchmark prices on the record are prices for natural gas to the borders of the importing countries and do not include transmission/distribution charges within the borders of the purchasing countries.⁹⁵ No party to this proceeding submitted on the record world prices for the transmission/distribution of natural gas. The rates charged by Gazprom constitute the only information on the record with regard to such costs. Both the NLMK Companies and the GOR reported that the prices charged by Gazprom consist of a wholesale gas price and the following three surcharges: (1) transportation surcharge; (2) surcharge for supply and sale (distribution) services; and (3) special extra surcharge for gas transportation services (for regional gasification programs).⁹⁶ Therefore, in order to ensure that the monthly benchmark prices reflect delivery charges in Russia, we added the per-unit transmission and distribution fees and other surcharges charged by Gazprom to the monthly weighted-average benchmark prices (inclusive of VAT and the import duty), which are expressed in rubles per thousand cubic meters to match the basis on which the NLMK Companies purchased natural gas from Gazprom. This approach is consistent with *Rebar from Turkey*, where we added the per-unit transmission and capacity fees charged by BOTAS to each monthly weighted-average benchmark price.⁹⁷ Because the NLMK Companies are located in various regions of Russia, and such fees differ across those regions,⁹⁸ we constructed regional-specific weighted-average benchmark prices.

To calculate the program benefit, we compared the corresponding monthly benchmark unit prices to the unit prices that the NLMK Companies paid Gazprom, including delivery charges, surcharges, and taxes during the POI. In instances where the benchmark unit price was greater than the price paid to Gazprom, we multiplied the difference by the quantity of natural gas purchased from Gazprom to arrive at the benefit. We next summed the benefits for the NLMK Companies and divided that amount by the appropriate sales denominator, in this case total sales, for 2014, in accordance with 19 CFR 351.525(b)(6). On this basis, we preliminarily determine that the NLMK Companies received a countervailable subsidy rate of 6.31 percent *ad valorem* under this program.

⁹⁴ See GOR PQR at 28.

⁹⁵ See GTIS Data Memorandum; Petitioners Factual Filing; and NLMK Factual Filing.

⁹⁶ See GOR First Supplemental PQR at 14-16; NLMK Section F PQR at 3; and NLMK First Supplemental PQR at 11.

⁹⁷ See *Rebar from Turkey*, and accompanying IDM at “Provision of Natural Gas for LTAR.”

⁹⁸ See NLMK Section F PQR at 6-7, and Exhibit F-5 (tariff schedules).

2. Tax Deduction for Exploration Expenses

Expenses for the development of natural resources under Article 253 of the Tax Code of the Russian Federation (TCRF) are considered expenses associated with production and sales which are deductible from taxable income. Under Article 261 of the TCRF, the GOR permits income tax deductions for expenses related to the development of natural resources, including outlays for geological studies of subsoil resources, prospecting for commercial minerals, and performance of work of a preparatory nature.⁹⁹ The NLMK Companies and the Severstal Companies reported deducting exploration expenses defined in Article 261 in the 2013 income tax return, which was filed with the tax authorities during the POI.¹⁰⁰

The GOR reported that the TCRF does not set eligibility requirements that a company must meet to claim an exploration expense deduction, *i.e.*, there is no export contingency, domestic content requirement, sector-specific or geographical-specific requirement.¹⁰¹ We examined Article 261 and preliminarily determine that the tax deduction for exploration expenses is not *de jure* specific pursuant to section 771(5A)(D)(i) of the Act, as the law does not appear to limit access to an enterprise, industry, group of industries, or region. Further, the GOR reported that a taxpayer deducts exploration expenses automatically, provided there is evidence that such expenses are economically justified and well documented in the taxpayer's records.¹⁰²

The Department's initial questionnaire instructed the GOR to provide usage information for this tax deduction, *e.g.*, the number of recipient companies and industries and the amount of annual assistance approved under the program.¹⁰³ In its initial response, the GOR reported that statistics on the use of "exploration expenses is not kept by the Russian authorities."¹⁰⁴ In the first supplemental questionnaire, we again requested the GOR to submit usage data for the tax deduction for exploration expenses.¹⁰⁵ We also stated that:

If the GOR is unable to provide the requested information in the form and manner specified, please explain and provide the information based on the format in which you maintain such data, or suggest alternative approaches for providing the requested information.¹⁰⁶

In its response, the GOR provided alternate data on the use of the reduced mineral extraction tax, about which the Federal Tax Service of the Russian Federation maintains statistics on an aggregate basis.¹⁰⁷ The GOR explained that under the mineral extraction tax program, a taxpayer who incurred expenses for research and exploration of mineral resources, or reimbursed

⁹⁹ See GOR PQR at 12 and Exhibit II-1; see also NLMK First Supplemental PQR at Exhibit S-6.

¹⁰⁰ See NLMK PQR at 17 and 23-24; see also Severstal PQR at 17.

¹⁰¹ See GOR PQR at 15-16.

¹⁰² *Id.*, at 13-14.

¹⁰³ See Letter from the Department to the GOR, "Countervailing Duty Questionnaire," September 14, 2015, at Section II – Standard Questions Appendix (section L.2. (a-e)).

¹⁰⁴ See GOR PQR at 19.

¹⁰⁵ See Letter from the Department to the GOR, "First Supplemental Questionnaire," November 12, 2015, at Tax Incentives for Mining Rights (question 2).

¹⁰⁶ *Id.*

¹⁰⁷ See GOR First Supplemental PQR at 2-3.

the government for such costs incurred, are allowed to pay the mineral extraction tax at the reduced rate of 70 percent (a coefficient of 0.7), with respect to the minerals extracted on the corresponding plot.¹⁰⁸ The NLMK Companies and the Severstal Companies reported that neither it nor any of its reporting cross-owned affiliates used, applied for, or benefited from any reduction in the extraction tax during the POI.¹⁰⁹

We reviewed the annual extraction tax data provided for the period 2010 – 2014, which included the “quantity of taxpayers who used the right to apply the coefficient 0.7.”¹¹⁰ The number of taxpayers who benefitted from the reduced tax rate was 64, 60, 62, 53, and 47 for 2010, 2011, 2012, 2013, and 2014, respectively.¹¹¹ On December 2, 2015, we issued a second supplemental questionnaire requesting the GOR to submit a breakdown of the industrial sectors for the taxpayers which used the reduced extraction tax over the reported period.¹¹² The GOR submitted its response on December 10, 2015, which we find did not provide us with enough time to incorporate the GOR response into our preliminary analysis. We will continue to examine the information in the GOR’s response for purposes of the final determination. On the basis of the usage contained in the GOR’s first supplemental questionnaire response, we preliminarily determine that the taxpayers who used the extraction tax incentive are limited in number under section 771(5A)(D)(iii)(I) of the Act. Further, relying on the extraction tax data as proxy usage data for the tax deduction for exploration expenses, we preliminarily determine that the tax deduction for exploration expenses program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the recipients of the subsidy are limited in number. We further preliminarily determine that the tax deduction for exploration expenses provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of foregone revenue that is otherwise due to the government. The benefit conferred is the difference between the amount of taxes the company paid and the amount of taxes that the company would have paid in the absence of this program, as described in 19 CFR 351.509(a), effectively, the amount of the tax deduction claimed.

To calculate the subsidy rate, we divided the amount of the tax savings received by the NLMK Companies and the Severstal Companies by the companies’ respective total sales for the 2014, in accordance with 19 CFR 351.525(b)(6). On this basis, we preliminarily determine that the NLMK Companies received a countervailable subsidy rate of 0.02 percent *ad valorem* and the Severstal Companies received a countervailable subsidy rate of 0.01 percent *ad valorem* under this program.

¹⁰⁸ See GOR PQR at 12.

¹⁰⁹ See NLMK PQR at 17.

¹¹⁰ See GOR First Supplemental PQR at 2-3.

¹¹¹ *Id.*, at 2-3.

¹¹² See Letter from the Department to the GOR, “Second Supplemental Questionnaire,” December 2, 2015, at Tax Incentives for Mining Rights (question b).

B. Programs Preliminarily Determined Not To Confer a Benefit During the POI

1. Tax Deduction for Research and Development (R&D) Expenses

Under Article 262 of the TCRF, the NLMK Companies and the Severstal Companies claimed a tax deduction for R&D expenses on their income tax return filed during the POI.¹¹³ We preliminarily determine the benefit (*i.e.*, tax savings) that the NLMK Companies and the Severstal Companies received under this program is less than 0.005 percent. Therefore, consistent with the Department's practice,¹¹⁴ we preliminarily determine that this program did not confer a benefit to the NLMK Companies and the Severstal Companies during the POI.

C. Programs Preliminarily Determined To Be Not Used

1. Grants for "Technical Retooling" and Modernization
2. Grants for Export Credit Interest for "Highly Processed" Industrial Goods
3. State Program to Develop Industry and Increase Competitiveness
4. Tax Incentives in Special Economic Zones (SEZs)
5. Tax Incentives for Mining Operations - Reduction in the Extraction Tax
6. Eximbank Financing
7. Incentives in Lipetsk's Regional SEZs
8. Income Tax Reductions and Property Tax Exemptions for Key Sectors in the Republic of Karelia

D. Program for Which More Information is Required

1. Provision of Mining Rights for LTAR

Pursuant to Article 1.2 of the Law of the Russian Federation N. 2395-1 of February 21, 1992 "On Subsoil Resources," subsoil resources in the territory of the Russian Federation are the property of the State, and the Russian Federation exercises its sovereign rights over the subsoil resources.¹¹⁵ According to the GOR, "the issues of the ownership, use and disposal of subsoil resources are in joint competence of the Russian Federation and sub-federal regions of the Russian Federation."¹¹⁶ The right of non-government entities for using subsoil resources is provided with special government permission in the form of a license. Specifically, the licenses for mining rights of subsoil resources can be granted upon (i) decision of the Federal Subsoil Management Agency or its territorial agencies based on the results of public tender auctions (*e.g.*, auctions where no counter-bids are permitted); and (ii) decision of the GOR and relevant regional executive authorities of the GOR based on the results of the public auctions (*e.g.*, auctions where counter-bids are permitted) or (iii) the results of consideration of certain applications (for subsoil areas of regional importance).¹¹⁷

¹¹³ See NLMK PQR at 17 and 23-24; see also Severstal PQR at 17.

¹¹⁴ See, *e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at "Grants Under the Guangdong Province Coast Region Fisherman's Job Transferring Bill Fishery Industry Development Project Fund."

¹¹⁵ See GOR PQR at 61 and Exhibit IV-1

¹¹⁶ *Id.*, at 61 and Exhibit IV-1.

¹¹⁷ *Id.*, at 62.

The NLMK Companies reported that they acquired coal mining rights but did not develop the deposits beyond geological surveys and exploration at the sites, and thus, the NLMK Companies did not extract coal from the sites.¹¹⁸ Additionally, the NLMK Companies reported that in 2013, they transferred the mining rights to affiliated companies. Information from the NLMK Companies indicates that these affiliated companies produce non-subject merchandise and that they do not otherwise meet the cross-ownership criteria that would require them to submit a questionnaire response and, thus, we find these affiliated companies do not have reporting obligation in this investigation.¹¹⁹ As a result, we preliminarily determine that the NLMK Companies did not use this program during the POI because, under the attribution regulation, the Department attributes subsidies to products sold by the recipient of the transferred subsidy (*see* 19 CFR 351.525(b)(6)(v)) and none of the recipients of the mining rights are producers of subject merchandise. Concerning the Severstal Companies, they reported that Severstal acquired licenses for mining rights from the GOR for several mining areas during the period 2006 through 2013. In each instance, the GOR sold Severstal the licenses through a government-run auction.¹²⁰

Because the GOR has sovereign rights over subsoil resources in Russia and it alone provides mining rights to access these resources, we preliminarily determine that the GOR's sale of mining rights to the Severstal Companies constitutes a financial contribution in the form of a provision of a good within the meaning of section 771(5)(D)(iii) of the Act.

Concerning specificity and benefit, as described under section 771(5A)(D) and 771(5)(E) of the Act, we find that we require additional analysis and information. We will issue a post-preliminary determination addressing these two subsidy criteria.

X. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹²¹ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.¹²²

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹²³ This summary should be limited to five pages total, including footnotes.

¹¹⁸ *See* NLMK PQR at 26.

¹¹⁹ *Id.*

¹²⁰ *See* Severstal Second Supplemental PQR at 9.

¹²¹ *See* 19 CFR 351.224(b).

¹²² *See* 19 CFR 351.309.

¹²³ *See* 19 CFR 351.309(c)(2) and (d)(2).

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*. Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹²⁴ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time¹²⁵ on the due dates established above.

XI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

15 DECEMBER 2015
(Date)

¹²⁴ See 19 CFR 351.303(b)(2)(i).

¹²⁵ See 19 CFR 351.303(b)(1).