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DATE: July 20, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty (“AD”) investigation of certain cold-rolled steel flat products (“cold-rolled steel”) from the Russian Federation (“Russia”). As a result of our analysis, we made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

On March 8, 2016, the Department of Commerce (“Department”) published its *Preliminary Determination* in the instant investigation, preliminarily finding that cold-rolled steel from Russia is, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”), and 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”), along with the non-individually examined companies receiving the all-others rate.

¹ See *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 81 FR 12072 (March 8, 2016) (“*Preliminary Determination*”) and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Products from The Russian Federation,” dated February 29, 2016 (“PDM”).



Subsequent to the *Preliminary Determination*, the Department issued a supplemental questionnaire to NLMK on February 22, 2016,² and to Severstal on March 21, 2016.³ NLMK provided a response on February 29, 2016,⁴ and Severstal provided responses on March 28, 2016, and April 4, 2016.⁵ On March 2016, ArcelorMittal USA LLC (“ArcelorMittal”), on behalf of Petitioners,⁶ filed comments in advance of the Department’s onsite verification.⁷

Between March 14, 2016, and May 10, 2016, the Department conducted export price (“EP”), cost, and home-market sales verifications of Severstal and NLMK. We followed standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the two respondents. We issued NLMK’s Cost Verification Report on April 26, 2016, and Sales Verification Report on June 9, 2016.⁸ Similarly, we released Severstal’s Cost Verification Report on May 4, 2016⁹ and Sales Verification Report on June 9, 2016.¹⁰

Subsequently, Petitioners alleged that certain of Severstal and NLMK’s submissions in connection with the Department’s verification of each respondent contained untimely new

² See Letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation,” dated February 22, 2016.

³ See Letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Third Supplemental Questionnaire for the Sections A, B and C Questionnaire Responses of Severstal Export GmbH and PAO Severstal,” dated March 21, 2016.

⁴ See Letter from NLMK, “NLMK’s Response to Second Supplemental Section D Questionnaire,” dated February 29, 2016.

⁵ See Letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Third Supplemental Sections A, B, and C Questionnaire Response,” dated March 28, 2016 (“Severstal’s 3rd SQR”); Letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Third Supplemental Sections A, B, and C Questionnaire Response, dated April 4, 2016 (“Severstal’s 3rd SQR (SSE Miami)”).

⁶ Petitioners in this investigation are AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation.

⁷ See Letters from Petitioners, “Antidumping Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation –Petitioner’s Comments in Advance of the Department’s Onsite Verification of Severstal’s Cost Data,” dated March 10, 2016; “Antidumping Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation –Petitioner’s Comments in Advance of the Department’s On-Site Verification of Novolipetsk Steel OJSC’s (“NLMK”) Cost Data,” dated March 10, 2016; and “Antidumping Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation –Petitioner’s Pre-Verification Comments Concerning Novolipetsk Steel OJSC’s (“NLMK”) Sales Data,” dated March 30, 2016.

⁸ See Memorandum to the File, “Verification of the Cost Response of Novolipetsk Steel OJSC in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation,” dated April 26, 2016 (“NLMK’s Cost Verification Report”); Memorandum to the File, “Verification of the Sales Response of Novex Trading (Swiss) SA and Novolipetsk Steel OJSC in the Antidumping Investigation of Cold-Rolled Steel Flat Products from the Russian Federation,” dated June 9, 2016 (“NLMK’s Sales Verification Report”).

⁹ See Memorandum to the File, “Verification of the Cost Response of Severstal Export GmbH and PAO Severstal in the Antidumping Duty Investigation of Certain Cold Rolled Steel Flat Products from the Russian Federation,” dated May 2, 2016 (“Severstal’s Cost Verification Report”).

¹⁰ See Memorandum to the File, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Russia: Export Price and Home Market Sales Verifications of Severstal Export GmbH, PAO Severstal and Severstal Export Miami Corporation,” dated June 10, 2016 (“Severstal’s Sales Verification Report”).

factual information and requested that the Department strike such information from the record.¹¹ Severstal and NLMK submitted a response to Petitioners' allegations on March 20, 2016, and on May 24, 2016, respectively.¹² On June 9, 2016, the Department determined that the information in question did not constitute untimely new factual information and found no basis to reject any portion of the prior submissions in question.¹³

On March 25, 2016, and March 31, 2016, respectively, NLMK and ArcelorMittal timely submitted a request for hearing.¹⁴ On June 29, 2016, both parties withdrew their requests for a hearing.¹⁵ No other interested parties requested a hearing.

On June 17, 2016, NLMK submitted a case brief,¹⁶ and on June 20, 2016, ArcelorMittal and Severstal submitted case briefs.¹⁷ On June 22, 2016, NLMK submitted its rebuttal case brief and on June 23, 2016,¹⁸ ArcelorMittal and Severstal submitted rebuttal briefs.¹⁹

¹¹ See Letter from Petitioners, "Antidumping Investigation of Certain Cold-Rolled Steel Flat Products from Russia Federation – Petitioner's Request to Strike Severstal's Submission of Untimely New Information In Connection with Verification of SSE," dated May 16, 2016; Letter from Petitioners, "Cold-Rolled Steel Flat Products from Russia – Petitioner's Request to Strike NLMK's Untimely Submission of New Factual Information In Connection with the Department's Sales Verification," dated May 18, 2016.

¹² See Letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Response to Petitioner's May 16 Request to Strike Minor Corrections," dated May 20, 2016; Letter from NLMK, "NLMK's Response to Petitioner's Request to Strike Factual Information on the Record Cold-Rolled Flat Products from Russia," dated May 24, 2016.

¹³ See Memorandum to the File, "Petitioner's Request to Reject Untimely New Factual Information to the Record," dated on June 9, 2016 ("New Factual Information Memorandum"). Subsequently, the Department requested NLMK to submit revised home market sales, U.S. sales and cost databases in accordance with the minor corrections accepted by the Department in connection of sales verification of NLMK, NLMK timely submitted revised databases as instructed. See Letter from the Department, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Request for NLMK's Revised Home Market Sales, U.S. Sales and Cost Databases," dated June 9, 2016; Letter from NLMK, "NLMK's Submission of Revised Sales and Cost Databases Cold-Rolled Steel Flat Products from Russia," dated June 14, 2016.

¹⁴ See Letter from NLMK, "NLMK's Request for hearing Cold-Rolled Flat Products from Russia," dated March 25, 2016, and Letter from Petitioners, "Antidumping Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation - Petitioner's Request for a Public Hearing," dated March 31, 2016.

¹⁵ See Letter from NLMK, "NLMK's Conditional Withdrawal of Request for Hearing Cold-Rolled Flat Products from Russia," dated June 29, 2016 and Letter from ArcelorMittal, "Antidumping Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation - Petitioner's Withdrawal of Request for A Public Hearing," dated June 29, 2016.

¹⁶ See Letter from NLMK, "NLMK's Case Brief for Antidumping Investigation of Cold-Rolled Flat Products from Russia" dated June 17, 2016 ("NLMK's Case Brief"). The Department denied NLMK's request for an extension of time to file its case brief; see Letter from NLMK, "NLMK's Request for Extension of Time to Submit Case Brief Cold-Rolled Flat Products from Russia," dated June 16, 2016; see Letter from the Department, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: NLMK's Request for Extension of Time to Submit Case Brief," dated on June 16, 2016.

¹⁷ See Letter from Petitioners, "Certain Cold-Rolled Steel Flat Products from the Russian Federation Case Brief Addressing Severstal" dated June 20, 2016 ("Petitioners' Severstal Case Brief"); and "Certain Cold-Rolled Steel Flat Products from the Russian Federation Case Brief Addressing NLMK" dated June 20, 2016 ("Petitioners' NLMK Case Brief"); Letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Case Brief," dated June 17, 2016 ("Severstal's Case Brief").

¹⁸ See Letter from NLMK, "NLMK's Rebuttal Case Brief for Antidumping Investigation Cold-Rolled Flat Products from Russia," dated June 22, 2016 ("NLMK's Rebuttal Brief"); Letter from Severstal, "Certain Cold-Rolled Steel

In accordance with the Preliminary Scope Decision Memorandum,²⁰ the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues. For a summary of the product coverage comments and rebuttal responses submitted on the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.²¹

III. 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.

Flat Products from the Russian Federation: Severstal’s Rebuttal Brief,” dated June 23, 2016 (“Severstal’s Rebuttal Brief”).

¹⁹ Letters from Petitioners, “Petitioner’s Rebuttal Brief Addressing Severstal,” dated June 23, 2016 and “Petitioner’s Rebuttal Brief Addressing NLMK” dated June 23, 2016. The Department denied Petitioners’ request for an extension of time to file their rebuttal case briefs; *see* Letter from Petitioners, “Certain Cold-Rolled Steel Flat Products from Russia – Petitioner’s Request for One-Day Extension of Deadline to Submit Rebuttal Case Briefs,” dated June 20, 2016; Letter from the Department, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Petitioner’s Request for Extension of Time to Submit Rebuttal Case Briefs,” dated June 20, 2016.

²⁰ *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Cold-Rolled Steel Products from Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated February 29, 2016 (“Preliminary Scope Decision Memorandum”).

²¹ *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Comments Decision Memorandum,” dated May 16, 2016 (“Final Scope Decision Memorandum”).

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:

- 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;²²
- Tool steels;²³
- Silico-manganese steel;²⁴
- 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*.²⁵
- 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*.²⁶

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,

²² 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.

²³ 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.

²⁴ 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.

²⁵ *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.”

²⁶ *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.”

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, 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.

IV. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

On February 29, 2016, the Department issued its preliminary critical circumstances determination in conjunction with its preliminary determination.²⁷ The Department preliminarily found that importers, exporters, and producers had reason to believe, at some time prior to the filing of the petition, that a proceeding was likely.²⁸ Specifically, the Department concluded that the factual information provided by Petitioners indicated that by March 2015, importers, exporters, or producers had reason to believe that proceedings were likely.²⁹ Accordingly, based on trade data submitted through October 2015, the Department preliminarily determined that critical circumstances existed for all producers or exporters, including Severstal and NLMK.³⁰ On July 18, 2016, the Department released the calculations for its preliminary determination of critical circumstance and afforded all parties an opportunity to submit factual information to rebut, clarify, or correct the factual information provided in that memorandum.³¹ No party raised the issue of critical circumstances for this final determination.

On November 20, 2015, the Department requested respondents to report their respective monthly quantity and value data for subject merchandise shipped to the United States beginning with July 2014, through the last day of the month of the publication of the preliminary determination of this investigation.³² As such, respondents reported all relevant shipment data available at the time and necessarily updated with more recent monthly totals as they became available during the proceeding. Nevertheless, the maximum pre-knowledge comparison period for which data is available on the record is necessarily set at the 8 month period of July 2014 through February 2015 as result of the Department's request for import information beginning in July 2014 and

²⁷ See *Preliminary Determination* and PDM at 14 through 19.

²⁸ *Id.* at 12072-73 and PDM at 10-14.

²⁹ *Id.*

³⁰ *Id.*

³¹ See Memorandum to All Interested Parties, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Release of Calculations for the Preliminary Determination of Critical Circumstances," dated July 18, 2016 ("Preliminary Critical Circumstances Calculation Memorandum").

³² See the Department's letter, "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.

subsequent determination to set a comparison period prior to the filing month of the Petition (*i.e.*, by March 2015, importers, exporters or producers had reason to believe that a proceeding involving cold rolled steel was likely; a finding that was not challenged by parties for this final determination³³). As a result, because the Department must use equivalent base and comparison periods in its analysis of whether imports were massive, the post-knowledge base period is then capped at the 8-month period including and subsequent to March 2015 (*i.e.*, March 2015-October 2015). Therefore, though respondents provided updated import volume information up to (and beyond) the month of publication of the *Preliminary Determination*, because the base and comparison periods must necessarily be analyzed on the same basis, for both the *Preliminary Determination* and again for the instant final determination, the Department is only able to examine imports in the 8-month periods prior and subsequent to the March 2015 date of knowledge and, therefore, we have not adjusted the methodology or expanded the parameters of the analysis used to evaluate whether imports of subject merchandise were massive since the *Preliminary Determination*.

For the final determination, with respect to Severstal, at verification, Severstal revised its reported critical circumstances monthly data based on bill of lading date.³⁴ We accepted this revision as a minor correction.³⁵ After analyzing the revised data, pursuant to the same methodology and parameters as in the *Preliminary Determination*, as discussed above, we find Severstal's shipments of merchandise under consideration during the comparison period increased by less than 15 percent over the respective imports in the base period. As such, we find that affirmative critical circumstances do not exist for Severstal for the final determination.³⁶

With respect to NLMK, we determined that cold-rolled steel is not being, or is not likely to be, sold in the United States at LTFV and, thus, we find that critical circumstances do not exist with respect to NLMK's imports as a result of the negative AD determination for NLMK.

With respect to the non-individually examined companies receiving the all-others rate, as noted in the *Preliminary Determination*, 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 Global Trade Atlas ("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 Harmonized Tariff Schedule categories included in the scope of the investigation. 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

³³ See PDM at 11-13.

³⁴ See Letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: SSE Miami Verification Minor Corrections" dated May 11, 2016.

³⁵ See *id.*, and Severstal's Sales Verification Report (*see also*, discussion in New Factual Information Memorandum, at 2-3).

³⁶ For the calculations used in the critical circumstances analysis, *see* the Memorandum to the File "Final Determination in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Transmission of Calculations for the Final Determination of Critical Circumstances to the File" dated concurrently with this memorandum.

relied upon Severstal's and NLMK's shipments during the base and comparison period, updated from the *Preliminary Determination* to include revisions to Severstal's reporting, to determine whether these imports were massive. 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 with respect to the non-individually examined companies, in accordance with 19 CFR 351.206(h) and (i) and, thus, we continue to find that affirmative critical circumstances exist for the non-individually examined companies receiving the all-others rate for the final determination.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our verification of Severstal and NLMK, and our analysis of the case and rebuttal briefs, we have made the following changes since the *Preliminary Determination*:

- We revised the calculations for the critical circumstances determination to account for revisions to Severstal's data presented as minor corrections to the response at Verification. *See* Section IV of this memorandum, "Final Determination of Critical Circumstances."
- We identified the highest home market net price and adjustments contained in Severstal's home market database, and as AFA, applied them to each transaction reported by OOO Severstal Gonvarri ("SGK"). *See* Comment 1.
- We denied Severstal's reported adjustment for foreign inland freight for the sales transactions recorded for PAO Severstal, Severstal Distribution and SGK. *See* Comment 1.
- We eliminated the adjustment made in the *Preliminary Determination* to account for Severstal indirect selling expenses incurred in the United States by Severstal Export Miami Corporation ("SSE Miami"). *See* Comment 3.
- The foregoing changes in Severstal's margin calculations, affected the results of the differential pricing analysis. As a result, we are basing our margin analysis on the average-to-transaction methodology. *See* Comment 4.
- We revised Severstal's U.S. price calculations to account for the actual, verified value of customs brokers' expenses. *See* Comment 5.
- We revised the calculation of the major input adjustment based on our findings at verification (*see* the Cost of Production and Constructed Value Calculation Adjustments for the Final Determination). In doing so, we did not include interest income or expenses in calculating the affiliates' cost of production. *See* Comment 9.
- We revised NLMK's indirect selling expenses for the home market sales to account for the reserve for bad debts. *See* Comment 13.
- We revised the numerator of the reported general and administrative expense ("G&A") ratio calculation to include several "other income and expense" items that are related to

the general operations of the company as a whole using the information provided in NLMK's 2014 fiscal year trial balance. *See* Comment 14.

- We included in NLMK's G&A expenses the expenses incurred by NLMK's parent companies. *See* Comment 15.
- We used the net financial expense ratio reported by NLMK which is based on NLMK's audited 2014 fiscal year consolidated financial statements prepared in accordance with the generally accepted accounting principles ("GAAP") prevailing in the United States. *See* Comment 16.
- We made minor corrections with regard to NLMK's indirect selling expenses incurred in the United States and foreign warehouse expenses. *See* Comment 17.

VI. LIST OF COMMENTS

- Comment 1: Application of Adverse Facts Available ("AFA") for Severstal
Comment 2: Classification of Severstal Export's Sales through SSE Miami
Comment 3: Treatment of SSE Miami's Indirect Selling Expenses in the Determination of U.S. Price
Comment 4: The Use of Zeroing in Severstal's Margin Analysis
Comment 5: Calculation of Severstal Export's U.S. Customs Clearance Costs
Comment 6: Financial Expenses and Foreign Exchange Losses for Severstal
Comment 7: Missing Costs for Severstal
Comment 8: Cost for Products Sold but not Produced During the Period of Investigation ("POI") for Severstal
Comment 9: Major Inputs for Severstal
Comment 10: Financial Expense Ratio Calculation for Severstal
Comment 11: Ministerial Errors for Severstal
Comment 12: NLMK's Date of Sale for the U.S. Sales
Comment 13: Reserve for Doubtful Debts in NLMK's Indirect Selling Expenses
Comment 14: NLMK's Other Income and Expense Items
Comment 15: Allocation of the Parent Company's Expenses to NLMK
Comment 16: NLMK's Net Financial Expense Ratio
Comment 17: Minor Corrections in NLMK's Margin Calculation

VII. DISCUSSION OF THE ISSUES

Comment 1: Application of Adverse Facts Available ("AFA") for Severstal

Petitioners' Comments

- The Department should apply total AFA to Severstal because the Department was unable to verify the accuracy and completeness of the following information in its questionnaire responses:
 - The total quantity and value ("Q&V") of Severstal's home market sales of subject and non-subject merchandise;

- The total Q&V of subject merchandise sold in the home market by PAO Severstal, Severstal Distribution (which failed to report home market sales of foreign like product produced by other producers in the home market), OOO Severstal Gonvarri (“SGK”) and AO Severstal SMTS Vsevolozhsk (“Vsevolozhsk”);
- The Department could only look at certain expenses in the context of pre-selected sales, and was not able to verify “surprise” sales to confirm that Severstal’s reported expenses are supported by its normal books and records.
- The discrepancy between the total value of home market sales in Severstal’s home market database and the total sales value recorded in its books and records indicates that Severstal failed to accurately report all of its home market sales.
- The Department could not replicate certain data requests for SGK and Vsevolozhsk.
- The reported value of Severstal’s home market inland freight adjustment;
- The Q&V of Severstal’s reported U.S. sales which failed to include certain U.S. sales in its U.S. database.
- Severstal did not report cost for products sold but not produced during the POI.
- Petitioners contend that the Department has recently relied upon total AFA to determine the margins for a company that failed to produce the records necessary to verify its sales reconciliation.³⁷

Severstal’s Rebuttal

- The Department should calculate its AD margin using data that Severstal reported and the Department verified. Severstal maintains that:
 - It fully cooperated to the best of its ability with the Department’s requests for information despite the fact that the Department did not exercise its statutory obligations to notify Severstal in advance that:
 - It would be required to reconcile Q&V of reported home market sales for SGK and Vsevolozhsk;
 - It would be required to provide proof of payment for Severstal’s foreign inland freight.³⁸
 - The Department verified Severstal’s per-unit foreign inland freight and allocation methodology.
 - The Department did not include SGK’s sales reconciliation in its verification report, did not examine SGK’s sales listing, and could have verified SGK’s sales if it had more time.
 - There are no missing data or record gaps to fill.
 - The Department should remove SGK and Vsevolozhsk’s sales from its dumping margin calculation because such sales are at a different level of trade from those of PAO Severstal and Severstal Distribution. Severstal claims:

³⁷ See Petitioners’ Case Brief at 8, 9 and 17, citing *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, in Part, 81 FR 35320 (June 2, 2016) (“*CORE Italy Final*”) and accompanying Issues and Decision Memorandum at 5.

³⁸ Severstal cites three cases which it claims confer obligations on the Department to determine dumping margins as accurately as possible; to gather accurate data from respondents; to give respondents a reasonable opportunity to participate in the review and verification process: *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (“*Rhone Poulenc*”); *Rubberflex v. United States*, 59 F. Supp. 2d 1338, 1346 (CIT 1999) (“*Rubberflex*”); and, *Bowe-Passat v. United States*, 17 C.I.T. 335, 339 (1993) (“*Bowe-Passat*”).

- SGK and Vsevolozhsk sell different products than PAO Severstal, Severstal Distribution and Severstal Export;
 - The different product, production/processing and customer focuses require different selling activities and intensities.
 - Severstal provided the data needed to calculate the cost for the products sold but not produced during the POI.
- None of the statutory prerequisites for AFA have been met:
 - The Department’s practice has been to apply “total” AFA only when an interested party has engaged in a deliberate attempt to impede the Department’s investigation in a way that substantially affected the Department’s ability to calculate an antidumping duty margin.³⁹
 - The Court of Appeals of the Federal Circuit (“CAFC”) has held that total AFA is appropriate “where none of the reported data is reliable or usable;”⁴⁰ and the Court of International Trade (“CIT”) has found the Department’s reliance upon total AFA proper where missing information was “core, not tangential.”⁴¹
 - The courts have confirmed that the application of total AFA must be reserved for extreme situations, where the respondent has outright refused to participate in the Department’s proceedings or has displayed otherwise egregious behavior, such as concealing information or altering documents requested by the Department.⁴²
 - Section 776(a) of the Acts permits the Department to use “facts otherwise available” under certain circumstances.
 - The courts have defined compliance with the “best of its ability” standard, which requires the Department to (1) state its reasons for finding that the party failed to act to the best of its ability; and (2) explain why the absence of the requested information is important to the investigation.”

Department’s Position: Severstal’s Sales Verification Report identified certain issues and areas for which Severstal did not have the appropriate documentation prepared and readily available to the Department to conduct a complete reconciliation (including proof of payment) of certain portions of its questionnaire response. However, for the reasons discussed below, we disagree with Petitioners that such failures warrant the application of total AFA to Severstal’s antidumping duty margin. Our verification revealed that:

- Severstal failed to prepare an adequate reconciliation for its affiliate SGK’s, reported home market sales of foreign like product and downstream sales, which account for a

³⁹ Severstal cites *Welded Stainless Pressure Pipe from Thailand: Amended Preliminary Determination of Sales at Less Than Fair Value*, 79 FR 10772, 10773-74 (February 26, 2014).

⁴⁰ Severstal cites *Zhejiang Dunan Heitan Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011).

⁴¹ Severstal cites *Shanghai Taoen International Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1348 n.13 (CIT 2005).

⁴² Severstal cites *Qingdao Taijia Group Co v. United States*, 637 F. Supp. 2d 1231, 1239 (CIT 2009) (explaining that the respondent made deliberately false and contradictory statements to the Department and attempted to conceal the requested documents during verification); and, *Papierfabrik August Koehler S.E. v. United States*, 7 F. Supp. 3d 1304, 1310-14 (CIT 2014) (stating that the respondent concealed and omitted its sales data by a transshipment scheme).

small portion of the total reported Q&V of sales reported in Severstal's home market database.⁴³

- Severstal failed to tie the reported home market freight expenses to actual proof of payment for three of its home market affiliates: PAO Severstal, Severstal Distribution and SGK.⁴⁴
- The Department discovered at verification that Severstal failed to report a small quantity of sales of foreign like product during the POI that was produced by other home market producers.⁴⁵
- We found no discrepancies or inadequacies with Severstal's reported U.S. sales and adjustments.

Sales Reconciliation for SGK and Vsevolozhsk

As an initial matter, we disagree with Severstal's contention that it learned that it would be required to reconcile Q&V of reported home market sales for affiliates SGK and Vsevolozhsk only at verification. As an initial matter, our initial questionnaire issued at the outset of this proceeding specifically requested Severstal provide a complete package of documents and worksheet demonstrating reconciliation of all of its reported sales to the general ledger or trial balances.⁴⁶ Our standard verification outline requests specific information regarding all four of Severstal's home market entities in the sections entitled: "Introduction,"⁴⁷ "Corporate Structure,"⁴⁸ and "Accounting and Data Systems."⁴⁹ In addition, the first question in "Quantity and Value Reconciliation" requires the company to "review the reconciliation worksheets and programs that tie the sales system/journal to the general ledger and into the financial statements sales total. Then tie the sales system to the quantity and value totals reported in the most up-to-date submission of your home and U.S. market databases."⁵⁰ Because the up-to-date submission of Severstal's home market database included sales from PAO Severstal, Severstal Distribution, SGK and Vsevolozhsk, Severstal's Verification Outline adequately notified Severstal that it would be required to provide a sales reconciliation for SGK and Vsevolozhsk.

Further, we disagree with Severstal's statements that "the Department did not include SGK's sales reconciliation in its verification report,⁵¹ did not examine SGK's sales listing,⁵² and could

⁴³ See Memorandum to Eric Greynolds, Acting Director, Office III, Antidumping and Countervailing Duty Operations, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Russia: Export Price and Home Market Sales Verifications of Severstal Export GmbH, PAO Severstal and Severstal Export Miami Corporation," dated June 9, 2016 ("Severstal's Sales Verification Report") at 3, 10 and 11.

⁴⁴ See Severstal's Sales Verification Report at 14 and Verification Exhibits VE-17 through VE-20.

⁴⁵ *Id.* at 10.

⁴⁶ See the Department's September 18, 2015 Sections B, C, D Questionnaire, at page B-6.

⁴⁷ See letter from the Department, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Antidumping Duty Investigation: Verification Outline for Severstal Export GmbH ("Severstal Export"), PAO Severstal ("Severstal"), Severstal Export and Severstal Export Miami Corporation ("SSE Miami)," dated March 29, 2016 ("Severstal's Verification Outline"), at 6.

⁴⁸ *Id.*

⁴⁹ *Id.* at 7.

⁵⁰ *Id.* at 8.

⁵¹ See Severstal's Rebuttal Brief at 38.

⁵² *Id.*

have verified SGK's sales if it had more time."⁵³ Specifically, our verification report detailed our attempts to verify SGK's home market sales.⁵⁴ We noted that Severstal's explained that it did not prepare reconciliation worksheets for SGK because, according to Severstal, we made no explicit request for SGK's quantity and value reconciliation in our verification outline.⁵⁵ We explained that SGK prepared a "pivot table of all sales during the POI by month, which ties to its audited financial statements. Severstal classified these sales by product (in English) and by description (in English and Russian)."⁵⁶ We noted that "Severstal explained that Severstal Gonvarri Kaluga's home market database has more than a large business-proprietary number of transactions covering sales of covered and non-covered products."⁵⁷ We noted that, "Severstal explained that it was difficult to obtain an accurate record of all cold rolled sales, because some transactions included cold rolled and non-cold rolled merchandise."⁵⁸ However, Severstal's Sales Verification Report does not state, and Severstal does not claim, that Severstal presented its sales listing to the Department in any usable form at verification.⁵⁹ We explained further that we "tried to reconcile the difference between PAO Severstal's sales of cold-rolled steel to SGK . . . and SGK's reported downstream cold rolled steel sales in the home market. . ."⁶⁰ We noted that Severstal stated that a portion of the "products PAO Severstal sold SGK either became scrap, were cut, slit, or were not sold during the POI," and that Severstal claimed (but was unable to substantiate with supporting evidence) that the a portion of PAO's sales to SGK was in inventory.⁶¹ Because Severstal was unable to substantiate its claims, Severstal's Sales Verification Report notes that we explained to Severstal that it "did not present data to adequately demonstrate the difference between SGK's sales of subject merchandise from Severstal and the reported downstream sales, or to demonstrate that all of SGK's sales products were adequately classified."⁶² Thus, Severstal's Sales Verification Report indicates that the Department made a good faith effort to examine the limited information that Severstal presented at verification, but, was not able to confirm the total Q&V of SGK's home market sales of foreign like product, or its downstream sales.

Finally, we disagree with Severstal's contention that the Department should remove SGK's and Vsevolozhsk's sales from Severstal's dumping margin calculation because they are at a different level of trade from that of PAO Severstal and Severstal Distribution. We note that Severstal's Rebuttal Brief presented, for the first time, arguments intended to explain why SGK and Vsevolozhsk's sales are at a different level of trade than sales made by PAO Severstal and Severstal Distribution. However, at no point previously in the investigation did Severstal argue for a level-of-trade adjustment or provide a level-of-trade variable in any subsequent supplemental response,⁶³ and these arguments are contradicted by Severstal's previous

⁵³ *Id.* at 34.

⁵⁴ *See* Severstal's Sales Verification Report 10-11.

⁵⁵ *Id.* at 10.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 10-11.

⁶⁰ *Id.* at 11.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *See* Letter from Severstal, "Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal's Downstream Home Market Sales Data," dated December 2, 2015 ("Severstal's Downstream Sales Data") (which

submissions which excluded a variable for level of trade in the home market database.⁶⁴ Therefore, because Severstal presented these arguments at a time when parties had no opportunity for comment, and the Department has had no opportunity to verify such information, we will neither omit SGK's and Vsevolozhsk's sales from the home market database, nor change our level-of-trade analysis for the final determination.

Verification of Severstal's Inland Freight in the Home Market

We disagree with Severstal's contention that it learned that it would be required to provide proof of payment for Severstal's foreign inland freight only at verification. Specifically, Severstal's Verification Outline provides specific documentation requirements for home market and U.S. sales, including all reported adjustments.⁶⁵ Severstal's Verification Outline states:

{W}e will "trace" the selected sale from initial inquiry/order through your records to receipt of payment from the customer. For the sales trace of each selected sale, a complete set of documents should be prepared for that sale supporting all sale-specific information listed in the U.S. or comparison sales files you reported to the Department. For charges and adjustments that represent the transaction-specific charges and adjustments for that transaction, such as on-invoice discounts, freight, commissions etc., the supporting documents should be included in the prepared set of support documents for that transaction and, where appropriate, a worksheet should be provided to link the charge or adjustment reported for that observation. The verifier will check each column (*e.g.*, product characteristics, date of sale and invoice, gross price, quantity, shipping date, payment date, commissions, etc.) of the sales files against the documents. Also, include in your sales-trace package, for each sale, copies of records that link the sale to the sales journal used in the reconciliation of overall quantity and value of sales. Charges and adjustments that have been reported on an allocated (non-sale-specific) basis will be verified separately as stand-alone topics. See section X below.

For each U.S and comparison-market sale listed in the attachments to this outline, provide a sales-trace package which includes documents which support each sales-specific data field in the sales listing reported to the Department. If an affiliated party is involved in the chain of distribution, also incorporate affiliated party documents in

include no variables for level of trade); 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 ("1st SQR (AC)") (which does not address level of trade); 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 ("1st SQR (ABCD)") at 12-13 (which explains that Severstal's "selling functions do not vary due to level of trade. . ."); 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 ("2nd SQR") (which does not address level of trade); *see also* Severstal's 3rd SQR and Severstal's 3rd SQR (SSE Miami) (which do not address level of trade).

⁶⁴ *See* Severstal's BQR, at B-27.

⁶⁵ *Id.* in the section entitled, "Verification of Reported Transaction-Specific Data for Selected Sales from the Comparison Market and U.S. Sales," at 9.

the sales trace package. The sales-trace package should include, but is not limited to, the following documents (where applicable):

1. Sales-negotiation correspondence
2. Price Lists
3. Customer contracts
4. Customer purchase orders
5. Order confirmations
6. Invoices
7. Packing lists
8. Inspection certificates, mill certifications
9. Shipping documents such as freight bills, bills of lading and airway bills
10. Export licenses and export permits (for export sales)
11. U.S. Customs entry documents (for export sales)
12. Sales journal pages recording the selected sale
13. Accounts receivable page showing the corresponding sales journal information (or summary information) pertaining to the selected sale
14. Records of payment such as canceled checks, letters of credit, debit/credit memos, bank deposit slips and/or bank statements
15. Accounts receivable ledger pages
16. Cash receipts journals
17. General Ledger pages
18. Invoices and records of payment for transaction-specific charges and/or adjustments
19. For expenses calculated using a ratio (e.g., credit), include in each sales trace a worksheet demonstrating that the ratio was applied correctly.⁶⁶

Thus, Severstal's Verification Outline provided notice prior to verification that Severstal would be required to provide proof of payment for all adjustments for each home market or U.S. sale, whether the adjustment was transaction-specific or determined on an allocated basis. In addition, Severstal's Verification Outline instructed Severstal to tie each adjustment to the company's accounting documents.⁶⁷ As a consequence, Severstal had adequate notice concerning the documentation requirements for Severstal's home market freight adjustment.

We disagree with Severstal's contention that we fully verified its per-unit domestic inland freight adjustments and allocation methodology. Severstal's section B response describes that PAO Severstal reported the actual freight expenses incurred on an invoice-by-invoice basis, and that Severstal Distribution extracted warehousing costs from its warehousing expenses⁶⁸ The verification report does not address any additional methodological discussion with respect to Severstal's home market freight expenses.⁶⁹ Nevertheless, even if such a methodological

⁶⁶ *Id.* at 9 and 10.

⁶⁷ *Id.*

⁶⁸ 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"), at B-31.

⁶⁹ *Id.* at 1 and 11.

discussion occurred, it would not constitute verification of a reported expense. The Department considers an expense “verified” when a company provides proof of payment for the expense, traces it to its audited financial statements, demonstrates that no expenses recorded on the audited financial statements were omitted, and demonstrates that no other year-end adjustments applied to the reported expense. However, at verification, Severstal failed to provide any evidence to demonstrate how it arrived at the per-unit freight expenses reported in the questionnaire response.⁷⁰ Severstal’s questionnaire responses are silent with respect to the methodology that it used to report home market inland freight for SGK and Vsevolozhsk.⁷¹ Nevertheless, our verification report shows that Severstal provided proof of payment for Vsevolozhsk’s home market freight.⁷² Thus, Severstal’s failure to present any documentation whatsoever for its reported foreign inland freight merits the application of partial AFA, as described below. However, this failure did not compromise Severstal’s overall quantity and value reconciliation, or its other reported home market adjustments, or the reconciliation of its U.S. sales and adjustments and, thus, doesn’t warrant the application of total AFA (*see* further discussion *infra*). Rather, as described below, we will make no adjustment to Severstal’s home market sales made by PAO Severstal, Severstal Distribution and SGK for foreign inland freight.

Severstal’s Failure to Report Home market sales of foreign like product Produced by Other Producers

We will make no changes to Severstal’s margin calculation for the home market sales of foreign like product produced by other home market producers. While Severstal did not report these sales in its home market database, nether did it withhold this information. Rather, it presented them as a part of Severstal Distribution’s overall sales reconciliation.⁷³ Review of the antidumping duty law and the Department’s practice indicates that Severstal had no obligation to report these sales. Specifically, Section 771(1) of the Act states:

(16) FOREIGN LIKE PRODUCT. The term “foreign like product” means merchandise in the first of the following categories in respect of which a determination for the purposes of part II of this subtitle can be satisfactorily made:

- (A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.
- (B) Merchandise—
 - (i) produced in the same country and by the same person as the subject merchandise,
 - (ii) like that merchandise in component material or materials and in the purposes for which used, and
 - (iii) approximately equal in commercial value to that merchandise.

⁷⁰ See Severstal’s Sales Verification Report at 14.

⁷¹ See Letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Downstream Home Market Sales Data,” dated December 2, 2015 (“Severstal’s Downstream Sales Data”) (which does not provide any explanation whatsoever concerning how Severstal reported the sales adjustments for SGK and Vsevolozhsk).

⁷² See Severstal’s Sales Verification Report at Exhibit 20.

⁷³ *Id.* at Exhibit 7.

- (C) Merchandise—
 - (i) produced in the same country and by the same person and of the same general class or kind as the subject merchandise,
 - (ii) like that merchandise in the purposes for which used, and
 - (iii) which the administering authority determines may reasonably be compared with that merchandise.

Because the Act defines the foreign like product as merchandise that is produced in the same country and by the same person as the subject merchandise, and because Severstal did not produce the merchandise, Severstal appropriately, did not report these sales in its U.S. sales database. Therefore, we will make no adjustments to Severstal's margins to account for these sales and do not agree with Petitioners that the omission of these sales – unnecessary for the Department's analysis and ultimate margin calculation - provides any reasonable basis for application of total AFA.

Use of Partial Facts Available and Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from 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 subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), 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 Tariff Act of 1930, as amended (the Act).⁷⁴ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁷⁵

⁷⁴ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). 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 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 International Trade Commission. See *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"). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁷⁵ See *Applicability Notice*, 80 FR at 46794-95.

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. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

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.⁷⁶ The TPEA also makes clear that when selecting an 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.

As noted above, section 776(a)(2)(A), (C) and (D) of the Act provides that if an interested party withholds information, significantly impedes a proceeding, or provides information that cannot be verified, 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 Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act 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

During this investigation, Severstal provided the Department with information concerning the sales and adjustments for SGK,⁷⁸ and Severstal Distribution’s foreign inland freight adjustment.⁷⁹ However, the Department was not able to verify this information.⁸⁰ Accordingly,

⁷⁶ See *Statement of Administrative Action* (“SAA”) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

⁷⁷ *Id.*, 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 Letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Downstream Home Market Sales Data,” dated December 1, 2015; see also Severstal’s 1st SQR (AC), Severstal’s 1st SQR (ABCD), Severstal’s 2nd SQR and Severstal’s 3rd SQR.

⁷⁹ See Severstal’s BQR, Severstal’s 1st SQR (AC), Severstal’s 1st SQR (ABCD), Severstal’s 2nd SQR and Severstal’s 3rd SQR.

⁸⁰ See Severstal’s Sales Verification Report at 3, 10, 11 and 14.

the Department determines that use of facts available is warranted in determining Severstal's margin, pursuant to Sections 776(a)(2)(A), (C) and (D) of the Act. Thus, because Severstal did not provide verifiable information at verification, we determine that Severstal withheld information that was within its control, and in doing so, significantly impeded the investigation. Therefore, pursuant to sections 776(a)(2)(A), (C) and (D) of the Act, the use of facts available with respect to SGK's sales and adjustments and the foreign inland freight adjustment for PAO Severstal, Severstal Distribution and SGK is appropriate. *Nippon Steel*⁸¹ expresses the Department's standard of cooperation as follows:

Compliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.

Because Severstal did not provide information at verification that the verification outline clearly specified as being required, and which it could be reasonably expected to have within its control, parts of Severstal's responses could not be verified. As a consequence, we have determined that Severstal did not do the maximum it was able to do in reporting SGK's sales and adjustments, and foreign inland freight for PAO Severstal, Severstal Distribution and SGK, and, therefore, failed to cooperate to the best of its ability. Thus, in calculating NV, pursuant to section 776(b) of the Act we have used partial AFA with respect to SGK's sales and adjustments, and foreign inland freight for PAO Severstal, Severstal Distribution and SGK. We also used partial AFA to assign cost to products sold but not produced during the POI, for which Severstal did not report cost.⁸²

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. In this instance, Severstal failed to prepare adequately for verification in order to present the Department with the necessary information concerning SGK's sales and adjustments for subject merchandise and concerning the proof of payment for its reported home market freight adjustment for PAO Severstal, Severstal Distribution and SGK. With respect to the information which was not made available for full verification, Severstal neither filed documents indicating difficulty in preparing and providing the information prior to verification, nor notified the Department at the outset of verification regarding the purported difficulties. Therefore, we find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to SGK's sales and adjustments, and with the foreign inland freight adjustments for PAO Severstal, Severstal Distribution and SGK, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

For the final determination, we made the following changes and adjustments to Severstal's margin program:

⁸¹ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed Cir. 2003) ("*Nippon Steel*").

⁸² See Comment 8 of this memorandum for a more detailed discussion of this issue.

- We applied to all of SGK’s sales the value of the highest home market net price (and corresponding adjustments) reported for any sale recorded in Severstal’s home market database.⁸³
- We denied Severstal an adjustment for home market freight for all home market sales with the exception of those made by Vsevolozhsk, which provided proof of payment for foreign inland freight.⁸⁴
- For products sold but not produced during the POI and for which no cost was reported, we assigned the highest cost reported for CONNUMs in the cost database.

Discussion of Total AFA Allegation

In spite of the deficiencies discussed above and the application of partial AFA, as discussed *supra*, we do not agree with Petitioner that total AFA is appropriate in this instance. We reconciled all of Severstal’s reported U.S. sales and adjustments from the questionnaire response to Severstal Export’s audited financial statements and to SSE Miami’s unaudited financial expenses, and found no discrepancies and/or omissions in the verification of U.S. sales.⁸⁵ We conducted completeness tests of those records in order to determine if there were any unreported sales or adjustments and found no discrepancies and/or omissions.⁸⁶ We examined the relevant data with respect to Severstal’s sales to Severstal Columbus and found no discrepancies and/or omissions.⁸⁷ We conducted a similar examination of Severstal’s home market sales and adjustments, and were able to reconcile the reported home market sales made by PAO Severstal, Severstal Distribution and Vsevolozhsk to the audited financial statements of the respective companies.⁸⁸ Severstal’s Sales Verification Report did not note that Severstal failed to report any expenses as part of the Department’s completeness tests.⁸⁹ With the exception of foreign inland freight, we reconciled and traced all the home market adjustments to proof of payment for sales made by PAO Severstal, Severstal Distribution, and Vsevolozhsk.⁹⁰ Therefore, with the exception of SGK’s sales and sales adjustments (which constitute a small percentage of all home market sales), and of the foreign inland freight reported by PAO Severstal, Severstal Distribution and SGK, the Department was able to verify the information included in the Severstal’s U.S. and home market Severstal databases.

We disagree with Petitioners that the Department could only look at certain expenses in the context of pre-selected sales, and were not able to verify surprise sales to confirm that Severstal’s reported expenses are supported by its normal books and records. Severstal prepared sales packages for pre-selected and surprise sales in both the home and U.S. markets. We selected and

⁸³ See Memorandum to the File, “Analysis Memorandum for the Final 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 Final Analysis Memorandum”) at 2 and Attachments 5 and 6.

⁸⁴ *Id.* at 3 and Attachments 1 and 2.

⁸⁵ See Severstal’s Verification Report at 9, and 13 – 16.

⁸⁶ *Id.* at 11.

⁸⁷ *Id.* at 9-10.

⁸⁸ *Id.* at 9.

⁸⁹ *Id.*, generally, at pages 11, and 13-15.

⁹⁰ *Id.* at 10, 14 and 15.

examined certain pre-selected and surprise sales in both the U.S. markets, and included these sales traces in the exhibits to our verification report. Specifically, Verification Exhibit VE-15 and 16 represent sales traces for U.S. surprise sales, and Verification Exhibit VE-20 represents a home market surprise sale trace.⁹¹

We disagree with Petitioners that the discrepancy between the total value of home market sales recorded in Severstal’s home market database and the total sales value recorded in its books and records indicates that Severstal failed to accurately report its home market sales. Specifically, Severstal’s Sales Verification Report specifically explains that the difference between the cited figures represents services.⁹² We state further that we selected an unreported transaction, examined its invoice, and determined that it did not represent sales of subject merchandise, and should have not been reported in the home market database.⁹³ As a consequence, we stated that we “found no discrepancies with the information reported in Severstal’s database with respect to Severstal SMTS Vsevolozhsk.”⁹⁴

We disagree with Petitioners’ contention that the Department’s inability to replicate a certain data query for SGK’ and Vsevolozhsk indicates a verification failure. Specifically, Petitioners cite a passage describing certain completeness tests based on product specification,⁹⁵ and explain that the Department was not able to replicate the data queries because, “Severstal Gonvarri Kaluga uses a separate nonintegrated SAP system for which Severstal does not have direct access, while we simply were not able to have access to Severstal Vsevolozhsk data files at verification due to time constraints.”⁹⁶ The verification report does not identify any missing information or lack of comparison on Severstal’s part. Moreover, despite the Department’s inability to access such information in the form requested with respect to this issue, the Department was otherwise able to adequately verify Vsevolozhsk’s sales.

Because we are able to calculate Severstal’s margins using verified information, with appropriate adjustments for SGK’s sales and adjustments, and the foreign inland freight reported for PAO Severstal, Severstal Distribution and SGK, we do not find it reasonable to apply total AFA to Severstal.

Comment 2: Classification of Severstal Export’s Sales through SSE Miami

Severstal’s Comments

- The Department should continue to find that Severstal Export’s U.S. sales involving SSE Miami are export price (“EP”) sales.⁹⁷

⁹¹ *Id.* at 19.

⁹² *Id.* at 11.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 8.

⁹⁶ *Id.*

⁹⁷ Severstal cites *Certain Steel Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 70 FR 67665 (November 8, 2005) and accompanying Issues and Decision Memorandum at 68.

- *AK Steel* establishes the key distinction between EP and constructed export price (“CEP”) sales as: (1) the location of the sale; and, (2) whether the sale is made to an affiliated party.⁹⁸
- Severstal Export made all U.S. sales outside of the United States prior to importation, and SSE Miami does not make any sales by itself, take title to the merchandise, invoice the final customer, or receive payment from the customer.
- The Department verified Severstal’s U.S. sales, including the terms of sales noted above, and did not find any discrepancies.
- SSE Miami (which is PAO Severstal’s wholly-owned subsidiary), is Severstal Export’s U.S. agent: it identifies potential customers (but does not close sales) and arranges for and pays for customs clearance and organized inland transportation (although Severstal Export pays the transportation expenses). SSE Miami’s entire income is derived from commissions paid by Severstal Export.
- The Department verified that:
 - PAO Severstal sells merchandise to Severstal Export, and that Severstal Export signs the order confirmation with the customer.
 - Severstal Export’s sales reconciliation, including the quantity and value of U.S. sales of merchandise under consideration, had no discrepancies.
 - The Department did not find any discrepancies during the U.S. sales verification of pre-selected and surprise sales.
- The Department should continue to apply neutral FA to Severstal’s sales to Severstal Columbus, because, as it determined in the *Preliminary Determination*, the information required to report Severstal Columbus’ downstream sales in the United States is not within Severstal’s control.⁹⁹

Petitioners’ Comments

- The Department should exclude Severstal’s sales through Severstal Columbus from the margin calculations, because such sales represent transactions between affiliated parties. Rather, the Department should: (1) calculate the weighted-average margin for Severstal’s direct sales to unaffiliated U.S. customers (excluding sales through Severstal Columbus); and (2) apply the weighted-average margin of Severstal’s direct sales to unaffiliated U.S. customers to Severstal’s sales through Severstal Columbus.
- The Department should classify Severstal’s U.S. sales through Severstal Columbus and SSE Miami as CEP sales, and calculate an adjustment for CEP profit, deducting it from Severstal’s reported CEP prices, in accordance with the statute and the Department’s regulations.

⁹⁸ Severstal cites to *AK Steel Corp., et al v. United States*, 226 F.3d 1361, 1370 (Fed. Cir. 2000) (“*AK Steel*”), subsequently supported by *Corus Staal B.V., et al v. United States*, 259 F. Supp. 2d 1253, 1259 (CIT 2003) in Severstal’s Case Brief at 5, 6.

⁹⁹ Severstal’s Rebuttal Brief at 19-24 recounts the extensive correspondence regarding this issue. This correspondence was also described in the Department’s PDM at 18-19. Severstal also cites *United States -Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, 24 July 2001, at paragraphs 91-110.

- The Department’s Verification Report contradicts Severstal’s contention that SSE Miami did not play a significant role in Severstal’s U.S. sales. Specifically, Petitioners argue that:
 - Because SSE Miami is PAO Severstal’s wholly-owned subsidiary, Severstal’s U.S. sales take a circuitous paper route from PAO Severstal (in Russia) to Severstal Export (in Switzerland), assisted by SSE Miami (in the United States) and a second unaffiliated commission agent in a third country.
 - Severstal changed the terms of sale after December 2014, so that, beginning in December 2014, Severstal Export pays freight expenses from St. Petersburg to the customer, while PAO Severstal pays inland freight from the factory to St. Petersburg; whereas before December 2014, Severstal Export paid all freight from the factory to the customer.
 - Severstal failed to provide proof of payment for its reported foreign inland freight expenses by the Severstal affiliates involved in the sales of the foreign like product in the home market.
 - Severstal failed to provide any accounting documentation, such as vouchers, ledgers, or trial balance, *etc.* to support its reported U.S. sales made through SSE Miami.
 - Severstal maintains that SSE Miami did not prepare audited financial statements.
- Record evidence contradicts Severstal’s assertion that SSE Miami served only as the importer of record, and neither takes title to the merchandise nor invoices the final customer. Rather Petitioners allege that SSE Miami acted as a surrogate in the United States for Severstal Export because:
 - SSE Miami and Severstal Export both share the name “Severstal Export.”
 - Neither Severstal Export nor SSE Miami issued invoices or took possession of the merchandise. Rather, Petitioners maintain that Severstal’s unaffiliated commission agent issued invoices to conceal both SSE Miami’s role and selling functions and to establish a paper trail showing SSE Miami did not issue invoices.
 - The corrections to Severstal’s monthly Q&V data provided during the SSE Miami verification reveal that the increase in sales value outpaced the increase in sales quantity. Petitioners claim that this pattern suggests that SSE Miami imposed a price increase after the goods left Severstal Export’s books, but before the same goods were sold to the unaffiliated U.S. customers.
 - SSE Miami did not provide the Department accounting records (such as vouchers, ledgers, or trial balance) maintained in the ordinary course of business during verification.
 - Severstal sanitized SSE Miami’s bank statements before placing them on the record and that such documents were unreliable because SSE Miami’s accountant could not “resolve the discrepancies between the bank statements and the figures recorded on the unaudited financial statements.”

Department’s Position: We agree with Severstal that we should continue to classify the transactions in question as EP sales. In the *Preliminary Determination*, we stated that we classified Severstal’s U.S. sales as EP sales, subject to verification,¹⁰⁰ because record evidence

¹⁰⁰ See PDM at 24-25.

indicates that Severstal Export made these sales outside the United States prior to importation¹⁰¹ and received payment.¹⁰² In addition, we stated that record evidence shows that SSE Miami neither takes title to the merchandise nor invoices the final customer.¹⁰³

Specifically, Severstal explains that its U.S. customers first contact Severstal Export (Severstal's world-wide trading agent in Switzerland) with a purchase order,¹⁰⁴ which it sends to PAO Severstal (the parent company and producer of the subject merchandise in Russia).¹⁰⁵ If and when PAO Severstal (in Russia) decides to accept the order, PAO Severstal (in Russia): 1) sends Severstal Export (in Switzerland) an agreed specification; 2) sends its production line a production order; and, 3) produces the goods.¹⁰⁶ Severstal Export (in Switzerland) also sends the unaffiliated U.S. customer a purchase order confirmation.¹⁰⁷ Once PAO Severstal (in Russia) produces the goods, it sends a mill test certificate to its Sales Department (in Russia) with the details of the order.¹⁰⁸ The Sales Department prepares the invoice to Severstal Export on the day the goods are shipped.¹⁰⁹ Severstal Export (in Switzerland) takes title to the goods, but PAO Severstal ships the goods directly to the unaffiliated U.S. customers.¹¹⁰

Severstal's Sales Verification Report did not contain any findings contrary to the information reported in Severstal's questionnaire responses with respect to the classification of its U.S. sales:¹¹¹

- The U.S. customer contacts Severstal Export with a purchase order.¹¹²
- Severstal Export sends the purchase order to PAO Severstal.¹¹³
- If PAO Severstal accepts the offer, it sends Severstal Export an agreed specification, issues a production order to the production line, and produces the merchandise. Severstal Export sends the unaffiliated U.S. customer a purchase order confirmation. Once Severstal produces the good, it sends a mill test certificate and invoice to Severstal Export, who takes title to the merchandise.¹¹⁴ PAO Severstal ships the merchandise directly to the U.S. customer.¹¹⁵

¹⁰¹ See Severstal's 1st SQR (ABCD) at 25 and Exhibit S-22.

¹⁰² *Id.*

¹⁰³ See PDM at 24-25. See also Severstal's 1st SQR (ABCD) 25 and Exhibit S-22.

¹⁰⁴ 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") at A-24.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See, e.g., Severstal's Sales Verification Report at 6 and 7.

¹¹² See Severstal's AQR at A-24. See also 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)") at 10-11.

¹¹³ See Severstal's AQR at A-24.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

The statute defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.”¹¹⁶ The statute defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the produce or exporter, to a purchaser not affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter...”¹¹⁷ As described above, Severstal’s U.S. sales were clearly made outside the United States before the date of importation by the producer or exporter of the subject merchandise, and thus, constitute EP sales, and Petitioners have provided no evidence to the contrary.

Specifically, the following allegations have no relevance to the classification of a sale as an EP or CEP sale:

- That PAO Severstal (in Russia) and/or Severstal Export (in Switzerland) changed procedures for paying for the foreign inland freight expenses incurred to ship the merchandise destined for the U.S. from the factory (in Russia) to the port in St. Petersburg (also in Russia);
- That PAO Severstal provided no proof of payment for most of its reported foreign inland freight expenses by the Severstal affiliates involved in the sales of the foreign like product in the home market;
- That Severstal failed to provide accounting documentation at the U.S. verification that SSE Miami does not maintain;
- That SSE Miami does not prepare audited financial statements;
- That SSE Miami and Severstal Export both share the name “Severstal Export;”
- That the corrections to Severstal’s monthly Q&V data for critical circumstances provided during the SSE Miami verification reveal that the increase in sales value outpaced the increase in sales quantity;
- That Severstal sanitized SSE Miami’s bank statements before placing them on the record; and,
- That SSE Miami’s accountant could not “resolve the discrepancies between the bank statements and the figures recorded on the unaudited financial statements.”

In addition, Petitioners present certain speculation without substantiation which, additionally, does not address the statutory or regulatory criteria for classifying EP or CEP sales. Specifically:

- Petitioners cited no record evidence to support their claim that the corrections to Severstal’s monthly Q&V data for critical circumstances suggest that SSE Miami imposed a price increase after the goods left Severstal Export’s books, but before the same goods were sold to the unaffiliated U.S. customers. In addition, Petitioners provided no information or argument demonstrating how this allegation addresses the statutory criteria for determining CEP or EP sales.

¹¹⁶ See section 772(a) of the Act.

¹¹⁷ See section 772(b) of the Act.

- Petitioners cited no record evidence for their allegation that neither Severstal Export nor SSE Miami issued invoices or took possession of the merchandise, but rather, Severstal’s unaffiliated commission agent issued invoices, in order to conceal both SSE Miami’s role and selling functions and to establish a paper trail showing the SSE Miami did not issue invoices.

A comprehensive examination of documentation for U.S. preselected and “surprise” sales examined at verification,¹¹⁸ shows that, in all instances, Severstal Export issued the commercial invoice to the U.S. customer, and that any invoices issued by the unaffiliated commission agent in a third country were for commission payments, not sales of subject merchandise to the United States.¹¹⁹ Therefore, there is no basis to Petitioners’ allegation that Severstal’s unaffiliated commission agent issued invoices in order to conceal both SSE Miami’s role and selling functions and to establish a paper trail showing the SSE Miami did not issue invoices.

We disagree that Severstal sanitized SSE Miami’s bank statements before placing them on the record. Rather, after the Department completed the verification using unexpurgated documents, Severstal requested to redact employee names from the bank statements to protect the privacy of the individuals involved, and did so with the Department’s approval.

We also disagree that the fact that Severstal’s accountant was unable to reconcile a small discrepancy between SSE Miami’s bank statements and its unaudited financial statements had any bearing on the classification of Severstal’s U.S. sales as EP and/or CEP sales. Our verification report described and quantified the size of this discrepancy and provided a complete narrative of the Department’s discussion with company officials regarding this amount and noting no substantive concerns.¹²⁰ In addition, the Department had full access to SSE Miami’s records during verification. Severstal’s Sales Verification Report did not identify any expenses pertaining to the antidumping duty investigation that SSE Miami failed to report. Moreover, even if such an omission had any bearing on the antidumping duty investigation, it does not pertain to the classification of EP or CEP sales.

We agree with Severstal that *AK Steel* establishes the key distinction between EP and CEP sales as: (1) the location of the sale; and, (2) whether the sale is made to an affiliated party. In addition, the courts further refined the meaning of the term, “location of the sale,” in *Corus Staal*¹²¹ and *Nucor*.¹²² *Corus Staal* highlights the importance of establishing when the material terms of the sale are set in determining the date of sale or an agreement to sell. The Court stated, “{n}either a sale or agreement to sell occurs until there is mutual assent to the material terms (price and quantity).”¹²³ The Court in *Corus Staal* then explained that the terms “sale” and “agreement to sell,” as written in the statute, have separate definitions. Citing *AK Steel*,¹²⁴ in

¹¹⁸ See Severstal’s Sales Verification Report at Verification Exhibits VE-12 through VE-16, providing the documentation for Severstal’s U.S. Preselected and Surprise Sales.

¹¹⁹ *Id.*

¹²⁰ See Severstal’s Sales Verification Report at 17.

¹²¹ See *Corus Staal v. United States*, 502 F.3d 1370 (Fed. Cir. 2007) (“*Corus Staal*”).

¹²² See *Nucor Corporation, et al, v. United States*, 612 F. Supp. 2d 1264 (Fed. Cir. 2009) (“*Nucor*”).

¹²³ See *Corus Staal*, 502 F.3d 1370 at 1376.

¹²⁴ See *AK Steel* at 1370-71.

defining “agreement to sell” the Court in *Corus Staal* stated, “[a]n ‘agreement to sell’ is a binding commitment that has not yet been consummated by the exchange of goods for consideration, *i.e.*, the ‘sale’ itself.”¹²⁵ As noted above, Severstal’s questionnaire responses, and the Department’s verification report, indicate that the material terms of the sale, as indicated by the order confirmation issued by Severstal Export (in Switzerland), were set outside of the United States, and prior to importation. In *Nucor*, the Court found that “all activities relevant to sales of ICDAS’ rebar to U.S. customers – including sales negotiations, issuance of invoices, and preparation of documentation to facilitate payment – were handled outside the United States, by ICDAS personnel in Turkey.”¹²⁶ In a similar way, as described above, the terms of the sale were set outside of the United States, and Severstal Export’s personnel in Switzerland, or its designated unaffiliated commission agent handled processing of the sales confirmations, issuance of invoices, and preparation of documentation to facilitate payment outside the United States prior to the date of importation. Therefore, because Severstal sold, or agreed to sell (based on the issuance of the invoice to the unaffiliated U.S. customer), the subject merchandise outside the United States before the date of importation to an unaffiliated purchaser in the United States, we continue to find that the transactions in question were properly classified as EP sales, and will make to changes to our final determination with regard to the classification of Severstal’s U.S. sales.

Finally, Petitioners’ contention that the Department should exclude Severstal’s sales through Severstal Columbus from the margin calculations, because such sales represent transactions between affiliated parties is inapposite. Our *Preliminary Determination* explained that, early in the POI, Severstal reported that it had made transfers of cold-rolled steel to one of its two former affiliates in the United States, Severstal Columbus LLC (“Severstal Columbus”).¹²⁷ However, three months after the POI began, Severstal sold this plant to Steel Dynamics Inc. (“Steel Dynamics”), a petitioner in the investigation.¹²⁸ We explained further that 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 to obtain the information required to report any such downstream sales from Steel Dynamics but was unable to do so.¹²⁹ 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.¹³⁰ In addition, on December 11, 2015, Severstal reported its sales of covered merchandise to Severstal Columbus.¹³¹ Severstal’s AQR and 1st SQR reiterate these facts, and Severstal provided a list of sales made to Severstal

¹²⁵ See *Corus Staal*, 502 F.3d 1370 at 1376-1377.

¹²⁶ See *Nucor Nucor*, 612 F.Supp. 2d 1264 at 1279

¹²⁷ See PDM at 18, citing Severstal’s AQR at page A-19.

¹²⁸ *Id.* citing Severstal AQR’s at page A-9 and A-10.

¹²⁹ 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”).

¹³⁰ 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”).

¹³¹ See Letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s U.S. Resale Data,” dated December 11, 2015.

Columbus.¹³² Our verification of Severstal’s U.S. sales did not refute any of these facts, or show that Severstal failed to report any sales of subject merchandise.¹³³ Therefore, for the *Final Determination*, we will make no changes to our treatment of Severstal’s sales through Severstal Columbus, and apply to them, as neutral facts available, the weighted-average margin determined for the sales reported on Severstal’s U.S. sales database. As we explained in the *Preliminary Determination*, such a calculation will have no impact on the calculations, and, as a result, we will make no changes to the Department’s margin calculation program.¹³⁴

Comment 3: Treatment of SSE Miami’s Indirect Selling Expenses in the Determination of U.S. Price

Severstal’s Comments

- Section 772(c) of the Act, section 351.402 of the Department’s regulations, and the Department’s practice prohibit the deduction of indirect expenses incurred in the United States for EP sales.
- Thus, the Department improperly deducted SSE Miami’s indirect expenses from Severstal EP sales, as reported. Specifically, despite finding that Severstal Export’s U.S. sales involving SSE Miami were EP sales for the *Preliminary Determination*, the Department improperly deducted the total value of indirect selling expenses incurred in the U.S. during the POI and applied it to all sales in the United States during the POI.
- If the Department determines that Severstal’s sales in the United States are CEP sales, it must provide Severstal a CEP offset in accordance with section 773(a)(7)(B), and must accordingly revise its level of trade analysis and model-match comparisons.

Petitioners’ Comments

- The Department should use the same methodology to calculate SSE Miami’s direct selling expenses (“SSEMIAMI_SELL”) in the final determination as it did for the *Preliminary Determination*. Specifically:
 - SSE Miami incurred direct selling expenses in connection with Severstal’s sales of subject merchandise in the U.S.
 - The expenses included in SSEMIAMI_SELL are direct expenses that SSE Miami incurred in performing selling functions on behalf of Severstal Export for sales to unaffiliated U.S. customers.
 - SSE Miami provided a variety of services on behalf of Severstal Export (*see* list on pages 17-18 of Petitioners Rebuttal Brief), which should be deducted from starting price in an AD calculation.
 - Severstal acknowledged that these expenses were direct because it reported that reported commission expenses (“COMM2U”) covered all reimbursements that SSE Miami obtained from Severstal for the extensive services that it performed.
 - Whether the expenses are “direct” or “indirect,” they are deductible expenses regardless of whether the sales are or are not properly considered as CEP sales, based on evidence on the record.

¹³² See Severstal’s Second Difficulty Letter at Attachment 1. See also Severstal’s 1st SQR (ABCD) at Exhibit S-27.

¹³³ See Severstal’s Sales Verification Report at 9 and 10.

¹³⁴ See PDM at 20.

Department's Position: As discussed above, the Department determines that sales involving SSE Miami were EP sales.¹³⁵ Section 772(c) of the Act and Section 351.402(b) of the Department's regulations does not permit the deduction of indirect expenses incurred in the United States for EP sales. Specifically, Section 772(c) describes the adjustments to both EP and CEP sales as follows:

(c) Adjustments for Export Price and Constructed Export Price. The price used to establish export price and constructed export price shall be

(1) increased by

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and

(C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy, and

(2) reduced by

(A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

Section 772(d) describes the additional adjustments *only* to CEP sales, as follows:

(d) Additional Adjustments to Constructed Export Price. For purposes of this section, the price used to establish constructed export price shall also be reduced by

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C);

¹³⁵ See Comment 2 of this memorandum.

- (2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e); and
- (3) the profit allocated to the expenses described in paragraphs (1) and (2).

Thus, sections 772(d)(1)(C) and (D) of the Act clearly establish that the Department deducts indirect selling expenses incurred in the United States only from sales classified as CEP.

Similarly, section 351.402(b) of the Department's regulations clarifies how the Secretary will make certain of the adjustments to the starting price in the United States that are required by section 772 of the Act. Specifically, Section 351.402(b) of the Department's regulations states:

- (b) Additional adjustments to constructed export price. In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.

Thus, because section 772(d) of the Act and section 351.402(b) of the Department's regulations identify indirect selling expenses incurred in the United States as applicable to CEP sales, we have made no adjustment to Severstal's U.S. price for indirect selling expenses incurred by SSE Miami for EP sales during the POI for our final determination.¹³⁶

Comment 4: The Use of Zeroing in Severstal's Margin Analysis

Severstal's Comment

- Severstal claims the Department should continue to use the average-to-average ("A-A") method of calculating Severstal's margin because the use of zeroing under the Department's new "differential pricing analysis," is contrary to the United States' obligations under the WTO Antidumping Agreement.¹³⁷

Petitioners' Comment

- Petitioners rebut that the Department should reject Severstal's arguments concerning the Department's differential pricing methodology.

Department's Position: The Department's Preliminary Decision Memorandum provides a comprehensive explanation of the methodology used to determine the appropriate comparison method for each company's dumping margin calculation.¹³⁸ Specifically, it states that, pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values ("NVs") to weighted-average EPs (or CEPs) (*i.e.*,

¹³⁶ See Severstal Final Analysis Memorandum.

¹³⁷ Severstal cites United States Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea, WT/DS464/R (March 11, 2016) ("US - Washers (Korea)"), at paragraph 7.147.

¹³⁸ See PDM, at 20-23.

the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction (“A-T”) method) as an alternative comparison method using a “differential pricing” analysis consistent with section 777A(d)(1)(B) of the Act, in order to determine 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.¹³⁹ The Department’s standard computer margin-calculation program conducts the differential pricing analysis for each company as a part of the margin analysis, each time it runs the program.¹⁴⁰ The Department records the results of the differential pricing analysis and comparison market methodology in the respective preliminary analysis memorandum,¹⁴¹ and any changes in the final analysis memorandum for each company. Thus, the Department does not make a separate determination with regard to the comparison methodology, apart from the results of the standard margin program.

For Severstal, based on the results of the differential pricing analysis, the Department finds that 81.19 percent of the value of U.S. sales pass the Cohen’s *d* test,¹⁴² 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 cannot account for such differences because there is more than a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales.¹⁴³ Thus, for the final determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Severstal.¹⁴⁴

Furthermore, regarding Severstal’s reference to a recent WTO panel report, we note that the Federal Circuit has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.¹⁴⁵ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.¹⁴⁶ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the

¹³⁹ 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.

¹⁴⁰ See, e.g. 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 February 29, 2016 (“Severstal Preliminary Analysis Memorandum”), at 3 and Attachment 3a, line number 7921 to 8121.

¹⁴¹ See, e.g., Severstal Preliminary Analysis Memorandum at 3.

¹⁴² See Severstal Final Analysis Memorandum at 5, Attachment 4 at page 76.

¹⁴³ See Final Analysis Memorandum at 5, and Attachment 4 at page 98.

¹⁴⁴ *Id.*

¹⁴⁵ See *Corus Staal BV v. United States*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005); accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (CAFC 2007).

¹⁴⁶ See

Department's discretion in applying the statute.¹⁴⁷ Therefore, it was appropriate for the Department to apply the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Severstal.

With regard to the average-to-transaction method, specifically, as an alternative comparison method under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has not issued a new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the Uruguay Round Agreements Act.

Comment 5: Calculation of Severstal's U.S. Customs Clearance Costs

Severstal's Comments

- Severstal contends that the Department should revise its U.S. customs clearance cost adjustment by relying on SSE Miami's actual customs clearance costs as the numerator for the final determination.
 - Severstal claims that it did not originally report the U.S. customs duty field ("USDUTYU") for all of its U.S. sales because Severstal Export does not directly incur customs clearance costs for delivered duty paid ("DDP") sales (although SSE Miami does). Instead, Severstal reported customs clearance costs as a commission to SSE Miami under the field COMM2U. Severstal states that it previously explained that Severstal Export commissions paid to SSE Miami were a conservative estimate of Severstal's Export's customs clearance costs for the U.S. sales because the commissions cover all of SSE Miami's expenses including customs clearing costs.
 - In the *Preliminary Determination*, the Department calculated a customs duty adjustment by dividing the POI value of a line item "Purchases and Customs Brokers" from SSE Miami's financial statements by the quantity of sales for which Severstal reported expenses under COMM2U. In doing so the Department used the POI amount from SSE Miami's financial statements as the numerator for RUSDUTYU which included the following categories of expenses: (a) purchases, (b) customs expenses for U.S. sales of subject merchandise, (c) customs expenses for U.S. sales of non-subject merchandise, and (d) customs expenses for sales to third countries. The Department used the total quantity of sales to which Severstal reported in COMM2U which only included sales of subject merchandise in the United States as the denominator.
 - In a post-prelim supplemental questionnaire response, Severstal provided a breakdown for the line item "Purchases and Customs Brokers" which identified the actual customs expenses attributed to the U.S. sales of subject merchandise. Subsequently, Severstal revised the customs expenses upward as a minor correction at verification. Severstal contends that the Department verified the actual U.S. customs broker expenses paid for U.S. sales during the POI.

¹⁴⁷ See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

Petitioners' Comments

- The Department should continue to rely on facts available to fill gaps in the administrative record concerning SSE Miami's direct selling expenses for the final determination.
 - Severstal's revised U.S. customs clearance costs, which is new information placed on the record subsequent to the *Preliminary Determination*, understates SSE Miami's costs and is not reliable.
 - Severstal failed to report the specific U.S. customs duty for U.S. sales, and instead reported a "commission" (COMM2U) between Severstal Export and SSE Miami, for a portion of U.S. sales during the POI, and failed to remedy the deficiencies in its response to the Department's supplemental questionnaires.
 - The Department should reject Severstal's explanations for why it failed to report its actual customs clearance costs because:
 - Severstal claims Severstal Export pays SSE Miami a commission for its services that covers all customs clearance costs.
 - Severstal made the claim at verification that no commissions for any U.S. sales prior to September 2014 were paid to SSE Miami; thus Severstal failed to report customs clearance costs for the U.S. sales prior to September 2014;
 - At verification, Severstal additionally removed amounts reported in COMM2U for several U.S. sales (as a minor correction). Because Severstal removed the expenses for these sales, Severstal contradicted its own claims to have reimbursed SSE Miami for customs fees through the payment of a commission.
 - The sum of the revised expenses for the U.S. customs clearance costs and SSE Miami's direct selling expenses are lower than originally reported in the amount in COMM2U.
- The Department properly rejected Severstal's ministerial error allegation regarding the U.S. customs clearance costs and SSE Miami's direct selling expenses in the preliminary determination, because Severstal's claimed denominator was incorrect.

Department's Position: We agree with Severstal that the Department should revise the U.S. customs clearance cost adjustment by relying on SSE Miami's actual customs clearance costs as the numerator for the final determination. As demonstrated below, record evidence supports, and was subsequently verified by the Department, that the amount of the line item extracted from Severstal's financial statements and used for the *Preliminary Determination* covers other non-customs clearance expenses as well as customs clearance expenses for non-subject merchandise and merchandise sold in third countries and, furthermore, that the revised total includes the correct expenses.

By way of background, initially, Severstal's section C response reports affiliated-party commissions in the COMM2U field, which Severstal claims covers all of SSE Miami's expenses, including customs clearing costs.¹⁴⁸ Severstal admitted that the reported customs

¹⁴⁸ See Severstal's 3rd SQR (SSE Miami) at 2, and 1st SQR (ABCD) at 38.

clearance costs could not be tied to specific sales.¹⁴⁹ In the *Preliminary Determination*, we rejected the use of Severstal's affiliated-party commissions as an adjustment to the EP because: 1) they represent inter-corporate transfers between two Severstal entities; 2) Severstal explained that such commissions covered Severstal's Export's customs clearance costs;¹⁵⁰ and, 3) SSE Miami's unaudited financial statements included a line item for the actual expenses paid.¹⁵¹ Therefore, we calculated a customs clearance cost by dividing a POI-adjusted line item "Purchases and Customs Brokers," from SSE Miami's financial statements by the quantity of sales for which Severstal reported expenses under COMM2U.¹⁵²

At verification, SSE Miami demonstrated that the line item "Purchases and Customs Brokers" covered not only customs expenses for the merchandise under consideration sold in the United States during the POI, but other things.¹⁵³ In order to verify this, we traced several of the customs invoices for these DDP sales to the U.S. sales database and found no discrepancies.¹⁵⁴ We also traced the customs invoice for a DDP sale that was not recorded on the U.S. sales database, and determined that it did not represent subject merchandise,¹⁵⁵ and was thus, appropriately not reported. Additionally, we traced all monthly summaries for customs broker fees (which include merchandise under consideration and merchandise not under consideration) to the amounts recorded on SSE Miami's bank statements.¹⁵⁶ These customs invoices also reconcile to SSE Miami's financial statements and bank account statements.¹⁵⁷

As a result of our verification, we determine that for the final determination, the numerator should be revised to include only actual customs clearance costs incurred for the U.S. sales of merchandise under consideration during the POI.

We disagree with Petitioners' assertion that because Severstal made the claim at verification that no commissions for any U.S. sales prior to September 2014 were paid to SSE Miami, Severstal failed to report customs clearance costs for the U.S. sales of merchandise under consideration prior to September 2014. First, our examination of the record shows that the commission pertaining to the U.S. sales prior to September 2014 is not associated with merchandise under consideration.¹⁵⁸ Thus, Severstal's claim is not inconsistent with record evidence. Finally, as explained in the New Factual Information Memorandum, the Department disagrees with Petitioners' assertion that the minor corrections pertaining to the customs clearance costs represent new factual information.¹⁵⁹

¹⁴⁹ *Id.* at 2.

¹⁵⁰ See Severstal's Preliminary Analysis Memorandum at 4. See also Severstal's CQR at C-34.

¹⁵¹ See Severstal's Preliminary Analysis Memorandum at 5. See also Severstal's 1st SQR (AC) at Exhibit S-16.

¹⁵² *Id.*

¹⁵³ See Severstal's Sales Verification Report, at 16. See also Severstal's 3rd SQR (SSE Miami) at 2.

¹⁵⁴ *Id.*, at 16-17.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*, at 17.

¹⁵⁷ *Id.*

¹⁵⁸ See Severstal's November, 6, 2015, section C response at Exhibit 5 and Severstal's Sales Verification Report at Verification Exhibit SSE-2.

¹⁵⁹ See New Factual Information Memorandum.

Therefore, for the final determination, we have revised Severstal's U.S. customs clearance-cost adjustment to include SSE Miami's actual, verified customs clearance costs in the numerator. We have continued to use the quantity of applicable sales in the denominator.¹⁶⁰

Comment 6: Financial Expenses and Foreign Exchange Losses for Severstal

Severstal's Comments

- The Department should revise its financial expense ratio calculation to reflect Severstal's actual financing expenses for the POI rather than using only data from Severstal's full year 2014 financial statements.
- The Department should not include the \$1.8 billion net foreign exchange losses reported in Severstal's consolidated 2014 financial statement because these losses are foreign exchange translation losses resulting from significant devaluation of the Russian ruble in 2014. Foreign exchange translation losses are the result of restating obligations that are denominated in a foreign currency into U.S. dollars as of December 31 and are purely paper losses that represent unrealized expenses that have not actually been incurred, have no relation to Severstal's sale or production of merchandise under consideration, and are in direct conflict with section 773(b)(3)(A) of the Act. The Department is prohibited from including amounts that are not actually incurred or realized by the respondent.¹⁶¹
- The Department disallowed the "gain on the remeasurement and disposal of financial investments" for the financial expense ratio calculated in the Preliminary Determination because it related to investment rather than sales or production activities. Likewise, even assuming that Severstal's foreign exchange loss represents an actual expense, it would still have no relation to Severstal's production or sale of merchandise under consideration. Accordingly, the foreign exchange loss must be removed from the Department's calculation of Severstal's financial expense ratio.
- In previous cases in which the Department has faced similar situations of a respondent having reported extremely high foreign exchange losses in its financial statement due to currency devaluation in part of the POI, the Department has used a "blended rate" to calculate the respondent's financial expenses. In *Union Steel Manufacturing, Co., Ltd., et al v. United States*, 837 F. Supp. 2d 1307 (CIT 2012) ("*Union Steel*"), the respondent reported very large foreign exchange losses in its 2008 financial statement, due to the devaluation of the Korean won. According to Severstal, on remand, the Department calculated the respondent's financial expense ratio using both the respondent's 2007 and 2008 financial statements. Similarly in this case, because the use of the 2014 financial statements is distortive, and the half-year financial statements for 2014 and 2015 are on the record, the Department should calculate the financial expense ratio using the actual financial expenses incurred during the POI, excluding foreign exchange losses recorded on the 2014 consolidated financial statements.

¹⁶⁰ See Severstal Final Analysis Memorandum at 4. See also Severstal Preliminary Analysis Memorandum at 5.

¹⁶¹ Severstal cites to *Fischer v. United States*, Ct. No. 10-00281, Slip Op. 12-59, CIT April 30, 2012 ("*Fischer*"), at 7, where the court stated that the Department's inclusion of unrealized currency translation in Fischer's constructed value calculation violates the express language of 19 USC 1677b(e)(2)(A)).

Petitioners' Rebuttal

- The Department should continue to calculate Severstal's financial expense ratio using the consolidated 2014 financial statements, as it did for the *Preliminary Determination*.
- The Department's normal practice is to include foreign exchange losses in the calculation of a respondent's financial expense ratio. Severstal's audited full year 2014 consolidated financial statements show that the company incurred foreign exchange losses of \$1.8 billion, which are not only translation losses but are comprised of foreign exchange losses on cash and cash equivalents and debt financing, foreign exchange losses on derivatives and foreign exchange losses on other assets and liabilities. The financial statements submitted by Severstal provide no basis for concluding that the foreign exchange losses were unrealized translation losses.
- The facts in this case differ fundamentally from the circumstances at issue in Fischer. Unlike the Brazilian respondent in Fischer, Severstal group companies conducted their businesses in different functional currencies on a transactional basis. As such, the foreign exchange losses are recognized in Severstal's consolidated statements.
- The Department should not rely on Severstal's financing costs during the POI. The half year financial statements provided by Severstal are interim reports that are not audited and do not include year-end adjustments required for an entity that is on an accrual accounting basis. Therefore, the Department should continue to calculate Severstal's financial expense ratio based on Severstal's full year 2014 audited financial statements in accordance with the Department's normal practice.
- In *Union Steel* cited by Severstal, the Department relied on the respondent's 2007 financial statements to calculate the financial expense ratio in the preliminary results, but subsequently relied on the respondent's 2008 financial statements (which were placed on the record after the preliminary results) to calculate the financial expense ratio in the final results. In that segment, the respondent's full year audited financial statements for both years that overlapped with the period of review were on the administrative record. In contrast, in this investigation the Department largely accepted Severstal's calculation of its financial expense ratio as submitted in Severstal's initial Section D response which was calculated based on the consolidated 2014 income statement.

Department's Position: We agree with Petitioners that the Department should use the fiscal year 2014 audited consolidated financial statements of Severstal to calculate the financial expense ratio.

It is the Department's practice to calculate financial expenses based on the full fiscal year's information that most closely corresponds to the period of investigation or review, rather than using the financial expenses incurred during the POI.¹⁶² In situations where the POI is divided equally between two fiscal years, it has been the Department's practice to use the financial statements from the most recently completed fiscal year at the time the questionnaire response

¹⁶² See, e.g., *Final Results of Antidumping Duty Administrative Review and New Shipper Review: Stainless Steel Bar from India*, 64 FR 13771, 13776 (March 22, 1999); and, *Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 63 FR 6899, 6906 (February 11, 1998).

was submitted.¹⁶³ The 2014 audited financial statements are the most recently completed fiscal year audited statements at the time the questionnaire response was submitted. We note that the 2015 audited financial statements (*i.e.*, the financial statements for the second half of the POI) were never submitted by the respondents and accordingly are not on the record.

Section 773(f)(1)(A) of the Act instructs the Department to calculate costs based on company records, provided they are in accordance with home country GAAP and are reasonable. Here, Severstal's consolidated financial statements are prepared in accordance with reporting standards that are permitted under Russian GAAP. Further, the Department does not find the inclusion of the foreign exchange losses to be unreasonable. Rather, the financial expense ratio calculation for Severstal reflects the Department's long-standing practice of calculating financial expenses at the highest level of consolidation and including in those expenses all foreign exchange gains and losses recorded on the audited income statement.¹⁶⁴

Severstal argues that the foreign exchange losses should be excluded because they are translation losses and do not reflect money actually expended. While the record is not clear as to how much of the foreign exchange losses relate to translation losses versus transaction losses associated with foreign denominated cash and cash equivalents and debt financing, losses on derivatives and losses on other assets and liabilities,¹⁶⁵ this distinction is not relevant. As was explained in *Mushrooms from India*,¹⁶⁶ the Department instituted a change in practice regarding the treatment of foreign exchange gains and losses effective with the publication of that notice. Under the new practice, instead of identifying foreign exchange gains and losses separately by source and level of corporate structure, we would normally include in the financial expense ratio calculation all foreign exchange gains and losses (both translation and transaction gains and losses) from the consolidated financial statements of the respondent's highest-level parent company. This approach recognizes that the critical factor in analyzing the appropriate amount to include in the costs of production ("COP")/constructed value is not the source of the foreign exchange gain or loss, but rather how the entity as a whole manages its foreign currency exposure.¹⁶⁷ Companies in the business of producing and selling merchandise are not in the business of speculating with foreign currencies. Moreover, the court has recognized that "although translation losses are

¹⁶³ See *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 7; and, *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 73444 (December 12, 2005).

¹⁶⁴ See *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 7; *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 8; and, *Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 65 FR 78472 (December 15, 2000), and accompanying Issues and Decision Memorandum at Comment 7.

¹⁶⁵ See note 6 to Severstal's 2014 consolidated financial statements.

¹⁶⁶ See *Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11045, 11048 (March 7, 2003) ("*Mushrooms from India*").

¹⁶⁷ See, *e.g.*, *Notice of Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in Part: Stainless Steel Bar from India*, 76 FR 56401 (September 13, 2011) ("*SS Bar from India*") and accompanying Issues and Decision Memorandum at Comment 6 and *Mushrooms from Indonesia*, 68 FR at 11054.

unrealized, as there is no actual outflow of funds from the company, the resulting exposure to increased liability for borrowed funds caused by fluctuations in the exchange rate is by no means hypothetical.”¹⁶⁸

We find Severstal’s reliance on *Fischer* misplaced. In that case, the Department’s discussion of certain foreign exchange losses not representing an actual expense related to the company’s losses that were recorded directly in the shareholders’ equity account on the balance sheet,¹⁶⁹ not the income statement. In the final determination of that case, the Department’s original calculation of the respondent’s financial expense ratio in fact included only the net foreign exchange losses recognized in the company’s income statement.¹⁷⁰ In this case, Severstal’s net foreign exchange loss was treated as a current expense on the consolidated income statement, not stockholders’ equity, thereby recognizing that these losses had an impact on the overall risk management and purchasing power of the consolidated entity as a whole.

We disagree with Severstal’s arguments that the Department should depart from its normal practice of calculating the financial expense ratio based on the consolidated financial statements for the fiscal year that most closely corresponds to the period of investigation or review. Severstal suggests this change because of the decline in the value of the Russian ruble during 2014, and that such a change would align with *Union Steel*. We note that in *Union Steel*, the significant decline in the Korean won, which led to an increase in the company’s foreign exchange transaction and translation losses, occurred in the last five months of the fiscal year financial statements used to calculate interest expense, which was after the end of the POR. In *Union Steel*, the respondent claimed that it could not have set home market selling prices during the POR taking into account the foreign exchange losses that occurred after the POR.¹⁷¹ However, in the instant case, the devaluation of the Russian ruble occurred during the POI, not after the POI.¹⁷² During this period of currency volatility Severstal could have taken steps to reduce its foreign exposure risk and mitigate the effect of the declining ruble.

We disagree with Severstal’s argument that foreign exchange losses should be excluded for the same reasons the Department excludes gain on the remeasurement and disposal of financial investments. It is the Department’s practice to exclude investment-related gains or losses from the calculation of the cost of production.¹⁷³ Investment activities are a separate profit making activity, whereas, foreign exchange gains and losses are associated with a company’s cash management and how an entity as a whole manages its foreign currency exposure.¹⁷⁴

¹⁶⁸ See *Micron Technology, Inc. v. United States*, 893 F. Supp. 21, 33 (CIT 1995).

¹⁶⁹ See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), (“*Orange Juice from Brazil*”), and accompanying Issues and Decision Memorandum at Comment 12.

¹⁷⁰ See *Orange Juice from Brazil* where the Department states that the net exchange variation included in the financial expense ratio “is classified as a line item in the income statement, not the statement of equity, and is an actual expense incurred by the company during the POR.”

¹⁷¹ See *Union Steel Manufacturing Co., Ltd. v. United States*, Slip Op. 10-11 (CIT 2012).

¹⁷² See Severstal’s 2014 consolidated financial statements.

¹⁷³ See *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007), and accompanying Issues and Decision Memorandum at Comment 6 (“*Raspberries from Chile*”).

¹⁷⁴ See, e.g., *SS Bar from India* at Comment 6 and *Mushrooms from Indonesia*, 68 FR at 11054.

For the foregoing reasons, we have continued to calculate Severstal's financial expense ratio based on the 2014 consolidated financial statements and to include all foreign exchange losses recorded on the audited consolidated income statement.

Comment 7: Missing Costs for Severstal

Severstal's Comments

- For a number of product control numbers ("CONNUMs") that Severstal sold but not produced during the POI and for which the company did not report costs, the Department should use the weighted-average COP of all Severstal's reported and verified control numbers rather than using AFA as was done at the *Preliminary Determination*.
- An actual COP for the POI does not exist for CONNUMs that were sold but not produced during the POI. Severstal submitted the necessary data to calculate the COP for its CONNUMs that were sold but not produced during the POI and suggested the methodology for the Department to do so (i.e., weight averaging the costs of the reported CONNUMs).
- The Department's application of AFA is contrary to substantial record evidence and the statute. The Department improperly rejected Severstal's revised COP data file that contained cost for all CONNUMs.
- The statutory requirements for the application of AFA are not satisfied in this case, because Severstal cooperated to the best of its ability on this issue.

Petitioners' Rebuttal

- The Department should continue to rely on partial AFA because of Severstal's failure to timely submit costs for the products sold but not produced during the POI.
- Severstal did not provide the Department with a complete COP database despite numerous opportunities to do so. The Department correctly rejected the unsolicited, revised cost file that was untimely submitted by Severstal.
- The Department should reject Severstal's suggestion to rely on the weighted-average costs of all CONNUMs for those CONNUMs for which it failed to submit COP data, because the diverse group of products, each with distinctive physical matching characteristics, requires a product-specific, rather than "weighted-average" COP.
- Therefore, as partial AFA, the Department should continue to use the highest cost for CONNUMs for which the cost information was not provided.

Department's Position: We disagree with Severstal's argument that the Department should use the weighted-average costs of the reported CONNUMs that Severstal produced and sold during the POI for the CONNUMs for which it did not provide a COP. The Department's questionnaire required Severstal to report costs for all CONNUMs.¹⁷⁵ Severstal did not provide the requested

¹⁷⁵ See the Department's original section B through D questionnaire dated September 18, 2015 at page D-1 which states, "Unless otherwise instructed by the Department, you should report per-unit COP information for each CONNUM included in your home market or third country sales listing submitted in response to section B of this questionnaire." In addition, the Department's December 17, 2015 Supplemental Section D included the following question: (1) It appears that many of the control numbers ("CONNUMs") reported in the home market sales

information by the deadline established in the supplemental questionnaire. Later, Severstal's unsolicited response was rejected because the deadline for Severstal to submit information responding to the questionnaire, as determined by section 351.301(c)(1) of the Department's regulations, had passed. Severstal's failure to provide the requested information resulted in a number of CONNUMs for which there was no COP.

Section 776(a)(2) of the Act provides that, "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."¹⁷⁶ Further, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹⁷⁷

We agree with Petitioners that by not providing the COP for all CONNUMs, Severstal withheld information requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and (C) of the Act. Without the requested information (i.e., the COP for all CONNUMs), the Department is unable to accurately calculate the dumping margin. Therefore, because Severstal failed to cooperate by not acting to the best of its ability to provide information requested by the Department, the Department has determined that application of partial adverse facts available, within the meaning of section 776(b) of the Act, is warranted. Accordingly, as partial AFA, for CONNUMs with no reported cost we used the highest cost reported for all CONNUMs in the COP database.

Comment 8: Cost for Products Sold but not Produced During the POI for Severstal

Petitioners' Comments

- The Department should adjust Severstal's reported cost of manufacture ("COM") to account for the costs for "products not sold."
- In its cost reconciliation, Severstal reduced the reported COM by the cost of these products, claiming that they are cold-rolled products for which a CONNUM could not be determined because the products were not sold (*i.e.*, the products are still in inventory and therefore the nominal widths and thicknesses, which is determined only at the time of sale, are unknown). Because these products were not sold and thus remained in inventory, the costs for those products was accounted for by Severstal when it derived the

database are not reported in the cost of production ("COP") database. Please revise your COP database to ensure that there are costs for all CONNUMs sold during the POI. (2) Identify CONNUMs sold but not produced during the POI, and explain how you calculated the reported cost for these CONNUMs. If necessary, identify the surrogate CONNUMs used to report the COP for those CONNUMs.

¹⁷⁶ See *SS Bar from India* and accompanying Issues and Decision Memorandum at Comment 6.

¹⁷⁷ *Id.*

reported COM by adjusting the cost of goods sold (“COGS”) for the changes in finished goods inventory.

- Therefore, because the reconciliation between COGS and COM has already been adjusted for inventories, the additional reduction to the reported COM for costs related to the products not sold will result in a double reduction of the same inventory costs.
- The Department should adjust Severstal’s reported total COM by adding back these costs that were improperly excluded by Severstal.

Severstal’s Rebuttal

- The Department should continue to exclude the COM of the products produced but not sold.
- Severstal did not include the cost for these products in its reported cost of production following the Department’s instructions in its initial Section D questionnaire. Specifically, the company created CONNUMs on the basis of sales data with specific characteristics of the exact product because production codes used for accounting purposes do not exactly match the CONNUM. Thus, if a specific product was not sold, its exact characteristics are not known, the product cannot be assigned a CONNUM, and the cost of such products was not known and therefore was not reported.
- The Department’s verification report confirms that Severstal properly excluded the cost of products not sold in the home or U.S. market, and the Department should continue to exclude Severstal’s costs for the Final Determination.

Department’s Position: We disagree with Petitioners that Severstal’s cost of production should be increased for the products not sold. The cost of products produced but not sold was a reconciling item in Severstal’s cost reconciliation.¹⁷⁸ In the cost verification report we noted that the cost of manufacture of products not sold “reflects the costs of cold rolled products for which a CONNUM could not be determined because the products were not sold (*i.e.*, the products are still in inventory and therefore the nominal widths and thicknesses are unknown).”¹⁷⁹ We also noted that “Severstal’s SAP system calculates manufacturing costs for each production order and each production order reflects only one product code. Due to the thickness and width range of Severstal’s product codes, a product code could be included in more than one CONNUM. However, when products are sold, the actual thickness and width of the product code is noted on the invoice. Severstal used a combination of the product codes and the sales information to assign each product code to a CONNUM.”¹⁸⁰ Thus, if an internal product code was sold during the POI, the entire POI production quantity of that product was included in the cost database and the total production quantity of that product code was assigned to the same CONNUM. However, if a certain product code was not sold in any market during the POI, the final characteristics of the product code were not known and they could not be assigned to a CONNUM.¹⁸¹ Therefore, the cost to produce those product codes was not included in the cost database and was reflected in the cost reconciliation as a deduction for “products not sold.”

¹⁷⁸ See the Reconciliation in Severstal’s Cost Verification Report at Verification Exhibit CVE-5.

¹⁷⁹ See Severstal’s Cost Verification Report at 8.

¹⁸⁰ See Severstal’s Cost Verification Report at 5.

¹⁸¹ See Letter from Severstal, “Certain Cold-Rolled Steel Flat Products from the Russian Federation: Severstal’s Supplemental Section D Questionnaire Response,” dated July 7, 2016 (“Severstal’s SDQR”), at 5.

We disagree with Petitioners' argument that because the reconciliation between COGS and COM has already been adjusted for inventories, the additional reduction to the reported COM for costs related to "products not sold" will result in a double reduction of the same inventory costs. We note that the purpose of the adjustment to COGS for changes in finished goods inventory is to derive the total COM of all products produced, including the cost of products that were not sold (i.e., could not be assigned to a particular CONNUM). Thus, the deduction of the cost of products not sold does not result in a double reduction of the same inventory costs, as suggested by Petitioners. As such we do not consider it necessary to increase the costs reported by Severstal.

Comment 9: Major Inputs for Severstal

Petitioners' Comments

- The Department should adjust the COP for major inputs used by Severstal in manufacturing the merchandise under consideration.
- The Department recalculated each of Severstal's affiliated supplier's COP based on information obtained during verification and found that Severstal understated the COP for the major inputs obtained from affiliated suppliers. The Department should revise Severstal's reported COP for major inputs based on those findings.
- The Department's COP calculation for the affiliated suppliers set the interest expense ratio to zero because the interest income offset exceeded the interest expense. However, the record lacks information to substantiate the fact that the "short-term interest income" listed in the worksheets provided by Severstal was in fact earned from the short term investment of working capital.
- The Department has a long-established practice of requesting that a respondent calculate financial expenses based on consolidated audited fiscal year financial statements at the highest consolidated level available. Therefore, it would be appropriate for the Department to use Severstal's reported financial expense ratio, as facts otherwise available, to fill the gaps in the record concerning the affiliated suppliers' financial expenses.

Severstal's Rebuttal

- Severstal agrees with Petitioners that the Department should use Severstal's affiliated suppliers' revised COP as mentioned in the Department's verification report.
- The Department should continue to calculate the affiliated suppliers' financial expenses using the affiliates' actual interest expenses and interest income related to short-term investment of their working capital, as reported by Severstal.
- Severstal fully cooperated with the Department's requests for information regarding its affiliates' short-term interest income offsets, the Department successfully verified that information, and there are no gaps in the record on this issue.
- Petitioners do not cite to any support for their claim that the Department's practice is to calculate the affiliate suppliers' COP using the net financial expenses based on the affiliate's consolidated financial statements. The Department's questionnaire specifically requests the "Affiliated Supplier's COP" which includes the supplier's own net financial expenses.

Department’s Position: With regard to the calculation of the financial expenses included in the affiliated suppliers’ COP, we note that the affiliated parties that supply the major inputs to Severstal are included in the consolidated financial statements of PAO Severstal and its affiliates.¹⁸² Therefore, because financing expenses of these affiliated suppliers are included in Severstal’s consolidated financial expenses, we find it reasonable to assume that any financial expenses incurred by these affiliates would already be accounted for in the consolidated financial expenses applied to the cost of final product produced by Severstal, *i.e.*, the subject cold-rolled steel. As such, for purposes of the major input analysis, we have excluded financial expenses from the calculation of the COP of affiliated inputs. Such calculation is consistent with our methodology applied in similar cases, *e.g.*, *Sugar from Mexico*.¹⁸³ We note that in light of the above, the other issues raised by the parties regarding the calculation of the financial expenses in the affiliated COP are moot.

Comment 10: Financial Expense Ratio Calculation for Severstal

Petitioners’ Comments

- The Department should exclude the “gain on re-measurement and disposal of financial investments” when calculating Severstal’s financial expense ratio because the gain is related to the investment activities, and such gains are normally disallowed by the Department.

Severstal’s Rebuttal

- Severstal did not comment on this issue.

Department’s Position: We agree with Petitioners that the gain on re-measurement and disposal of financial investments should be excluded from Severstal’s financial expense ratio. It is the Department’s practice to exclude investment-related gains or losses from the calculation of cost of production.¹⁸⁴ Therefore, we have continued to exclude this gain from the calculation of the financial expense ratio for the final determination.

Comment 11: Ministerial Errors for Severstal

Petitioners’ Comments

- The Department should correct two ministerial errors in the computer programs it used in the Preliminary Determination. First, the general administrative (“G&A”) and financial expense ratios should be applied to the revised total cost of manufacture (“RTOTCOM” that includes adjustment for major inputs), rather than to the original computer variable total cost of manufacture (“TOTCOM”). Second, the Department should use the variable for the G&A expenses revised as above (“RGNA”) when calculating total cost of

¹⁸² See Severstal’s AQR at A-11 and exhibit A-7.

¹⁸³ See *Notice of Final Determination of Sales at Less Than Fair Value: Sugar from Mexico*, 80 FR 57341 (September 23, 2015) (“*Sugar from Mexico*”) and accompanying Issues and Decision Memorandum at Comment 9.

¹⁸⁴ See *Raspberries from Chile*.

production (“TOTCOP”), and TOTCOM should be the addition of RTOTCOM plus RGNA and the revised interest expense (“RINTEX”).

Severstal’s Rebuttal

- Severstal did not comment on these issues.

Department’s Position: We disagree with Petitioners that the G&A and interest expense ratios should be applied to the RTOTCOM. We note that TOTCOP should be the addition of RTOTCOM plus G&A and financial expense (“INTEX”). The G&A and financial expense ratios should be applied to the TOTCOM before the major input adjustment. To make the ratios arithmetically correct, the denominator must be on the same basis as the cost to which the ratio is applied. Because the product-specific cost to which the ratio is applied has been increased by the major input adjustment, the G&A and financial expense ratios should be applied to the COM before the adjustment for the major input, because the denominators of the G&A and financial expense ratios do not include that additional costs associated with the major input adjustment.¹⁸⁵

Comment 12: NLMK’s Date of Sale for its U.S. Sales

Petitioners’ Comments

- The Department should rely on the dates of Novex’s (*i.e.*, NLMK’s trading arm for export sales) contracts with U.S. customers, rather than the invoice dates reported and used for the *Preliminary Determination*, as the date of sale because record evidence demonstrates that the contract date represents the date on which all of the material terms of NLMK’s U.S. sales are established.
- For support, Petitioners included an attachment summarizing all five POI-period contracts and relevant invoices, and indicated that the terms of the contracts between Novex and its U.S. customers remain unchanged between the terms agreed in the sales contracts and in the subsequently issued invoices.
- While Petitioners acknowledge differences between the quantities agreed in the contracts and the quantities invoiced to the U.S. customers, Petitioners argue that the final quantity on the invoices pertaining to each contract is within the aggregate weight tolerance stated in the contract. Further, even on a transaction-specific basis, the difference between the quantity shipped and the quantity specified in the contract is within the weight tolerance.

NLMK’s Comments

- The Department should continue to rely on date of invoice as the date of sale because record evidence supports that one or more material terms of the contracts changed after the dates of NLMK’s contracts, but prior to the invoice dates.
- Section 351.401(i) of the Department’s regulations establishes the norm of using the date of invoice as recorded in the exporter or producer’s books and records as the date of sale. The exception to the regulation which allows the use of a date other than the invoice date establishes a presumption in favor of the date of invoice and Petitioners’ contention of

¹⁸⁵ See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009) and the accompanying Issues and Decision Memorandum at Comment 6.

departure from using the date of invoice is not supported by the record evidence in this investigation.

- Petitioners' interpretation that the quantity term of Novex's contract remained unchanged because the aggregate quantity shipped is within the weight tolerance specified in the contract is improper and would render the specification sheets and quantities associated with each specification sheet meaningless under the contract. Each contract entails combination of specifications and each specification is not a substitute for another.
- NLMK identified that the quantity shipped and associated with a specification in one contract which accounts for a substantial portion of the total POI sales is outside the weight tolerance specified in the contract.
- Indeed, the bill of lading date for one contract differs from the contractual shipment date specified in the contract; thus, the record demonstrates that delivery terms indeed change in the execution of a contract.

Department's Position: As in the *Preliminary Determination*, we continue to use the date of invoice as the date of sale in the final determination because the record evidence of this investigation demonstrates that one or more material terms of Novex's contracts changed after the dates of Novex's contracts.

Petitioners are incorrect when they claim that the material terms of Novex's contracts with its U.S. customers remained unchanged between the date of the contracts and execution of the terms of the contract (*i.e.*, shipment of individual sales). The record evidence of this investigation shows that the quantity for one contract changed between contract date and invoice date.¹⁸⁶

First, we disagree with Petitioners that the quantity term of Novex's contracts is not altered and fully met so long as the final quantity shipped is within aggregate weight tolerance specified in the contract. For instance, if each contract encompassed one specification¹⁸⁷ and the final quantity for that specification shipped was within the weight tolerance specified in the contract, the quantity term of sales may, indeed, not change. However, each of Novex's cold-rolled steel contracts at issue contains a combination of specifications and each specification is different from another within the contract. Additionally, each of the contracts at issue contains specific language demonstrating that mill specification sheets form an integral part of the sales contract.¹⁸⁸ Even if we were to agree with Petitioners' assessment on what constitutes a material change in quantity by examining weight tolerance, it would be more appropriate to examine the weight tolerance on a specification basis, rather than a contract basis (*i.e.*, a combination of specifications). The record evidence shows the quantity shipped for one specification in one contract which accounted for a significant portion of the total reported U.S. sales is substantially

¹⁸⁶ See the Department's memorandum to The File, "Verification of the Sales Response of Novex Trading (Swiss) SA and Novolipetsk Steel OJSC in the Antidumping Investigation of Cold-Rolled Steel Flat Products from the Russian Federation," dated on June 9 2016 ("NLMK's Sales Verification Report"), at Exhibit SV-24 at pages 1 and 19.

¹⁸⁷ Specification is one of the physical characteristics of merchandise under investigation, for which the respondents are required to report for this proceeding (*i.e.*, under field number 2.3 in Section B of the Department's questionnaire). Although Specification is not used in the construction of the CONNUM, it is associated with industry standards, designation, type, or grade of a product.

¹⁸⁸ See NLMK's Sales Verification Report, at Exhibit SV-24, at page 1.

outside the weight tolerance specified in the contract, and thus the quantity term of that contract changed after the date of the contract.¹⁸⁹

Further, we find that the proceedings to which Petitioners cite (*i.e.*, where the Department determined that a change in the quantity shipped occurred between the date of contract and the date of invoices does not constitute a change in the material terms of sales)¹⁹⁰ to be inapposite and not illustrative to the instant circumstance. Unlike in those proceedings, as stated above, the record evidence in this investigation demonstrates that each of Novex's contracts contain more than one specification and the mill certificate of each specification forms an integral part of the contract. Thus, we find it inappropriate to deduce the same conclusion that the quantity term of the contract is not altered on the basis that the total quantity of various specifications shipped is within the aggregate weight tolerance. As such, we remain unconvinced that Novex's contract date reflects the date on which Novex established the material terms of the sales and find that Petitioners have failed to provide compelling reasoning to overcome the presumption that invoice date be used as the date of sale, particularly in consideration of record information which demonstrates that multiple terms of sale may change between contract date and invoice date.

In summary, as stated in NLMK's Sales Verification Report, we determined that the actual quantities sold and shipped for each specification in the contract were not finalized until the invoice date. As such, because one or more material terms of Novex's contracts changed after dates of the contracts, we find it more appropriate to use the date of invoice as the date of sale. For the reasons discussed above, we continue to use the date of invoice as the date of sale in the final determination.

Comment 13: Reserve for Doubtful Debts in NLMK's Indirect Selling Expenses

Petitioners' Comments

- In the Preliminary Determination, the Department excluded from NLMK's revised G&A expenses those attributable to doubtful debt expenses related to selling expenses. The Department should account for the reserve for doubtful debts in NLMK's indirect selling expenses and make adjustments in calculating the normal value and the net home market price used in the sales-below-cost test.
- Petitioners did not comment on the allocation methodology of NLMK's reserve for doubtful debts.

NLMK's Comments

- NLMK does not disagree with Petitioners' assertion that the doubtful debt expenses should be accounted for in its indirect selling expenses. However, the net of two

¹⁸⁹ *Id.*, at Exhibit SV-24, at pages 9 and 13.

¹⁹⁰ See Petitioners' NLMK Case Brief at pages 8-9 (referencing our determinations in *Final Results of the Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2011-2012*, 7 FR 79665 (December 31, 2013); *Antidumping Investigation of Certain Hot-Rolled Carbon Steel Flat Products from Thailand; Notice of Final Determination of Sales at Less Than Fair Value*, 66 FR 49,622 (September 28, 2001) ("*Hot-Rolled Steel from Thailand*"); and the *Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 65 FR 60,910 (October 13, 2000).

accounts pertaining to NLMK's trial balance, rather than one, should be used as a starting point for such a calculation.

- The correct amount of doubtful debts should also correspond to the POI rather than FY2014.
- In making any adjustment, the Department should allocate the proper amount to the cold-rolled steel sold in the home market sales and worldwide (excluding U.S. sales) because the Department verified all U.S. sales of cold-rolled steel during the POI and the prepayment terms of all these sales such that no doubtful debt reserve should be attributable to the U.S. sales of cold-rolled steel.

Department's Position: Consistent with our practice,¹⁹¹ we agree with Petitioners that NLMK's reserve for doubtful debts must be accounted for in the calculation of indirect selling expenses in the final determination. After examination of the record, we agree with NLMK that the proper value for doubtful debts should be the net of the two relevant accounts as discussed in NLMK's brief.¹⁹² In accordance with our determination in *Welded Non-Alloy Steel Pipes from Korea*,¹⁹³ combined with the consideration that the record of this proceeding contains actual values of the net doubtful debts, we find it appropriate to rely on the amount of doubtful debts pertaining to the POI for allocation to the indirect selling expenses.

Finally, the record of this case supports that Novex, NLMK's affiliated trading arm, prepaid all of its purchases from NLMK for sales of cold-rolled steel to the United States,¹⁹⁴ and our verification did not find any inconsistencies.¹⁹⁵ In *Porcelain-on-Steel Cookware from Mexico*,¹⁹⁶ a case which NLMK cited to support its proposed allocation of doubtful debt, the Department allocated expenses associated with bad debts over all U.S. sales made during the POI because we found that the record of that proceeding did not indicate which sales were associated with the bad debt expenses at issue. While we acknowledge that the facts of the instant case are somewhat different than those at issue in the *Porcelain-on-Steel Cookware from Mexico* case, we find the Department's reasoning in that case is illustrative with respect to the instant issue of whether we should allocate the bad debts expenses over only all home market and worldwide sales (excluding U.S. sales of merchandise under consideration). Thus, we find it reasonable to conclude the reserve for doubtful debt is not associated with the U.S. sales of merchandise under

¹⁹¹ See *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003); *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 6713 (February 10, 2013); *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 67 FR 62112 (October 3, 2002).

¹⁹² NLMK's Rebuttal Brief at 9 (referencing Petitioners' NLMK Case Brief, Attachment 2-1 ("NLMK's Reclassification of Other Income & Other Expenses Detail by Account 2014 Trial Balance to G&A")).

¹⁹³ See *Circular Welded Non-Alloy Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010) and the accompanying Issues and Decision Memorandum ("*Welded Non-Alloy Steel Pipes from Korea*").

¹⁹⁴ See NLMK's November 6, 2015 Section C Response and January 6, 2016 Supplemental B&C Response.

¹⁹⁵ See NLMK's Sales Verification Report Exhibits SV-21 through SV-26.

¹⁹⁶ See *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 19, 2000) ("*Porcelain-on-Steel Cookware from Mexico*") and the accompanying Issues Decision and Memorandum, at Comment 4.

investigation because evidence supports that all U.S. sales of merchandise under consideration are prepaid, and thus do not give rise to reserve for doubtful debt for those U.S. sales.

As such, we determine that the reserve for doubtful debt should not be attributed to any of the U.S. sales of cold-rolled steel. Accordingly, for purposes of calculating indirect selling expenses, we agree with NLMK that the allocation of the reserve for doubtful debts to cold-rolled steel should only be applied to the home market sales and worldwide (excluding the United States).¹⁹⁷

Comment 14: NLMK's Other Income and Expense Items

NLMK did not include other income and expense items in the reported G&A expense. For the *Preliminary Determination*, the Department adjusted NLMK's reported G&A expense ratio to include several other income and expense items that are related to the general operations of the company as a whole.¹⁹⁸ The Department made the adjustment using the information provided in the notes to the income statement in NLMK's 2014 fiscal year audited financial statements submitted in Exhibit A-25B of the initial October 15, 2015, section A response.

Petitioners' Comments

- The Department should adjust NLMK's reported G&A expense ratio using the information provided in NLMK's 2014 fiscal year trial balance that was submitted in Exhibit 4 of the January 6, 2016 first supplemental section D response, because the trial balance lists the individual other income and expense items while the notes to the income statement groups the items by type of transaction.
- Using the information from NLMK's 2014 fiscal year trial balance, Petitioners submitted a proposed calculation of NLMK's G&A expense ratio.¹⁹⁹

NLMK's Comments

- As Petitioners request, the information provided in NLMK's 2014 fiscal year trial balance should be used to adjust reported G&A expenses. However, the Department for the *Preliminary Determination* correctly calculated the adjustment because the other income and expense amounts from the trial balance tie to the corresponding amounts provided in the notes to the financial statements.
- Department officials at the cost verification obtained a schedule of all the other income and expense items and the associated amounts from the trial balance, grouped the items

¹⁹⁷ For a detail calculation of the revised indirect selling expense ratios for the final determination, see the Memorandum to the File, "Analysis Memorandum from the Final Determination of Antidumping duty Investigation of Certain Cold-Rolled Steel Flat Products ("Cold-Rolled Steel") from the Russian Federation ("Russia"): Novext Trading (Swiss) SA and Novolipetsk Steel OJSC (Collectively "NLMK") ("NLMK Final Analysis Memo"), dated concurrently with this memorandum.

¹⁹⁸ See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Ernest Z. Gziryan, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Novolipetsk Steel OJSC," dated February 29, 2016 ("Preliminary Cost Memo") at page 2 and attachments 2 and 3.

¹⁹⁹ See Petitioners' NLMK Case Brief at attachments 2A and 2B.

by the type of transaction and found no differences between the amounts reported in the trial balance and the amounts reported in the notes to the income statement.²⁰⁰

Department's Position: We agree with Petitioners. For the final determination, we adjusted NLMK's reported G&A expense ratio to include several other income and expense items that are related to the general operations of the company as a whole using the information provided in NLMK's 2014 fiscal year trial balance. We reviewed the proposed calculation submitted by Petitioners and noted that Petitioners included the "reserve recovery for financial investment impairment" and "reserve establishment for financial investment impairment" amounts in the G&A expenses. We revised Petitioners' proposed calculation to exclude these amounts from the G&A expenses because they are related to the investing activity of the company.²⁰¹ The Department does not normally include the gains and losses on investment activity because they do not relate to the general operations of the company.²⁰²

Comment 15: Allocation of the Parent Company's Expenses to NLMK

Petitioners' Comments

- The Department should include in NLMK's G&A expenses an amount for administrative services performed on behalf of NLMK by its parent company, Fletcher Group Holdings Limited ("Fletcher Group").
- Department officials at the cost verification requested a breakdown of the Fletcher Group's investment portfolio so that a portion of the expenses incurred by the parent company can be attributed to NLMK.²⁰³ The Fletcher Group declined to provide the requested breakdown, arguing that the expenses incurred by the Fletcher Group are related to its investment activities and have nothing to do with NLMK's operations.²⁰⁴
- The Department may use an adverse inference to ensure that the party does not obtain a more favorable result by failing to cooperate than if it cooperated fully²⁰⁵ and it is the Department's practice to consider, in employing adverse inference, the extent to which a party may benefit from its own lack of cooperation.²⁰⁶
- The Fletcher Group's refusal to provide the requested breakdown impeded the Department's ability to calculate an allocated parent company G&A attributable to

²⁰⁰ See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Ernest Z. Gziryan, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, titled "Verification of the Cost Response of Novolipetsk Steel OJSC in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation" dated April 26, 2016 ("NLMK's Cost Verification Report") at page 25 and Cost Verification Exhibit 8.

²⁰¹ See NLMK's Cost Verification Report at page 25.

²⁰² See *Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007), and accompanying Issues and Decision Memorandum at Comment 6.

²⁰³ See NLMK's Cost Verification Exhibit 2, page 17.

²⁰⁴ See NLMK's Cost Verification Exhibit 2, page 18.

²⁰⁵ See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea*, 72 FR 69663 (December 10, 2007), and accompanying Issues and Decision Memorandum at Comment 10.

²⁰⁶ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Steel Threaded Rod from Thailand*, 78 FR 79670 (December 31, 2013) and accompanying Issues and Decision Memorandum at Comment 4, unchanged for the final determination, *Notice of Final Determination of Sales at Less Than Fair Value: Steel Threaded Rod from Thailand*, 79 FR 14476 (March 14, 2014).

NLMK. As partial facts available, the Department should calculate a G&A expense ratio by dividing the combined expenses incurred by the Fletcher Group and the parent company of the Fletcher Group by their respective combined revenue and net income.²⁰⁷ This G&A expense ratio should be applied to NLMK's cost of manufacturing to calculate the additional G&A expenses for administrative services performed on behalf of NLMK by its parent company.

NLMK's Comments

- The Fletcher Group, NLMK's parent company, is an investment entity and all the expenses incurred by the Fletcher Group relate to its investment activities. Specifically, these expenses include rental of office space, staff and director's pay, payments to financial advisors, and other expenses associated with the operations of an investment company.²⁰⁸
- The Department should not apply partial facts available because NLMK made a "best faith" effort to obtain the requested information from the Fletcher Group, and it is the Fletcher Group that withheld the information and not NLMK. Moreover, the Fletcher Group justified the withholding of the requested information by explaining that it is not involved in the operations of NLMK and all of its expenses are related to its investing activities.
- Neither Petitioners nor the Department has provided any evidence challenging the fact that Fletcher Group was exempt from consolidation with NLMK or showing that the Fletcher Group's activities affected the operations of NLMK.
- In the worst case scenario, if the Department assigns all the expenses incurred by the Fletcher Group and the parent company of the Fletcher Group to the NLMK consolidated entity (on the premise that the activities of these two investment entities affect the NLMK consolidated entity and not only the unconsolidated steel products producing entity), it will have a minimal effect on the reported G&A expense ratio.

Department's Position: We agree with Petitioners, in part. The Department's practice is to include an amount for administrative services performed by the parent company or other affiliated party on the respondent company's behalf in the numerator of a respondent's G&A expense ratio.²⁰⁹ At the cost verification, we reviewed NLMK's corporate structure, the financial statements prepared by NLMK, the Fletcher Group, and the parent company of the Fletcher Group. We noted that the Fletcher Group and the parent company of the Fletcher Group prepare financial statements in accordance with International Financial Reporting Standards ("IFRS") applicable to investment entities.²¹⁰ As the Fletcher Group's and its parent company's only activity is managing their investments, including NLMK, it is reasonable to assume that the administrative expenses incurred by these two entities benefit the companies they own. Thus, we consider it reasonable to assign a portion of such costs to NLMK. Therefore, we requested a

²⁰⁷ See the Petitioners' NLMK Case Brief at page 17.

²⁰⁸ See NLMK's Cost Verification Report, Exhibit 2, page 18.

²⁰⁹ See *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 78 FR 35248 (June 12, 2013), and accompanying Issues and Decision Memorandum at Comment 9.

²¹⁰ See NLMK's Cost Verification Report at pages 4 and 5.

breakdown of the Fletcher Group's investment portfolio, so that the administrative expenses incurred by the Fletcher Group could be allocated to NLMK using a reasonable allocation base. However, NLMK did not provide the requested information. NLMK's failure to provide the requested information prohibited the Department from making a reasonable allocation of the parent company's expenses to NLMK.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Further, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.

We agree with Petitioners that by not providing the requested breakdown of the investment portfolios, NLMK withheld information requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and (C) of the Act. Without the requested information (*i.e.*, the breakdown of the investment portfolios), the Department is unable to properly allocate the parent companies' expenses to NLMK. We also find that necessary information is missing from the record, within the meaning of section 776(a)(1) of the Act. Therefore, because NLMK failed to cooperate by not acting to the best of its ability to provide information requested by the Department, the Department has determined that application of partial adverse facts available, within the meaning of section 776(b) of the Act, is appropriate with respect to allocation of the parent companies' expenses to NLMK. As partial adverse facts available, we attributed the entire amount of G&A expenses incurred by the Fletcher Group and the parent company of the Fletcher Group to the NLMK unconsolidated entity. In doing so, we computed an additional G&A expense ratio by including in the numerator all of the G&A expenses incurred by the Fletcher Group and the parent company of the Fletcher Group as proposed by Petitioners. We included in the denominator NLMK's company-specific cost of sales amount adjusted for packing and affiliated party transactions. We applied this ratio to NLMK's revised cost of manufacturing to calculate the CONNUM-specific additional per-unit G&A amount.²¹¹

Comment 16: NLMK's Net Financial Expense Ratio

The Department's questionnaire instructed NLMK to calculate its financial expense ratio based on the financial statements that represent the highest consolidated level available for a

²¹¹ See Memorandum to Neal M. Halper, Director of Office of Accounting, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Novolipetsk Steel OJSC," dated concurrently with this memorandum.

consolidated group of companies that includes NLMK as a member. In its section A response NLMK stated that the company is controlled by Fletcher Group.²¹² However, the company did not provide the financial statements for the Fletcher Group that includes the operating results of NLMK. As such, for the *Preliminary Determination* we used the net financial expense ratio reported by NLMK which is based on NLMK's unconsolidated 2014 fiscal year audited financial statements prepared in accordance with the Russian Accounting Standards because the Department was not certain whether the submitted NLMK Group's audited consolidated financial statements were at the highest level of consolidation.²¹³

NLMK's Comments

- The Department has a long-standing practice of using consolidated financial statements for determining the interest expense to obtain a more accurate measure of the borrowing costs incurred by the consolidated group because the cost of capital is fungible.
 - There is a presumption that consolidated financial statements are more meaningful than the separate financial statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has controlling financial interest in another entity.²¹⁴
 - The Department has implied that the use of non-consolidated financial statements may be misleading because a lower level of consolidation only reflects the financial position that the management of the group wished to present for that particular subsidiary.²¹⁵
 - Both the U.S. Court of International Trade and U.S. Court of Appeals for the Federal Circuit have upheld the Department's long-standing policy of using the consolidated financial statements to calculate the interest expenses as a reasonable interpretation of the statute.²¹⁶ Further, the Federal Circuit stated that the Department has adopted and followed a standard policy for assessing finance costs of a producer based on the consolidated financial statements of a parent because the cost of capital is fungible.
- Thus, the use of consolidated financial statements ensures the most accurate calculation of the interest expense. The Department's use of NLMK's unconsolidated financial statements to calculate the interest expense is contrary to the Department's long-standing practice and policy.
- The Department should use NLMK's consolidated financial statements that incorporate the operating results of NLMK and its consolidating subsidiaries to calculate the interest expense because these financial statements are at the highest level of consolidation available and reflect the financial results of the NLMK Group.
- To comply with the rules of the stock exchange on which NLMK's shares are traded, these consolidated financial statements are prepared in accordance with U.S. GAAP.

²¹² See NLMK's October 16, 2015 section A response at page 8 and Exhibit 6.

²¹³ See NLMK's Preliminary Cost Memo at page 2 and Attachment 4.

²¹⁴ See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe from Turkey*, 76 FR 76939 (December 9, 2012), and accompanying Issues and Decision Memorandum at Comment 9.

²¹⁵ See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from India*, 72 FR 52055 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 7.

²¹⁶ See *Gulf State Tube Division of Quanex Corporation v. United States*, 981 F. Sup 630, 647 (CIT 1997) and *America Silicon Tools v. United States*, 334 F. 3d 1033, 1037-1038 (Fed. Cir. 2003).

From 2015, NLMK started preparing the consolidated financial statements in accordance with IFRS because of the new requirements of the Russian laws. NLMK states that in response to the Department's February 22, 2016 second supplemental section D questionnaire, it informed the Department that the Fletcher Group does not prepare consolidated financial statements because it is an "investment entity" and submitted the company-specific financial statements of the Fletcher Group.²¹⁷

- In response to the Department's March 8, 2016, third supplemental section D questionnaire, NLMK submitted the financial statements of the parent company of the Fletcher Group.²¹⁸ NLMK maintains that both of these investment entities are not required to prepare consolidated financial statements and are required to measure their investments at fair value. NLMK's operating results are not consolidated either in the Fletcher Group's financial statements or in the financial statements of the parent company of the Fletcher Group. The consolidated financial statements of the NLMK Group are at the highest level of consolidation.
- The Department for the final determination should either use the 2014 U.S. GAAP consolidated financial statements or the 2014 data from the 2015 IFRS consolidated financial statements to calculate the net financial expense ratio.

Petitioners' Comments

- The Department should continue to rely on NLMK's 2014 unconsolidated financial statements prepared in accordance with Russian Accounting Standards to calculate NLMK's financial expense ratio because the statute directs the Department to calculate the cost of production based on the respondent's normal books and records if such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with production of the merchandise.²¹⁹
- Consistent with the directions provided by the statute, in *Certain Steel Concrete Reinforcing Bars from Turkey* the Department expressed a preference for using the respondent's unconsolidated financial statements denominated in Turkish currency and prepared in accordance with Turkish GAAP to calculate the financial expense ratio over the respondent's unconsolidated financial statements denominated in U.S. Dollars and prepared in accordance with International Accounting Standards ("IAS").²²⁰
- The Department should not rely on NLMK's 2014 consolidated financial statements prepared in accordance with U.S. GAAP to calculate NLMK's financial expense ratio because these statements are not prepared in accordance with home country GAAP (i.e., the Russian Accounting Standards) and are inconsistent with the statute's directions.
- NLMK has failed to provide evidence that NLMK's U.S. GAAP consolidated financial statements are required under Russian law, because NLMK has stated that these U.S. GAAP consolidated financial statements are prepared to comply with the rules of the stock exchange on which NLMK's shares are traded.

²¹⁷ See NLMK's February 29, 2016 second supplemental section D response at page 1 and exhibit 4.

²¹⁸ See NLMK's March 10, 2016 third supplemental section D response at page 1 and exhibit 1.

²¹⁹ See Section 773(f)(1)(A) of the Act.

²²⁰ See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Steel Concrete Reinforcement Bars from Turkey*, 71 FR 65082 (November 7, 2006), and accompanying Issues and Decision Memorandum at Comment 6 ("*Certain Steel Concrete Reinforcing Bars from Turkey*").

- Russian law did not require NLMK to prepare consolidated financial statements in accordance with U.S. GAAP in 2014, i.e., preparation of U.S. GAAP consolidated financial statements was not mandated by the Russian law, and NLMK had the choice to prepare the consolidated financial statements in accordance with the Russian Accounting Standards. As such, the Department's reliance on NLMK's 2014 unconsolidated financial statements prepared in accordance with the Russian Accounting Standards to calculate NLMK's financial expense ratio is consistent with the statute and the Department's established practice.
- The Department's cost verification report makes clear that the requirement of the Russian law to prepare consolidated financial statements in accordance with IFRS took effect only in 2015.²²¹
- The Department should not rely on NLMK's 2014 consolidated financial statements prepared in accordance with IFRS to calculate NLMK's financial expense ratio because it constitutes new factual information and the Department officials at the cost verification properly refused to put these financial statements on the record.²²²
- The Department should also not rely on NLMK's 2015 consolidated financial statements prepared in accordance with IFRS that also have the corresponding 2014 IFRS data obtained by the Department officials at the sales verification²²³ to calculate NLMK's financial expense ratio because the 2014 IFRS data were not verified by the Department officials at the cost verification.
- The IFRS consolidated financial statements differ substantially in format and substance from the corresponding data in NLMK's 2014 U.S. GAAP consolidated financial statements. Specifically, the financial expenses, financial income, and foreign exchange gains and losses are all substantially different.

Department's Position: We disagree with Petitioners. For the final determination, we used the net financial expense ratio reported by NLMK which is based on NLMK's audited 2014 fiscal year consolidated financial statements. These financial statements are at the highest level of consolidation available, and the preparation of such statements, which follow U.S. GAAP, is permitted by Russian law No 208-FZ²²⁴ While Russian GAAP does not require that NLMK prepare its audited consolidated financial statements in accordance with U.S. GAAP, it does not prohibit NLMK from doing so. NLMK's shares are traded on the London Stock Exchange and the Moscow Stock Exchange.²²⁵ NLMK has historically prepared its audited consolidated financial statements in accordance with U.S. GAAP and it provided support that the preparation of the U.S. GAAP consolidated financial statements are in accordance with Russian Law No 208-FZ "About Consolidated Financial Statements" issued on July 27, 2010. This law requires that publicly traded companies such as NLMK issue consolidated financial statements in accordance with IFRS. However, for listed companies that were already preparing consolidated financial statements on a basis distinct from IFRS, they are permitted to continue preparing their non-IFRS based financial statements until 2015, at which time the first IFRS consolidated

²²¹ See NLMK's Cost Verification Report at page 5.

²²² *Id.*

²²³ See NLMK's Sales Verification Report Exhibit SV-8.

²²⁴ See NLMK's March 10, 2016 third supplemental section D response at Exhibit 3.

²²⁵ See NLMK's Cost Verification Report at page 3 and Cost Verification Exhibit 2, page 2.

financial statements should be prepared for 2015. Since NLMK was preparing consolidated financial statements in accordance with U.S. GAAP, the company chose to continue to prepare and issue consolidated financial statements in accordance with U.S. GAAP for 2014. As such, the consolidated audited financial statements reported and used for the interest expense computation were the 2014 U.S. GAAP audited consolidated financial statements prepared and issued to financial statement users in the normal course of business and in compliance with the Russian law.

NLMK's parent company, the Fletcher Group, as well as Fletcher Group's parent company, prepare audited financial statements in accordance with IFRS prescribed for investment entities. At verification we reviewed these financial statements and noted that they do not represent the highest level of consolidation for NLMK, *i.e.*, the revenue earned from the sales of NLMK's steel products, the associated cost of sales, and the associated operating and finance costs are not reflected in these financial statements.²²⁶ As such, NLMK's U.S. GAAP consolidated financial statements represent the highest level of consolidation that includes the operating results of NLMK.

Finally, we find Petitioners' reliance on *Certain Steel Concrete Reinforcing Bars from Turkey* to be misplaced because the fact pattern is different from the instant case. In *Certain Steel Concrete Reinforcing Bars from Turkey*, the respondent did not prepare consolidated financial statements and submitted two sets of unconsolidated financial statements. One set was prepared in accordance with Turkish GAAP and the other set was prepared in accordance with IAS. The Department chose the Turkish GAAP unconsolidated financial statements to calculate the net financial expense ratio. In the instant case, NLMK prepares consolidated U.S. GAAP financial statements. These financial statements are at the highest level of consolidation available and are in compliance with the Russian legislation on the preparation of consolidated financial statements.

It is the Department's long-standing practice to rely on the amounts reported in the consolidated financial statements at the highest level available to calculate the net financial expense ratio.²²⁷ This practice has been upheld by the U.S. Court of International Trade and U.S. Court of Appeals for the Federal Circuit.²²⁸ Only when audited consolidated financial statements do not exist, the Department deems it appropriate to base the net financial expense ratio calculation on the audited financial statements of the respondent (*i.e.*, the unconsolidated financial statements).²²⁹ In this case we have audited consolidated financial statements that are acceptable under Russian GAAP, and the reported financial expense rate calculation based on such statements has been verified.²³⁰ Accordingly, for the final determination we calculated NLMK's

²²⁶ See NLMK's Cost Verification Report at page 5.

²²⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France*, 64 FR 73143, 73152 (December 29, 1999).

²²⁸ See *Gulf State Tube Division of Quanex Corporation v. United States*, 981 F. Sup 630, 647 (CIT 1997) and *America Silicon Tools v. United States*, 334 F. 3d 1033, 1037-1038 (Fed. Cir. 2003).

²²⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15475 (March 23, 1993).

²³⁰ See NLMK's Cost Verification Report at page 26.

financial expense ratio using NLMK's submitted audited consolidated US GAAP financial statements.

Comment 17: Minor Corrections in NLMK's Margin Calculation

Petitioners' Comments

- The Department relied on an incorrect home market warehousing expense field in calculating the net home market price. The Department should use the warehousing expenses that do not include value-added taxes ("VAT") taxes in the final determination.
- The Department incorrectly converted the field for the indirect selling expenses incurred in the U.S. into U.S. dollars in the SAS margin program though the expenses reported are denominated in U.S. dollars.

NLMK's Comments

- NLMK disagrees that the Department should use the warehousing expenses that do not include VAT taxes for all sales; rather, NLMK contends that the warehouse expenses that are net of VAT taxes are appropriate to use only in the case where the warehouse is affiliated (*i.e.*, for Novolipetsk Steel Service Center ("NSS")) and that the Department should continue to use the warehouse expenses inclusive of VAT.

Department's Position: With respect to the indirect selling expenses incurred in the United States, we inadvertently "converted" the reported expenses to the U.S. dollars when those expenses were already denominated in U.S. dollars. For the final determination, we agree with Petitioners and have corrected the error in the SAS margin programing accordingly.²³¹

We also agree with Petitioners that we should use the warehouse expenses that are net of VAT taxes to calculate the net home market price, in accordance with our practice and the intent of the statute that dumping comparisons are tax-neutral.²³² NLMK did not provide argument as to why the Department should depart from its standard practice of relying on expenses that are tax-neutral for calculation of dumping margin generally, nor did it provide explanation or citation to precedent to support the specific assertion that it is only appropriate to use net-of-VAT warehouse expenses if the warehouse services were provided by its affiliate NSS. Therefore, we continue to use net-of-VAT expenses for all warehouse expenses in the final determination.

²³¹ See NLMK Final Analysis Memo for detail.

²³² See *Polyethylene Terephthalate File, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments and Partial Rescission of Review: 2012-2013*, 79 FR 72166 (December 5, 2014) (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Agreements Act, H.R. Doc. No. 103-316, vol. 1, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172. See also NLMK's Final Analysis Memo for corrections.

VIII. RECOMMENDATION

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



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date