A-485-809
Investigation
POI: 1/1/2019-12/31/2019
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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 Romania

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I. SUMMARY

The Department of Commerce (Commerce) finds that common alloy aluminum sheet (aluminum sheet) from Romania is being, or is likely to be, sold in the United States at less than fair value (LTFV), 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.

After analyzing the comments submitted by interested parties, we made certain changes to the *Preliminary Determination*.[1] We recommend that you approve the position described in the "Discussion of the Issue" section of this memorandum. Below is the sole issue in this investigation for which we received comments from interested parties:

Comment: Adverse Facts Available (AFA) Rate Calculation

II. BACKGROUND

On October 15, 2020, Commerce published in the *Federal Register* the *Preliminary Determination*.[2] Alro, SA is the sole mandatory respondent in this investigation. On November

[1] *See Common Alloy Aluminum Sheet From Romania: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 65358 (October 15, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.
[2] *Id.*

5, 2020, Alro, SA and the Vimetco Group submitted a case brief.[3] On November 6, 2020, Commerce postponed the deadline for issuing the final determination until March 1, 2021, and also extended the provisional measures from a four-month period to a period of not more than six months.[4] On November 12, 2020, 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), domestic producers of aluminum sheet, submitted a rebuttal brief.[5] No parties requested a hearing.

III. DISCUSSION OF THE ISSUE

Comment: Adverse Facts Available (AFA) Rate Calculation

Alro, SA's (and the Vimetco Group's) Comments:

- The highest transaction-specific dumping margin of 83.94 percent, which Commerce calculated from Alro, SA's own data and assigned to Alro, SA as total AFA, is both aberrational and punitive.
- The AFA rate is inappropriate because it is based on outlier data comprising a tiny group of sales with warranty expenses that are significant due to Commerce's failure to follow its administrative practice.
- Alro, SA's highest non-aberrational transaction-specific dumping margin would have been 38.83 percent if Commerce had followed its long-standing practice of allocating warranty expense over all sales in the market in which such expense is accrued, instead of relying upon transaction-specific warranty expenses when calculating net sales prices.[6]

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[3] *See* Alro, SA and the Vimetco Group's Letter, "Common Alloy Aluminum Sheet from Romania, Sales At Less Than Fair Value Investigation; Case Brief of Alro, SA and the Vimetco Group," dated November 5, 2020 (Alro, SA and the Vimetco Group's Case Brief). On April 8, 2020, Alro, SA and its affiliate Vimetco Management Romania, SRL, notified Commerce that "Vimetco Group" is not a legal entity but that the name reflects a collection of companies including Alro, SA. *See* Alro, SA's Letter, "Common Alloy Aluminum Sheets from Romania, A-385-809; Clarification of Company Names," dated April 8, 2020. Given that Vimetco Group is not a legal entity but refers to a group of companies in which Alro, SA is the only producer, seller, and exporter of aluminum sheet, we have assigned the dumping rate to Alro, SA.

[4] *See Common Alloy Aluminum Sheet from Indonesia and Romania: Postponement of Final Determinations of Less-Than-Fair-Value Investigations*, 85 FR 71049 (November 6, 2020).

[5] *See* Petitioners' Letter, "Petitioners' Rebuttal Brief For Alro, SA and the Vimetco Group," dated November 12, 2020 (Petitioners' Rebuttal Brief).

[6] *See* Alro, SA and the Vimetco Group's Case Brief at 5 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010- 2011*, 78 FR 35248 (June 12, 2013), and accompanying Issues and Decision Memorandum (IDM) at 52-53; *see also Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006), and accompanying IDM at Comment 1; *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission*, 74 FR 11082 (March 16, 2009), and accompanying IDM at Comment 13; *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comments 59 and 69; *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative*

- The record shows that Commerce intended to allocate warranty expenses over all sales in the relevant market rather than rely on transaction-specific warranty expenses. Commerce directed Alro, SA to "report the unit cost of warranty expenses incurred during the POI" as well as the per-unit warranty cost for each of the three most recently completed fiscal years.[7] If a company's POI or POR warranty expenses are "found distortive," Commerce's practice is to use the company's "three-year historical warranty expenses" to adjust sales prices.[8]
- The AFA rate is also inappropriate because: 1) it is multiple times higher than the AFA rate calculated by the petitioners and the petition dumping margin of 12.51 percent (which would have been assigned to Alro, SA had it refused to provide any information at all in this investigation); and 2) Alro, SA cooperated to the best of its ability until it did not respond to Commerce's second section D supplemental questionnaire. Alro, SA was only granted seven days to respond to this supplemental questionnaire which required a new allocation methodology for cost differences which are not tracked in the normal course of business; the administrative burden was overwhelming such that Alro, SA could not respond to this supplemental questionnaire.
- Commerce has a legal obligation "to determine dumping margins as accurately as possible," even in the context of AFA.[9]
- The Court of Appeals for the Federal Circuit (CAFC) ruled that Commerce may not employ an AFA rate that is either aberrational or punitive, noting that the statutory provision governing AFA precludes Commerce from selecting "unreasonably high rates with no relationship to the respondent's actual dumping margin."[10] The CAFC also noted

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Review, 75 FR 68758 (November 9, 2010)); *see also* Alro, SA and the Vimetco Group's Case Brief at 6 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Solar Cells from China Final Determination*), and accompanying IDM at 80).

[7] *See* Alro, SA and the Vimetco Group's Case Brief at 7-8 (citing Alro, SA's June 5, 2020, Section B Response at 32-33; and Alro, SA's June 5, 2020, Section C Response at 36; and Commerce's Letter, "Less Than Fair Value Investigation of Common Alloy Aluminum Sheet from Romania: Sections B and C Supplemental Questionnaire," dated July 10, 2020 at pages 9-10, 34, and 35, and Questions 34 and 40).

[8] *See* Alro, SA and the Vimetco Group's Case Brief at 6 (citing *Solar Cells from China Final Determination* IDM at 80; *Honey from Argentina, supra; Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008), and accompanying IDM at 23; *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (Oct. 1, 2009), and accompanying IDM at Comment 4; *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010), and accompanying IDM at Comment 4; *Certain Steel Nails from Malaysia: Final Determination of Sales at Less Than Fair Value*, 80 FR 28969 (May 20, 2015), and accompanying IDM at Comment 8; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at less Than Fair Value and Final Affirmative Determination* of *Critical Circumstances*, 81 FR 35303 (June 2, 2016), and accompanying IDM at Comment 19; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from The People's Republic of China*, 81 FR 39905 (June 20, 2016), and accompanying IDM at Comment 25).

[9] *See* Alro, SA and the Vimetco Group's Case Brief at 9 (citing *NTN Bearing Corp. v. United States,* 74 F.3d 1204, 1208 (Fed. Cir. 1995), quoting *Rhone Poulenc, Inc. v. United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990); and *Ta Chen Stainless Pipe, Inc. v. United States,* 24 CIT 841 (Aug. 25, 2000), n. 3, *citing D&L Supply Co. v. United States,* 113 F. 3d 1220, 1224 (Fed. Cir. 1997)).

[10] *See* Alro, SA and the Vimetco Group's Case Brief at 9 (citing *F.lli De Cecco di Filippo Fara S. Martino SpA v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

that AFA rates are intended "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."[11]

- Commerce should return to Alro, SA's counsel its business proprietary information (*i.e.*, BPI) as requested.
- Commerce has a longstanding practice of returning BPI when a party withdraws its permission for disclosure of its BPI under an administrative protective order. Alro, SA's request that its BPI be removed from the record constitutes withdrawal of its consent for disclosure.
- In *Allegheny Ludlum v United States*, the CIT found that Commerce's practice of allowing a party to withdraw its consent for disclosure and remove its BPI from the record was a reasonable interpretation of the Act.[12]
- Similar to *Allegheny Ludlum v United States*, the integrity of this proceeding will be preserved if Commerce removes Alro, SA's BPI from the record, because Commerce will still apply AFA to Alro, SA.

Petitioners' Rebuttal Comments:

- Commerce should continue to base Alro, SA's AFA rate on its highest non-aberrational transaction-specific dumping margin. Alro, SA (and the Vimetco Group) withheld necessary information requested by Commerce and did not "do the maximum it {was}able to do" in responding to requests for information. Thus, the application of total AFA is appropriate.[13]
- The CIT held that purposefully withholding requested information is grounds for the application of AFA.[14] Commerce's requests for information in this investigation were no more numerous or onerous than in most other aluminum sheet investigations.
- While Alro, SA (and the Vimetco Group) argue that Alro, SA cooperated until it ceased participating in the investigation, that does not mean that Commerce can rely on Alro, SA's data as if it had submitted complete and verifiable questionnaire responses. Since Alro, SA declined to participate in the investigation, the record is bereft of complete information necessary to calculate its actual dumping margin.
- Alro, SA (and the Vimetco Group) did not present any evidence that Commerce's AFA calculations are aberrational, punitive, erroneous, or inaccurate.
- Commerce is under no obligation to follow its normal practice with respect to warranty expenses because it is determining an AFA rate based on an incomplete and deficient record (*e.g.*, Alro, SA failed to report warranty expenses for all U.S. sales).
- Commerce should continue to deduct Alro, SA's reported warranty expenses (*i.e.*, WARRU and WARR2U fields) from its gross U.S. sales prices in calculating the AFA rate. Commerce never made a specific finding that Alro, SA's reported warranty

[11] *Id.*; *see also BMW of North America v. United States,* 926 F.3d 1291 (Fed. Cir. 2019)).
[12] *See* Alro, SA and the Vimetco Group's Case Brief at 18 (citing *Allegheny Ludlum Corp., et al. v. United States,* Slip Op. 03-126 (CIT Sept. 29, 2003) at 8).
[13] *See* Petitioners' Rebuttal Brief at 5 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1372, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).
[14] *See* Petitioners' Rebuttal Brief at 5 and 6 (citing *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1343 n.6, 1344-45, 1348 n.13 (CIT 2005)).

expenses are distortive. Moreover, Commerce relied on product-specific, customer-specific, and transaction-specific warranty expenses in its dumping margin calculations in other cases.[15]

- Commerce should retain Alro, SA's BPI data on the record. Removing the BPI from the record allows Alro, AS to manipulate the proceeding to obtain a lower dumping margin.
- By signing the Certificates of Accuracy accompanying each of its BPI submissions, Alro, SA acknowledged Commerce's right to maintain copies of BPI submissions for the purposes of "determining the accuracy" of the certifications.

Commerce's Position: We disagree with Alro, SA (and the Vimetco Group), in part. We have retained Alro, SA's BPI on the record and not modified warranty expenses as requested. While we have continued to base the AFA rate on Alro, SA's own data, we have selected the highest non-aberrational individual dumping margin based on an average-to-average comparison, rather than the highest non-aberrational individual dumping margin based on an average-to-transaction comparison, as the AFA rate.

Despite Alro, SA's (and the Vimetco Group's) request, we did not adjust its warranty expenses when we calculated the AFA rate. When applying AFA pursuant to sections 776(a) and (b), Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[16] Alro, SA ceased responding to Commerce's supplemental questionnaires. Hence, Commerce is under no obligation to adjust the calculation of individual dumping margins which may be used as AFA based on assumptions about what information it would have obtained and how that information would affect the margins of dumping. Consequently, we do not find it appropriate to assume that we have the complete and final information on warranty expenses on the record such that we should adjust those expenses in calculating the AFA rate.

Moreover, Commerce is not engaging in its normal analysis (where Commerce might make certain adjustments to the reported expense) for calculating individual dumping margins here since Alro, SA's actions prevented such an analysis. Rather, Commerce is calculating an AFA rate for Alro, SA based on the facts available, *i.e.*, the sales and cost data as they were provided

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[15] *See* Petitioners' Rebuttal Brief at 8 (citing *e.g.*, *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016), and accompanying IDM at Comment 12C; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019) and accompanying IDM at Comment 15; *Final Results in the Antidumping Duty Administrative Review of Grain-Oriented Electrical Steel from Italy*, 66 FR 14887 (March 14, 2001), and accompanying IDM at Comment 6; *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From France*, 66 FR 40201, 40204 (August 2, 2001); *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Final Results of Antidumping Duty Administrative Review and Termination of the Suspension Agreement*, 67 FR 6226 (February 11, 2002), and accompanying IDM at Comment 9; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold- Rolled Carbon Steel Flat Products from Brazil*, 67 FR 62134 (October 3, 2002), and accompanying IDM at Comment 16; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497, 35499 (May 20, 2002)).

[16] *See* Section 776(b)(1)(B) of the Act; *see also Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24743 (May 30, 2018).

by Alro, SA by the point in the investigation when Alro, SA decided to no longer cooperate with Commerce in this investigation.

Also, Commerce finds that it would not be appropriate to adjust Alro, SA's reported sales and cost data for purposes of calculating an AFA rate when it ceased participating in the investigation and prevented Commerce from calculating an accurate estimated weighted-average dumping margin. If Alro, SA believed that some of what it reported was inaccurate, or should have been reported differently, or should have been revised, then it should have continued to participate in the investigation and could have had an opportunity to revise the reported data. Instead Alro, SA chose to cease participating in the investigation.

Additionally, it would not be appropriate to adjust selectively the facts available as requested by Alro, SA (and the Vimetco Group). Alro, SA ceased participating in the investigation. Thus, the full extent of the sales and costs adjustments that may have been required is unknown. Allowing Alro, SA to selectively highlight certain advantageous adjustments may result in it receiving a more beneficial result than if Alro, SA had fully cooperated and Commerce had the opportunity to fully analyze its sales and cost information.

For the final determination, we have based Alro SA's dumping margin on the highest non-aberrational individual dumping margin determined using the average-to-average comparison methodology. We do not find this rate aberrational or punitive. First, the AFA rate is based on Alro, SA's own data. When Commerce utilizes a respondent's own sales data, it is afforded broad discretion in the selection of the adverse rate, and this is true even if the selected rate is reflective of only a small proportion of the respondent's sales.[17] Second, the AFA rate is not an outlier. Rather, the rate is at the high end of a range of relatively similar dumping margins whose pattern of incremental changes forms a continuum of dumping margins.[18]

Third, the sale on which we based the AFA rate is not unusual in terms of the product sold, the sales quantity, or the sales terms. We individually compared the control number (CONNUM) characteristic codes reported for the sale on which we based the AFA rate with those reported for other sales in the U.S. sales database, and found that six out of the nine CONNUM characteristic codes reported for this sale were reported for a majority of U.S. sales.[19] While the remaining three CONNUM characteristic codes were not reported for a majority of U.S. sales, there are nonetheless a considerable number of other U.S. sales with these same three CONNUM characteristic codes. In addition, the quantity of the sale is within the range of quantities of all of Alro, SA's U.S. sales of subject merchandise during the POI. Lastly, the sale had the same sales terms as a significant number of Alro, SA's other U.S. sales of subject merchandise during the POI.[20] Accordingly, record evidence indicates that the transaction upon which the AFA rate is based is not unusual or otherwise atypical.

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[17] *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002); *see also Hyundai Elec. Indus. Co., Ltd. v. United States*, 395 F. Supp 2d 1231, 1235-36 (CIT 2005) (Hyundai).
[18] *See* Final Analysis Memorandum.
[19] *Id.*
[20] *Id.*

While Alro, SA (and the Vimetco Group) contend that Commerce should take into consideration the fact that it cooperated earlier in the investigation, the fact remains that Alro, SA ceased participating in the investigation, withheld requested information, and significantly impeded the investigation. Hence, the application of AFA is appropriate. In fact, in its case brief, Alro, SA does not dispute Commerce's decision to apply AFA.[21]

We do not find this rate punitive simply because it is multiple times higher than the Petition rate (*i.e.*, 12.51 percent). The SAA provides that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[22] Commerce's practice is to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[23] Because the Petition rate is multiple times lower than the AFA rate based on Alro, SA's own data, there is reason to believe that Alro, SA would benefit from its own lack of cooperation if Commerce selected the Petition rate as the AFA rate. Moreover, any comparison of this AFA rate to the rate calculated by the petitioners is not availing because the petitioners omitted certain selling expenses from their net price calculations.[24] Thus, we find that the petitioners' calculation is not usable for comparison purposes.

Lastly, we address Alro, SA's (and the Vimetco Group's) request that all of its BPI submissions be removed from the administrative record and returned to counsel.[25] The submission of information within an antidumping proceeding is voluntary.[26] However, while Commerce allows parties to withdraw their BPI once it has been submitted, Commerce can retain such information on the record in situations when the removal of information could potentially undermine the agency's ability to reach an accurate determination in the investigation or administrative review, diminish the effectiveness of the antidumping remedy, or enable the non-cooperating party to benefit from its refusal to cooperate.[27] Thus, Commerce has the discretion

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[21] *See* Alro, SA and the Vimetco Group's Case Brief at 1.

[22] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (*SAA*); *see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

[23] *See, e.g.*, *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

[24] *See* Petitioners' Letter, "Common Alloy Aluminum Sheet from Romania – Petitioners' Analysis of Alro's Sales and Cost Data for AFA Margin Purposes for the Preliminary Determination," dated September 15, 2020 at Attachment 3; *see also* Memorandum, "Proprietary Information for the Final Determination of the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Romania," dated concurrently with this IDM.

[25] *See* Alro, SA and the Vimetco Group's Letter, "Common Alloy Aluminum Sheet from Romania, A-485-809; Reply of Alro, SA and the Vimetco Group Concerning the Second Supplemental Section D Questionnaire and Request for Return of Business Proprietary Submissions," dated September 9; *see also* Alro, SA and the Vimetco Group's Letter, "Common Alloy Aluminum Sheet from Romania, A-485-809; Reply of Alro, SA and the Vimetco Group to Petitioners' Objection to Return of Alro's Business Proprietary Submissions," dated September 11, 2020.

[26] *See* section 777 of the Act.

[27] *See, e.g.*, *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167 (June 19, 2009), and accompanying IDM at Comment 1 (*Lawn Groomers*).

to deny a respondent's request to withdraw information where it is necessary to preserve the remedial purpose of the law or other statutory goals.[28]

As explained above and in the SAA, the statutory purpose of AFA is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[29] If Commerce were to grant Alro, SA's (and the Vimetco Group's) request for the return of its BPI, the only remaining dumping margin on the record of the investigation on which to base the AFA rate would be the petition margin (as adjusted at initiation). As noted above, the dumping margin in the petition, as adjusted at initiation, is 12.51 percent,[30] while the AFA rate calculated from Alro, SA's own data is 37.26 percent. Consequently, if Commerce permitted Alro, SA to withdraw its BPI from the record, it would obtain a significantly more favorable result. We believe that such an action could seriously undermine the effectiveness of the antidumping remedy in this proceeding should this investigation result in an antidumping duty order and enable a non-cooperating party, Alro, SA, to benefit from its refusal to cooperate.

There is precedent for not allowing a party to withdraw its information from the record of a proceeding. In *Live Cattle from Canada*,[31] Commerce retained a respondent's BPI documents when it "determined that retention of that data {was} necessary to preserve the integrity of the process and the remedial purpose of the law."

In *Lawn Groomers*, Commerce did not permit a party to remove its BPI from the record of the proceeding "in order: (1) to prevent {the respondent} from obtaining a significantly more favorable result by failing to cooperate than if it had cooperated and (2) to prevent manipulation of the final weighted-average dumping margin under which most exports will be subject."[32]

In *WSPP from Malaysia*, although the respondent requested that its information be removed from the record, Commerce retained its BPI and public information on the record in order to prevent the manipulation of the final weighted-average dumping margins.[33]

We believe the situations in *Lawn Groomers* and *WSPP from Malaysia* are similar to this investigation. Allowing Alro, SA to withdraw its BPI from the record of this investigation would inappropriately allow it to benefit from its refusal to participate and would result in the manipulation of Commerce's analysis and determination. As a result, we find it is necessary to retain Alro, SA's BPI on the record of the investigation in order to ensure the effectiveness of an

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[28] *See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56738, 56743 (October 21, 1999) (*Live Cattle from Canada*).
[29] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 870.
[30] *See Initiation Notice*.
[31] *See Live Cattle from Canada*, 64 FR 56739, 56743.
[32] *See Lawn Groomers*.
[33] *See Welded Stainless Pressure Pipe from Malaysia: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 808 (January 7, 2014), unchanged in *Welded Stainless Pressure Pipe From Malaysia: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2012-2013*, 79 FR 31090 (May 30, 2014) (*WSPP from Malaysia*).

antidumping remedy if this investigation results in an antidumping duty order and to prevent a non-cooperating party from benefitting from its refusal to cooperate.

Alro, SA (and the Vimetco Group) cited *Allegheny Ludlum* in arguing that returning BPI would not affect the integrity of the instant proceeding (in *Allegheny Ludlum*, similar to this investigation, the AFA rate only affected one respondent and did not affect the "all-others" rate).[34] We disagree that *Allegheny Ludlum* is on point.

Currently Alro, SA is the only known exporter of aluminum sheet in Romania. Therefore, if we do not retain Alro, SA's BPI on the record of this investigation, it would significantly distort the rate under which all exports are currently covered if this investigation results in an antidumping duty order.[35]

Based on the foregoing, we assigned Alro, SA an AFA rate equal to the highest non-aberrational individual dumping margin that we calculated for the company using the average-to-average comparison methodology.

IV. RECOMMENDATION

We recommend approving the above position. If this position is accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. 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

[34] *See Allegheny Ludlum Corp. v. United States*, 27 CIT 1461, 1467 (September 29, 2003) (*Allegheny Ludlum*); *see also* Alro, SA and the Vimetco Group's Case Brief at 18.

[35] *Cf. Allegheny Ludlum*, 27 CIT at 1466-67 (citing *Live Cattle from Canada*) (explaining that Commerce must balance any potential negative impact that refusing to withdraw information may have against the negative impact that withdrawal of information would have on the public's interest in the agency enforcing the antidumping law).