A-533-895
Investigation
Public Document
E&C/OV: JM/NM

March 1, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India

I. SUMMARY

The Department of Commerce (Commerce) determines that common alloy aluminum sheet (aluminum sheet) from India is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2019, through December 31, 2019. The mandatory respondents subject to this investigation are Hindalco Industries Limited (Hindalco) and Manaksia Aluminum Company Limited (MALCO).

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

Hindalco Issues
Comment 1: Hindalco's Untimely Extension Request
Comment 2: Whether Commerce Should Continue to Apply Partial Adverse Facts Available (AFA) to Hindalco
Comment 3: Whether Commerce Should Deny Certain Price Adjustments for Hindalco
Comment 4: Whether Commerce Should Rely on FA for Hindalco's "Deemed Export" Sales
Comment 5: Whether Commerce Should Rely on FA for Hindalco's Home Market Warehousing Expenses
Comment 6: Whether Commerce Overstated the Affiliated Party Adjustment

[1] *See Common Alloy Aluminum Sheet from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65377 (October 15, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

MALCO Issues

Comment 7: Whether MALCO's Cost Information is Usable
Comment 8: MALCO's Missing Cost Data for U.S. Control Numbers (CONNUMs)
Comment 9: Appropriate Differential Pricing Methodology
Comment 10: Whether to Disallow Home Market Quantity and Early Payment Discounts
Comment 11: Whether Commerce Should Apply the Highest U.S. Commission Rate to All U.S. Sales
Comment 12: Whether to Disallow MALCO's Home Market Credit Expenses
Comment 13: Whether MALCO Has Properly Reported Its Packing Costs
Comment 14: Whether MALCO's Overall Costs Should Be Adjusted for the Cost of Home Market Returns
Comment 15: Whether MALCO's Reported Direct Materials Cost is Understated
Comment 16: Whether to Revise MALCO's General and Administrative (G&A) Expenses Ratio to Include Missing Expenses and to Correct the Cost of Goods Sold
Comment 17: Whether to Revise MALCO's Interest Expense Ratio
Comment 18: Constructed Value (CV) Profit

General Issues

Comment 19: Selection of the All-Others Rate

II. BACKGROUND

On October 15, 2020, Commerce published the *Preliminary Determination* in this investigation.[2] Subsequently, on November 25 and 27, 2020, Commerce received Hindalco's and MALCO's response to our in lieu of on-site verification questionnaires, respectively.[3] On December 2, 2020, we invited parties to comment on the *Preliminary Determination*.[4] On December 17, 2020, we received case briefs from the petitioners,[5] Hindalco,[6] Jindal Aluminum Limited (Jindal),[7] and Virgo Aluminum Limited (Virgo).[8] Between December 22 and 28, 2020, we

[2] *Id.*
[3] *See* Hindalco's Letter, "Hindalco Industries Limited's Response to Request for Documentation," dated November 25, 2020; *see also* MALCO's Letter, "Manaksia Aluminium Company Limited Responding to In-Lieu of Verification Questionnaire Response," dated November 27, 2020 (MALCO November 27, 2020 VQR).
[4] *See* Memorandum, "Briefing Schedule," dated December 2, 2020.
[5] *See* Petitioners' Letter, "Petitioners' Case Brief Regarding MALCO," dated December 17, 2020 (Petitioners Case Brief). The petitioners are the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc. (collectively, the petitioners).
[6] *See* Hindalco's Letter, "Administrative Case Brief of Hindalco Industries Limited," dated December 17, 2020 (Hindalco Case Brief).
[7] *See* Jindal's Letter, "Submission of Administrative Case Brief," dated December 17, 2020 (Jindal Case Brief).
[8] *See* Virgo's Letter, "Submission of Case Brief," dated December 17, 2020 (Virgo Case Brief).

received rebuttal briefs from the petitioners[9] and MALCO.[10] On February 5, 2021, we held a virtual public hearing.[11]

III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Based on the review of the record and comments received from interested parties, we have revised MALCO's reported commission expenses for the final determination, as discussed in Comment 11 below.

IV. DISCUSSION OF THE ISSUES

Comment 1: Hindalco's Untimely Extension Request

Background: On July 30, 2020, at 3:04 pm Eastern Time (ET), Commerce issued a supplemental section A questionnaire (SAQR2) to Hindalco and uploaded it to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) with a deadline of 5:00 pm ET, August 6, 2020.[12] Due to a time lag caused by the ACCESS system processing time, an ACCESS digest notice was generated at 5:11 pm ET on Friday, July 31, 2020.[13]

Hindalco did not respond to this supplemental questionnaire. On August 10, 2020, Hindalco submitted a letter requesting that Commerce extend the deadline for the SAQR2 or reissue the questionnaire to Hindalco.[14] As we explained in response to this request, Hindalco failed to establish that there was an "extraordinary circumstance" within the meaning of 19 CFR 351.302(c). As such, Commerce denied Hindalco's untimely extension request in accordance with our regulations.[15]

Hindalco's Comments[16]

- In its letter denying Hindalco an extension, Commerce stated that counsel failed to establish "extraordinary circumstances." A global pandemic, however, is as close to a "natural disaster" as we have seen. If COVID-19 has not caused "extraordinary circumstances," it is hard to imagine what would qualify as such. Commerce should

[9] *See* Petitioners' Letter, "Rebuttal Brief of Petitioners," dated December 22, 2020; *see also* Petitioners' Letter, "Errata to Petitioners' Rebuttal Brief Regarding Jindal and Virgo," dated December 23, 2020 (Petitioners All-Others Rebuttal); and Petitioners' Letter, "Rebuttal Brief of Petitioners Regarding Hindalco," dated December 28, 2020 (Petitioners Rebuttal Brief).
[10] *See* MALCO's Letter, "Submission of Rebuttal Case Brief," dated December 28, 2020 (MALCO Rebuttal Brief).
[11] *See* Transcript of the Hearing held on February 5, 2021.
[12] *See* Commerce's Letter, "Supplemental Questionnaire," dated July 30, 2020 (SAQR2); *see also* Commerce's Letter, "Hindalco Industries Limited's Supplemental Section A Questionnaire Response," dated August 18, 2020 (Denial of Hindalco Untimely Extension).
[13] *See* Denial of Hindalco Untimely Extension.
[14] *See* Hindalco's Letter, "Request For An Extension Of Time To Submit Hindalco's Second Supplemental Section A Response Or, In The Alternative, For Reissuance Of The Second Supplemental Section A Questionnaire," dated August 10, 2020 (Hindalco Extension Request).
[15] *See* Denial of Hindalco Untimely Extension.
[16] *See* Hindalco Case Brief at 4-17.

either reconsider its decision and allow Hindalco to file its response to the SAQR2 or issue an additional supplemental questionnaire.

- Counsel was unaware that Commerce had issued a supplemental questionnaire until one day after the deadline to respond, due to the extraordinary circumstances caused by COVID-19. The only indication that Commerce had released the SAQR2 was the ACCESS digest email sent at 5:11 p.m. on Friday, July 31, 2020. While a paralegal did download the SAQR2, the remote working conditions caused by COVID-19 resulted in miscommunication between this paralegal and her supervisor and also prevented her from making a hard-copy printout of the document. Thus, Hindalco's counsel did not process the SAQR2 in the internal document management system of its law firm.
- The law firm also did not identify the supplemental questionnaire during its regular review of the ACCESS docket because ACCESS did not place the SAQR2 at the top of the record, but instead backdated and added it to the record according to the earlier upload date. This was not a case of inattentiveness or insufficient resources, but a technical error that resulted from the pandemic.
- Commerce tolled its own statutory deadlines twice, a recognition of the operational difficulties caused by COVID-19.
- Commerce has granted out-of-time extensions in cases with similar circumstances,[17] and it has also exercised its discretion to grant untimely extension requests even in the absence of "extraordinary circumstances."[18]
- Commerce has solicited new information after its preliminary decisions in previous proceedings.[19] Commerce should allow Hindalco to file a response to the SAQR2. Because Commerce has postponed the final determination until March 1, 2021, Commerce has ample time for to review all outstanding questions regarding Hindalco, including time for the petitioners to rebut any information. As a result, this would not delay Commerce's completion of this investigation nor promote unfairness. Additionally, this would allow Commerce to calculate a more accurate dumping margin.
- In *Artisan Manufacturing*, the U.S. Court of International Trade (CIT) found that Commerce abused its discretion by not accepting a quantity and value questionnaire response, where acceptance of that response would not be consequential to Commerce's conduct of the investigation or promote unfairness, and in which the consequence of denying the late filing would be disproportionately severe.[20]

---

[17] *Id*. at 6-7 (citing Hindalco Extension Request).

[18] *Id*. at 7-8 (citing *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009) (*SSB from India*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349, 52350 (September 13, 2007) (*Glycine from Japan*)).

[19] *Id*. 8-9 (citing *Certain Steel Grating from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32366 (June 8, 2010) (*Steel Grating from China*); *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 83 FR 28186 (June 18, 2018) (*Olives from Spain*), and accompanying IDM at 3 and 70; *Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720 (May 27, 2010) (*Lock Washers from China*), and accompanying IDM; and *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 75 FR 44764 (July 29, 2010) (*Wooden Bedroom Furniture from China*), and accompanying IDM)).

[20] *Id*. at 10 (citing *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1348 (CIT 2014) (*Artisan Manufacturing*)).

Petitioners' Comments[21]

- Commerce has already considered and properly rejected Hindalco's request, finding that the circumstances that caused Hindalco's untimely extension request and failure to respond to the SAQR2 did not meet the "extraordinary circumstances" requirement in Commerce's regulations.
- Hindalco explanation for its failure to respond is neither extraordinary nor directly related to the ongoing pandemic. These same explanations could have occurred prior to the pandemic. In *Dongtai Peak*, the U.S. Court of Appeals for the Federal Circuit (CAFC) found that AFA was appropriate under the same circumstances (*i.e.*, communication problems).[22]
- As Commerce explained in *Plywood from China*, "{ACCESS} email digests constitute official notice of a document, not whether a party accessed or reviewed the document on ACCESS."[23] Hindalco received official notice of the SAQR2 on July 31, 2020, and a paralegal downloaded it on the same day.[24] Hindalco's alleged ignorance of the issuance of the SAQR2 does not excuse it from its failure to respond or submit a timely extension request.
- Hindalco cites four cases where Commerce granted untimely extension requests. However, Commerce already considered these cases in its denial of Hindalco's untimely extension request.[25] As Commerce explained, it "evaluates such requests on a case-by-case basis, based on the circumstances unique to each case."[26] The CAFC has upheld Commerce's discretion in denying untimely extension requests if good cause for an extension does not exist.[27]
- Hindalco's citations to *SSB from India*, *Glycine from Japan*, and *Lock Washers from China* are inapposite because they predate Commerce's current regulations concerning time limits for the submission of factual information and acceptance of untimely extension requests only under "extraordinary circumstances."[28]
- In *Steel Grating from China* and *Olives from Spain*, Commerce did not reissue a questionnaire to which a respondent failed to respond. In *Steel Grating from China*, Commerce issued a post-verification questionnaire concerning the authenticity of information collected at verification. Thus, verification uncovered a new, previously unknown issue. In *Olives from Spain*, there is no indication that Commerce issued the post-verification questionnaire to request information that the respondents had previously failed to provide.

---

[21] *See* Petitioners Rebuttal Brief at 7-12, 15-16, and 20-23.
[22] *Id*. at 21-22 (citing *Dongtai Peak Honey Industry Co., Ltd. v. United States*, 777 F.3d 1343, 1352 (Fed. Cir. 2015) (*Dongtai Peak*)).
[23] *Id*. at 15-16 (citing *Certain Hardwood Plywood Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017) (*Plywood from China*), and accompanying IDM at Comment 7).
[24] *Id*. (citing Denial of Hindalco Untimely Extension at Attachment).
[25] *Id*. at 7-8 (citing Denial of Hindalco Untimely Extension at 3).
[26] *Id*.
[27] *Id*. at 8 (citing *Dongtai Peak*, 777 F.3d at 1343, 1352).
[28] *Id*. at 9 (citing *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246-47 (April 10, 2013) (*Time Limits Final Rule*); and *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 43991 (July 6, 2016) (*OBAs from Taiwan*), and accompanying IDM at Comment 2 (June 27, 2016)).

- In this proceeding, Commerce identified issues in Hindalco's responses before the *Preliminary Determination*, which is part of the reason Commerce issued the SAQR2. Hindalco's failure to respond to the SAQR2 does not warrant an additional opportunity to submit factual information.
- Hindalco argues that, by providing such an opportunity, Commerce can obtain a more accurate dumping margin. However, the CAFC has held that Commerce's enforcement of deadlines supersedes concerns of accuracy.[29] This is also in accordance with Commerce practice.[30]

Commerce Position: Commerce continues to deny Hindalco's untimely extension request. As explained *supra*, Commerce issued the SAQR2 on July 30, 2020, with a response deadline of August 6, 2020.[31] On August 10, 2020, Hindalco submitted a letter requesting that Commerce extend the deadline for the SAQR2 or reissue the questionnaire to it.[32] In its case brief, Hindalco reiterates all the reasons it outlined in its untimely extension request and asks again that Commerce reconsider our decision because a global pandemic is an extraordinary event in the form of a natural disaster. However, as we explained in our prior denial of Hindalco's requests, Hindalco failed to explain how the ongoing COVID-19 pandemic in general explains why its law firm was unable to timely file a request for an extension, or how a lack of communication, miscommunication, as well as a mistake in reading the ACCESS digest and the ACCESS docket, constituted an "extraordinary circumstance" within the meaning of 19 CFR 351.302(c). Because Hindalco did not establish that its failure to act stemmed from an extraordinary circumstance beyond Hindalco's control, Commerce denied Hindalco's untimely extension request in accordance with our regulations.[33]

Pursuant to 19 CFR 351.302(c), an untimely filed extension request will not be considered unless the party demonstrates the existence of "extraordinary circumstances." The regulation defines "extraordinary circumstance" as "an unexpected event that: (i) {c}ould not have been prevented if reasonable measures had been taken, and (ii) {p}recludes a party or its representative from timely filing an extension request through all reasonable means." In the preamble to the regulation, Commerce stated:

> Examples of extraordinary circumstances include a natural disaster, riot, war, *force majeure*, or medical emergency. Examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due.[34]

As explained below, Hindalco's case brief continues to fail to establish that there was an "extraordinary circumstance" within the meaning of the regulations.

---

[29] *Id*. at 11 (citing *PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 761 (Fed. Cir. 2012) (*PSC VSMPO*) and *Dongtai Peak*, 777 F.3d at 1351-52).
[30] *Id*. (citing *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 29826 (June 30, 2017) (*SSB from Spain*), and accompanying IDM at Comment 1).
[31] *See* SAQR2.
[32] *See* Hindalco Extension Request.
[33] *See* Denial of Hindalco Untimely Extension.
[34] *See Time Limits Final Rule*, 78 FR at 57790 and 57793.

Counsel for Hindalco explains that it was unaware of the supplemental questionnaire until after the deadline because of COVID-19 which has dramatically altered its business operations. Specifically, counsel argues that it has procedures in place for working during COVID-19 where its paralegals receive the ACCESS digests and then download Commerce's materials. Hindalco admits that the law firm's employee followed the proper procedure in this instance, but that, due to an unforeseeable flaw in King & Spalding's internal document management system, the paralegal did not correctly internally process or distribute the SAQR2 to counsel.[35] Additionally, counsel argues that remote working conditions prevented the paralegal from printing and distributing a hard copy of the supplemental questionnaire which would normally occur.[36] Counsel also claims that it has back-up procedures in place where an attorney and a paralegal reviews the ACCESS docket on a daily basis, but that they did not detect the SAQR2 during these sweeps.[37] Counsel argues that this was due to the fact that the SAQR2 was dated July 30, 2020, but an ACCESS digest notice was not generated until 5:11 p.m. ET on Friday, July 31, 2020.[38] This resulted in SAQR2 not appearing at the top of the ACCESS docket and was instead backdated to July 30, 2020, which pre-dates the actual issuance of the supplemental questionnaire. Counsel argues that this is not an issue of inattentiveness or insufficient resources but is a technical issue resulting from the pandemic. Lastly, counsel notes that Commerce itself tolled deadlines in its proceedings, itself recognizing that the pandemic was an extraordinary event.

As we previously explained,[39] the existence of the ongoing COVID-19 pandemic in general does not explain why the law firm was unable to timely file a request for an extension of the specific deadline. Hindalco's counsel does not assert that any of the personnel responsible for the submission of the questionnaire response or a hypothetical extension request were themselves ill. Instead, it concedes that a paralegal downloaded the SAQR2 and then notified her supervisor that the document existed. Hindalco's only defense is that, although this supervisor thereafter offered to assist the paralegal by sharing the supplemental questionnaire with counsel, "remote working locations resulted in a miscommunication."[40] Miscommunication caused by working remotely is not "extraordinary." This is particularly true in this case, where the SAQR2 was issued on July 30, 2020, almost five months into the pandemic. The law firm had ample time to prepare procedures for working remotely over the long term. Moreover, we note that other parties in proceedings before Commerce have continued to make timely submissions even during the pandemic, including the other mandatory respondent in this proceeding, MALCO, which is represented *pro se* in India. Finally, Commerce's decision to toll deadlines – only in administrative reviews of existing antidumping and countervailing duty orders – does not somehow excuse Hindalco's failure to meet Commerce's deadlines in this investigation.

In this case, the record is clear that counsel for Hindalco, King & Spalding, was notified of the questionnaire and corresponding deadline on July 31, 2020. The SAQR2 was dated July 30,

[35] *See* Hindalco Case Brief at 4-17.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *See* Denial of Hindalco Untimely Extension.
[40] *See* Hindalco Case Brief at 5.

2020, and placed on ACCESS at 3:04 p.m. ET on that date. An ACCESS digest notice was generated at 5:11 p.m. ET on Friday, July 31, 2020.[41] An employee from King & Spalding downloaded the SAQR2 at 5:14 p.m. ET, July 31, 2020, three minutes after receiving the ACCESS notification.[42] Regardless of whether King & Spalding received the SAQR2 on July 30, 2020, or July 31, 2020, it had at least six days after that point to request an extension to file a response to the SAQR2. King & Spalding presents no explanation as to why its remote working conditions prevented the paralegal and her supervisor from following up in the six subsequent days after the SAQR2 was downloaded.

Even in the hypothetical situation that employees of the law firm had not downloaded the SAQR2, King & Spalding had all the necessary information to find the supplemental questionnaire in the ACCESS docket. The ACCESS digest notice has the document's details, including the date and time the SAQR2 was uploaded. As noted in *Electronic Filing Procedures* and the ACCESS Handbook, all interested parties on the public service list of a case are sent email digests which constitute official notice to an interested party or its representative that a document is available in ACCESS and that it is a part of the official record of the proceeding.[43] Similar to the email notifications with daily digests of public documents and public versions released by Commerce, email notifications for business proprietary information (BPI) documents generated by Commerce are sent to lead attorney E-Filer accounts twice each day when documents have been approved for release. These email digests constitute official notice to the lead attorney that a BPI document is available in ACCESS. The ACCESS Handbook expressly states it is the responsibility of the lead attorney or his or her proxy to retrieve the BPI documents.[44] Commerce will not email courtesy copies of documents containing an interested party's own BPI to it or its representative; BPI documents will be available for download for 14 calendar days from the document filed date.[45] Thus, King & Spalding's inability to find the SAQR2 in the ACCESS docket as well as alleged lack of awareness of the issuance of the SAQR2 is attributable to lack of resources or inattentiveness, and not to a technical issue. As noted above, the preamble to 19 CFR 351.302(c) specifically states that such circumstances are unlikely to be considered extraordinary, and we have not considered them as such here.

Lack of communication, miscommunication, as well as a mistake in reading the ACCESS digest and the ACCESS docket, are not extraordinary within the meaning of our regulations. Accordingly, we continue to find that the pandemic did not prevent King & Spalding from receiving the questionnaire, nor did the pandemic prevent it from either submitting the questionnaire response or making a timely extension request by the applicable deadline.

---

[41] Thus, the record indicates that the time lag was due to the ACCESS system processing time only and that Commerce did not "backdate" this questionnaire. It is not uncommon for a document that is uploaded to ACCESS in the afternoon to be approved through the ACCESS system on the following business day.

[42] *See* Denial of Hindalco Untimely Extension at Attachment.

[43] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) (*Electronic Filing Procedures*).

[44] *See* ACCESS Handbook at 6-7 and 20-21, available at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

[45] *See, e.g.*, *Plywood from China* IDM at Comment 7; and *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM at Comment 48.

Moreover, King & Spalding has failed to demonstrate that the circumstances: (1) could not have been prevented if reasonable measures had been taken; or (2) precluded the law firm from timely filing an extension request through all reasonable means within the meaning of 19 CFR 351.302(c)(2).

With respect to Hindalco's citation to past instances in which Commerce granted extensions after the deadline had passed, we note that most of the examples are the same cases Hindalco cited in its initial untimely extension request. As we explained in response to that request:

> We recognize that there are a limited number of prior instances in which Commerce has accepted untimely extension requests. Commerce evaluates such requests on a case-by-case basis, based on the circumstances unique to each case. As noted above, 19 CFR 351.302(c) expressly states that an untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. Commerce has evaluated the circumstances described in your letter, unique to this case, and finds that the extraordinary circumstances standard has not been satisfied.[46]

It is well-established that each Commerce proceeding is independent from other proceedings and that decisions in other proceedings are made based on the individual circumstances of those cases.[47] The CIT has repeatedly affirmed Commerce's longstanding practice to treat each proceeding as independent with separate records.[48] As explained above, we considered the circumstances unique to this case and find that Hindalco has not demonstrated that "extraordinary circumstances" exist.

Regarding Hindalco's citations to *SSB from India*, *Glycine from Japan*, and *Lock Washers from China*, we agree with the petitioners that these cases are inapposite because they predate Commerce's current regulations. Specifically, in the *Time Limits Final Rule*, Commerce moved beyond "general" deadlines and established specific deadlines depending on the category of factual information being provided. These changes were intended to ensure that Commerce has sufficient time to review and analyze factual information "at the appropriate stage in the proceeding," and before "it is too late {for Commerce} to adequately examine, analyze, conduct follow-up inquiries regarding, and if necessary, verify the information."[49] Around the same time, Commerce also modified 19 CFR 351.302(c) concerning the filing of extension requests to make clear that untimely extension requests would be accepted only in "extraordinary circumstances." Both of these changes demonstrate that Commerce intended to establish definitive deadlines, and that those deadlines must be observed. These changes post-date Commerce's decisions in *SSB from India*, *Glycine from Japan*, and *Lock Washers from China*.

---

[46] *See* Denial of Hindalco Untimely Extension at 3.
[47] *See, e.g.*, *OBAs from Taiwan* IDM at Comment 4 and 7.
[48] *See, e.g.*, *Outokumpu Copper Rolled Products AB v. United States*, 829 F. Supp 1371, 1377 (CIT 1993); *E.I. DuPont de Nemours & Co. v. United States*, Slip Op. 98-7 (CIT 1998); and *Cerro Flow Products, LLC v. United States*, Slip Op. 14-84 (CIT 2014).
[49] *See Time Limits Final Rule*, 78 FR at 21246-47.

Hindalco also cites *Steel Grating from China*, *Olives from Spain*, and *Wooden Bedroom Furniture from China* to argue that it would be within Commerce's discretion to request additional information after the *Preliminary Determination*.[50] In doing so, Hindalco argues, Commerce could calculate a more accurate dumping margin, which the CAFC has explained is "{a}n overriding purpose of Commerce's administration of antidumping laws."[51] We disagree. In these cases, none of the respondents failed to provide information requested by Commerce.[52] In *Steel Grating from China* and *Wooden Bedroom Furniture from China*, Commerce issued post-preliminary supplemental questionnaires after receiving allegations of fraud from the petitioner.[53] In *Olives from Spain*, there is no information on our record that indicates why a post-preliminary supplemental questionnaire was issued, and the public documents are silent on the matter. Finally, while we do not dispute that Commerce has the discretion to solicit information at any point in a proceeding, including after issuing a preliminary decision, Commerce is not required to do so, especially in a case such as this one, where requesting missing information a second time would undermine Commerce's timeliness regulation and practice. Thus, Hindalco's cites to these cases are not meaningful.

Further, while we agree that Commerce's mandate is to calculate dumping margins as accurately as possible, we disagree that *Bestpak* requires us to issue a supplemental questionnaire to obtain more accurate margins. In *Bestpak*, the CAFC found that there was no record evidence to support Commerce's methodology for assigning a dumping rate for a separate rate company using a simple average of the rates determined for the mandatory respondents.[54] Commerce argued that it had made the best decision it could with the limited record available to it.[55] Nevertheless, the CAFC remanded this decision to Commerce so that we could more accurately determine the dumping margin with the current record.[56] The CAFC did not order Commerce to issue a supplemental questionnaire to obtain additional information.

As we explained in Denial of Hindalco Untimely Extension, "{t}o administer the trade remedy laws within the statutory timeframes and in a manner that provides all parties with due process, Commerce must be able to enforce established deadlines." Commerce establishes deadlines so that it can conduct this (and its numerous other trade remedy proceedings) in an efficient manner within its statutory and regulatory deadlines. Therefore, it is critical that parties file documents by the established deadline or timely request an extension of such a deadline. Timely filings and timely extension requests contribute to Commerce's efficient administration of the numerous cases before it under the antidumping duty law. Conversely, untimely filings and untimely extension requests hinder the efficient conduct of our proceedings and require Commerce to devote additional time and resources to addressing such untimely filings and requests. Although the burden associated with a single late-filed questionnaire response may be perceived as

[50] Hindalco also cites *Lock Washers from China*, but as we explained above, this case occurred before Commerce's current regulations regarding time limits and untimely extension requests.
[51] *See* Hindalco Case Brief at 10 (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F. 3d 1370, 1379 (Fed. Cir. 2013) (*Bestpak*)).
[52] In *Olives from Spain*, it appears Commerce did apply partial AFA but this was a result of respondents' failure to act to the best of their ability after the preliminary determination. *See Olives from Spain* IDM at Section VII.
[53] *See Steel Grating from China*, 75 FR at 32366; *see also Wooden Bedroom Furniture from China* IDM at 1.
[54] *See Bestpak*, 716 F. 3d at 1378-80.
[55] *Id*.
[56] *Id*.

minimal, that burden is not minimal when aggregated across all proceedings. Accordingly, for the efficient conduct of its proceedings, it is critical that parties adhere to the deadlines established by Commerce.

We find that the circumstances in *PSC VSMPO* and *Dongtai Peak* are more relevant to this investigation. In *PSC VSMPO*, the CIT ordered Commerce to accept untimely factual information because the circumstances were "not typical."[57] The CAFC reversed this decision and explained:

> The {CIT} improperly intruded upon Commerce's power to apply its own procedures for the timely resolution of antidumping reviews. The role of judicial review is limited to determining whether the record is adequate to support the administrative action. A court cannot set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered.[58]

Thus, *PSC VSMPO* indicates that maintaining Commerce's ability to set and enforce time limits supersedes any concern over ensuring increased accuracy in computed dumping margins. In *Dongtai Peak*, the CAFC quoted *Yantai Timken* in finding that Commerce properly exercised its discretion in denying an untimely extension request because it failed to show that either "good cause" or "extraordinary circumstances" existed, as required by 19 CFR 351.302(b) and (c).[59] The CAFC explained in its decision:

> {i}n order for Commerce to fulfill its mandate to administer the antidumping law, including its obligation to calculate accurate dumping margins, it must be permitted to enforce the time frame provided in its regulations.[60]

As these cases indicate, Commerce must weigh its duty to administer all its trade remedy proceedings with calculating accurate dumping margins. As a consequence, we find Hindalco's reliance on *Bestpak* and argument that Commerce has an "overriding purpose" of calculating accurate dumping margins over its ability to enforce deadlines to be misplaced.

Relatedly, Hindalco lastly argues that not to accept Hindalco's response to the SAQR2 would be an abuse of Commerce's discretion in accordance with *Artisan Manufacturing*. We disagree. As an initial matter, *Artisan Manufacturing* predates Commerce's modifications in the *Time Limits Final Rule*. Therefore, we find that this case is inapposite. Moreover, in *Artisan Manufacturing*, the CIT found that Commerce's communication of our time extension policy was ambiguous.[61] Here, as a result of the *Time Limits Final Rule* and Commerce's revised regulations, Hindalco had notice of the deadline to submit its supplemental questionnaire response or a letter requesting an extension. Hindalco also had ample opportunity to comply with these requirements, but it

[57] *See PSC VSMPO* 688 F.3d at 761.
[58] *Id*.
[59] *See Dongtai Peak* 777 F.3d at 1351-52.
[60] *Id*. (citing *Yantai Timken Co., Ltd. v. United States*, 521 F. Supp. 2d 1356, 1371 (CIT 2007) (*Yantai Timken*)).
[61] *See Artisan Manufacturing* 978 F. Supp. 2d at 1348.

simply failed to file a timely extension request or a timely supplemental questionnaire response. The questionnaire cover letter cites 19 CFR 351.302(c), and explicitly states that:

> If Commerce does not receive either the requested information or a written extension request before 5:00 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. Commerce will not accept any requested information submitted after the deadline. As required by section 351.302(d) of our regulations, we will reject such submissions as untimely. Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.[62]

This language provided Hindalco with clear notice of its obligations regarding filing and requesting extensions, and the possible consequences of failure to timely submit a response or request an extension. In particular, it makes clear that a response or an extension request will be considered untimely if it is received after the established deadline, and failure to timely request an extension may result in the application of AFA. The language here clearly states the consequences regarding this specific filing's deadline.

In summary, for the reasons above, we continue to deny Hindalco's untimely extension request and, consequently, will not permit Hindalco to file its response to the SAQR2 or issue a new supplemental questionnaire.

Comment 2: Whether Commerce Should Continue to Apply Partial AFA to Hindalco

Hindalco's Comments[63]

- Section 776(b) of the Act requires that Commerce find the respondent "has failed to cooperate by not acting to the best of its ability" before it can apply AFA. Hindalco has fully cooperated in the concurrent antidumping and countervailing duty investigations, filing complete responses to all other questionnaires and submitting its response to Commerce's request for documentation. Thus, Hindalco has acted to the best of its ability and AFA is not warranted.
- Additionally, the courts have held that, for Commerce to apply section 776(b) of the Act, Commerce must make "a separate determination that the respondent failed to cooperate 'by not acting to the best of its ability.'"[64] Commerce cannot conflate sections 776(a) and (b) of the Act using the same rationale. The courts have also held that a respondent can fail to respond, and such failure is not necessary ground for an adverse inference.[65]

[62] *See* SAQR2.
[63] *See* Hindalco Case Brief at 11-17.
[64] *Id*. at 11-12 (citing *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1359 (CIT 2003) (*China Steel Corp*) and *POSCO v. United States*, 337 F. Supp. 3d 1265, 1273 (CIT 2018) (*POSCO*)).
[65] *Id*. at 14-15 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*); *Pro-Team Coil Nail Enterprise, Inc v. United States*, 419 F. Supp. 3d 1319 (CIT 2019) (*Pro-Team Coil*); and *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1302, 1316 (CIT 1999) (*Mannesmannrohren-Werke AG*)).

- For the *Preliminary Determination*, Commerce applied partial AFA because Hindalco failed to respond to the SAQR2. Commerce concluded that, in doing so, Hindalco both "did not act to the best of its ability" (the standard of section 776(b) of the Act) and "significantly impeded this proceeding" (one of the standards of section 776(a) of the Act).[66] In short, and contrary to law, Commerce failed to provide a separate and additional explanation on how Hindalco failed to act to the best of its ability.
- As explained by the CAFC, Commerce may not use AFA to punish respondents.[67] This is consistent with Commerce practice, where in prior cases, Commerce did not apply AFA on a respondent's single failure to respond to a request for information.[68] Hindalco's single failure to submit its response to the SAQR2 is not an indication of Hindalco's unwillingness to cooperate.

Petitioners' Comments[69]

- Commerce properly concluded that Hindalco's "failure to respond or timely file an extension request" to the SAQR2 "is not indicative of its cooperating to the best of its ability to comply with Commerce's request for information."[70]
- In *China Steel Corp*, the CIT found that Commerce's application of AFA was not in accordance with law because Commerce failed to articulate how the respondent did not act to the best of its ability. The court did not say that two separate reasons were required to satisfy both sections 776(a) and 776(b) of the Act. Instead, the FA finding and AFA finding may be related to the same actions or failures to act.
- Commerce's precedent confirms that Hindalco's failure to respond to an entire supplemental questionnaire justifies the application of AFA.[71] The CAFC has affirmed that a respondent's failure to timely submit an entire questionnaire response indicates a failure to act to the best of its ability.[72]
- The cases Hindalco cites to demonstrate that Commerce has not applied AFA where a respondent made a single failure to respond are materially dissimilar to this investigation. In those cases, none of the respondents failed to respond to an entire questionnaire response. Instead, the respondents, at most, failed to respond to a specific item within a questionnaire that did not render the remainder of the response unusable.[73] Additionally, Hindalco's reference to *F.lli De Cecco* is inappropriate because the issue in that case was

[66] *Id*. at 12-13 (citing *Preliminary Determination* PDM at 6-7).
[67] *Id*. at 15 (citing *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (*F.lli De Cecco*)).
[68] *Id*. (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part*, 77 FR 14495 (March 12, 2012) (*OTR Tires from China*), and accompanying IDM at 23).
[69] *See* Petitioners Rebuttal Brief at 12-20.
[70] *Id*. at 15 (citing *Preliminary Determination* PDM at 7).
[71] *Id*. at 13-14 (citing *SSB from Spain* IDM at Comment 2; *Large Residential Washers from Mexico: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 11963 (March 19, 2018) (*Washers from Mexico*), and accompanying IDM at Comment l; and *Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8510 (January 26, 2017) (*CTL Plate from China*), and accompanying IDM at Comment 1).
[72] *Id*. at 14 (citing *Dongtai Peak*, 777 F.3d at 1355-56).
[73] *Id*. at 17-20 (citing *Pro-Team Coil*, 419 F. Supp. 3d at 1329-1330, 1332, 1335-1336, and 1339-40; *Mannesmannrohren-Werke AG*, 77 F. Supp. 2d at 1307-1308; and *OTR Tires from China* IDM at Comment 13).

> Commerce's corroboration of the total AFA rate.[74] As a result, Commerce should continue to apply partial AFA for the final determination.

Commerce Position: Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information in the form and manner requested upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

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

Further, section 776(b) of the Act provides that, if Commerce 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, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available. The "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.[75] In *Nippon Steel*, the CAFC clarified that, for Commerce to determine that a respondent did not act to the best of its ability, Commerce must demonstrate:

> (1) an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations and
>
> (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.[76]

[74] *Id*. at 19 (citing *F.lli De Cecco*, 216 F. 3d at 1029-1031).
[75] *See Nippon Steel*, 337 F.3d at 1373, 1382-83.
[76] *Id*., 337 F.3d at 1382-83.

We issued the SAQR2 to: (1) request information and documentation supporting when certain home market customers became aware that they were eligible for certain price adjustments and when the amount of those adjustments were established; (2) request information regarding "deemed export" sales made by Hindalco to a Special Economic Zone (SEZ) or Export Oriented Unit (EOU) and whether Hindalco was aware of any of these sales being ultimately shipped to the United States; and (3) request that Hindalco provide additional information regarding its warehouse expense calculation in the home market and why Hindalco could not calculate its warehousing expense by warehouse on a product-specific basis.[77] As stated above, Hindalco failed to respond to the SAQR2 (*see* Comment 1).

In the *Preliminary Determination*, we found that Hindalco failed to timely provide Commerce with the requisite explanations and documentation for certain sales, expenses, and price adjustments, and, thus, we preliminarily determined that certain necessary information was missing to calculate an accurate dumping margin, in accordance with section 776(a)(1) of the Act. Further, we found that Hindalco failed to submit a timely response to Commerce's supplemental section A questionnaire, and this failure significantly impeded the investigation by preventing Commerce from fully analyzing several factors in calculating an accurate margin for Hindalco. Thus, we also found that the use of facts available was warranted, in accordance with sections 776(a)(2)(B)-(C) of the Act.

With respect to section 776(b) of the Act, for the *Preliminary Determination*, we also found that Hindalco failed to meet the established deadlines or submit a timely extension request, and, thus, Hindalco did not act to the best of its ability in this investigation. As noted in Comment 1, above, this failure stemmed from actions within Hindalco's control (*e.g.*, a lack of attentiveness and/or failure to follow its own internal procedures), and, thus, an adverse inference is warranted (*i.e.*, AFA), pursuant to section 776(b) of the Act. Thus, for the final determination, we find no basis to alter our use of partial AFA.

Hindalco argues that it has cooperated to the best of its ability throughout this case, citing the fact that it has responded to all other questionnaires issued in both the antidumping and countervailing duty investigations. We disagree. As the CAFC explained in *Nippon Steel*:

> Compliance with the 'best of the 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.[78]

The CAFC goes further, noting that the focus of section 776(a) "is a respondent's *failure to provide information*. The reason for the failure is of no moment. The mere failure of a respondent to furnish requested information – for any reason – requires Commerce to resort to other sources of information to complete the factual record on which it makes its

[77] We also requested documentation regarding the "sales trace" for Hindalco's largest sale made to an affiliate. This issue was not discussed in any interested parties' case briefs; *see Preliminary Determination* PDM at 6-7.
[78] *See Nippon Steel*, 337 F.3d at 1382 (emphasis added).

determination{.}"[79] The CAFC continues, "{section 776(b) of the Act} permits Commerce to 'use an inference that is adverse to the interests of {a respondent} in selecting from among the facts otherwise available,' only if Commerce makes the separate determination that the respondent 'has failed to cooperate by not acting to the best of its ability to comply.' The focus of subsection (b) is respondent's *failure to cooperate to the best of its ability*…"[80]

We determine that Hindalco did not put forth the "maximum effort" required of it. Hindalco retained and was represented by counsel throughout the entirety of this proceeding, and, therefore, had the ability to understand Commerce's policy on deadlines as well as ACCESS procedures. Hindalco's failure to respond to the SAQR2 does not provide Commerce with full and complete answers to all inquiries for this investigation. Moreover, as explained in Comment 1, we continue to find that Hindalco's failure to respond to the SAQR2 is due to its inattentiveness and carelessness. In other proceedings, Commerce has not only found a respondent's failure to respond to a single questionnaire as a basis to find that the respondent did not act to the best of its ability, but in some cases, Commerce has found that this failure was sufficient to apply total AFA.[81] Thus, consistent with the courts' decisions and in line with Commerce's practice, we determine that Hindalco failed to put forth its maximum efforts to provide the necessary information we requested.

Furthermore, as we explained in the *Preliminary Determination*, we will continue to rely on AFA only in part because we find that Hindalco cooperated to the best of its ability in providing the remaining information on the record, and because such information is timely submitted, complete, and verifiable, and can be used without undue difficulties.[82] Moreover, where we sought additional information and clarification on the record in the SAQR2, but responsive information was elsewhere on the record, we also did not rely on AFA related to those topics. This approach is consistent with Commerce's long-standing practice of relying on a respondent's reported information when that respondent has failed to provide only a limited amount of information which, singly or in the aggregate, does not render the remaining information unusable.[83]

Hindalco cites *China Steel Corp* and *POSCO* to argue that Commerce cannot use the same rationale for sections 776(a) and (b) of the Act and that Commerce must provide a separate and additional explanation as to how Hindalco failed to act to the best of its ability. We agree. In *China Steel Corp*, the CIT explained that, Commerce must explain and/or analyze whether the respondent "willfully decided not to cooperate or behaved below the standard of a reasonable

[79] *Id.*, 337 F.3d at 1381 (emphasis in original).
[80] *Id*. (emphasis in original).
[81] *See, e.g.*, *SSB from Spain* IDM at Comment 2; *Washers from Mexico* IDM at Comment 1; *CTL Plate from China* IDM at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985-86 (July 12, 2000) (*Steel Hollow Products from Japan*); and *Dongtai Peak*, 777 F.3d at 1355-56.
[82] *See* section 782(e)(1)-(5) of the Act.
[83] *See, e.g.*, *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 74985 (November 24, 2020), and accompanying IDM at Comment 2; and *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009), and accompanying IDM at Comment 10.

respondent" before Commerce can determine that AFA is warranted.[84] Similarly, here, we have explained why information is missing on the record, in accordance with section 776(a) of the Act, and why Hindalco had the ability to provide that information in a timely manner but failed to do so, triggering an adverse inference under section 776(b) of the Act.

In *POSCO*, the CIT explained that "{section 776}(b) {of the Act} applies only when {Commerce} makes a separate determination that the respondent failed to cooperate 'by not acting to the best of its ability.'"[85] The court further explained, citing *Nippon Steel*, "{w}hen determining whether a respondent has complied to the 'best of its ability,' Commerce 'assess{es} whether {a} respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.'"[86] The CIT found that Commerce's determination that the respondent failed to provide information and our explanation of how this failure demonstrated that the respondent did not act to the best of its ability, despite responding to multiple questionnaire responses, was reasonable.[87]

As we explained above, and in the *Preliminary Determination*, Hindalco failed to timely provide Commerce with the requisite explanations and documentation for certain sales and expenses.[88] Thus, we find that facts available, under sections 776(a)(1) and 776(a)(2)(B)-(C) of the Act, is warranted. Further, the requested information was within Hindalco's possession, and it had the ability to provide it to Commerce. For this reason, Commerce finds that Hindalco's failure to respond demonstrates that it behaved below the standard of a reasonable respondent and did not act to the best of its ability; *see* Comment 1. Therefore, pursuant to section 776(b)(1) of the Act, Commerce has determined that partial AFA continues to be appropriate.

Finally, Hindalco argues that the courts have held that a respondent can fail to respond, and such failure is not necessarily grounds for an adverse inference.[89] Additionally, Hindalco argues that in *OTR Tires from China*, Commerce did not apply AFA for a respondent's single failure to respond to a request for information. Finally, Hindalco states that the purpose of AFA is to provide an incentive to cooperate, not to punish a respondent.[90]

As an initial matter, Hindalco provides a limited explanation of how *Pro-Team Coil* is relevant to this investigation. In this court case, which remains ongoing, the CIT sustained Commerce's decision to apply AFA to one of the mandatory respondents but remanded the AFA rate applied.[91] The CIT also remanded Commerce's decision to apply AFA to a different mandatory

---

[84] *See China Steel Corp*, 264 F. Supp. 2d at 1360 (citing *Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1379).
[85] *See POSCO*, 337 F. Supp. 3d at 1273.
[86] *Id*.
[87] *Id*. at 1275-76.
[88] As noted above and as discussed below in Comment 3, Hindalco also failed to provide requested explanations and documentation for certain price adjustments. However, for purposes of this final determination, we find that it is not necessary to apply AFA in determining that Hindalco has not demonstrated its entitlement to these adjustments. *See* Comment 3.
[89] *See* Hindalco Case Brief at 14-15 (citing *Pro-Team Coil*, 419 F. Supp. 3d at 1319 and *Mannesmannrohren-Werke AG*, 77 F. Supp. 2d at 1302, 1316).
[90] *Id*. at 15 (citing *F.lli De Cecco*, 216 F. 3d at 1027, 1032).
[91] *See Pro-Team Coil Nail Enterprise v. United States*, Slip Op. 20-163 (CIT 2020).

respondent.[92] Regarding the latter remand, the CIT found that Commerce did not explain why the respondent did not act to the best of its ability nor explain why we disregarded record evidence. In that case, Commerce disregarded certain timely-filed information, and the CIT ordered Commerce to explain why, pursuant to sections 782(e)(1) to (5) of the Act, we did not use information which was timely submitted, complete, and verifiable, and could be used without undue difficulties. The CIT also ordered Commerce to explain why acceptance of this submission, which summarized information already on the record and confirmed the respondent's earlier questionnaire responses, would unduly burden Commerce.[93] Because the circumstances in that proceeding are markedly different from the facts here, we find Hindalco's cite to *Pro-Team Coil* to be inapposite.

Hindalco's reliance on *Mannesmannrohren-Werke AG* is similarly misplaced. This case not only predates Commerce's issuance of the *Time Limits Final Rule* (*see* Comment 1) but, in that case, Commerce applied AFA because: (1) the respondent failed to respond to a single question within a supplemental questionnaire; and (2) the respondent's response to a different question did not hold true at verification.[94] The CIT remanded this decision to Commerce so that we could explain further how the respondent failed to act to the best of its ability.[95] On remand, Commerce provided an additional justification, which the CIT sustained.[96] Thus, *Mannesmannrohren-Werke AG* does not support Hindalco's argument. Rather, it supports Commerce's decision to apply partial AFA for the final determination.

We also find Hindalco's cite to *OTR Tires from China* to be inapposite. In that proceeding, the petitioner argued that Commerce should apply AFA to value the factors of production (FOPs) of certain CONNUMs which had not been produced during the period of review (POR) because the respondent had been uncooperative regarding the suitability of the replacement CONNUMs it chose. Commerce disagreed and, instead, issued a supplemental questionnaire requesting that the respondent justify its selection of the CONNUMs used to value FOPs of the CONNUMs sold, but not produced, during the POR. The respondent provided the requested justification, and Commerce did not ask further questions.[97] In short, there was no failure to respond to a request for information, unlike in this investigation. Hindalco provides no explanation as to how the facts in *OTR Tires from China* are analogous to the circumstances in this investigation, and we find no basis to reconsider our decision here as a result. In contrast, we find that the circumstances in *SSB from Spain*, *Washers from Mexico*, *CTL Plate from China*, *Steel Hollow Products from Japan*, and *Dongtai Peak* more appropriate. In these cases, we found that a respondent's failure to respond to a single questionnaire warranted a finding that the respondent did not act to the best of its ability, and we applied partial or total AFA.[98] Consistent with Commerce practice, we also find that Hindalco's failure to respond to a single questionnaire warrants partial AFA.

---

[92] *See Pro-Team Coil*, 419 F. Supp. 3d at 1330-34.
[93] *Id*.
[94] *See Mannesmannrohren-Werke AG*, 77 F. Supp. 2d at 1307-08.
[95] *Id.*, 77 F. Supp. 2d at 1325.
[96] *See Mannesmannrohren-Werke AG v. United States*, 120 F. Supp. 2d 1075, 1089-97 (CIT 2000).
[97] *See OTR Tires from China* IDM at Comment 13.
[98] *See SSB from Spain* IDM at Comment 2; *see also Washers from Mexico* IDM at Comment 1; *CTL Plate from China* IDM at Comment 1; *Steel Hollow Products from Japan*, 65 FR at 42985-86; and *Dongtai Peak*, 777 F.3d at 1355-56.

Finally, we also find that Hindalco's cite to *F.lli De Cecco* is inapposite. In *F.lli De Cecco*, the CIT remanded Commerce's application of the petition rate in applying AFA and suggested that Commerce apply the highest rate verified for any of the cooperating respondents. On remand, Commerce followed the CIT's suggestion, which the CIT affirmed and the CAFC sustained. In short, at issue in that case was whether Commerce's corroboration of the AFA rate was appropriate. As the CAFC explained,

> the corroboration requirement in {section 776(c) of the Act is} intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit *with some built-in increase* intended as a deterrent to non-compliance.[99]

In other words, the CAFC held that, when Commerce has determined that AFA is appropriate, the rate Commerce applies should be higher than the respondent's actual estimated rate to deter future non-compliance. This interpretation is supported by the CAFC's additional explanation:

> Thus, we are convinced that it is within Commerce's discretion to choose which sources and facts it will rely on to support an adverse inference when a respondent has been shown to be uncooperative. Particularly in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.[100]

As explained in Comment 1 and above, we find that Hindalco was uncooperative and did not act to the best of its ability by failing to respond to the SAQR2. As such, to create a proper deterrent against future non-cooperation, Commerce continues to find that applying partial AFA to Hindalco is appropriate.

Comment 3: Whether Commerce Should Deny Certain Price Adjustments for Hindalco

Background: In the *Preliminary Determination*, Commerce found that Hindalco's failure to respond to the SAQR2 resulted in Hindalco's failure to establish, using record evidence that: (1) certain customers in the home market were aware that they were eligible for particular price adjustments; or (2) Hindalco established the amounts of those adjustments at the time of sale. We explained that price adjustments are typically allowed only "when the seller establishes the terms and conditions" under which they will be granted "at or before the time of sale."[101] As a consequence, we did not allow certain price adjustments for specific customers in the home market where Hindalco failed to establish the customer knew the terms of the price adjustment at the time of the sale.

[99] *See F.lli De Cecco*, 216 F. 3d at 1032 (emphasis added).
[100] *Id*.
[101] *See Preliminary Determination* PDM at 6-7.

Hindalco's Comments[102]

- Because there is no legal justification for AFA, Commerce must rely on the FA on the record in accordance with sections 776(a) and 782(e) of the Act. The record establishes that Hindalco's customers were aware of the adjustments at the time of the sale.[103] Thus, Commerce should allow these adjustments.
- The unit prices on a customer's purchase order (PO) reflect the price net of the price adjustment. Although these price adjustment amounts do not appear on the invoice and, instead, Hindalco rebates them to the customer using post-invoice credit notes, the fact that the customer's PO contains a price net of the price adjustment indicates customers are aware of this adjustment at the time of the sale. Thus, there is no basis for disallowing this adjustment.

Petitioners' Comments[104]

- In accordance with 19 CFR 351.401(c), Commerce does not accept price adjustments after the time of sale unless the interested party can demonstrate its entitlement to such an adjustment. Commerce's practice is to consider five factors[105] to determine a respondent's entitlement to a post-sale price adjustment.[106]
- In the SAQR2, Commerce requested information to analyze whether Hindalco is entitled to a post-sale price adjustment for the sales in question. Hindalco's failure to respond resulted in Commerce's being unable to properly analyze the factors and, more critically, meant that Hindalco failed to place complete information on the record to establish its entitlement to such adjustments.
- Hindalco claims that information supporting its post-sale price adjustment is on the record. The information Hindalco cites is a PO and an invoice. However, there appears to be no information connecting the PO and invoice to each other.
- In *CORE from Taiwan*, Commerce described some examples of the types of documents it would expect to see (*i.e.*, contracts or communication with the customer indicating that the customer had knowledge of the terms and conditions; valid agreements or schedules of proposed price adjustments; and/or evidence that the customers were notified, or aware, of such price adjustments). Neither the PO nor invoice that Hindalco cites

[102] *See* Hindalco Case Brief at 17-21.
[103] *Id*. at 20-21 (citing Hindalco's Letter, "Hindalco Industries Limited's Second Supplemental Section B and C Questionnaire Response," dated September 28, 2020 (Hindalco September 28, 2020 SQR) at Exhibit 7; and Hindalco's Letter, "Resubmission of Hindalco Industries Limited's Supplemental Sections B and C Response," dated August 19, 2020 (Hindalco August 19, 2020 SQR) at 4-5, 8-9, and Exhibit B-22)).
[104] *See* Petitioners Rebuttal Brief at 23-33.
[105] These factors are: (1) whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment. *See Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641, and 15644-45 (March 24, 2016) (*Final Modification*).
[106] *See* Petitioners Rebuttal Brief at 24-25 (citing *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018) (*CORE from Taiwan*), and accompanying IDM at Comment 4; and *Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 64040 (November 20, 2019) (*Uncoated Paper from Portugal*), and accompanying IDM at Comment 1).

mention the price adjustment in question or the terms and conditions of the price adjustment.

- Even if Commerce concludes that this information demonstrates Hindalco's entitlement to this price adjustment, Hindalco has not demonstrated that it should be applied to all customers. On the contrary, record evidence indicates that this information cannot be generalized to all customers.[107] Thus, at a maximum, Commerce should only grant this post-sale price adjustment for the customer identified in Exhibit 7 of the Hindalco September 28, 2020 SQR.
- The post-invoice credit notes that Hindalco cite are insufficient to demonstrate its entitlement to this post-sale price adjustment because they were issued after the sale. In *Uncoated Paper from Portugal*, Commerce did not grant a post-sale price adjustment even though the respondent established that the customer received a price adjustment. Commerce concluded that, despite this fact, the respondent failed to establish that the terms and/or conditions were established and/or known at the time of the sale.
- In accordance with 19 CFR 351.401(b)(1) and the Statement of Administrative Action (SAA), Hindalco has the evidentiary burden to prove its entitlement to this price adjustment.[108] This follows Commerce practice.[109] Because Hindalco failed to demonstrate it is entitled to this price adjustment and failed to provide requested information, for the final determination, Commerce should continue to find that necessary information is not on the record and that Hindalco's failure to provide information significantly impeded this investigation. Thus, partial AFA for this price adjustment to certain customers is appropriate.

Commerce Position: In the *Preliminary Determination*, as a result of Hindalco's failure to respond to the SAQR2, we applied partial AFA to certain home market price adjustments. Specifically, we disallowed certain price adjustments for specific customers in the home market where the record did not demonstrate that such customers were entitled to the price adjustments. For the final determination, we continue to find that denying these adjustments is warranted; however, we find that this determination can be reached without the application of AFA. *See* Comment 2.

In the SAQR2, we requested information and documentation supporting when certain customers became aware that they were eligible for particular price adjustments and when Hindalco established the amount of those adjustments.[110] Hindalco failed to provide this information. As a consequence, Commerce is missing information necessary to fully analyze Hindalco's post-sale price adjustments granted to these specific customers. Thus, for the *Preliminary Determination*, Commerce concluded that Hindalco was not entitled to a deduction from home market price for

[107] *Id*. at 29-30 (citing Hindalco's Letter, "Hindalco Industries Limited's Section A Response," dated May 27, 2020 (Hindalco May 27, 2020 AQR) at Exhibit A-IX(b); and Hindalco's Letter, "Hindalco Industries Limited's Supplemental Section A Response," dated July 7, 2020 (Hindalco July 7, 2020 SQR) at 22).
[108] *Id*. at 32 (citing SAA, H.R. Doc. No. 103-316, vol. 1, (1994) at 829).
[109] *Id*. (citing *CORE from Taiwan* IDM at Comment 4; *Uncoated Paper from Portugal* IDM at Comment 1; and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002), and accompanying IDM at Comment 7).
[110] *See* SAQR2; *see also Preliminary Determination* PDM at 6-8.

this post-sale price adjustment. For a different set of customers, Hindalco was able to demonstrate entitlement, and Commerce granted the post-sale price adjustment.

Pursuant to 19 CFR 351.401(c), Commerce "will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates {. . .} its entitlement to such an adjustment." Commerce considers a number of factors in determining whether a party has demonstrated its entitlement to a post-sale price adjustment, including: (1) whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment.[111]

In an August 2020 supplemental response, Hindalco provided a sample contract with one of its home market customers, as well as a list and details for all invoices with this customer, a sample invoice with this customer, and the post-invoice credit note related to the sample sale; these documents clearly demonstrated that this home market customer met the terms of the contract and was entitled to the price-adjustments.[112] As a result, for all home market customers of the same type, Commerce granted the reported price adjustment. However, Hindalco failed to provide similar documentation for other home market customers; as discussed above, because Commerce identified a deficiency in Hindalco's response with respect to this price adjustment, Commerce issued a supplemental questionnaire to Hindalco notifying it of this deficiency. However, Hindalco failed to provide the requested documentation. Hindalco now tries to demonstrate from the deficient record where Commerce can ascertain the missing information. Hindalco cites to a tax invoice and PO for one customer and a post-invoice credit note to a different customer to claim that the record establishes that these specific customers are aware at the time of the sale of their price adjustments.[113] Hindalco argues that, because the unit prices on the PO are net of the price adjustment, as corroborated by the combination of the gross price on the invoice and the amount of the post-invoice credit notes,[114] it has adequately established that the customer is aware of this adjustment at the time of the sale.

We disagree. Neither the PO nor invoice that Hindalco cites mention the price adjustment in question nor the terms and conditions of the price adjustment. And as Hindalco admits, the price adjustment amounts do not appear on the invoice. Thus, all this documentation demonstrates is that the customer requested one price in its PO but Hindalco charged a different price on the invoice. It does not demonstrate that Hindalco's customers knew the specific terms and conditions of the price adjustment prior to receiving it. Additionally, the post-invoice credit note to which Hindalco refers relates to a different sale than the PO and invoice that Hindalco also

[111] *See Final Modification*, 81 FR at 15641 and 15644-45; *see also CORE from Taiwan* IDM at Comment 4; *Uncoated Paper from Portugal* IDM at Comment 1; and *Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 7269 (January 27, 2021), and accompanying IDM at Comment 2.
[112] *See* Hindalco August 19, 2020 SQR at 27-29 and Exhibits 19-23.
[113] *See* Hindalco Case Brief at 20-21 (citing Hindalco September 28, 2020 SQR at Exhibit 7 and Hindalco August 19, 2020 SQR at 4-5, 8-9, and Exhibit B-22).
[114] *Id*.

cites.[115] The record does not contain the post-invoice credit note related to this invoice. Thus, even assuming, *arguendo*, that the PO and invoice *could* demonstrate that the customer was aware of the price adjustment at the time of the sale, there is nothing on the record that shows that this is *actually* the case for the sale in question.

Hindalco also fails to explain how a post-invoice credit note demonstrates that the customer was aware of the price adjustment at the time of the sale. In *Uncoated Paper from Portugal*, there was no dispute that the respondent's customers received the reported rebates and/or quantity discounts. However, we denied an adjustment for these amounts because we found that the respondent "failed to establish with supporting documentation that the terms and conditions of the adjustment were established and/or known to the customer at the time of sale."[116] Thus, even assuming, *arguendo*, that the post-invoice credit note demonstrates that Hindalco's customers ultimately received the price adjustment, Hindalco, like in *Uncoated Paper from Portugal*, failed to establish that the terms and conditions of the adjustment were established and/or known to the customer at the time of the sale. There is no evidence that Hindalco agreed to the price proposed by its customer in the PO (especially given that the invoice reflected a different price); rather, there is only evidence that Hindalco provided such an adjustment via a post-invoice credit note issued after the sale, for a different sale to a different customer.

Hindalco has cited no additional record evidence to demonstrate that the specific customers in question were aware of the terms and conditions of the price adjustment at the time of the sale. Accordingly, Commerce is continuing to allow this price adjustment only where Hindalco has adequately demonstrated the customer was entitled to the adjustment and to disallow the price adjustment where Hindalco has not demonstrated such entitlement for the final determination.

Comment 4: Whether Commerce Should Rely on FA for Hindalco's "Deemed Export" Sales

Background: Commerce requested information regarding whether Hindalco's "deemed export" sales to an SEZ or EOU were ultimately shipped to the United States. Due to Hindalco's failure to respond to the SAQR2, in the *Preliminary Determination*, Commerce found, as partial AFA, that Hindalco shipped these "deemed export" sales to the United States, and we included these sales in our analysis by assigning them the highest transaction-specific margin computed for any other U.S. sale.

Hindalco's Comments[117]

- "Deemed export" sales are sales shipped to designated zones within India, *i.e.*, SEZs/EOUs, and subsequently exported after further manufacturing.[118] If a customer had

[115] *See* Memorandum, "Business Proprietary Memorandum for Hindalco Industries Limited," dated March 1, 2021 (Hindalco BPI Memo).
[116] *See Uncoated Paper from Portugal* IDM at Comment 1.
[117] *See* Hindalco Case Brief at 21-24.
[118] *Id*. at 22 (citing *Countervailing Duty Investigation of Certain Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 2946 (January 10, 2017) (*OTR Tires from India*), and accompanying IDM at Comment 1; and *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004) (*PET Film from India*), and accompanying IDM at 4).

performed any further processing in the designated zones and then shipped merchandise to the United States, that particular customer would be listed as the manufacturer in U.S. Customs and Border Protection (CBP) data.
- The record establishes the number of Hindalco's "deemed export" sales, as well as the identity of Hindalco's customers.[119] With this information, the record demonstrates that Hindalco's "deemed export" sales were not ultimately shipped to the United States. Thus, Commerce should treat these sales as home market sales for the final determination.

Petitioners' Comments[120]
- Commerce released CBP data for certain U.S. Harmonized Tariff Schedule (HTSUS) subheadings. However, subject merchandise could also have entered under HTSUS subheadings for which Commerce did not release CBP data. Thus, these further manufacturers may not be in the CBP data released for this investigation but may still have shipped subject merchandise to the United States.
- Hindalco assumes that the further manufacturing performed was substantial enough that the further manufacturer was listed for customs purposes as the manufacturer. If the further manufacturing was a simple process, Hindalco could still be listed as the manufacturer in custom documents.
- The record does not establish that these sales were not destined for the United States. Because Hindalco failed to respond to the SAQR2, Commerce is missing information to determine whether these sales are U.S. sales in accordance with its "knowledge test."[121] For the final determination, Commerce should continue to apply AFA by treating Hindalco's "deemed export" sales as unreported U.S. sales and assign them the highest non-aberrational transaction-specific margin.

Commerce Position: In the *Preliminary Determination*, as a result of Hindalco's failure to respond to the SAQR2, we found, as AFA, that Hindalco's "deemed export" sales were sales to the United States; further, because Hindalco did not report these sales, we assigned to them the highest transaction-specific margin calculated for any of Hindalco's other U.S. sales. For the final determination, we continue to find that applying AFA to these transactions is warranted. *See* Comment 2.

In the SAQR2, we requested information regarding "deemed export" sales made by Hindalco to an SEZ or EOU, including whether Hindalco knew, at the time that it made these sales, if the merchandise would ultimately be shipped to the United States. Hindalco failed to provide this information. As a result, Commerce is missing information necessary to analyze fully whether these sales were ultimately destined for the United States and whether Hindalco had knowledge of such destination at the time of sale. Thus, for the *Preliminary Determination*, Commerce

[119] *Id*. at 23 (citing Hindalco August 19, 2020 SQR at Exhibit 5).
[120] *See* Petitioners Rebuttal Brief at 33-36.
[121] *Id*. at 35-36 (citing *Wonderful Chemical Indus., Ltd. v. United States*, 259 F. Supp. 2d 1273, 1279 (CIT 2003); and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299 (July 12, 2006) (*CTL Plate from Italy*), and accompanying IDM at Comment 1).

concluded, as AFA, that Hindalco's "deemed export" sales were sales made to the United States and that Hindalco had knowledge of the ultimate destination.

Under section 772(a) of the Act, export price is the price at which the first party with knowledge of the U.S. destination of the merchandise sells that merchandise, either directly to a U.S. purchaser or to an intermediary, such as a trading company. Commerce's test for determining knowledge is whether the relevant party knew, or should have known, that the merchandise was destined for the United States.[122] In determining whether a party knew, or should have known, that its merchandise was destined for the United States, Commerce's well-established practice is to consider such factors as: (1) whether that party prepared or signed any certificates, shipping documents, contracts or other papers stating that the destination of the merchandise was the United States; (2) whether that party used any packaging or labeling which stated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise otherwise indicated that the destination was the United States; and (4) whether that party admitted to Commerce that it knew that its shipments were destined for the United States.[123]

Hindalco explained that "deemed export" sales are sales that are shipped to designated zones within India, *i.e.*, SEZs/EOUs, then are further manufactured and subsequently exported.[124] Hindalco posits that, if these sales were ultimately shipped to the United States, the further manufacturers (*i.e.*, its customers) should be in the CBP data released by Commerce; and, because they are not, the record demonstrates that Hindalco's "deemed export" sales were not ultimately shipped to the United States.

As an initial matter, limited information is available on the record with respect to these sales. In its initial section A questionnaire response, Hindalco provided the accounts used to record export sales and home market sales in its accounting system.[125] In a supplemental questionnaire, we asked about Hindalco's two home market sales accounts, and Hindalco responded that one was for domestic sales and another was for these "deemed" export sales to an SEZ or EOU within India. Hindalco provided no additional information on these designated zones, including the fact that products entered into these zones are further manufactured.[126] As a result, in the SAQR2, we asked two preliminary questions to better understand the information Hindalco reported and determine whether additional information was needed. Hindalco failed to respond.[127]

While Hindalco cites *PET Film from India* for the proposition that "deemed exports" undergo further manufacturing, we note that in that proceeding, Commerce made no mention of an SEZ

[122] *See, e.g.*, *CTL Plate from Italy* IDM at Comment 1; and *Glycine from Japan: Final Determination of Sales at Less Than Fair Value*, 84 FR 18484 (May 1, 2019), and accompanying IDM at Comment 7.
[123] *See CTL Plate from Italy* IDM at Comment 1.
[124] *See* Hindalco Case Brief (citing *OTR Tires from India* IDM at Comment 1; and *PET Film from India* IDM at 4).
[125] *See* Hindalco May 27, 2020 AQR at 22-23.
[126] *See* Hindalco July 7, 2020 SQR at 18. In its case brief, Hindalco claims that products are further manufactured. As support for this claim, Hindalco cites *PET Film from India* IDM at 4, which states "Deemed exports are sales of products which were shipped to export processing zones within India, which are outside of the customs territory of India, and subsequently exported out of the physical boundaries of India after undergoing further manufacturing."
[127] *See* SAQR2 at 2.

or EOU.[128] Similarly, in *OTR Tires from India* and *PET Film from India New Shipper*, which provide detailed explanations of SEZs and EOUs within India, there is no mention of further manufacturing as a requirement.[129] As a result, it is not clear that "deemed exports" necessarily involve further manufacturing before export, and Hindalco cites no evidence on this specific record which would demonstrate that its own sales to an SEZ or EOU were further manufactured. However, even, assuming, *arguendo*, that Hindalco's SEZ/EOU customer further manufactured the aluminum sheet, there is also nothing on the record to determine the extent of the further processing. Thus, we disagree with Hindalco that the absence of its SEZ/EOU customers in the CBP record is determinative here, given that the record does not definitively establish that they would be classified as the manufacturer for custom purposes. Additionally, in the exhibit that Hindalco posits indicates its SEZ/EOU customers, the total sales value does not tie to its sales reconciliation.[130] Thus, there is a concern that this exhibit does not identify the complete list of SEZ/EOU customers.

Regarding the CBP data themselves, Commerce released data for a limited number of HTSUS subheadings,[131] which did not cover all products that fall within the scope of this investigation. Because this information is not exhaustive, there is no way to be certain that Hindalco's sales of aluminum sheet to customers for "deemed export" were not imported into the United States during the POI, even were Commerce to assume that the customers reported in the U.S. sales database also were the sole purchasers of that aluminum sheet. Additionally, the record lacks evidence related to the time lag between Hindalco's sale to its customers located in an SEZ/EOU and the subsequent export of those products from India. Given that the CBP data only cover the POI, such merchandise could have entered the United States after the POI. In short, the CBP data on the record do not definitively establish that Hindalco's "deemed exports" sales were not destined for the United States.

Information necessary to answer these questions was in Hindalco's possession, but Hindalco failed to provide this information on request. Accordingly, for the final determination, we continue to find that, because Hindalco failed to act to the best of its ability in this investigation, it is appropriate, as AFA, to: (1) treat Hindalco's "deemed export" sales as sales to the United States; and (2) include these sales in our analysis by assigning them the highest non-aberrational transaction-specific margin calculated for Hindalco.

Comment 5: Whether Commerce Should Rely on FA for Hindalco's Home Market Warehousing Expenses

Background: Due to Hindalco's failure to respond to the SAQR2, record evidence did not establish that Hindalco's calculation of its warehousing expense was accurate. Thus, in the *Preliminary Determination*, Commerce disallowed Hindalco's home market warehousing expenses as AFA.

[128] *See PET Film from India* IDM at 4.
[129] *See OTR Tires from India* IDM at Comment 1; *see also Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 27, 2011), and accompanying IDM at 13-15.
[130] *See* Hindalco BPI Memo.
[131] *See* Memorandum, "Release of U.S. Customs and Border Protection Data," dated March 24, 2020.

Hindalco's Comments[132]

- Commerce's reasoning that the missing information was essential was incorrect because it overstates the nature and breadth of the SAQR2 and ignores verifiable record evidence which supports Hindalco's warehousing expense calculation.
- Hindalco provided its warehousing expenses on a warehousing-specific basis, and it accompanied its calculations with a sample invoice for the Delhi warehouse in December 2019. This invoice provides a breakdown for the invoiced amount for certain products, and the invoiced amount ties to Hindalco's calculation worksheet.[133] This record information resolves two of the four SAQR2 questions pertaining to Hindalco's warehouse expenses.
- Commerce's third question was a request for documentation to show that Hindalco paid the invoice for Delhi warehousing expenses. Absence of such documentation does not undermine the accuracy of Hindalco's warehousing expense calculation.
- Commerce's fourth question required Hindalco to recalculate warehousing expenses on a product-specific basis. However, Hindalco had already explained in a prior supplemental questionnaire response that it could not do so.[134] Thus, Hindalco provided sufficient information to establish the accuracy of its warehousing expenses in the home market.

Petitioners' Comments[135]

- Commerce correctly found that, due to Hindalco's failure to submit a response to the SAQR2, the record is missing information which would allow Commerce to determine whether Hindalco's warehousing calculation is correct. Accordingly, for the final determination, Commerce should continue to apply partial AFA to Hindalco's warehousing expenses.

Commerce Position: In the SAQR2, we requested that Hindalco provide additional information regarding its warehouse expense calculation in the home market, accompanied by an explanation as to why Hindalco could not calculate its warehousing expense by warehouse on a product-specific basis. Hindalco failed to provide this information, and, as a result, Commerce is missing information necessary to determine whether Hindalco's allocation of its warehousing expenses is appropriate. Thus, for the *Preliminary Determination*, Commerce disallowed the expense in its entirety. For the final determination, we continue to find that disallowance of the expense is warranted. *See* Comment 2.

Pursuant to 19 CFR 351.401(g)(1), Commerce will "consider allocated expenses [. . .] when transaction-specific reporting is not feasible." However, as instructed in Commerce's initial

[132] *See* Hindalco Case Brief at 24-26.
[133] *Id*. at 24-25 (citing Hindalco's Letter, "Hindalco Industries Limited's Sections B and C Responses," dated June 23, 2020 (Hindalco June 23, 2020 BCQR) at 33-34 and Exhibit B-XIV and Hindalco July 7, 2020 SQR at 15 and Exhibit XI).
[134] *Id*. at 25 (citing Hindalco June 23, 2020 BCQR at 33-34).
[135] *See* Petitioners Rebuttal Brief at 18.

questionnaire,[136] the respondent must demonstrate "that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions."[137] In determining whether an allocation is calculated on as specific a basis as is feasible, Commerce considers the records maintained by the respondent in the normal course of business.[138] Further, section 782(d) of the Act provides that, if "a response to a request for information {. . .} does not comply with the request," Commerce shall inform the respondent "of the nature of the deficiency and shall {. . .} provide that person with an opportunity to remedy *or explain* the deficiency."[139]

In Hindalco's initial section B questionnaire response, Hindalco reported its warehousing expense on a POI-average and warehouse-specific basis.[140] In its calculation, Hindalco included both subject merchandise and non-subject merchandise.[141] Hindalco's response did not explain how it had reported warehousing expenses on as specific a basis as is feasible nor demonstrate that Hindalco's inclusion of non-subject merchandise in its calculation was not distortive. As a result, on July 14, 2020, Commerce issued a supplemental questionnaire (SBQR) requesting this information, in order to provide Hindalco an opportunity to remedy or explain this deficiency. The response to this questionnaire was initially due on July 21, 2020.[142]

Between the issuance of the SBQR and Hindalco's response, we received Hindalco's response to a section A supplemental questionnaire. Within this response, Hindalco provided a sample warehousing invoice.[143] This invoice appeared to indicate that Hindalco incurred different warehousing expenses for different products and that it should be able to calculate a warehousing expense on a product-specific basis.[144] Additionally, this invoice raised concerns over how the total invoiced amount was calculated. As a result, Commerce issued the SAQR2 with a deadline of August 6, 2020.[145] Hindalco did not respond to this questionnaire.[146]

On August 4, 2020, Hindalco filed its response to the SBQR.[147] In this submission, Hindalco claimed that it was "not able to report its warehouse expense information on a *transaction*-

---

[136] *See* Commerce's Letter, "Initial Questionnaire," dated April 23, 2020 at G-10 ("Commerce will accept allocated price adjustments and expenses only if you can demonstrate that the allocation is calculated on as specific a basis as is feasible (*e.g.*, on a customer-specific basis, product-specific basis, and/or monthly-specific basis, *etc*.) and is not unreasonably distortive. In doing so, provide a complete explanation of: (1) how the price adjustments or expenses are recorded in your records; (2) why you cannot report the price adjustment or expense on a more specific basis using your records; and, (3) why your allocation methodology does not cause inaccuracies or distortions").
[137] *See* 19 CFR 351.401(g)(2).
[138] *See* 19 CFR 351.401(g)(3).
[139] *See* section 782(d) of the Act (emphasis added).
[140] *See* Hindalco June 23, 2020 BCQR at 42 and Exhibit B-XIV
[141] *Id*.
[142] *See* Commerce's Letter, "Supplemental Questionnaire," dated July 14, 2020 at 12-13.
[143] *See* Hindalco July 7, 2020 SQR at 15-16 and Exhibit SAQR-XI.
[144] *Id*.
[145] *See* SAQR2 at 1-2.
[146] *See* Comment 1.
[147] This response was initially rejected as untimely for not being filed in its entirety by 5pm on the deadline date. Upon reconsideration, however, Commerce allowed Hindalco to re-file this submission on August 19, 2020. *See* Commerce's Letter, "Rejection of Hindalco Industries Limited's Supplemental Section B-C Questionnaire Response," dated August 5, 2020; *see also* Hindalco's Letter, "Hindalco's Request For Reconsideration, Or In The

specific basis, because the information is not maintained on this basis."[148] Hindalco explained that it "does not receive separate invoices to warehouse subject merchandise versus other products, nor does the company employ different warehouses to store {subject merchandise} versus other products."[149] Further, Hindalco explained that it is "not able to trace each coil or pallet that enters a warehouse to the shipment out of the warehouse…{t}hus, Hindalco reported the warehouse expense information in as specific manner as possible."[150]

Hindalco's explanation does not explain or address the sample warehouse invoice which indicates that Hindalco could report its warehouse expense on a *product-specific basis*.[151] Additionally, while the sample invoice demonstrates that Hindalco does not receive separate invoices for different products, the sample invoice provides a table that breaks down the invoice amount.[152] Thus, information on the sample warehouse invoice appears to contradict Hindalco's claim. Hindalco's failure to respond to the SAQR2 and to address these concerns results in a record which is missing information necessary to permit Commerce to determine whether Hindalco's allocation methodology is on as specific a basis as is feasible and is not unreasonably distortive.

Hindalco argues that the record contains an explanation as to why it could not allocate its warehousing expense on a product-specific basis. However, as quoted above, Hindalco explained how it could not calculate this expense on a *transaction-specific* basis, not *a product-specific* basis. Moreover, as discussed above, Hindalco's explanation did not address the sample warehousing invoice, which appears to contradict its claims that a breakdown of this expense by product is not possible. Hindalco has not cited any record evidence that suggests otherwise.

Hindalco also argues that it is immaterial how the sample warehousing invoice total is calculated because the amount on that invoice ties to its warehouse allocation worksheet. We disagree. As we explained above, Commerce had concerns on whether and how the sample warehousing invoice reconciled to Hindalco's warehousing allocation.[153] These concerns led Commerce to ask questions regarding the reliability of that invoice, whether acceptance of Hindalco's warehouse-specific allocation would not be distortive; and why Hindalco is unable to allocate its warehousing expense on a more specific basis. In issuing the SAQR2, Commerce hoped to have these deficiencies in the record answered. Because Hindalco failed to respond, however, Commerce is unable to confirm the reliability and accuracy of Hindalco's allocation methodology.

Regarding Hindalco's argument that the absence of payment documentation from Hindalco to its warehouse supplier does not undermine the accuracy of Hindalco's warehousing expense calculation, we agree, in part. Proof of payment, or lack thereof, does not undermine Hindalco's

---

Alternative, Request For Leave To Resubmit," dated August 6, 2020; Commerce's Letter, "Hindalco Industries Limited's Request for Reconsideration," dated August 18, 2020; and Hindalco August 19, 2020 SQR.

[148] *See* Hindalco August 19, 2020 SQR at 34 (emphasis added).

[149] *Id*. at 33-34.

[150] *Id*.

[151] *See* Hindalco July 7, 2020 SQR at Exhibit SAQR-XI (emphasis added).

[152] *Id*. Because the specific information is BPI, for further discussion, *see* Hindalco BPI Memo.

[153] *See* Hindalco BPI Memo for details of Commerce's concerns regarding this reconciliation, which is based on proprietary information.

allocation itself. However, Commerce does not unquestioningly accept all expenses recorded during the POI regardless of when (or whether) they are paid. Typically, it is Commerce's long-standing practice to require respondents to demonstrate that they not only incurred all reported expenses, as initially recorded in their books and records, but that they also paid the amount(s) reported. Respondents are asked to tie the reported information both to the expenses recorded in their books and records and to their audited financial statements. Failure to do so may result in Commerce's disallowance of the expense.[154] In short, while we agree that lack of proof of payment in general does not undermine Hindalco's calculation methodology, the absence of such documentation does call into question whether this expense should be allowed as the record is silent on the amount Hindalco actually paid.

For the foregoing reasons, we continue to find that it is appropriate to disallow home market warehousing expenses for purposes of the final determination. As noted above, necessary information is missing from the record, and that information was within Hindalco's possession, but it failed to provide it in a timely manner. Thus, in accordance with sections 776(a) and (b) of the Act, we find that the use of partial AFA is appropriate here.

Comment 6: Whether Commerce Overstated the Affiliated Party Adjustment

Hindalco's Comments[155]

- Commerce preliminarily adjusted Hindalco's reported cost of manufacturing (COM) to reflect the higher of market price (MP) of the input in question compared to Hindalco's purchases of that input from affiliated parties.
- The adjustment to the COM should be based on Hindalco's actual consumption of the input in question.

Petitioners' Comments[156]

- In the *Preliminary Determination,* Commerce correctly calculated the major input adjustment.
- To calculate the adjustment, Commerce used the following three percentages: (1) the percentage difference between the market and transfer price (TP); (2) the percentage of the input in question that is supplied by the affiliated parties; and (3) the percentage the input in question comprises of the COM.
- Using the aforementioned percentages is the method by which Commerce usually calculates the major input or transaction disregarded adjustments.[157] The structure of the

[154] *See, e.g., Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 85 FR 80005 (December 11, 2020), and accompanying IDM at Comment 2; *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49950 (July 29, 2016), and accompanying IDM at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010), and accompanying IDM at Comment 14; and *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005), and accompanying IDM at Comment 1.
[155] *See* Hindalco Case Brief at 26-27.
[156] *See* Petitioners Rebuttal Brief at 36-39.
[157] *Id.*

major input chart template that Commerce provides in its antidumping duty questionnaire suggests this calculation methodology, and Hindalco has provided no reason to deviate from it.

Commerce Position: We agree with the petitioners that we should continue to use the affiliated party input adjustment calculated and applied in the *Preliminary Determination*, rather than Hindalco's proposed calculation. Therefore, for the final determination we have not changed this input adjustment.

Section 773(f)(3) of the Act mandates that major inputs purchased from affiliated parties reflect the higher of MP, TP, or cost of production (COP). While neither the Act nor the regulations prescribe the exact manner for calculating an adjustment pursuant to the "major input" or "transaction disregarded" analysis, Commerce's calculation in the *Preliminary Determination* relied on the actual company-specific information submitted by Hindalco and, thus, represents a reasonable approach to calculating the major input adjustment.[158] Specifically, as requested, Hindalco provided information related to affiliated party purchases of the input in question, including an MP, the TP, the affiliated supplier's COP, the percentage the supplier-specific purchases represents of total purchases of the input in question, and the percentage the input in question represents of COM.[159] We examined the exhibits and charts provided by Hindalco that supported the major input adjustment. Hindalco derived the data from its normal accounting records (*i.e.*, inventory movement schedules, purchasing records, *etc.*). These data reconcile to the financial statements and to the other sections of Hindalco's response, and, therefore, represent a reasonable basis for calculating the major input adjustment.[160]

Hindalco offers no compelling reason as to why the information Commerce used in its preliminary adjustment calculation is not a reasonable basis for calculating the major input adjustment. Moreover, there are several assumptions embedded in Hindalco's proposed calculation. Specifically, Hindalco's proposed calculation, which is based on supplier-specific consumption values, assumes: (1) a relative mix of purchase prices among affiliated, unaffiliated, and self-produced inputs equals the relative consumption prices of the input; and (2) the relative mix of the quantity of purchases among affiliated, unaffiliated and self-produced inputs equals the relative consumption mix of the input in question. While Hindalco could have submitted the precise consumption mix information rather than relying on assumptions, it elected not to do so even though Hindalco had the information in its possession. Commerce requires precise information because any difference between the actual data and assumed data would skew the analysis and resulting major input calculation. Accordingly, because Hindalco chose not to support its proposed calculation with precise supporting information or to provide a compelling reason for Commerce to change the adjustment, we have continued to rely upon the approach followed in the *Preliminary Determination*, which is supported by substantial evidence on the record.

---

[158] *See* Hindalco's Letter, "Hindalco Industries Limited's Section D Response," dated June 29, 2020; *see also* Hindalco's Letter, "Hindalco Industries Limited's Supplemental Section D Response," dated August 17, 2020 at Exhibit D-7.
[159] *Id.*
[160] *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 41437 (July 5, 2000), and accompanying IDM at Comment 1.

Comment 7: Whether MALCO's Cost Information is Usable

Petitioners' Comments[161]

- MALCO's allocation of conversion costs is neither documented nor verifiable as it is based solely on the experience of individuals rather than the actual experience of the company as documented in its books and records.
- MALCO admits the "experience of the production manager" is neither documented nor verifiable, and it demonstrated that it had actual cost records in its SAP® computer system on which it could have relied.
- The information from its books and records that MALCO has submitted demonstrates that the estimations provided by the manager, and relied on by MALCO in its responses to report costs, are inaccurate. This deficiency affects all of MALCO's reported costs and prevents MALCO's cost responses from being used in their entirety.
- MALCO has CONNUM-specific cost information that it could have provided, but it failed to do so.
- MALCO is required under Indian law to maintain a record of the information requested.
- The data MALCO provided in support of its allocation do not confirm the manager's estimates in calculating the productivity numbers. As a result, MALCO's costs cannot be used as reported, and there is not any data on the record that can be used to correct MALCO's misreported and unverifiable costs. Due to MALCO's deficient cost reporting, Commerce cannot rely on MALCO's reporting in its entirety and, therefore, Commerce should assign MALCO a margin based on the application of total AFA.

MALCO's Rebuttal Comments[162]

- MALCO reported only a few variables based on the production manager's experience, *e.g.*, speed of the machine, for calculating the labor and power cost of the casting and rolling processes. MALCO used these parameters to calculate productivity rates for these two processes to capture the differences in cost caused by differences in the CONNUM characteristics.
- MALCO does not maintain a cost accounting system to provide CONNUM specific costs.
- MALCO is in compliance with the rules relating to maintaining cost records under Indian law. MALCO's auditors noted in their audit report that MALCO maintained adequate cost records and is in compliance with the Indian government's statutory requirements
- A comparison of the actual speed of the machine compared to the reported speed shows that the reported speed is in line with the actual observed speed.
- If the productivity rates calculated by MALCO are somewhat deficient, Commerce can allocate the labor and power cost of the "melting and casting" and "cold rolling" processes based on the overall production quantity.

Commerce Position: We disagree with the petitioners that total AFA is warranted for MALCO. According to section 776(a) of the Act, Commerce shall use the facts otherwise available in

[161] *See* Petitioners Case Brief at 32-35.
[162] *See* MALCO Rebuttal Brief at 6-11.

reaching a determination if: (1) necessary information is not available on the record; or (2) an interested party or any other person: (A) withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsection (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information that cannot be verified as provided in section 782(i) of the Act. Further, section 776(b) of the Act provides that, if Commerce 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, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available.

In this case, we disagree that application of facts available under section 776(a) of the Act is warranted. In particular, we find that all necessary information is available on the record of this investigation, and MALCO has not withheld information, failed to provide information within the established time limits, significantly impeded this proceeding, or provided information that cannot be verified. We find that, throughout the course of this investigation, MALCO has cooperated with Commerce's requests for information, and it has answered each request for information to the best of its ability. Therefore, we find no basis to apply facts available or facts available with an adverse inference in this case.

In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. MALCO reported its costs according to its normal books and records which are maintained in accordance with Indian GAAP. Hence, the issue at hand is whether MALCO's reported CONNUM product-specific costs reasonably reflect the costs associated with the production of the subject merchandise. As background, MALCO does not have a cost accounting system in the normal course of business which would provide CONNUM-specific costs. MALCO collects cost data on an aggregate basis based on the amounts actually incurred in various general ledger accounts maintained in the financial accounting system. MALCO relied on its financial accounting system to identify all costs incurred in production of the merchandise under consideration during the POI. For reporting purposes to Commerce, MALCO identified the physical characteristics for each CONNUM, as defined by Commerce in the initial questionnaire, for each product produced during the POI and then attributed the actual costs as recorded in its financial accounting records to each CONNUM based on its physical characteristics. The reported CONNUM-specific costs reconciled in total to the total actual costs incurred by the company and the CONNUM-specific allocations were reasonable.

In its attempt to report accurate CONNUM specific costs, MALCO relied on a methodology that used various allocation bases to allocate the actual conversion costs incurred at eight different production processes. The petitioners take issue with the productivity rates, which were used for allocating the conversion costs incurred at two stages: (1) the melting and casting, and (2) cold rolling processes. For example, to allocate labor and power costs for these processes, MALCO calculated a standard productivity rate for each CONNUM. These productivity rates rely on variables such as machine speed, efficiency, recovery rate, and input thickness, which were

based on the knowledge and experience of the production manager. MALCO used the calculated standard productivity rates to capture the variation in the required labor and power consumption at these two processes for the different CONNUMs produced (*e.g.*, CONNUMs with different gauges). These productivity rates are used in only these two processes (casting and rolling) out of eight different production stages needed in the manufacture of aluminum sheet.

Further, in response to our questionnaire in lieu of on-site verification, MALCO provided support to substantiate the machine speed and thickness used in the standard productivity rates which demonstrated that the machine speed and input thickness used in the productivity rates were reasonable.[163] While MALCO does not maintain, in its normal books and records, any documentation to track the parameters used in the standard productivity rates, the parameters used by the production manager based on his historical experience were proven reasonable when compared to the record evidence provided to support the machine speed and input thickness. Based on an analysis of the record evidence, we find for this final determination the reported CONNUM specific costs reported by MALCO are reasonable.

We disagree with petitioners that MALCO had CONNUM specific cost information in its SAP® computer system which it could have used to report costs to Commerce. MALCO stated consistently that it did not maintain a cost accounting system and did not track costs in its system to calculate CONNUM specific conversion costs, and we have found no record evidence that contradicts this statement.

In addition, we disagree with the petitioners' contention that MALCO's cost information is not in accordance with Indian law. MALCO's auditors have noted in their audit report that MALCO is "*prima facie"* in compliance with the requirements under the Indian law for maintaining cost records. As such, in this final determination, we are continuing to find MALCO's reported cost information usable.

Comment 8: MALCO's Missing Cost Data for U.S. CONNUMs

Petitioners' Comments[164]

- MALCO's cost database is missing information for some U.S. CONNUMs. This precludes sales of these products from being compared to home market prices for similar merchandise with a difference in merchandise adjustment or from determining CV.
- If Commerce does not resort to total AFA and relies on MALCO's data, it should apply partial AFA to these sales. As partial AFA, Commerce should apply the higher of the margin alleged in the petition (*i.e.* 151.00 percent) or the highest calculated transaction margin for any U.S. sale.

MALCO's Rebuttal Comments[165]

- It is Commerce's normal practice to use surrogate costs for any CONNUMs which are sold but not produced during the POI.

[163] *See* MALCO November 27, 2020 VQR at V-8 and Exhibit V-7.b.
[164] *See* Petitioners Case Brief at 13-14.
[165] *See* MALCO Rebuttal Brief at 14-15.

- These CONNUMs also fall in the definition of CONNUMs sold but not produced during the POI; therefore, Commerce's should determine surrogate costs as it did in the *Preliminary Determination*.
- The CONNUMs identified by the petitioners were only included in the U.S. sales database when Commerce requested MALCO report its sales with proforma invoices issued during the POI, but with sales invoice dates after the POI.
- The petitioners' claim for application of AFA does not contain any merit and should be rejected.

Commerce Position: We disagree with the petitioners that there is missing cost data for MALCO's U.S. sales. In the *Preliminary Determination*, Commerce stated that the appropriate date of sale for MALCO's U.S. sales was the invoice date.[166] To determine whether this was the most appropriate date of sale, Commerce requested voluminous information from MALCO, including that MALCO "include all U.S. sales of subject merchandise in the revised U.S. sales database for which the reported purchase order date falls within the POI. Your database should include all sales previously reported (do not remove sales for which the purchase order date falls before the POI)."[167] After analyzing the documentation MALCO provided, Commerce reached its *Preliminary Determination*, *i.e.*, MALCO's appropriate date of sale is the invoice date. No party has argued that Commerce should change MALCO's U.S. date of sale for this final determination.

As MALCO notes, the sales the petitioners contend are missing cost information are all for sales with invoice dates outside the POI. These sales were only provided on the record in response to Commerce's questionnaires, which specifically requested MALCO provide sales that had invoice dates outside the POI. Commerce requested this information in order to determine the most appropriate date of sale. Because Commerce concluded that MALCO's invoice date is the appropriate date of sale, all sales with invoice dates outside the POI are not included in MALCO's margin calculation. Therefore, while the cost information for these sales is not on the record, this information is not needed for our analysis, and the application of AFA is not warranted.

Comment 9: **Appropriate Differential Pricing Methodology**

Petitioners' Comments[168]

- Commerce should presume that differential pricing is occurring in the U.S. market based on the region because MALCO has not accurately reported U.S. destination information. This prevents the proper application of the differential pricing test.
- In its section C response, MALCO reported the ZIP code and the state of each customer based on the destination port or "as otherwise known to MALCO." MALCO did not explain how it determined the ultimate destination of its U.S. sales and the record appears to show contradictions in the reported destinations. Sample documentation for one of MALCO's sales shows a different destination listed in the "Ship to Party" indicated in its

[166] *See Preliminary Determination* PDM at 11-12.
[167] *See* Commerce's Letter, "Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India: Section C Supplemental Questionnaire," dated August 12, 2020 at 2-3.
[168] *See* Petitioners Case Brief at 14-16.

tax invoice than the destination MALCO reported for this transaction in its U.S. sales database.
- Because the record shows that MALCO reported the destination information incorrectly, Commerce should assume in its final determination analysis that other sales have been similarly misreported by destination.
- Commerce should, therefore, assume as facts available that differential pricing exists for all U.S. sales and apply the average-to-transaction methodology across all sales.

MALCO's Rebuttal Comments[169]
- MALCO has reported the ZIP code and the state code of the destination in the United States, which sometimes is a U.S. port, as listed on the bill of lading or as otherwise known to MALCO in the normal course of business.
- The address on the invoice pointed out by the petitioners is the customer's address and not the destination address as per the instruction given by the customer in the respective purchase order.
- The petitioners ignored the instructions provided by the customer in the cited purchase order. These instructions clearly mention the type of delivery and destination of delivery.
- MALCO has correctly reported this information in its U.S. sales database, and a determination that differential pricing exists is not warranted.

Commerce Position: We find that the application of facts available is not warranted for MALCO's reported U.S. sales destination in this final determination.

The petitioners allege that MALCO has not accurately reported its U.S. sales destination and point to sample sales documentation provided by MALCO[170] as evidence that the destination on the documentation differs from the destination MALCO reports in its U.S. sales database.[171] The petitioners further argue that, due to these differences, Commerce should assume in its final determination that an unknown number of additional sales have similarly-misreported destination information.[172]

A detailed review of the record shows that the address in the invoice highlighted by the petitioners is not a shipping destination address. Additional documentation related to this sale, including the purchase orders, bill of lading, proforma invoices and email communication all supports the U.S. destination MALCO reported for this sale.[173] MALCO also provided complete sales documentation (known as "sales traces") for numerous U.S. sales.[174] We reviewed these sales traces and note that the U.S. destination provided in the documentation matches the destination MALCO reported in its U.S. sales database. Therefore, we disagree with the

[169] *See* MALCO Rebuttal Brief at 16.
[170] *See* MALCO's Letter, "Section A Questionnaire Response," dated May 26, 2020 (MALCO May 26, 2020 AQR) at Exhibit A-11.
[171] *See* Petitioners Case Brief at 15.
[172] *Id.*
[173] *See* MALCO November 27, 2020 VQR at Exhibit V-1. We note that the petitioners are not arguing the MALCO should not report the port as the destination, but that the final destination in the documentation is not a port.
[174] *Id.*; *see also* MALCO May 26, 2020 AQR at Exhibit A-11; and MALCO's Letter, "Section C Supplemental Questionnaire Response," dated September 2, 2020 at Exhibit S4-5.a.

petitioners that, based on the totality of the record, MALCO incorrectly reported its U.S. destinations.

MALCO further states that it reported its destination, as listed on the bill of lading, or as otherwise known to MALCO.[175] Because Commerce never requested that MALCO report its destination in a different manner, nor did Commerce inform MALCO that its destination reporting was deficient in any manner, for the final determination, we continue to use MALCO's reported destination and find that the application of facts available is not warranted.

Comment 10: Whether to Disallow Home Market Quantity and Early Payment Discounts

Petitioners' Comments[176]

- While Commerce granted MALCO an early payment discount in the *Preliminary Determination*, MALCO has not met its burden of proof to warrant a continued adjustment.
- MALCO explained that it does not have any policy to provide early payment and quantity discounts and that it granted such early payment discounts based on discussions with customers over the phone. Because MALCO admits that it does not have a formal discount policy, it cannot meet the first requirement of Commerce's test – that the terms and conditions of the adjustment are established and/or known to the customer at the time of sale.
- Because the discounts were allegedly granted over the phone, MALCO also has no documentation to support its claim that the discounts were provided at the time of sale and not as post sale price adjustments. Thus, Commerce should disallow these reductions to home market prices and set these discount amounts to zero for all of MALCO's home market sales.

MALCO's Rebuttal Comments[177]

- MALCO previously submitted documents for its reported early payment discounts and quantity discounts in its initial section B questionnaire response. MALCO complied with all requests for information from Commerce.
- Since Commerce did not issue additional questionnaires regarding these discounts, it appears that Commerce is satisfied with the information submitted by MALCO.
- MALCO does not have any formal policy for discounts. This does not mean that MALCO did not comply with Commerce's requests for information as suggested by the petitioners.
- The credit notes for the early payment discounts and home market quantity discounts provided by MALCO contain the date of the credit note, which shows the date on which the discount was formally agreed on between MALCO and the customer.[178]
- Since MALCO fully complied with Commerce's requests for information, setting the values of early payment discount and quantity discount to zero is not warranted.

[175] *See* MALCO's Letter, "Section C Questionnaire Response," dated June 22, 2020 (MALCO June 22, 2020 CQR) at C-38.
[176] *See* Petitioners Case Brief at 18.
[177] *See* MALCO Rebuttal Brief at 17-18.
[178] *Id.*

Commerce Position: For the final determination, we are continuing to grant MALCO's early payment discounts and to disallow MALCO's quantity discounts, consistent with the *Preliminary Determination*, and in accordance with 19 CFR 351.401(b)(1).

Section 351.401(c) of Commerce's regulations provides that:

> In calculating export price, constructed export price, and normal value (where normal value is based on price), {Commerce} normally will use price that is net of price adjustments, as defined in 351.102(b), that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).

Commerce's regulations were modified, effective April 24, 2016, to include the following: "{Commerce} will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates to the satisfaction of {Commerce}, its entitlement to such an adjustment."[179] As explained in the *Final Modification*, the term price adjustment includes "discounts, rebates, and post-sale price adjustments that affect the net outlay of funds by the purchaser."[180]

Commerce modified 19 CFR 351.401(c) to provide additional guidance on how to determine whether to grant post-sale price adjustments. The *Final Modification* states that Commerce may consider the following criteria when determining whether to grant a post-sale price adjustment: (1) Whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment.[181]

In response to Commerce's initial and supplemental section B questionnaires, MALCO provided credit notes as supporting documentation for its early payment and home market quantity discounts.[182] We reviewed the credit note which MALCO issued for the early payment discount and determined that the credit note not only detailed the terms of the adjustment, but it was also issued prior to the issuance of the tax invoice, *i.e.*, when the terms of the sale in the home market were finalized.[183] Thus, documentation on the record supports MALCO's claim that its reported early payment discounts were known to the customer prior to the time of sale. Therefore, we are continuing to grant MALCO's early payment discounts, consistent with our practice,[184] because the terms of the adjustments were known to the customer at the time of the sale.

---

[179] *See Final Modification*; and 19 CFR 351.401(c).
[180] *Id.*
[181] *See Final Modification.*
[182] *See* MALCO's Letter, " Section B Questionnaire Response," dated June 24, 2020 (MALCO June 24, 2020 BQR) at Exhibit B-7.h and Exhibit B-7.j; *see also* MALCO's Letter, " Section B Supplemental Questionnaire Response," dated August 24, 2020 (MALCO August 24, 2020 SBQR) at Exhibit S3-9.
[183] *See* MALCO May 26, 2020 AQR at A-23.
[184] *See Uncoated Paper from Portugal* IDM at Comment 1.

However, the credit note that MALCO provided to support its home market quantity discounts made no reference to the terms of the adjustment.[185] We were unable to determine whether the credit note for the home market quantity discounts was issued prior to the issuance of MALCO's tax invoice and, thus, the record does not indicate that home market quantity discounts were known to the customer at the time of the sale. We were also unable to determine from the credit note any terms or conditions of the discounts, *i.e.*, minimum quantity thresholds. Since MALCO did not demonstrate that its home market quantity discounts were known to the customer at the time of sale, for the final determination, we are continuing to disallow all of MALCO's home market quantity discounts.

Comment 11: Whether Commerce Should Apply the Highest U.S. Commission Rate to All U.S. Sales

Petitioners' Comments[186]

- MALCO stated that it does not have any agreements with its selling agents and professed no knowledge of the agents' activities.
- MALCO revised the reported commission expense in its sales database, stating that, after re-checking the commission expense reported to its records, MALCO found that the commission paid to unaffiliated selling agents differed from the amounts previously reported. However, the reported commissions in MALCO's revised sales database contradict MALCO's revised narrative explanation. MALCO sheds no new light on this contradiction on the record.
- MALCO also stated that it was unable to provide any of the requested historical information to document its commission expenses before the POI.
- MALCO cannot document its commission agreement(s), has not provided any documentation of its actual commission payments during the POI, and has provided varying accounts of its commission payments.
- Commerce should find that MALCO has not properly supported its claimed commission amounts and set the commission amount to the maximum commission rate MALCO initially reported.

MALCO's Rebuttal Comments[187]

- MALCO reported its commissions expenses accurately.
- The petitioners' claim that MALCO did not provide any documents for the amount of commission reportedly paid to one of its selling agents is false. Exhibit V-3.a of MALCO's November 27, 2020, submission provides an invoice showing the commission paid, the commission rates, and a bank statement documenting the commission paid. The commissions reported in the September 2, 2020, U.S. sales database are accurate, and Commerce should continue to use them for the final.

[185] *See* MALCO June 24, 2020 BQR at Exhibit B-7.j.
[186] *See* Petitioners Case Brief at 19-20.
[187] *See* MALCO Rebuttal Brief at 18-19.

Commerce Position: We have revised MALCO's U.S. commission expenses for this final determination to use the applicable commission rates contained in MALCO's November 27, 2020, verification questionnaire response.[188]

In the *Preliminary Determination*, we used MALCO's reported commission expenses in its latest U.S. sales database without making any corrections. On November 17, 2020, we issued a request for documentation from MALCO, which included questions related to its reported commission expenses paid to its unaffiliated selling agents.[189] In that questionnaire, we also requested that MALCO provide supporting documentation from the selling agents, reconcile this information to its accounting system, and provide a calculation worksheet demonstrating how it allocated certain invoice-specific commission expenses to the individual sales in its U.S. sales database. On November 27, 2020, MALCO responded to our questionnaire by providing the requested information.[190] However, this information showed that MALCO's reported commission rates, as reflected in its revised calculation worksheet, do not always tie to the commission rates previously reported in its September 2, 2020 U.S. sales database. Thus, we agree with the petitioners that MALCO has reported contradicting commission rates between its narrative response and the amounts it has reported in its U.S. sales database,[191] and this contradiction warrants an adjustment for the final determination.

We note that MALCO's supporting documentation has consistently shown the same commission rates applicable to each selling agent. Additionally, MALCO provided screen shots from its accounting system, which also reconcile to the submitted supporting documentation.[192] However, as noted above, some of the commission expenses reported in the U.S. sales database do not tie to this supporting documentation, *i.e.*, the commission rates in the U.S. sales database differs from the commission rates MALCO reported paying in the supporting documentation,[193] Because the documentation MALCO provided reconciles to its accounting system,[194] for any instance where MALCO's commission expenses in its latest U.S. sales database does not reconcile to the underlying documentation, we are revising those commission expenses to be equal to the rates indicated in the supporting documentation.[195]

However, we disagree with the petitioners that MALCO failed to support its commission expenses for each selling agent.[196] MALCO is not able to provide agreements in effect during the POI with its selling agents because it readily admits it does not maintain such agreements.[197] Because the record does not otherwise indicate that such records exist, we find that MALCO did

[188] *See* MALCO November 27, 2020 VQR at Exhibit V-3.b.
[189] *See* Commerce's Letter, "Request for Documentation," dated November 17, 2020.
[190] *See* MALCO November 27, 2020 VQR at Exhibits V-3.a, V-3.b and V-3.c.
[191] *See* MALCO June 22, 2020 CQR at C-39; *see also* MALCO September 2, 2020 SCQR at S4-16; and MALCO November 27, 2020 VQR at Exhibit V-3.b.
[192] *See* MALCO November 27, 2020 VQR at V-2 and Exhibit V-3.a.
[193] *See* Memorandum, "Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India: Final Analysis Memorandum for Manaksia Aluminium Company Limited," dated concurrently with this memorandum (Final Analysis Memorandum) at III.
[194] *See* MALCO November 27, 2020 at Exhibit V-3.a.
[195] *See* Final Analysis Memorandum at III.
[196] *See* MALCO June 22, 2020 CQR at Exhibit C-12.a; *see also* MALCO November 27, 2020 at V-2 and Exhibit V-3.a.
[197] *See* MALCO September 2, 2020 SCQR at S4-16.

not fail to provide information that was available to it, and the application of AFA is not warranted.

Regarding MALCO's relationship to its selling agents, MALCO has consistently indicated it was unaffiliated with its selling agents, and nothing on the record indicates any such affiliations.[198] In a supplemental questionnaire, Commerce queried whether MALCO's selling agents worked exclusively for MALCO. MALCO replied that it did not have exclusive contracts with any of its selling agents, and that "MALCO does not have any control or information on the business activity of {selling agents}. Therefore, MALCO cannot answer whether {any selling agent} works for other companies on commission basis."[199] While the petitioners contend that MALCO did not provide "historical" information regarding its commissions expense,[200] we note that Commerce did not ask MALCO to provide such information. Instead, Commerce requested information from one of MALCO's selling agents for the month of February 2019. MALCO stated that it did not begin working with this selling agent until October 2019, and it was, therefore, not able to provide such details for February 2019.[201] MALCO, in the alternative, provided the requested information for the first month such information was available.[202] We, therefore, disagree with the petitioners that MALCO did not adequately support its claimed commissions by not providing information that was non-existent.

Comment 12: Whether to Disallow MALCO's Home Market Credit Expenses

Petitioners' Comments[203]

- MALCO acknowledged that it included taxes and ignored discounts in calculating its reported credit expenses. Commerce correctly recognized in the *Preliminary Determination* that MALCO did not correctly report its credit expense and recalculated MALCO's home market credit expenses to be tax exclusive and to reflect early payment discounts.
- Rather than using the actual payment dates to calculate its home market credit expense, MALCO stated that it calculated an average credit period for each customer based on the turnover of the customer's account receivable balance, and used this amount in lieu of the difference between payment date and shipment date in its home market credit expense calculation.
- Credit expenses should be calculated and reported on a transaction-by-transaction basis using the number of days between date of shipment to the customer and the date of payment. Using average credit periods is only permissible if a company is unable to determine the actual payment dates from its records.
- MALCO admitted that one customer made an advance payment for a sale after the POI and stated that, for some customers who do not have regular transactions with MALCO, the average credit days calculated may not reflect the actual credit period used by the customer.

[198] *Id.* at S4-17; *see also* MALCO June 22, 2020 CQR at C-39 to C-40.
[199] *See* MALCO September 2, 2020 SCQR at S4-17.
[200] *See* Petitioners Case Brief at 19.
[201] *See* MALCO November 27, 2020 VQR at V-2.
[202] *Id.*
[203] *See* Petitioners Case Brief at 20-21.

- The documentation of an advance payment demonstrates that MALCO had the ability to calculate transaction-specific home market credit expenses based on actual dates of payment and, thus, Commerce should disallow MALCO's home market credit expenses for the final determination.

MALCO's Rebuttal Comments[204]

- Taxes form part of the invoice value which the customer pays to MALCO and should be included in the home market credit expense. Omitting taxes from the credit calculation understates the expense.
- MALCO did not include early payment discounts in its calculation of credit expenses because these discounts are not part of the invoice value.
- MALCO's calculation of date of receipt of payment is based on the instructions in the initial section B questionnaire, which states, "if you are unable to determine actual payment dates from your records, you may base the calculation on the average age of accounts receivable."
- Commerce should use the credit expenses reported by MALCO for the final determination as it follows Commerce's instructions.

Commerce Position: For the final determination, we have continued to use a revised home market credit expense for MALCO that is tax exclusive and net of early payment discounts. We also have continued to rely on MALCO's methodology for the calculation of its average credit period for the reasons stated below.

MALCO reported its home market credit expenses inclusive of taxes and exclusive of early payment discounts.[205] However, in the *Preliminary Determination*, we disagreed that MALCO's calculation methodology was appropriate, and we recomputed home market credit expenses in accordance with our long-standing practice.[206] For example, in *Cement from France*, we stated:

> While there may be an opportunity cost associated with extending credit on the payment of invoice value inclusive of {value added tax (VAT)}, that fact alone is not a sufficient basis for {Commerce} to make an adjustment. We note that virtually every expense associated with less than fair value comparisons is paid for at some point after the cost is incurred. Accordingly, for each post-service payment, there is also an opportunity cost. Thus, to allow the type of adjustment suggested by respondent would imply that in the future {Commerce} would be faced with the impossible task of trying to determine the opportunity cost of every freight charge, rebate, and selling expense for each sale reported in respondent's database. This exercise would make our calculations inordinately complicated,

[204] *See* MALCO Rebuttal Brief at 19-20.
[205] *See* MALCO June 24, 2020 BQR at Exhibit B-12.c.
[206] *See Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel from India*, 72 FR 51595 (September 10, 2007), and accompanying IDM at Comment 7 and 9, *see also Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, 12747-48 (March 16, 1998); *Notice of Final Determination of Sales at Less-Than-Fair Value, Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 38756, 38772-73 (July 19, 1999); and *Final Determinations of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136 (March 25, 1994) (*Cement from France*) at Comment 14.

> placing an unreasonable and onerous burden on both respondents and {Commerce}. (*See e.g., Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom*, 58 FR 3253, January 8, 1993.) Consequently, we have recalculated home market credit expenses to exclude the VAT included in the gross unit prices used in the original calculation.[207]

Further, we also determined that MALCO's early payment discounts are amounts that are typically deducted from the gross unit price on the invoice and should be included in MALCO's calculation of its home market credit expenses, consistent with our practice.[208] MALCO does not cite to any precedent or any record evidence that would lead Commerce to alter its normal credit expense methodology. For the final determination, we agree with the petitioners on this point, and we have continued to compute revised home market credit expenses that are tax exclusive and net early payment discounts. *See* Comment 10 for further discussion of MALCO's early payment discounts.

As part of MALCO's calculation, MALCO also based the home market credit period for each customer based on the average turnover of the customer's accounts receivable balance during the POI. MALCO indicated that this was necessary because it does not receive invoice-specific payments from its home market customers.[209] While the petitioners claim that MALCO can, in fact, report actual payment dates,[210] they support this claim by pointing only to a single instance of an advance payment for a sale after the POI, as well as to a statement by MALCO that, for some customers who do not have transactions with MALCO on regular basis, the average credit days calculated may not reflect their actual payment period.[211] The petitioners argue that, based on this explanation, MALCO demonstrated that it could have reported the actual time between shipment and payment and that its credit period is, therefore, inaccurate.[212]

We disagree. MALCO calculated its credit periods based on Commerce's instructions in the April 23, 2020, initial questionnaire, which states that "if {a respondent is} unable to determine actual payment dates from {its} records, {it} may base the calculation on the average age of accounts receivable."[213] We reviewed MALCO's formula used to calculate the reported credit periods based on its accounts receivable and do not find it unreasonable. Further, there is no evidence on the record that MALCO receives invoice-specific payments from its home market customers,[214] aside from the single, post-POI payment cited by the petitioners. MALCO

---

[207] *See Cement from France* at Comment 14.
[208] *See Notice of Preliminary Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination, and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 76 FR 67688 (November 2, 2011) at 67694, unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012).
[209] *See* MALCO June 24, 2020 BQR at Exhibit B-12.c; *see also* MALCO August 24, 2020 SBQR at S3-12.
[210] *See* Petitioners Case Brief at 20.
[211] *Id.*; *see also* MALCO August 24, 2020 SBQR at S3-13.
[212] *See* Petitioners Case Brief at 21.
[213] *See* MALCO Rebuttal Brief at 19-20; *see also* Commerce's Letter, "Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India: Initial Questionnaire," dated April 23, 2020 at B-20.
[214] *See* MALCO August 24, 2020 SBQR at S3-13, *see also* MALCO November 27, 2020 VQR at Exhibit V-2.a – V.2.c.

acknowledges that it does not have transactions with this one customer on a regular basis,[215] and that this customer therefore falls into the category of customers to which MALCO could have calculated the home market credit expense using the actual payment date. However, these customers represent a minor percentage MALCO's sales.[216] Our review of other sales documentation provided on the record supports MALCO's claim that it does not normally receive invoice-to-invoice payments from its home market customers and, thus, it cannot determine the actual payment date for a vast majority of its home market sales.[217]

In summary, we find that MALCO's methodology for calculating its home market credit period is consistent with Commerce's practice where parties are unable to determine the actual payment dates. While the record establishes that MALCO may, in certain limited instances, be able to determine the actual payment date, we find no basis to generalize this finding and apply it to all of MALCO's home market sales.[218] Because we find that MALCO's reporting was appropriate, we have continued to rely on its reported average age of accounts receivable for use in its credit expense calculation for the final determination.

Comment 13: Whether MALCO Has Properly Reported Its Packing Costs

Petitioners' Comments[219]

- After originally reporting a single packing cost irrespective of CONNUM or market, MALCO provided revised packing costs based on a new allocation methodology by general product category in a supplemental questionnaire response. This revised packing cost was not more specifically reported by CONNUM or destination market.
- MALCO's total reported packing costs in the revised worksheet in Exhibit S3-18.a of its supplemental section B questionnaire response appear understated as compared to the packing amounts MALCO reported in Exhibit D-17 of its section D questionnaire response.
- The gross and net weights for MALCO's reported sales demonstrate that packing materials differ by market and product.
- Commerce should reject MALCO's packing costs as reported and apply partial AFA. As AFA, Commerce should set home market packing costs to zero and allocate the entire original packing costs over the total quantity of U.S. sales.

MALCO's Rebuttal Comments[220]

- The petitioners made incorrect comparisons of MALCO's total packing costs reported. The packing cost reported in Exhibit S3-18.a is reported over the POI, *i.e.*, January 1, 2019, to December 31, 2019, while the packing cost reported in Exhibit D-17 is reported on MALCO's fiscal year, *i.e.* April 2019, to March 2020.

[215] *Id.*
[216] *See* MALCO's August 24, 2020 Home Market Sales Database.
[217] *See* MALCO May 26, 2020 AQR at Exhibit A-12, *see also* MALCO August 24, 2020 SBQR at Exhibit S3-7.
[218] While Commerce could revise the credit expense for this one transaction to use actual payment date, we find that it has no impact on the overall margin, and, thus, we have not done so. *See* Final Analysis Memo. The petitioners cited to no other sales or customers that may have an actual payment date, and, as discussed, we find a majority of MALCO's sales are to regular customers that do not have a similar invoice-to-payment linkage available.
[219] *See* Petitioners Case Brief at 22-24.
[220] *See* MALCO Rebuttal Brief at 21.

- The petitioners' comparison of gross and net weights between export and domestic sales does not control for coils with different dimensions. As can be seen from the documentation referenced by the petitioners, the exported coils have a different thickness and widths compared to home market coils. A bigger coil, and not the destination market, leads to the use of more packing material.

Commerce Position: We have continued to rely on MALCO's reported packing costs for the final determination.

MALCO initially computed its per-unit packing costs for all products by dividing total packing costs by total production quantity.[221] MALCO stated that its packing costs vary by the type of product but not by market.[222] In response to a supplemental questionnaire, MALCO revised its calculations to report a separate packing cost for each of the three main types of products it produces.[223] In the *Preliminary Determination*, Commerce used MALCO's revised packing costs in the margin calculations.

The petitioners compared MALCO's total reported packing costs in a revised worksheet[224] to MALCO's original packing cost expense allocated from its general expenses[225] and concluded that MALCO understated its overall packing costs.[226] However, a review of the record shows that MALCO's revised worksheet related to packing cost incurred during the POI (*i.e*. January 1, through December 31, 2019) whereas the packing costs allocated from MALCO's general expenses were based on MALCO's fiscal year (*i.e.* April 2019 through March 2020).[227] Therefore, it is reasonable to conclude that the difference in packing costs is due to the different time periods. Further, we note that MALCO reconciled its reported packing costs to its financial statements without error.[228] Therefore, we find nothing on the record to indicate that MALCO has incorrectly reported its total POI packing costs.

Regarding the petitioners' argument that MALCO's reported gross and net weights undermine its reported costs,[229] we also disagree. To support this allegation, the petitioners provided a comparison chart that allegedly demonstrates that MALCO's packing costs differ significantly by market.[230] However, in our verification supplemental questionnaire, we requested that MALCO provide specific invoices from its U.S. and home market sales databases and the packing lists associated with these invoices.[231] We further asked MALCO to demonstrate, using these documents and any other supporting documents, that its packing for both markets was the same.[232] MALCO responded with the requested documentation and also provided photographs

[221] *See* MALCO's June 22, 2020 CQR at Exhibit C-19; *see also* MALCO's August 24 SBQR at S3-34.
[222] *Id.*
[223] *See* MALCO August 24, 2020 SBQR at S3-34 and Exhibit S3-18.a.
[224] *Id.* at Exhibit S3-18.a.
[225] *See* MALCO's Letter, " Section D Questionnaire Response," dated June 29, 2020 (MALCO June 29, 2020 DQR) at Exhibit D-17.
[226] *See* Petitioners Case Brief at 22.
[227] *See* MALCO June 22, 2020 CQR at Exhibit C-19
[228] *See* MALCO November 27, 2020 VQR at V-5 – V-7 and Exhibit V-6.a – V-6.g.
[229] *Id.* at 23.
[230] *Id.*
[231] *See* Commerce's Letter, "Request for Documentation," dated November 17, 2020 at 3.
[232] *Id.*

as additional documentation.[233] A review of the invoices shows that MALCO sells the same product type with identical packing in both markets, supporting its argument that the packing, by product type, does not vary between markets.[234] The packing lists also show that, although the product types are the same across the various markets, they are of different thickness resulting in a difference in the packed weight of the finished goods.

Based on the review of the documents provided by MALCO, we find no evidence that MALCO incorrectly reported its packing cost. The record clearly shows that MALCO's product types do not differ by market and that the weight difference noted by the petitioners is attributable to different products having different thickness, not to their method or weight of packing. Therefore, for this final determination, we are continuing to use MALCO's reported packing costs.

Comment 14: Whether MALCO's Overall Costs Should Be Adjusted for the Cost of Home Market Returns

Petitioners' Comments[235]

- Although MALCO included returns in its sales reconciliation, there is no record evidence that such products were excluded from the quantity of finished goods used in the denominator of the cost allocation based on the documentation provided.
- Accordingly, if Commerce uses MALCO's cost response for the final determination, Commerce should increase the reported cost of production to account for the cost of these returns.

MALCO's Rebuttal Comments[236]

- MALCO previously stated in its section D questionnaire response that, to determine the production quantity, it relied on the production report for the POI ,which is maintained in the normal course of record keeping. To calculate the cost of production, MALCO used the POI actual production quantity and POI actual cost.
- Commerce should not make any adjustments to the cost of production to account for the costs of sales returns because adding the cost of sales returns to the cost of production will result in double counting.
- MALCO's returned goods are entered into its finished goods inventory.

Commerce Position: We disagree with the petitioners. MALCO is required to report total cost of production of the subject merchandise during the POI. Under the full absorption method of accounting, the entire cost of production of the merchandise produced has to be borne by the total quantity produced and it is irrelevant whether the product sold is returned or not. Record evidence shows that MALCO did use POI production quantities to fully absorb the costs as reflected in its audited financial statements.[237] Therefore, no cost adjustments due to home market returns are warranted.

[233] *See* MALCO November 27 VQR at Exhibit V-6.e, V-6.f and V-6.g.
[234] *Id.*
[235] *See* Petitioners Case Brief at 16-17.
[236] *See* MALCO Rebuttal Brief at 17.
[237] *See* MALCO June 29, 2020 DQR at D-26.

Comment 15: Whether MALCO's Reported Direct Materials Cost is Understated

Petitioners' Comments[238]

- A review of the sample purchase invoices from January 2019 and December 2019 for aluminum ingot shows that MALCO paid much higher prices for these two purchases than the average reported. This may have significantly understated the direct material costs.
- MALCO understated the costs of direct material by not including the basic custom duty and social welfare surcharge.

MALCO's Rebuttal Comments[239]

- The petitioner's comparison of invoice price for aluminum ingot to the average price of aluminum ingot and scrap is illogical. The invoice price for the aluminum ingot should be compared to the separate inventory movement schedule provided by MALCO for aluminum ingot.
- A comparison of the invoice price of aluminum ingot from January 2019 to the average price for the same month shows that they were almost identical.
- Custom duties and social welfare surcharges are already included as part of material costs. MALCO provided screen shots of its accounting system explaining how these taxes are accounted for in calculating the material costs.

Commerce Position: We disagree with the petitioners. The petitioners' analysis is based on the worksheet for inventory movement MALCO provided with its initial section D response.[240] This inventory movement schedule combines aluminum scrap and ingot to calculate one average price. Commerce subsequently requested and received separate inventory movement schedules for aluminum scrap and ingot.[241] In our review of the ingot inventory movement schedules and supporting invoice, we noted that the invoice price of aluminum ingot from January 2019 and the average price for the same month from the inventory movement schedule shows were almost identical and, therefore, the reported cost of ingot is reasonable. A similar analysis of the aluminum scrap cost shows that the POI weighted-average cost of purchases and the weighted average cost of consumption are reasonable.[242] Since the consumption cost per kilogram is identical for the aluminum scrap and slightly higher for aluminum ingot, we find no record evidence to support the petitioners' contention that material costs have been understated.

Regarding the custom duty and social welfare surcharge, we note that MALCO reported that the custom duty and social welfare surcharge are included in the cost of direct materials. MALCO provided screen shots from its accounting system to demonstrate inclusion of the custom duty and social welfare surcharge in the material costs. Therefore, we find that the reported material costs are not understated as alleged by the petitioners.[243]

---

[238] *See* Petitioners Case Brief at 26-27.
[239] *See* MALCO Rebuttal Brief at 22-24.
[240] *See* MALCO June 29, 2020 DQR at D-7 and Exhibit D-3.
[241] *See* MALCO's Letter, "Section D Supplemental Questionnaire Response," dated August 10, 2020 at S2-3 and Exhibit S2-2.a.
[242] *Id*.
[243] *See* Petitioners Case Brief at 25-28.

Comment 16: Whether to Revise MALCO's G&A Expenses Ratio to Include Missing Expenses and to Correct the Costs of Good Sold

Petitioners' Comments[244]

- MALCO excluded certain expenses from its calculation of the G&A expenses (*e.g.*, Rent, Insurance, Rates & Taxes, Provision for Doubtful Debt, Travelling & Conveyance, Other Miscellaneous Expenses, etc.). These expenses need to be included in the G&A expenses to calculate a correct G&A ratio.
- MALCO inflated its costs of goods sold amount used as the denominator of the G&A expense ratio by including the cost of sales of traded goods and cost of sales of re-purchased coil. Commerce should remove these costs from the denominator of the calculation.
- MALCO has classified as indirect selling expenses numerous amounts which appear to be labor costs or G&A expenses. Commerce should reclassify these costs/expenses accordingly.

MALCO's Rebuttal Comments[245]

- MALCO has accounted for every single account to arrive at the most accurate G&A expense rate. If Commerce decides to include the expenses identified by the petitioners as part of G&A, then such expenses should also be deducted from TOTCOM to avoid double counting them.
- MALCO correctly included the cost of sales of traded goods in the denominator of the G&A ratio. MALCO incurred G&A when trading such goods. Because these expenses are included in the numerator of the G&A ratio, it is only reasonable that cost of sales for these traded goods should also be included in the denominator of that ratio.
- MALCO properly classified labor, G&A, packing costs, and indirect selling expenses based on the department in which the personnel worked, based on the designation of each employee in its payroll records.

Commerce Position: We are not adjusting MALCO's G&A ratio for this final determination. In our review of the record evidence for G&A expenses, we find that MALCO properly classified and accounted for all the expenses the petitioners noted. Where certain expenses were allocated between G&A, indirect selling, and packing, we find the allocation reasonable. While the petitioners claim that some of these reported expenses were not properly allocated, the petitioners provide no record evidence, beyond the title of the expense, to support their allegation. The petitioners also do not explain how MALCO's reporting is unreasonable. We find, therefore, that MALCO has reasonably allocated its expenses.

We also find that MALCO correctly included the cost of sales of the traded goods and excluded the cost of sales of re-purchased coil in the cost of goods sold used to calculate its G&A ratio. It

[244] *Id*. at 21 and 28-29.
[245] *See* MALCO Rebuttal Brief at 20 and 25-26.

is Commerce's practice to calculate company-wide G&A expenses by dividing the company-wide general expenses by the total company-wide cost of sales.[246]

Comment 17: Whether to Revise MALCO's Interest Expense Ratio

Petitioners' Comments[247]

- MALCO inflated its costs of goods sold denominator used in the calculation of the interest expense ratio, by including the cost of sales of traded goods and cost of sales on re-purchased coil in the cost of goods sold denominator. Commerce should remove these costs from the denominator of the calculation.

MALCO's Rebuttal Comments[248]

- MALCO correctly included the cost of sales of traded goods in the denominator for calculating the interest expense ratio. MALCO incurred G&A and interest expenses when trading such goods. Because these expenses are included in the numerator of the calculation, it is only reasonable that cost of sales of these traded goods should also be included in the denominator to calculate.

Commerce Position*:* We find that MALCO correctly included the cost of sales of the traded goods in its cost of goods sold denominator in calculating its financial expense ratio. As the cost of traded goods needs to be financed as much as that of produced goods, it is Commerce's practice to calculate the company-wide financial expense ratio by dividing the company-wide financial expenses by the total company-wide cost of sales, including that of traded goods.[249]

Comment 18: CV Profit

Petitioners' Comments[250]

- If Commerce finds that all of MALCO's reported home market sales are outside the ordinary course of trade because they were made at below-cost prices, Commerce should consider readily available alternative bases for CV profit. For example, Commerce can use the Hindalco's profit experience from its 2018-2019 financial statements to determine CV profit.

MALCO's Rebuttal Comments[251]

- MALCO's reported costs are accurate, reconcile to its financial statements, and are verifiable with source documents. Therefore, Commerce should use the reported COP to perform the cost test for home market sales.

---

[246] *See Certain Lined Paper Products from India: Final Results in the Antidumping Duty Administrative Review of 2006-2007*, 74 FR 17149 (April 6, 2009) (*Lined Paper from India*), and accompanying IDM at Comment 3, *see also Certain Pasta from Italy: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review of 1996-97*, 64 FR 6615 (February 10, 1999), and accompanying IDM at Comment 15.
[247] *See* Petitioners Case Brief at 30.
[248] *See* MALCO Rebuttal Brief at 25.
[249] *See Lined Paper from India* IDM Comment 4.
[250] *See* Petitioners Case Brief at 31.
[251] *See* MALCO Rebuttal Brief at 26-27.

Commerce Position: Since there are comparison market sales that passed the cost test, the issue of using an alternative basis for profit for CV is moot and we have not addressed this issue.

Comment 19: Selection of the All-Others Rate

Jindal's and Virgo's Comments[252]

- Commerce should not assign the all-others rate based on the rate calculated for Hindalco because Commerce applied partial AFA to Hindalco. The partial AFA treatment was specific to Hindalco and its failure to submit a questionnaire response. Thus, the all-others rate of 47.92 percent is not reflective nor representative of other Indian exporters, especially when the margin calculated for MALCO, the other selected respondent, is zero.
- All other Indian exporters and producers have not failed to cooperate in any way during this investigation and were not given any opportunity to submit their own data. These Indian exporters and producers should not be penalized for another respondent's failure.
- Instead, Commerce should assign a rate of two percent (*i.e.*, the threshold below which Commerce treats any dumping margin as *de minimis* in an investigation). Commerce has adopted this approach in the past.[253]
- Alternatively, Commerce should calculate the all-others rate by taking a simple average of the calculated rates for the mandatory respondents.[254]

Petitioners' Comments[255]

- Pursuant to section 735(c)(5)(A) of the Act, Commerce calculates the all-others rate as "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776."
- Hindalco's margin was based on partial AFA, not total AFA. Thus, the exception in section 735(c)(5)(B) of the Act does not apply, and Commerce correctly based the all-others rate on Hindalco's calculated margin. Neither Jindal nor Virgo address the fact that the plain language of the Act in this investigation dictates that the all-others rate be based only on Hindalco's calculated margin (*i.e.*, the expected method). The rate assigned to all other producers and exporters does not rely on a finding that they are uncooperative, but rather is derived from the application of the statutory methodology for calculating the all-others rate.

[252] *See* Jindal Case Brief; *see also* Virgo Case Brief.
[253] *See* Jindal Case Brief at 5; and Virgo Case Brief at 6-7 (both citing *Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354 (CIT 2014)).
[254] *See* Jindal Case Brief at 5-6; and Virgo Case Brief at 8 (both citing *Forged Steel Fittings from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 66306 (October 19, 2020) (*Steel Fittings from India*)).
[255] *See* Petitioners All-Others Rebuttal.

- The SAA confirms that margins based on partial AFA should be included in the calculation of the all-others rate.[256] Commerce has affirmed this practice in recent cases.[257]
- In both cases that Jindal and Virgo cite, all respondents with calculated margins received either a zero, *de minimis*, or total AFA margin.[258] As a result, these cases fall under the exception provided in section 735(c)(5)(B) of the Act, which allows Commerce to use "any reasonable method" to calculate the all-others rate *only* when all producers or exporters that were individually examined received a zero percent, *de minimis*, or total AFA margin (*i.e.*, a margin determined entirely under section 776 of the Act).
- Neither Jindal nor Virgo have pointed to any record evidence establishing that the "expected method" results in an all-others rate that is not reasonably reflective of their potential dumping margins.
- Even if the instant case fell under section 735(c)(5)(B) of the Act, which it does not, Commerce should at the very least employ the "expected method," which would involve averaging Hindalco's and MALCO's margins.

Commerce Position: In the *Preliminary Determination*, we assigned Hindalco's estimated weighted-average dumping margin as the all-others rate. As we explained in the *Preliminary Determination*:

> Pursuant to section 735(c)(5)(A) of the Act, {the all-others} rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined *entirely* under section 776 of the Act .[259]

The plain language of the Act makes clear that, under the general rule in section 735(c)(5)(A) of the Act, Commerce does not use calculated margins of zero or *de minimis*, or margins based on total AFA (*i.e.*, determined entirely under section 776 of the Act), in determining the all-others rate. In the *Preliminary Determination*, Commerce calculated an individual estimated weighted-average dumping margin for Hindalco based on partial AFA. Additionally, Commerce determined that the estimated weighted-average dumping margin for MALCO was zero. Therefore, based on the plain language of the Act, Commerce used the dumping margin calculated for Hindalco, which was the only calculated margin that was not zero, *de minimis*, or determined entirely under section 776 of the Act as the all-others rate.

---

[256] *Id*. at 4-5 (citing SAA H.R. Doc. No. 103-316 at 873 (1994)).
[257] *Id*. (citing *Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019), and accompanying IDM at Comment 7; *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24083-84 (May 24, 2019), and accompanying IDM at Comment 2; and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53214-15 (October 22, 2018), and accompanying IDM at Comment 1).
[258] *Id*. at 7-8 (citing *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 22232-33 (April 15, 2013) (*Lined Paper from India 2010-2011*); and *Steel Fittings from India*, 85 FR at 66306-07).
[259] *See Preliminary Determination*, 85 FR at 65377 (emphasis added).

Jindal and Virgo argue that, because Commerce applied partial AFA to Hindalco, section 735(c)(5)(B) of the Act is applicable. However, a careful reading of the Act does not support this conclusion. Section 735(c)(5)(B) of the Act states:

> EXCEPTION.—If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.[260]

As the Act makes clear, this exception may only be employed when the rates are determined entirely on zero, *de minimis*, or total AFA. For this final determination, Commerce is continuing to apply only partial AFA to calculate Hindalco's rate. In addition, MALCO's rate continues to be zero. Therefore, because Commerce has a calculated rate that is not based entirely on AFA, the exception provided in section 735(c)(5)(B) of the Act is not applicable. Instead, Commerce correctly continues to follow the general rule provided in section 735(c)(5)(A) of the Act and assign Hindalco's calculated margin as the all-others rate.

As the petitioners rightly pointed out, the cases cited by Jindal and Virgo have very different fact patterns than the facts in this investigation. In *Lined Paper from India*, we calculated weighted-average dumping margins of zero for both mandatory respondents.[261] In *Steel Fittings from India*, Commerce calculated a weighted-average dumping margin of zero for one mandatory respondent and applied total AFA to the other two mandatory respondents.[262] As a consequence, it was appropriate in those cases for Commerce to rely upon section 735(c)(5)(B) of the Act, and apply a zero margin or an average of the zero and total AFA rates, respectively, as the all-others rates.

We agree with the petitioners that neither Jindal nor Virgo has pointed to any record evidence or case precedent establishing that Commerce should not follow the general rule in section 735(c)(5)(A) of the Act. Accordingly, for the final determination we continue to determine the all-others rate based on Hindalco's weighted-average dumping margin, which is the only calculated margin that is not based entirely on facts available, zero, or *de minimis*.

[260] Emphasis added.
[261] *See Lined Paper from India 2010-2011*, 78 FR at 22234.
[262] *See Steel Fittings from India*, 85 FR at 66307.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final dumping margins in the *Federal Register* and will notify the International Trade Commission of our determination.

☒	☐
Agree	Disagree

3/1/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance