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E&C AD/CVD OIII: LRL/EQW/ACR

Public Document

February 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Cold-Rolled Steel
Flat Products from the Russian Federation

I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that certain cold-rolled steel flat products (“cold-rolled steel”) from the Russian Federation (“Russia”) are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”). The Department also preliminarily determines that critical circumstances exist for the mandatory respondents, Severstal Export GmbH (“Severstal Export”) and PAO Severstal (collectively, “Severstal”) and Novex Trading (Swiss) SA and Novolipetsk Steel OJSC (collectively, “NLMK”), and the non-individually examined companies receiving the all-others rate. The preliminary estimated weighted-average dumping margins for Severstal and NLMK are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On July 28, 2015, the Department received antidumping duty (“AD”) petitions concerning imports of cold-rolled steel from Brazil, the People’s Republic of China (“PRC”), India, Japan, Republic of Korea (“Korea”), the Netherlands, Russia, and the United Kingdom (“UK”),¹ filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively “Petitioners”). The Department initiated this investigation on August 17, 2015.²

¹ See Petitions for the Imposition of Antidumping Duties on imports of Certain Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom, (July 28, 2015) (“Petition”).

² See *Certain Cold-Rolled Steel Flat Products from Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 51998 (August 24, 2015) (“Initiation Notice”).

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (“CBP”) data for certain of the Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings listed in the scope of the investigation.³ Accordingly, on August 21, 2015, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of cold-rolled steel to be reported in response to the Department’s questionnaire.⁵ Between September and December 2015, the following interested parties submitted comments on the scope of the investigation: Caparo Precision Strip, Ltd. (“Caparo”), Sumitomo Corporation of Americas, POSCO, Nippon Steel & Sumitomo Metal Corporation, Nissan North America, Inc., the Ministry of Economic Development of the Russian Federation, Hitachi Metals America, Ltd., Electrolux Home Products, Inc., and Electrolux Home Care Products, Inc., JFE Steel Corporation and Ameri-Source Specialty Products, Inc. On September 18, 2015, December 1, 2015, and January 6, 2016, Petitioners submitted rebuttal scope comments in response to the scope comments of each of the interested parties that submitted scope comments.

On September 9, 2015, the following interested parties submitted comments regarding the product characteristics of the merchandise under consideration: Petitioners, Caparo, Tata Steel UK Ltd. (“TSUK”), and Tata Steel IJmuiden BV. On September 16, 2015, Petitioners filed rebuttal comments to Caparo’s and TSUK’s submissions on product characteristics. Usinas Siderurgicas de Minas Gerais - Usiminas S.A., JSW Steel Ltd. and JSW Steel Coated Products Ltd., interested parties in the companion AD investigations on cold-rolled steel, filed rebuttal comments to Petitioners’ September 9, 2015, comments on physical characteristics.

Petitioners and the Ministry of Economic Development of the Russian Federation provided respondent-selection comments on September 2 and 3, 2015, respectively.⁶ On September 14, 2015, the Department limited the number of mandatory respondents selected for individual examination to the two largest publicly-identifiable producers/exporters of the subject merchandise by volume.⁷ Accordingly, we selected Severstal and NLMK as mandatory respondents in this investigation.⁸

³ See *Initiation Notice*, 80 FR at 51203.

⁴ See Memorandum to the File, “Antidumping Duty Investigation: Certain Cold-Rolled Steel Flat Products from the Russian Federation: Results of Customs and Border Protection Query Results,” dated August 21, 2015.

⁵ See *Initiation Notice*, 80 FR at 51119. See also letter to All Interested Parties, dated August 25, 2015.

⁶ See letter from the Ministry of Economic Development of the Russian Federation, “Certain Cold-Rolled Steel Flat Products from Russia (Case No.: A-821-822, C-821-823); comments,” dated September 2, 2015. See also letter from Petitioners, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Petitioners’ Comments on Selection of Mandatory Respondents,” dated September 3, 2015.

⁷ See Memorandum to Christian Marsh, “Selection of Respondents for the Antidumping Duty Investigation on Certain Cold-Rolled Steel Flat Products from the Russian Federation,” dated September 14, 2015, at 5.

⁸ *Id.*

On September 11, 2015, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cold-rolled steel from Russia.⁹

On September 17, 2015, the Department issued its Section A questionnaire to Severstal and NLMK; its Section B-E questionnaires followed on September 18, 2015. On October 9, and October 15, 2015, respectively, Severstal and NLMK submitted timely responses to Section A of the Department’s questionnaire.¹⁰ Both companies timely filed responses to Sections B through D from November 4, 2015, through December 1, 2015.¹¹

From November 2015 through January 2016, we issued supplemental questionnaires to Severstal¹² and NLMK.¹³ We received supplemental questionnaire responses from Severstal¹⁴

⁹ See *Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom*, 80 FR 55872 (September 17, 2015) (“*ITC Preliminary Determination*”).

¹⁰ See letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Section A Questionnaire Response,” dated October 9, 2015 (“Severstal’s AQR”); see also letter from NLMK, “NLMK’s Section A Questionnaire Response: Cold-Rolled Flat Products from Russia,” dated October 16, 2015, and letter from NLMK, “NLMK’s Supplemental Section A Questionnaire Response: Cold-Rolled Flat Products from Russia,” dated October 18, 2015 (collectively “NLMK’s AQR”).

¹¹ See letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Response to Section B of the Department’s Antidumping Questionnaire,” dated November 4, 2015 (“Severstal’s BQR”); letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Response to Section C of the Department’s Antidumping Questionnaire,” November 6, 2015 (“Severstal’s CQR”); letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Response to Section D of the Department’s Antidumping Questionnaire,” dated November 9, 2015 (“Severstal’s DQR”); letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Correction to Severstal’s Response to Section D Questionnaire,” dated November 10, 2015; and letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Downstream Home Market Sales Data,” dated December 2, 2015.

See letter from NLMK, “NLMK’s Section B Questionnaire Response: Cold-Rolled Flat Products from Russia,” dated November 4, 2015 (“NLMK’s BQR”); letter from NLMK, “NLMK’s Section C Questionnaire Response: Cold-Rolled Flat Products from Russia,” dated November 6, 2015 (“NLMK’s CQR”); letter from NLMK, “NLMK’s Section D Questionnaire Response Cold-Rolled Flat Products from Russia,” dated November 9, 2015 (“NLMK’s DQR”).

¹² See letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation,” dated December 17, 2015 (“First Severstal Section D Supplemental Questionnaire”); letter from the Department, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Antidumping Duty Investigation: First Supplemental Questionnaire for the Sections A, B and C Questionnaire Responses of Severstal Export GmbH and PAO Severstal,” dated December 23, 2015 (“First Severstal Section A-C Supplemental Questionnaire”); and letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Second Supplemental Questionnaire for the Sections A, B and C Questionnaire Responses of Severstal Export GmbH and PAO Severstal,” dated February 5, 2016 (“Second Severstal Section A-C Supplemental Questionnaire”).

¹³ See letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Supplemental Section A Questionnaire,” dated November 5, 2015 (“NLMK Section A Supplemental Questionnaire”); letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation,” dated December 16, 2015 (“NLMK Section D Supplemental Questionnaire”); letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Supplemental Sections B & C Questionnaire,” dated December 16, 2015 (“First NLMK Supplemental Sections B & C Questionnaire”); and letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Supplemental Sections B & C Questionnaire,” dated December 16, 2015 (“Second NLMK Supplemental Sections B & C Questionnaire”).

and NLMK¹⁵ throughout the same time period. In addition, over the same time period, Petitioners submitted comments regarding Severstal and NLMK's questionnaire responses.¹⁶

On October 30, 2015, Petitioners filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.¹⁷ On November 9, 2015, NLMK and Severstal each submitted rebuttal comments to Petitioners' critical circumstances allegation.¹⁸ On November 9,

Russian Federation: Second Supplemental Sections B & C Questionnaire," dated February 9, 2016 ("Second NLMK Supplemental Sections B & C Questionnaire").

¹⁴ See letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Supplemental Section D Questionnaire Response," dated January 8, 2016 ("Severstal's SDQR"); letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Supplemental Sections A, B, and C Questionnaire Response," dated January 14, 2016 ("Severstal's 1st SQR (AC)"); letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Supplemental Sections A, B, C, and D Questionnaire Response," dated January 22, 2016 ("Severstal's 1st SQR (ABCD)") (collectively, "Severstal's 1st SQR"); and letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Second Supplemental Sections A, B, and C Questionnaire Response," dated February 12, 2016 ("Severstal's 2nd SQR").

¹⁵ See letter from NLMK, "NLMK's Supplemental Section A Questionnaire Response: Cold-Rolled Flat Products from Russia," dated November 18, 2015 ("NLMK's SAQR"); letter from NLMK, "NLMK's Supplemental Section B, C and D Questionnaire Response: Cold-Rolled Flat Product from Russia," dated January 6, 2016 ("NLMK's 1st SQR (B-D)"); letter from NLMK, "NLMK's Supplemental Section D Questionnaire Response: Cold-Rolled Flat Products from Russia," dated January 7, 2016 ("NLMK's SDQR"); letter from NLMK, "NLMK's Extended Second Supplemental Section D Questionnaire Response: Cold-Rolled Flat Products from Russia," dated January 13, 2016 ("NLMK's 2nd SDQR"); letter from NLMK, "NLMK's Extended Second Supplemental Section B Questionnaire Response: Cold-Rolled Flat Products from Russia," dated January 13, 2016 ("NLMK's 2nd SBQR"); and letter from NLMK, "NLMK's Response to Second Supplemental Sections B and C Questionnaire: Cold-Rolled Flat Products from Russia," dated February 12, 2016 ("NLMK's 3rd SQR (B-C)").

¹⁶ See letter from Petitioners, "Certain Cold-Rolled Flat Products from Russia - Petitioners' Comments on Deficiencies in Section A Response of Novolipetsk Steel OJSC ("NLMK") and Novex Trading (Swiss) SA ("Novex")," dated October 27, 2015; letter from Petitioners, "Petitioners' Comments on Deficiencies in Section B and C Responses of Novolipetsk Steel OJSC ("NLMK") and Novex Trading (Swiss) SA ("Novex")," dated November 16, 2015; letter from Petitioners, "Petitioners' Comments on Deficiencies in the Supplemental Section D Responses of Novolipetsk Steel OJSC ("NLMK")," dated January 21, 2016; letter from Petitioners, "Petitioners' Comments on Deficiencies in the Supplemental Section B & C Responses of Novolipetsk Steel OJSC ("NLMK")," dated February 3, 2016; letter from Petitioners, "Petitioners' Deficiency Comments on Severstal's Section B and C Responses," dated November 19, 2015 ("Petitioner's Severstal BC Deficiency Comments"); letter from Petitioners, "Petitioners' Comments on Deficiencies in Severstal's Section D Questionnaire Response," dated November 20, 2015; letter from Petitioners, "Submission of Information on Affiliates' Home Market Downstream Sales," dated December 21, 2015; letter from Petitioners, "Petitioners' Request to Strike Severstal's Untimely Submitted COP Data File," dated February 2, 2016; letter from Petitioners, "Petitioners' Deficiency Comments on Severstal's Supplemental Questionnaire Responses," dated February 3, 2016 ("Petitioners' Severstal SQR Deficiency Comments"); letter from Petitioners, "Cold-Rolled Steel Flat Products from Russia: Petitioners' Pre-Preliminary Determination Comments on Novolipetsk Steel OJSC ("NLMK")," dated February 17, 2016, and letter from Petitioners, "Antidumping Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Petitioners' Pre-Preliminary Determination Comments on Severstal," date February 22, 2016 ("Petitioners' Severstal Pre-Preliminary Determination Comments").

¹⁷ See letter from Petitioners, "Certain Cold-Rolled Steel Flat Products from The People's Republic of China, Japan, and the Russian Federation – Petitioners' Critical Circumstances Allegation," dated October 30, 2015 ("Critical Circumstances Allegation").

¹⁸ See letter from NLMK, "NLMK's Response to Petitioners' Critical Circumstances Allegation: Certain Cold-Rolled Steel Flat Products from the Russian Federation," dated November 9, 2015; and letter from Severstal,

2015, the Department requested shipment data from Severstal and NLMK with respect to the critical circumstances allegation.¹⁹ On November 30, 2015, Petitioners responded to respondents' critical circumstances rebuttal comments.²⁰ Severstal and NLMK responded to the Department's request for shipment data on December 15, 2015,²¹ January 16, 2016,²² and February 16, 2016.²³

On November 20, 2015, the Department postponed the time period for the preliminary determination of this investigation by 50 days, to February 23, 2016, in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).²⁴ Later, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines as a result of the closure of the Federal Government during Snowstorm "Jonas."²⁵ Therefore, the statutory signature date for this investigation has been extended by four business days until February 29, 2016.

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

III. PERIOD OF INVESTIGATION

The period of investigation ("POI") is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 28, 2015.²⁶

"Certain Cold-Rolled Steel Flat Products from the Russian Federation: Response to Petitioners' Critical Circumstances Allegation," dated November 9, 2015.

¹⁹ See letters from Department to Severstal and NLMK, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Request for Monthly Quantity and Value Shipment Data," dated November 19, 2015. See also letter from the Department, "Amended Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Request for Monthly Quantity and Value Shipment Data," dated November 20, 2015 ("Shipment Data Letters").

²⁰ See letter from Petitioners, "Certain Cold-Rolled Steel Flat Products from Japan and the Russian Federation: Petitioners' Response to Respondents' Critical Circumstances Rebuttal," dated November 30, 2015.

²¹ See letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Monthly Quantity and Value Shipment Data," dated December 15, 2015; and letter from NLMK, "NLMK's Monthly U.S. Shipment Data: July 2014 - November 2015; Cold-Rolled Steel Flat Products from Russia," dated December 15, 2015.

²² See letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Monthly Quantity and Value Shipment Data," dated January 15, 2016. See also letter from NLMK, "NLMK's Monthly U.S. Shipment Data: July 2014 - December 2015; Cold-Rolled Flat Products from Russia," dated January 15, 2016.

²³ See letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Monthly Quantity and Value Shipment Data," dated January 16, 2016. See also letter from NLMK, "NLMK's Monthly U.S. Shipment Data: July 2014 - January 2016; Cold-Rolled Flat Products from Russia," dated February 16, 2016.

²⁴ See *Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 80 FR 74764 (November 30, 2015).

²⁵ See Memorandum to the file from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" dated January 27, 2016.

²⁶ See 19 CFR 351.204(b)(1).

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on February 23, 2016, Severstal requested the Department to postpone the final determination and extend provisional measures from four months to six months.²⁷ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative; (2) the requesting exporter, Severstal, accounts for a significant proportion of exports of the subject merchandise; and, (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. 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:

²⁷ See Letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Request for Postponement of Final Determination,” dated February 23, 2016.

- 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;²⁸

²⁸ 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;²⁹
- Silico-manganese steel;³⁰
- 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*.³¹
- 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*.³²

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, 7211.23.6090, 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, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the 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, 7217.90.5060,

²⁹ 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.

³⁰ 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.

³¹ *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. 42,501, 42,503 (Dep’t of Commerce, July 22, 2014) (“*Grain-Oriented Electrical Steel from Germany, Japan, and Poland*”). 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.”

³² *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. 71,741, 71,741-42 (Dep’t of Commerce, Dec. 3, 2014) (“*Non-Oriented Electrical Steel from the People’s Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*”). 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.”

7217.90.5090, 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 U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

VI. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. Petitioners alleged that critical circumstances exist with respect to imports of the merchandise under consideration, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), on October 30, 2015.³³ We preliminarily find that critical circumstances exist.

A. Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

B. Critical Circumstances Allegation

Petitioners allege critical circumstances exist with respect to Russia under both prongs of section 733(e)(1)(A) of the Act, which states that critical circumstances may be found if (1) “there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise,” or (2) there is knowledge by the person by whom or for whose account subject merchandise was imported that the merchandise was sold at less than fair value and that such sales were likely to cause material injury to an industry in the United States. In addition to showing a history of injurious dumping or imputed importer knowledge of ongoing injurious dumping under section 733(e)(1)(A), Petitioners must also demonstrate “massive imports” under section 733(e)(1)(B).

Petitioners maintain that producers in Russia have a history of injurious dumping.³⁴ Specifically, Petitioners claim that Mexico has had an outstanding AD order against cold-rolled sheet from Russia since 1999;³⁵ the European Union began an investigation on cold-rolled steel from Russia

³³ See Critical Circumstances Allegation.

³⁴ *Id.* at 5.

³⁵ *Id.*

in May 2015,³⁶ and the Department determined dumping margins for Russian producers during the course of two previous AD investigations.³⁷

Petitioners also claim that importers knew or should have known that subject imports from China, Japan, and Russia were being sold at less than fair value and that such imports were likely to cause material injury to the U.S. cold-rolled steel industry. Specifically, Petitioners note that the Petition margins for Russia ranged from 69.12 to 227.52;³⁸ that the Russian producers are subject to long-standing AD orders on similar products of cut-to-length (“CTL”) plate and hot-rolled steel;³⁹ and that the ITC made a preliminary determination of injury in the instant investigation.⁴⁰

Petitioners claim further that imports of the subject merchandise have been massive over a relatively short period, beginning in March 2015, four months prior to the filing of the Petition, when it became clear that AD and CVD petitions were imminent.⁴¹ Using a base and comparison period of 3 months before and after March 2015, Petitioners found that imports increased by 143% during the comparison period.⁴²

C. Analysis

The Department’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioners’ critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination. As further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) the evidence presented in Petitioners’ October 30, 2015, allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC’s preliminary injury determination.

We considered each of the statutory criteria for finding critical circumstances below. Because we find a history of injurious dumping under section 773(e)(1)(A)(i) of the Act and massive imports under section 773(e)(1)(B), we preliminarily determine that critical circumstances exist.

³⁶ *Id.* at 6.

³⁷ *Id.* citing *Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation*, 67 FR 62121 (October 3, 2002) (“*Cold-Rolled Carbon Steel 2002*”); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 61261 (November 10, 1999), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510 (February 4, 2000) (“*Cold-Rolled Carbon-Quality Steel 2000*”).

³⁸ See Critical Circumstances Allegation at 7.

³⁹ *Id.* at 8, citing Exhibit 5, “Antidumping and Countervailing Duty Orders in Place as of October 19, 2015,” available at http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations.htm.

⁴⁰ See Critical Circumstances Allegation at 8, citing *Initiation Notice*, 80 FR at 51203.

⁴¹ See Critical Circumstances Allegation at 8.

⁴² *Id.* at 15.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.⁴³ As noted above, Mexico has had an outstanding AD order against cold-rolled sheet from Russia since 1999.⁴⁴ A comparison of the products covered by that order and the scope of the products included in this investigation shows that the scope of the Mexican order covers at least some of the products included in the instant investigation.⁴⁵ This order constitutes a history of dumping elsewhere of the subject merchandise.⁴⁶ Thus, the Department preliminarily finds that there is a history of injurious dumping of cold-rolled steel from Russia pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(B) of the Act: Whether There Have Been Massive Imports Over a Relatively Short Period

In determining whether imports of the subject merchandise were “massive,” the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption accounted for by the imports.⁴⁷ In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the Petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the Petition (*i.e.*, the “comparison period”). If the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier

⁴³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008) (“*Carbon Steel Pipe Final Determination*”); see also *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) (“*SDGE Final Determination*”).

⁴⁴ See Critical Circumstances Allegation at 5.

⁴⁵ See Memorandum to the File, “Preliminary Determination in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Transmission of Information and Calculations for the Preliminary Determination of Critical Circumstances to the File,” dated concurrently with this memorandum (“Department’s Critical Circumstances Transmission Memorandum”).

⁴⁶ See, e.g., *Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67702, 67706 (November 2, 2011), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021, 17025 (March 23, 2012); *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015) and accompanying Issues and Decisions Memorandum at Part VIII, unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015).

⁴⁷ See 19 CFR 351.206(h)(1).

time.⁴⁸ Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.⁴⁹

Based on evidence provided by Petitioners, the Department finds that pursuant to 19 CFR 351.206(i), importers, exporters or producers had reason to believe, at some time prior to the filing of the Petition, that a proceeding was likely. Specifically, the Department concludes that the factual information provided by Petitioners indicates that by March 2015, importers, exporters or producers had reason to believe that proceedings were likely. Among the documents Petitioners provided to support their claim of so-called “early knowledge,” the Department finds the following particularly relevant:

- On March 10, 2015, Steel Market Update acknowledged and responded to an influx of “recent” inquiries from importers of cold-rolled steel and CORE steel products “asking questions about the potential for a trade case or anti-dumping filing by the domestic mills against foreign steel imports.” The article stated that “if there is a case most likely other countries will be involved in the trade action.”⁵⁰
- On March 15, 2015, a Wall Street Journal article discusses leading American Steel producers testifying before Congressional Steel Caucus hearing as “a prelude to launching at least one anti-dumping complaint.” According to the article, “China isn’t alone in facing allegations of dumping. Similar complaints have been levelled against others such as Japanese and Indian producers.”⁵¹
- On March 24, 2015, a report indicated that U.S. steel producers have now built a strong case against the imports and will likely file a complaint with the ITC.⁵²
- On March 26, 2015, American Metal Market issued a press release stating that nearly 70 percent of industry participants expected CRS and CORE steel cases to be filed in 2015.⁵³
- On March 26, 2015, an article in the Chicago Tribune makes clear that the domestic industry will be pursuing AD cases.⁵⁴

With respect to expectations for a proceeding, section 351.206(i) of the Department’s regulations allow for the use of a comparison period prior to the filing of the Petition in situations where importers, exporters, or producers had reason to believe that an AD proceeding was likely prior to the filing of the Petition. The March 26, 2015, American Metal Market Press Release specifically mentions Russia, and the above-mentioned articles and press releases indicate that, by March 2015, rumors had turned to expectations among steel importers, exporters, and

⁴⁸ See 19 CFR 351.206(i).

⁴⁹ See *id.*

⁵⁰ See Critical Circumstances Allegation at Exhibit 9.

⁵¹ *Id.* at Exhibit 10.

⁵² *Id.* at Exhibit 11.

⁵³ *Id.* at Exhibit 13.

⁵⁴ *Id.* at Exhibit 12.

producers that forthcoming petitions involving multiple countries were inevitable. As such, the Department preliminarily finds that information on the record demonstrates that, by March 2015, importers, exporters or producers had reason to believe that a proceeding involving cold rolled steel was likely. According, the Department finds that a comparison period prior to the filing of the Petition is warranted.

Moreover, it is the Department's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁵⁵ The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base or comparison period depending on whether the event that gave rise to the belief occurred in the first half (included in the comparison period) or second half (included in the base period) of the month.⁵⁶ Based on these practices, the Department compared import data for the period March 2015 through October 2015 (the last month for which import data is currently available) with the preceding eight-month period of July 2014 through February 2015.⁵⁷ These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration.

a. Severstal and NLMK

It is the Department's practice to conduct its massive imports analysis with respect to the mandatory respondents based on their reported monthly shipment data.⁵⁸ We found that both Severstal's and NLMK's reported shipments of merchandise under consideration during the comparison periods increased by more than 15 percent over their respective imports in the base periods.⁵⁹ Accordingly, we preliminarily find that there were massive imports of subject merchandise from Severstal and NLMK, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).⁶⁰

b. Non-Individually Examined Respondents

⁵⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁶ *Id.*

⁵⁷ See Department's Critical Circumstances Transmission Memorandum.

⁵⁸ See, e.g., *Carbon Steel Pipe Final Determination*; see also *SDGE Final Determination*.

⁵⁹ See Department's Critical Circumstances Transmission Memorandum.

⁶⁰ See *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014) and accompanying Preliminary Decision Memorandum 11-16, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *SDGE Final Determination*, 74 FR at 2052-2053.

In order to determine whether the companies included in the all others rate have massive imports, it is the Department's practice to rely upon GTA import statistics specific to cold-rolled steel, less the mandatory respondents' reported shipment data, to determine if imports in the comparison period for the subject merchandise were massive. However, this analysis was not possible in this case, because the quantity of shipments reported by the mandatory respondents was greater than the quantity of imports recorded in the GTA statistics for the HTS categories included in the Petition.⁶¹ Therefore, the GTA data do not provide a reliable measure of whether imports of covered merchandise were massive in the comparison period. As a result, we relied upon the average of Severstal's and NLMK's shipments during the base and comparison period, and determined that these imports were massive as well. From this data, it is clear that there was an increase in imports of more than 15 percent during a "relatively short period" of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for Severstal, NLMK and all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Based on the Department's finding of a history of injurious dumping and massive imports, the Department preliminarily determines that critical circumstances exist for the mandatory respondents, Severstal and NLMK, and the non-individually examined companies receiving the all-others rate.

VII. Application of Facts Available and Use of Adverse Inferences

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

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

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

⁶¹ *Id.*

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

On June 29, 2015, the President of the United States signed into law the *Trade Preferences Extension Act* (“TPEA”),⁶² which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁶³ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁶⁴

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁶⁵ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁶⁶

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

⁶² See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) and *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (“Applicability Notice”).

⁶³ See TPEA and Applicability Notice.

⁶⁴ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁶⁵ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (“SAA”).

⁶⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (“*Nippon Steel*”).

and under the *TPEA*, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The *TPEA* also makes clear that when selecting an adverse facts available (“AFA”) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Application of Partial AFA for Severstal

On January 28, 2016, Severstal submitted an unsolicited cost of production (“COP”) Database, which the Department subsequently rejected and removed from the record of this investigation.⁶⁷ Severstal’s cover letter accompanying the unsolicited COP Database argued that it inadvertently omitted the electronic COP data file, revised to include CONNUMs for products that were sold but not produced during the PO, from its recent submission of its Sections A, B, C, and D Questionnaire Response.⁶⁸ The Department’s COP Database Rejection Letter explained that Severstal failed to identify the provision of 19 CFR 351.102(b)(21) under which the information was being submitted.⁶⁹ In addition, the Department explained that Severstal’s unsolicited COP Database reflected information requested in the Department’s Section D Supplemental Questionnaire,⁷⁰ and accordingly was untimely filed.⁷¹ We noted that Severstal’s original SDQR explained that it did not provide the COPs for the CONNUMs with no cost as requested in the Department’s Section D Supplemental Questionnaire.⁷² We noted that Severstal had not requested an extension of the January 7, 2016, deadline for the submission of its missing COP information.⁷³

⁶⁷ See letter to Severstal, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Rejection of Severstal Export GmbH and PAO Severstal’s January 29, 2016, Revised COP Database and February 5, 2016, Objection Letter from the Record of the Investigation,” dated February 11, 2016 (“COP Database Rejection Letter”). See also Memorandum to the File, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People’s Republic of China: Request ACCESS to Delete Severstal Export GmbH and PAO Severstal’s (collectively “Severstal”) January 28, 2016, Transmittal Letter and Section D Database, and Severstal’s February 5, 2016, Letter from the Record,” dated February 12, 2016.

⁶⁸ See COP Database Rejection Letter at 2.

⁶⁹ *Id.*

⁷⁰ See letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation, dated December 17, 2015 (“Section D Supplemental Questionnaire”).

⁷¹ See COP Database Rejection Letter at 2.

⁷² *Id.* See also letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation, dated December 17, 2015 (“Section D Supplemental Questionnaire”).

⁷³ See COP Database Rejection Letter at 2, which explains further that prior to January 7, 2016, Severstal requested, and was granted, an extension of time to respond to other portions of the Department’s Supplemental Questionnaire. See letter from Severstal to the Department, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Partial Extension Request for Supplemental Section D Questionnaire Response,” dated January 6, 2016 (requesting extension to respond to questions 7, 22, and 29 of the Department’s Section D Supplemental Questionnaire); see also letter from the Department, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Request for an Extension of Time to File Supplemental Section D Responses to Questions 7, 22, and 29,” dated January 6, 2016. Additional extensions were granted, extending Severstal’s deadlines until

We explained that we did not agree with Severstal’s argument that its unsolicited COP Database was timely under Section 351.301(c)(5), because it was responsive to the Department’s Section D Supplemental Questionnaire.⁷⁴ We explained that the submission thus met the definition of Section 351.102(b)(21)(i), and was outside the scope of Section 351.301(c)(5).⁷⁵ Moreover, we stated that even if Severstal’s submission was guided by that section, Severstal’s submission still failed to conform to the requirements of that section, because it did not “clearly explain why the information contained {in its submission} does not meet the definition of factual information described in § 351.102(b)(21)(i)-(iv),” and did not “provide a detailed narrative of exactly what information is contained in the submission and why it should be considered.”⁷⁶

As noted above, section 776(a)(2)(B) of the Act provides that if an interested party fails to provide information within the established deadlines, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁷⁷

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (“CAFC”) noted that while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”⁷⁸ Thus, according to the CAFC, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁷⁹ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt,

January 22, 2016. See letter from the Department, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Second Partial Extension Request for Supplemental Sections A, B, C and D Questionnaire Responses,” dated January 13, 2016 (“1st SQR (ABCD)”); See letter from the Department, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Third Partial Extension for Supplemental Sections A, B, C and D Questionnaire Responses,” dated January 19, 2016. However, none of those extension requests pertained to the cost of production information at issue here.

⁷⁴ See COP Database Rejection Letter at 3.

⁷⁵ *Id.*

⁷⁶ *Id.* citing 19 CFR § 351.302(c)(5).

⁷⁷ See SAA, H.R. Rep. No. 103-316, at 870; see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁷⁸ See *Nippon Steel*, 337 F.3d at 1382-83.

⁷⁹ *Id.* at 1382.

careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.⁸⁰

The antidumping duty questionnaire and subsequent supplemental questionnaires issued in this investigation required respondents to report all of their relevant COP during the POI. Severstal had multiple opportunities to provide COP data for all CONNUMs sold in the home and U.S. market. The Department issued multiple supplemental questionnaires to Severstal regarding its COP data in accordance with section 782(d) of the Act.⁸¹ The Department granted Severstal many extensions of the deadline to provide the information required for its supplemental questionnaire responses.⁸² Severstal made many adjustments to its reported sales and cost responses without addressing its failure to report COP data for all CONNUMs sold in the U.S. and home markets.⁸³ Thus, we preliminarily determine that Severstal failed to submit requested information within the applicable time limits.

In this case, we find that the application of facts available is appropriate under section 776(a)(2)(B) of the Act because Severstal possessed the necessary records to provide a complete COP database but did not do so in a timely manner. In addition, we find that Severstal’s failure to report all of its COP data during the POI, including the information over which it maintained control at all times, indicates that Severstal did not act to the best of its ability to comply with our requests for information. Hence, we find that the application of AFA is appropriate under section 776(b) of the Act. As AFA, we are assigning to those CONNUMs for which COP data has not been timely provided the highest reported cost for CONNUMs in the database.⁸⁴

Finally, because we are relying on Severstal’s own information obtained during the course of this review, there is no need to corroborate this information pursuant to section 776(c) of the Act.

Application of Neutral Facts Available for Severstal’s Sales through Severstal Columbus

Severstal reported that, early in the POI, it made transfers of covered merchandise to one of its two former affiliates in the United States, Severstal Columbus LLC (“Severstal Columbus”).⁸⁵ However, three months after the POI began, Severstal sold this plant to Steel Dynamics Inc. (“Steel Dynamics”), a petitioner in the investigation.⁸⁶ Petitioners contend that because Severstal made these sales to Severstal Columbus for the purpose of resale in the United States, subsequent downstream sales of Severstal merchandise should be classified as CEP sales during the POI.⁸⁷

⁸⁰ *Id.*

⁸¹ See First Severstal Section D Supplemental Questionnaire and First Severstal Section A-C Supplemental Questionnaire.

⁸² See, e.g., the COP Database Rejection Letter at 2, footnote 15, which provides an extensive outline of Severstal’s requests for an extension and the Department’s responses.

⁸³ See, e.g., Severstal’s SDQR, 1st SQR (AC) and 1st SQR (ABCD).

⁸⁴ See Memorandum to Neal M. Halper, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Severstal Export GmbH and PAO Severstal,” dated concurrently with this memorandum (“Severstal Cost Calculation Memorandum”).

⁸⁵ See Severstal AQR at page A-19.

⁸⁶ *Id.* at page A-9 and A-10.

⁸⁷ See Petitioner’s Severstal BC Deficiency Comments at 23-24; Petitioners’ Severstal SQR Deficiency Comments at 17-20; and Petitioners’ Severstal Pre-Preliminary Determination Comments at 9-12.

Our analysis shows that Severstal cooperated to the best of its ability to obtain information concerning any sales made by Severstal Columbus of the merchandise that Severstal shipped during the POI, prior to Severstal Columbus' sale to Steel Dynamics. On September 30, 2015, Severstal first reported that it attempted, but was unable to obtain the information required to report any such downstream sales from Steel Dynamics.⁸⁸ On November 6, 2015, it reported a second time that it was not able to obtain information from Steel Dynamics, and requested the Department to issue a questionnaire to Steel Dynamics for those sales.⁸⁹ In addition, on December 11, 2015, Severstal reported its sales of covered merchandise to Severstal Columbus.⁹⁰ Severstal's AQR and 1st SQR reiterate these facts, and provide a list of sales made to Severstal Columbus.⁹¹

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record, or (2) an interested party or any other person: (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Severstal was unable to provide the requested CEP sales information for certain sales made through its former U.S. affiliate. Because that information is not on the record, we find that the application of facts available is appropriate. However, we find that the record supports accepting, as facts available, the weighted-average margin determined for the sales reported on Severstal's U.S. sales database in place of the missing CEP sales. Where a respondent has cooperated and attempted to obtain cost or sales information over which it has no control, and the missing information accounts for only a small portion of the total, and there is usable information that could serve as a substitute, the Department has used facts available in place of the missing information.⁹² In this proceeding, the record shows that Severstal identified and documented its unsuccessful attempts to obtain the sales information from its former affiliate, the quantity of sales account for only a small portion of the total sales during the POR, and there are usable sales data on the record that can serve as a substitute for the missing sales information. Therefore, we are using the sales data submitted by Severstal as a substitute for the missing sales in accordance with section 776(a) of the Act.

⁸⁸ See letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Notice of Difficulty in Responding to Questionnaires," dated September 30, 2015 ("Notice of Difficulty").

⁸⁹ See letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Request to Issue Steel Dynamics, Inc. a Questionnaire Regarding Resale and Further Manufacturing Data," dated November 6, 2015 ("Second Difficulty Letter").

⁹⁰ See letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's U.S. Resale Data," dated December 11, 2015.

⁹¹ See Severstal's Second Difficulty Letter at Attachment 1. See also Severstal's 1st SQR (ABCD) at Exhibit S-27.

⁹² See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015) at Comment 10, where the Department relied on neutral facts available for certain unreported production information that the respondent made a good faith effort to obtain from unaffiliated tollers.

We do not find that the criteria for using an adverse inference apply in this instance. Pursuant to section 776(b) of the Act, the Department uses facts otherwise available with an adverse inference when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The record shows that Severstal made multiple attempts to obtain sales data from its previous affiliate, based on the Department's request for information. Based on this fact, we find that Severstal cooperated to the best of its ability. Thus use of an adverse margin is not supported by the record.

Therefore, because the information required to report Severstal Columbus' downstream sales in the United States is not within Severstal's control, we have determined to include these sales in Severstal's margin calculations, and to apply to them, as neutral facts available, the weighted-average margin determined for the sales reported on Severstal's U.S. sales database. However, because such calculation will have no impact on the calculations, we made no changes to the Department's margin calculation program.

VIII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Severstal's and NLMK's sales of the subject merchandise from Russia to the United States were made at less than fair value, the Department compared the EP to the normal value ("NV") as described in the "Export Price" and "Normal Value" sections of this memorandum.

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices ("CEPs")) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁹³ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

⁹³ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3; *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For Severstal and NLMK, purchasers are based on the reported unique customer codes.⁹⁴ Regions are defined using the reported destination code (*i.e.*, zip code for both Severstal and NLMK)⁹⁵ and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method,

⁹⁴ See Severstal’s CQR at page C-15 and NLMK’s CQR at 12.

⁹⁵ See Severstal’s CQR at 35 and NLMK’s CQR at 27.

and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

B. Results of the Differential Pricing Analysis

Severstal

For Severstal, based on the results of the differential pricing analysis, the Department preliminarily finds that 80.53 percent of the value of U.S. sales pass the Cohen's *d* test,⁹⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is no meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test. Accordingly, the Department preliminarily determines to use the average-to-average method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Severstal.

⁹⁶ See Memorandum to the File, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products ("Cold-Rolled Steel") from the Russian Federation ("Russia"): Severstal Export GmbH and PAO Severstal (collectively "Severstal")," dated concurrently with this memorandum ("Severstal Preliminary Analysis Memorandum").

NLMK

For NLMK, based on the results of the differential pricing analysis, the Department preliminarily finds that zero percent of the value of U.S. sales pass the Cohen's *d* test,⁹⁷ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for NLMK.

IX. PRODUCT COMPARISONS

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

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristics reported by the respondents in the following order of importance: paint characteristics, carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, and heat treatment. Severstal's and NLMK's reported control numbers for sales to the United States of cold-rolled steel identify the characteristics of the cold-rolled steel as exported by Severstal and NLMK.⁹⁸

Neither Severstal nor NLMK reported sales of non-prime cold-rolled steel to the United States during the POI, but both reported that they sold non-prime cold-rolled steel in the home market.⁹⁹

X. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁰⁰ In addition, the Department's long-standing

⁹⁷ See Memorandum to the File, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products ("Cold-Rolled Steel") from the Russian Federation ("Russia"): Novex Trading (Swiss) SA and Novolipetsk Steel OJSC (collectively "NLMK")," dated concurrently with this memorandum ("NLMK's Preliminary Analysis Memorandum").

⁹⁸ See Severstal's BQR at pages B-11 to B-16 and NLMK's BQR at 14 - 22.

⁹⁹ See Severstal's CQR at page C-7 and NLMK's CQR at 4 - 11.

¹⁰⁰ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) ("*Allied Tube & Conduit Corp.*") ("As elaborated by Department practice, a date other than invoice date

practice is to rely on shipment date as the date of sale where the shipment date precedes the invoice date.¹⁰¹ Given that date of sale is a significant threshold issue in that it establishes the universe of sales included in our dumping analysis, we intend to thoroughly examine the reported bases for date of sale at verification of both respondents.

Severstal

Severstal reported the earlier of the date of the invoice or the date of shipment as the date of sale for comparison market sales,¹⁰² and the latest order confirmation date between Severstal Export and the U.S. customer as the date of sale for U.S. sales.¹⁰³ Therefore, in accordance with 19 CFR 351.401(i), we preliminarily determine that reported dates of sale (*i.e.*, the earlier of invoice date or date of shipment in the home market, and the order confirmation date in the United States) is the appropriate date of sale.

NLMK

For its comparison market sales and U.S. sales, NLMK reported the invoice date as the date of sale.¹⁰⁴ Therefore, we preliminarily determine that invoice date is the appropriate date of sale for both comparison market sales and U.S. sales.

XI. EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for Severstal's and NLMK's U.S. sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record. We did not utilize the CEP methodology in accordance with section 772(b) of the Act because Severstal's and NLMK's U.S. sales of merchandise under consideration were not sold in the United States by U.S. sellers affiliated with Severstal and NLMK, and therefore are EP, as defined by section 772(a) of the Act.

Petitioners argue that Severstal's U.S. sales should be classified as CEP sales.¹⁰⁵ However, we preliminarily determine, subject to verification, that these sales constitute EP sales because record evidence indicates that Severstal Export made these sales prior to importation¹⁰⁶ and

'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.'").

¹⁰¹ See, e.g., *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015), and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

¹⁰² See Severstal's 1st SQR (ABCD) at 59 and 2nd SQR at 9-10.

¹⁰³ See Severstal's 1st SQR (ABCD) at 28-29 and 2nd SQR at 10.

¹⁰⁴ See NLMK's BQR at 25.

¹⁰⁵ See Petitioners' Severstal BC Deficiency Comments at 20-24.

¹⁰⁶ See Severstal's 1st SQR (ABCD) at 25 and Exhibit S-22.

received payment.¹⁰⁷ In addition, record evidence shows that Severstal Miami neither takes title to the merchandise nor invoices the final customer.¹⁰⁸

Severstal

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

NLMK

We based EP on a packed price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, international freight, marine insurance, U.S. inland freight from warehouse to the unaffiliated customer, other U.S. transportation expense, and U.S. customs duty.

XII. NORMAL VALUE

A. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act and 19 CFR 351.404(b)(2). If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that Severstal's and NLMK's aggregate volumes of home market sales of the foreign like product were greater than five percent of the aggregate volumes of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Severstal and NLMK, in accordance with section 773(a)(1)(B) of the Act.

Consistent with our practice, we also included Severstal's and NLMK's reported sales to affiliated parties for purposes of determining home market viability.¹⁰⁹

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* 25 and Exhibit S-22.

¹⁰⁹ See *Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).

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

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.¹¹⁰ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."¹¹¹

During the POI, Severstal and NLMK made sales of cold-rolled steel in the home market to affiliated parties, as defined in section 771(33) of the Act.¹¹² Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling and packing expenses. Pursuant to 19 CFR 351.403(c) and, in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade ("LOT"), we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.¹¹³

C. Level of Trade

Pursuant to section 773(a)(1)(B)(i) of the Act, to the extent practicable, NV is normally based on the prices in the home market that are made at the same level of trade ("LOT") as the EP. The NV LOT is that of the starting-price sale in the comparison market, or when NV is based on constructed value, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is the level of the starting-price sale, which is usually from the exporter to the importer. To determine whether a respondent's home market sales are at a different LOT than its U.S. sales, we examine stages in the marketing and selling functions along the chain of distribution between the producer and unaffiliated customer. If the home market sales are at a different LOT, and the difference affects the price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.410(c).¹¹⁴

Severstal reported that it sold to affiliated and unaffiliated end-users and distributors in its home market,¹¹⁵ and that its selling functions do not vary due to the channels of distribution.¹¹⁶

¹¹⁰ See 19 CFR 351.403(c).

¹¹¹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003).

¹¹² See Severstal's BQR at page B-17 and NLMK's BQR at pages 2-6.

¹¹³ See section 771(15) of the Act; 19 CFR 351.102(b)(35).

¹¹⁴ See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-3 (November 19, 1997).

¹¹⁵ See Severstal's AQR at Exhibit A-10 and BQR at pages B-17 to B-18.

Similarly, NLMK reported that it sold to unaffiliated end-users and distributors and to affiliated customers in its home market, and that its selling functions do not vary due to the channels of distribution.¹¹⁷ Because the selling activities to NLMK's and Severstal's customers did not vary for sales in the home market through its two channels of distribution, we preliminarily determine that there is one LOT in the home market for both Severstal and NLMK. Both Severstal and NLMK reported that they had only one channel of distribution in the U.S. market.¹¹⁸ Accordingly, there is only one LOT in the U.S. market for both Severstal and NLMK.

Severstal and NLMK also provided the Department with information on their selling activities in its home and U.S. markets.¹¹⁹ While there are some minor differences between the services provided in the home and U.S. markets, we find that the services are similar enough that separate LOTs are not warranted. Accordingly, we preliminarily find that Severstal and NLMK provided the same or similar level of customer support services on their U.S. sales (all of which were EP) as they did on their home market sales, and that a LOT adjustment for Severstal and NLMK is not warranted.

D. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the *TPEA*, which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.¹²⁰ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.¹²¹ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent companies in all AD proceedings.¹²² Accordingly, the Department requested this information from NLMK and Severstal.¹²³ We examined NLMK and Severstal's cost data and determined that there are reasonable grounds to believe or suspect that sales of the foreign like product were made at less than the cost of production. We further determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

¹¹⁶ See Severstal's 1st SQR (ABCD) at 12-13.

¹¹⁷ See NLMK's AQR at page 13; Exhibit A-13.

¹¹⁸ See Severstal's AQR at Exhibit A-9, and CQR at page C-17; See NLMK's AQR at page 12, and Exhibits A-13 and A-14; NLMK's SAQR at Exhibit SA-3.

¹¹⁹ See Severstal's 1st SQR (AC) at Exhibit S-10; See NLMK's AQR at Exhibit A-14; NLMK's SAQR at Exhibit SA-3.

¹²⁰ See *TPEA*.

¹²¹ See *Applicability Notice*.

¹²² *Id.*, 80 FR at 46794-95.

¹²³ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the cost of production (“COP”) for Severstal and NLMK based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.¹²⁴

Severstal

We relied on the COP data submitted by Severstal, except as follows:¹²⁵

- We adjusted the cost of inputs purchased by Severstal from affiliated suppliers to reflect the higher of the affiliated purchase price, market price, and the affiliates’ COP in accordance with section 773(f)(3) of the Tariff Act of 1930, as amended.
- For CONNUMs for which Severstal failed to report cost information, we used the highest cost reported for CONNUMs in the cost database.¹²⁶
- For CONNUMs for which Severstal reported only direct material costs, we calculated the fixed overhead cost using the average ratio of fixed overhead to total cost of manufacture reported for all other CONNUMs.
- We disallowed the offset to Severstal’s financial expenses for certain gain related to the investment activities of the company. We applied the revised financial expense ratio to the sum of the total cost of manufacturing plus the separately reported coefficient adjustment.

NLMK

We relied on the COP data submitted by NLMK, except as follows:¹²⁷

- We adjusted the cost of inputs purchased by NLMK from affiliated suppliers to reflect the higher of the affiliated average purchase price, market price, and the affiliates’ COP in accordance with section 773(f)(3) of the Tariff Act of 1930, as amended.
- We revised the numerator of the reported general and administrative (“G&A”) expense ratio calculation to include certain “other income and expense items” that are related to the general operations of the company as a whole. Additionally, we revised the denominator of the reported G&A expense ratio calculation to include the affiliated suppliers input adjustment.

¹²⁴ See “Test of Comparison Market Sales Prices” section, below, for treatment of home market selling expenses.

¹²⁵ See Memorandum to Neal M. Halper, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Severstal Export GmbH and PAO Severstal,” dated concurrently with this memorandum (“Severstal Cost Calculation Memorandum”).

¹²⁶ Please see the discussion in “Application of Facts Available and Use of Adverse Inferences” for an explanation of the discussion of this issue.

¹²⁷ See Memorandum to Neal M. Halper, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Novolipetsk Steel OJSC,” dated concurrently with this memorandum.

- We revised the financial expense ratio based on NLMK’s reported ratio which was calculated based on NLMK’s unconsolidated 2014 fiscal year audited financial statements prepared in accordance with the Russian Accounting Standards.
- For the subject merchandise that was produced by NLMK and sold to and further processed by its affiliate (Novolipetsk Steel Service Center (“NSS”)), we calculated a single average further processing cost for that subject merchandise, and used it in the calculation of the net home market price for those downstream sales made by NSS.
- For NSS’s downstream sales, we calculated an additional indirect selling expense that represents the general and administrative and financial expenses incurred by NSS.

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

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

Where we find that more than 20 percent of a company’s home market sales for a given product were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of NV Based on Comparison Market Prices

Severstal

We calculated NV based on delivered or ex-works prices to unaffiliated and affiliated customers where the sale was made at arm's length. We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and warehousing under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

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

NLMK

We calculated NV based on delivered or ex-works prices to unaffiliated and affiliated customers where the sale was made at arm's length. We made deductions, where appropriate, from the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

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

XIII. CURRENCY CONVERSION

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

XIV. U.S. INTERNATIONAL TRADE COMMISSION NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business

proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 735(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cold-rolled steel from Russia before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

XV. 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.¹²⁸ 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 the case briefs, may be submitted no later than five days after the deadline for case briefs.¹²⁹

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.¹³⁰ This summary should be limited to five pages total, including footnotes.

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*.¹³¹ 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.¹³² Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,¹³³ on the due dates established above.

XVI. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

¹²⁸ See 19 CFR 351.224(b).

¹²⁹ See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

¹³⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹³¹ See 19 CFR 351.310(c).

¹³² See 19 CFR 351.303(b)(2)(i).

¹³³ See 19 CFR 351.303(b)(1).

XVII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 FEBRUARY 2016
Date