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Investigation
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DATE: March 19, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of 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 Carbon and Alloy Steel Wire Rod from Spain

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I. Summary

We analyzed the comments received from the interested parties in the less-than-fair-value (LTFV) investigation of carbon and alloy steel wire rod (wire rod) from Spain. As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Global Steel Wire S.A. (GSW), CELSA Atlantic S.A., and Compañía Española de Laminación (CELSA Barcelona) (collectively, CELSA), one of the mandatory respondents in this investigation. We are continuing to base the margin assigned to the second, non-participating respondent, ArcelorMittal Espana S.A. (AME), on adverse facts available (AFA). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Comment 1: Date of Sale and Use of Constructed Export Price

Comment 2: Inclusion of Certain Extraordinary Expenses in GSW's Net General and Administrative Expenses

Comment 3: Correction of Certain Data Errors

Comment 4: Inclusion of Income Attributable to Certain Scrap Sales in GSW's Net General and Administrative Expenses

Comment 5: Adjustment of GSW's Reported Costs to Reflect the Yield Loss Attributable to the Cutting Stage of the Production Process

Comment 6: Whether GSW Understated its Per-Unit Costs by Reporting Sales Quantities

Comment 7: Whether GSW Improperly Calculated Direct Materials Cost on a Product-Group Basis

Comment 8: Inclusion of Certain Items in the Calculation of the CELSA Companies' General and Administrative Expense Rates

Comment 9: AFA

II. Background

On October 31, 2017, the Department of Commerce (Commerce) published the *Preliminary Determination* of sales of wire rod from Spain at LTFV.[1] On November 7, 2017, Commerce published the postponement of the final determination of this investigation until March 15, 2018 and extended provisional measures.[2] On December 7, 2017, Commerce published the *Amended Preliminary Determination* of sales of wire rod from Spain at LTFV.[3] The period of investigation (POI) is January 1, 2016, through December 31, 2016.

In September 2017, we received scope case and rebuttal briefs.[4] On November 20, 2017, we issued a final memorandum in response to these scope comments, in which we did not change the scope of this investigation.[5]

[1] *See Carbon and Alloy Steel Wire Rod from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances, in Part*, 82 FR 50389 (October 31, 2017) (*Preliminary Determination*), and accompanying memorandum, "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain," dated October 24, 2017 (Preliminary Decision Memorandum).

[2] *See Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, Turkey, and the United Kingdom: Postponement of Final Determinations of Less-Than-Fair-Value Investigation and Extension of Provisional Measures*, 82 FR 51613 (November 7, 2017).

[3] *See Carbon and Alloy Steel Wire Rod from Spain: Amended Preliminary Determination of Sales at Less Than Fair Value*, 82 FR 57726 (December 7, 2017), and accompanying memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Ministerial Error Memorandum," dated December 1, 2017 (Amended Preliminary Decision Memorandum).

[4] *See* Letter, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Scope Issues Case Brief," dated September 6, 2017; *see also* Letter, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: British Steel's Scope Case Brief," dated September 6, 2017; *see also* Letter, "Carbon And Alloy Steel Wire Rod from Belarus, Italy, The Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine. United Arab Emirates. and the United Kingdom - Rebuttal Brief in Response to the Scope Case Briefs of British Steel and POSCO," dated September 13, 2017.

[5] *See* Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Final Scope Memorandum" dated November 20, 2017 (Final Scope Memorandum).

In November 2017, we conducted verification of the sales and cost of production (COP) data reported by CELSA, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). The verification reports were issued in January 2018.[6]

We invited parties to comment on the *Amended Preliminary Determination*. In January and February 2018, Nucor Corporation (herein after, the petitioner)[7] and CELSA submitted case and rebuttal briefs.[8] Commerce held a public hearing limited to issues raised in the case and rebuttal briefs on February 22, 2018.

Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now March 19, 2018.[9]

Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margin calculated for CELSA and for all-other companies from those calculated in the *Amended Preliminary Determination*.[10]

III. Use of Adverse Facts Available

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: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to

[6] *See* Memorandum, "Verification of the Cost Response of Global Steel Wire S.A., CELSA Atlantic S.A., and Compania Espanola de Laminacion in the Less-than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from Spain" dated January 8, 2018 (Cost Verification Report); *see also* Memorandum, "Verification of the Sales Response of Global Steel Wire S.A., CELSA Atlantic S.A., and Compania Espanola de Laminacion in the Antidumping Investigation of Carbon and Alloy Steel Wire Rod from Spain" dated January 18, 2018 (Sales Verification Report).

[7] The case and rebuttal briefs were filed only on behalf of Nucor Corporation.

[8] *See* Letter, "Carbon and Alloy Steel Wire Rod from Spain: Case Brief of Nucor Corporation," dated January 29, 2018 (Petitioner's Case Brief); *see also* Letter, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Case Brief," dated January 29, 2018 (CELSA's Case Brief); *see also* Letter, "Carbon and Alloy Steel Wire Rod from Spain: Rebuttal Brief of Nucor Corporation," dated February 5, 2018 (Petitioner's Rebuttal Brief); *see also* Letter, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Rebuttal Brief," dated February 5, 2018 (CELSA's Rebuttal Brief).

[9] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[10] For a detailed explanation of our revisions, *see* the Memorandum to the File, entitled, "Final Determination Analysis of Data Submitted by Global Steel Wire S.A., CELSA Atlantic S.A., and Compania Espanola de Laminacion Carbon and Alloy Steel Wire Rod from Spain," dated concurrently with this memorandum (CELSA Analysis Memorandum).

subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.[11]

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

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, 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.[12] Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the *SAA* explains that 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."[13] Further,

[11] Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made, including amendments to section 776 of the Act. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (*TPEA*). *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*TPEA Application Dates*).

[12] *See* section 776(b)(1)(B) of the Act; *TPEA*, section 502(1)(B).

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

affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[14]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[15] Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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

As noted above, sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act provide that if an interested party fails to provide or withholds necessary information within the established deadlines, significantly impedes a proceeding, or provides information but the information cannot be verified, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the *SAA* explains 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."[16]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[17] Thus, according to the CAFC precedent, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best

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[14] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

[15] *See SAA*, at 870.

[16] *Id.*; *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[17] *See Nippon Steel*, 337 F.3d at 1382-83.

of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[18] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[19]

Application of AFA for AME

In the *Preliminary Determination*, we applied AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308, to AME, due to this mandatory respondent's failure to respond to Commerce's questionnaire or otherwise participate in this investigation.[20] For the final determination, we continue to find it appropriate to apply AFA to AME.

We continue to find that the application of facts available is appropriate under sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act. AME's failure to provide necessary relevant information and failure to participate in this investigation significantly impeded the conduct of this proceeding. Hence, we conclude that AME has not acted to the best of its ability to comply with Commerce's request for information and continue to find that the application of AFA pursuant to section 776(b) of the Act is warranted for determining AME's margin.

Selection and Corroboration of the AFA Rate

In an investigation, Commerce's practice is to select, as an AFA rate, the higher of: 1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.[21] In the *Preliminary Determination*, we assigned the petition margin of 32.64 percent to AME as an AFA rate, and we corroborated this rate to the extent practicable within the meaning of section 776(c) of the Act, using CELSA's highest transaction-specific dumping margins.[22] We continue to find it appropriate to assign the petition margin of 32.64 percent to AME as an AFA rate for the final determination.[23] Therefore, we find that the 32.64 percent rate alleged in the petition is both reliable and relevant and sufficiently adverse within the meaning of section 776(c) of the Act. The *SAA* states that Commerce may employ an adverse inference in selecting from the facts available "to ensure that the party does not obtain a

[18] *Id*. at 1382.
[19] *Id.*
[20] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum, at 14-17. *See also* Letter from AME, "Carbon and Alloy Steel Wire Rod from Spain – ArcelorMittal Espana's Withdrawal from Participation as a Mandatory Respondent in the Antidumping Investigation," dated June 29, 2017.
[21] *See, e.g., Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value,* 81 FR 3101, 3102 (January 20, 2016), and accompanying Issues and Decision Memorandum, at Comment 1; *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362, 61363 (October 13, 2015), and accompanying Issues and Decision Memorandum, at Comment 20; *Certain Stilbenic Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012).
[22] *See* Preliminary Decision Memorandum, at 14-17.
[23] *See* CELSA Analysis Memorandum.

more favorable result by failing to cooperate than if it had cooperated fully."[24] In this case, Commerce has done so by selecting the petition margin and assigning this margin as the AFA rate applicable to AME.

IV. Critical Circumstances

In the *Preliminary Determination*, Commerce found that critical circumstances existed for AME, but not for all other Spanish producers or exporters based on trade data submitted between January 2017 and June 2017.[25] No interested party filed arguments regarding our preliminarily critical circumstances determination. However, because critical circumstances were alleged in this case and because we have made changes to the margin calculation for the sole cooperating mandatory respondent, for this final determination we have evaluated whether critical circumstances exist, in accordance with section 735(a)(3) of the Act.

In determining whether a history of dumping and material injury exists pursuant to section 735(a)(3)(A)(i) of the Act, Commerce generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.[26]

Pursuant to section 735(a)(3)(A)(ii), Commerce examines whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.[27]

In determining whether imports of the subject merchandise were "massive," Commerce normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption accounted for by the imports.[28] In determining whether there are "massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the Petition (*i.e.*, the "base period") to a comparable period

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[24] *See SAA*, at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007); *see also 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 Preliminary Decision Memorandum, 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).

[25] *See Preliminary Determination*, 82 FR at 50390; *see also* Preliminary Decision Memorandum, at 17-21.

[26] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*Carbon Steel Pipe Final Determination*); *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009) (*SDGE Final Determination*).

[27] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

[28] *See* 19 CFR 351.206(h)(1).

of at least three months following the filing of the Petition (*i.e.*, the "comparison period"). If Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[29] Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[30]

With respect to whether a history of dumping and material injury exists, the petitioner identified no such orders with respect to wire rod from Spain. Furthermore, based on our research, we have found no evidence of any AD order on wire rod from Spain encompassing the same or similar scope of merchandise subject to this investigation. Thus, we continue to find that there is not a history of injurious dumping of wire rod from Spain.

We must next determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and that there was likely to be material injury by reason of such sales. The petitioners alleged that this criterion is met by virtue of the dumping margins alleged in the Petition, which could be as high as 32.70 percent on a transaction-specific basis.[31] Thus, the petitioners asserted that certain dumping margins alleged in the Petition, which were up to 32.70 percent, exceeded the 15 percent threshold used by Commerce to impute knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.[32] The petitioners further argued that importers of wire rod from Spain have been on notice that dumped imports are likely to cause injury since the ITC's May 2017, preliminary affirmative injury finding.[33]

On July 19, 2017, Commerce requested that CELSA report its respective monthly quantity and value data for subject merchandise shipped to the United States, beginning with September 2016, through June 2017.[34] As such, CELSA reported all relevant shipment data available at the time, and necessarily updated their reported data with more recent monthly totals, as they became available during the proceeding.[35] We compared the total volume of shipments from January

[29] *See* 19 CFR 351.206(i).
[30] *See* 19 CFR 351.206(h)(2).
[31] *See* Letter, "Carbon and Alloy Steel Wire Rod from Russia, South Africa, Spain, Turkey, and United Kingdom: Critical Circumstances Allegations," dated July 6, 2017, at 6.
[32] *Id.*
[33] *Id. Citing Carbon and Certain Alloy Steel Wire Road from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom*, Inv. Nos. 701-TA-573-574 and 731-TA-1349-1358, USITC Pub. 4693 (May 2017) (ITC Preliminary Affirmative Injury Determination).
[34] *See* Letter to CELSA, "Less-than-Fair-Value Investigation on Carbon and Alloy Steel Wire Rod from Spain: Request for Monthly Quantity and Value Shipment Data," dated July 19, 2017.
[35] *See* Letter from CELSA, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Response to Request for Monthly US Shipment Quantity and Value Information," dated July 26, 2017; *see also* Letter from CELSA, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: July 2017 Update to Monthly US Shipment Quantity and Value Information," dated August 8, 2017; *see also* Letter from CELSA, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: August 2017 Update to Monthly US Shipment Quantity and Value Information," dated September 11, 2017; *see also* Letter from CELSA, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: September 2017 Update to Monthly US Shipment Quantity and Value Information," dated October 4, 2017; *see also* Letter from CELSA, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Response to Request for

2017 through March 2017 (the base period), to shipment data for April 2017, through June 2017 (the comparison period).[36]

For CELSA, we have, based on changes we have made to the margin calculation based on our findings at verification, calculated a weighted-average dumping margin of 11.08 percent. As a result, for purposes of this investigation, Commerce determines that the knowledge standard is not met because CELSA's margin is less than the 15 percent threshold for constructed export price (CEP) sales and the 25 percent threshold for export price (EP) sales.[37] Accordingly, for CELSA, because the statutory criteria of section 735(a)(3)(A) of the Act has not been satisfied, we did not examine whether imports from CELSA were "massive" over a relatively short period, pursuant to section 735(a)(3)(B) of the Act.

Likewise, we are assigning to all other producers and exporters a rate of 11.08 percent. Thus, for all other producers or exporters of wire rod from Spain, Commerce finds that the criteria under sections 735(a)(3)(A) of the Act have not been met. Accordingly, Commerce determines that the margins for CELSA and for all others do not provide a sufficient basis for imputing knowledge of sales at LTFV to the importers of subject merchandise and that critical circumstances do not exist for all other producers or exporters of wire rod from Spain.

Because the other mandatory respondent in this investigation, AME, was uncooperative, we are assigning, as AFA, a rate of 32.64 percent, the highest margin in the Petition, which we have corroborated to the extent practicable, as noted above. Because the dumping margin exceeds the threshold sufficient to impute knowledge of dumping, this rate provides a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to importers. Accordingly, for AME, we continue to find that the statutory criteria of section 735(a)(3)(A) of the Act have been satisfied.

It is Commerce's practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison periods.[38] However, as noted above, AME did not respond to any of our requests for information.[39] Therefore, Commerce continues to find that the use of facts otherwise available with an adverse inference is warranted. Accordingly, we continue to find that there were massive imports of subject merchandise from AME and determine that the statutory criterion of section 735(a)(3)(B) is met. Therefore, for this final determination, we continue to find that critical circumstances exist for AME.

V. Scope of the Investigation

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted

Monthly US Shipment Quantity and Value Information," dated November 8, 2017.

[36] *Id.* at Attachment.

[37] *See* Preliminary Decision Memorandum, at 20.

[38] *See, e.g.*, *Carbon Steel Pipe Final Determination*, 73 FR at 31972-73; *SDGE Final Determination*, 74 FR at 2052-53.

[39] *See* the "Application of AFA for AME" section of this memorandum.

physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.*, products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

VI. Scope Comments

During the course of this investigation, Commerce received numerous scope comments from interested parties. In September 2017, we received scope case and rebuttal briefs. On November 20, 2017, we issued a final scope memorandum in response to these comments in which we did not change the scope of this investigation.[40]

VII. Margin Calculations

We calculated EP and normal value (NV) for CELSA using the same methodology described in the *Preliminary Determination* and *Amended Preliminary Determination*, except as follows:

1. We revised the date of sale and treated certain of CELSA's sales as CEP sales, rather than EP sales.
2. We made changes to correct certain errors and incorporate minor corrections identified at cost and sales verifications.
3. We have recalculated GSW's general and administrative expense rate to include extraordinary expenses and an income offset for sales of purchased scrap which could not be consumed.
4. We have revised the application of our calculated yield loss for GSW's cutting process so that it is only applied to those products which passed through the cutting stage of the production process.
5. We have revised the calculation of several of the CELSA companies' general and administrative expense rates to reflect the inclusion of certain expenses discussed in the proprietary cost calculation memorandum.

[40] *See* Final Scope Memorandum.

VIII. Discussion of Issues

Comment 1: Date of Sale and Use of Constructed Export Price[41]

The Petitioner's Arguments

- Commerce should apply the contract amendment date as the date of sale for applicable sales from CELSA to a certain U.S. customer since Commerce's regulations provide that it may use a date other than the invoice date if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.[42] The petitioner points to cases in which the Court of International Trade (CIT) has found that other steel products, such as rebar, may be subject to a date of sale other than the invoice date.[43]
- Commerce should use, as the date of sale, the date on which the material terms of price and quantity are set. Commerce has determined that a long-term contract's price term is fixed if it is established by a published source outside of the control of either party to the contract.[44] Additionally, Commerce has determined that, for a long-term contract with a minimum quantity requirement, the contract date is the date of sale for the minimum quantity specified in the contract.[45] Since the terms of the contract were set by an outside source, there is nothing further for the parties to discuss, and both parties subject to the agreement were bound by the terms of the contract.
- The material terms of sale for the minimum quantity requirement were established on the contract amendment date. Once this contract amendment was signed, there was nothing left to negotiate, and there is no evidence on the record that either of the parties deviated from the contract terms or requirements.[46]
- The price was established at the time of the long-term contract amendment. The petitioner states that the prices were set, and no discrepancies from that price formula were noted by Commerce during verification.[47]
- The minimum quantity was established in the long-term contract, which was renewed at the time of the contract amendment. CELSA was able to schedule production based on provisional order confirmations, demonstrating that the minimum quantity was set for the applicable months of the POI at the date of the contract amendment.[48]
- Language in the contract and contract amendment set expectations as to the material terms of sale regarding the desired merchandise, demonstrating a meeting of the minds at the time the contract was established.[49]

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[41] This comment discusses the date of sale of certain CELSA sales – those made pursuant to a long-term supply contract to a particular customer. The terms of this contract terminated on October 31, 2016; accordingly, the long-term supply contract is only applicable to sales before November 1, 2016.
[42] *See* Petitioner's Case Brief, at 3, citing 19 CFR 351.401(i).
[43] *Id.* at 4, citing *Nucor Corp. v. United States*, 612 F. Supp. 2d 1264 (CIT 2009).
[44] *Id.* citing *Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico*, 64 FR 14872 (March 29, 1999) (*Rubber from Mexico*).
[45] *Id*. citing *Rubber from Mexico*, at Comment 3.
[46] *Id.* at 6.
[47] *Id.* at 7-8.
[48] *Id.* at 8-10.
[49] *Id.* at 10-11.

- Commerce should use the contract amendment date as the date of sale only for the minimum purchase quantity, plus tolerance, in each month of the POI for which the contract is applicable. For volumes exceeding the minimum quantity and tolerance level specified in the contract, Commerce should use the accounting invoice date as the date of sale.[50]
- If Commerce does not use the contract amendment date for the minimum purchase plus tolerance per applicable month of the POI, then Commerce should use the accounting invoice date for all sales to the U.S. customer during the POI. Since the accounting invoice would reflect a date of sale that occurs after importation for months in which the contract was in effect, the sales should be treated as CEP sales.[51]

CELSA's Arguments

- The accounting invoice should serve as the date of sale for all U.S. sales at issue during the POI, since this invoice reflects the date when the sales prices and quantities are firmly established. Commerce has used the accounting invoice as the date of sale in other proceedings, which also reflects the date on which merchandise left an unaffiliated U.S. warehouse. Commerce should follow the precedent of relying on the accounting invoice date.[52]
- Since Commerce previously concluded that final quantity was established on the date of release from the unaffiliated U.S. warehouse to the U.S. customer, Commerce should use the accounting invoice as the date of sale for all U.S. sales at issue because that is the date in which all material terms, particularly quantity, are established.[53]

The Petitioner's Rebuttal Arguments

- Commerce should reject CELSA's argument that the accounting invoice date is the correct date of sale for the first minimum supply contract amount plus a percentage increase for tolerance of the product sold to the relevant customer during the POI. Both price and quantity were established in the long-term contract and subsequent amendment. CELSA does not dispute the establishment of price in the long-term contract and subsequent agreement.[54]
- Commerce has previously used the contract date for minimum purchase contracts as the date of sale, such as in *Rubber from Mexico*, and should rely upon the contract amendment date as the date of sale for the minimum purchase quantity in this final determination.[55]

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[50] *Id*. at 11-23.
[51] *Id.* at 20-23.
[52] *See* CELSA's Case Brief, at 4-5, citing *Stainless Steel Bar from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 4383 (January 22, 2013) (*Stainless Steel Bar from Brazil*) and accompanying Preliminary Decision Memorandum at 3.
[53] *Id.*
[54] *See* Petitioner's Rebuttal Brief, at 3-5.
[55] *Id.* at 5-6, citing *Rubber from Mexico* at Comment 3.

- If Commerce uses the accounting invoice date as the date of sale for all the relevant U.S. customer's sales then these sales should be treated as CEP sales since the date of sale occurs after importation.[56]

CELSA's Rebuttal Arguments

- Commerce should reject the petitioner's claim that the material terms of sale are established in the long-term contract and subsequent amendment. The petitioner fails to overcome the burden of establishing the date of sale as a date other than the accounting invoice date.[57]
- While the petitioner seeks to determine the date on which the price and quantity of the sale are established, there are other relevant sales terms Commerce should assess, such as the type of product sold. However, the long-term contract only identified the product grade; it did not specify the requisite diameter, which is an essential product characteristic. The record of the investigation contains examples of varying quantities of different diameters of wire rod sold to the relevant U.S. customer.[58] Without the exact specification of the product being sold, the terms of the sale identified in the contract are theoretical, not applicable to any specific sale or sales, and do not reflect actual sales which will occur or have occurred.
- Neither price nor quantity are established in the long-term contract, since the final price is only set based on the date the merchandise is released from the unaffiliated warehouse and the quantity of the sale, rather than a minimum required quantity.[59]
- Relying upon the contract amendment date as the date of sale runs counter to Commerce's preference for date of sale, its reliance upon invoice date throughout the course of this investigation, and record information, such as facts examined by the Commerce officials at verification. Also, using a sale date other than invoice date would be contrary to Commerce's regulatory presumption of invoice date as the appropriate date of sale. Commerce has stated in past cases its preference for a predictable sale date upon which to rely on.[60] Accordingly, for the final determination, Commerce should base CELSA's date of sale on the accounting invoice date.

Commerce's Position

We disagree with the petitioner that CELSA's long-term contract reflects an appropriate date of sale for its U.S. sales. Commerce's regulations state that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.[61]

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[56] *Id.* at 7-8.
[57] *See* letter from CELSA, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Rebuttal Brief," dated February 5, 2018, at 3.
[58] *Id.* at 4-5, Exhibit 1.
[59] *Id.* at 6.
[60] *Id.* at 10, citing, *e.g.*, *Hardwood and Decorative Plywood from the People's Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013) and accompanying Preliminary Decision Memorandum (*Plywood from China*), at 22.
[61] 19 CFR 351.401(i).

However, a date other than invoice date can be used if Commerce determines that another date better establishes the material terms of sale.[62]

As explained in *Stainless Steel Bar from Brazil*, Commerce normally relies on invoice date to establish the material terms of sale since that is when the material terms of sale are typically set.[63] While we have the discretion to choose a more appropriate date based on the specific facts of a particular case, here we find that the invoice date is the most appropriate date of sale because all material terms of sale are established at that point, rather than on either the contract date or subsequent contract amendment date.

In the *Preliminary Determination*, we found that "the material terms of sale are established on the date of first invoice," meaning the shipping invoice.[64] However, Commerce found at verification that changes to quantity occurred after the issuance of the first invoice, and, thus, this invoice and does not reflect the date on which the material terms of sale are set.[65] Therefore, we now find that the date of the shipping invoice is not the appropriate sale date. Instead, based on our findings at verification, we determine that all of the material terms of sale (which include price, quantity, and delivery terms and payment terms) are not set until the second invoice – the accounting/sales invoice – is issued by CELSA. Accordingly, we find that the accounting invoice date is the appropriate date of sale.

Although the petitioner emphasizes that the price of the subject merchandise is established by the formula set forth in the long-term contract (as subsequently amended), record information demonstrates that quantity is not established until the accounting invoice date.[66] Specifically, at verification, we found that the total quantity of product (*i.e.*, bundles of each product, by diameter) – and, thus, the total tonnage – is not finalized until the accounting invoice.[67] Thus, it is not until the accounting invoice that the total quantity (*i.e.*, tonnage) of wire rod sold is established. This was confirmed by Commerce at verification, in which it noted from examination of the sales traces that quantity changed even after the order confirmation date.[68] Accordingly, we disagree with the petitioner's argument that the contract amendment date should serve as the date of sale for the relevant U.S. sales. The record demonstrates that although the contract and contract amendment specify a minimum purchase quantity and tolerance, this minimum quantity was exceeded in eleven of the twelve months in the POI, demonstrating that the minimum quantity plus tolerance do not establish the sales quantity.[69]

The petitioner relies on *Rubber from Mexico* to argue that Commerce has a practice of using contract date for the minimum quantity in long-term contracts with a minimum purchase

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[62] *Id.*
[63] *See Stainless Steel Bar from Brazil*, PDM at 3.
[64] *See* Preliminary Decision Memorandum, at 8.
[65] *See* Sales Verification Memorandum, at 9.
[66] *See* Letter, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Response to Section A of the Antidumping Duty Questionnaire," dated June 23, 2017, at Exhibit A-11; *see also*, Sales Verification Report, at 9.
[67] *See* Sales Verification Report, at Exhibit G-5.
[68] *Id.* at 9-10.
[69] *See* Letter, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Response to the Fourth Supplemental Questionnaire," dated September 21, 2017, at Exhibit FSQ-9.

requirement and date of invoice for all amounts sold in excess of the minimum requirement.[70] However, we find that case does not provide relevant guidance here because it does not reflect Commerce's current practice for determining date of sale. As explained in *Ferrovanadium from Korea, Solar Cells from China*, *Large Power Transformers from Korea*, and the *Preamble* to Commerce's regulations, Commerce's current practice is to use a uniform date of sale all of the respondent's sales, and a single date of sale for each sale.[71] We have determined, consistent with this practice, that it is appropriate to use a single date of sale for each of the sales at issue, and to use a single date of sale (invoice date) for all of CELSA's sales.

Additionally, we agree with CELSA that price and quantity are not the only terms of sale that are relevant to the determination of the date of sale in this case. As discussed above, we have considered all material terms of sale (which include price, product quantity, delivery terms and payment terms) in determining the appropriate date of sale. While some terms of sale are established at an earlier date, we find that the accounting invoice finalizes the total quantity of bundles of each product, by diameter, and, thus, establishes the total tonnage.

Furthermore, we agree with both parties that if the accounting invoice date is used as the date of sale, then CELSA's sales to its U.S. customer before November 1, 2016 should be treated as CEP sales, as originally reported by CELSA.[72] Section 772(b) of the Act defines CEP sales as sales occurring after importation to the United States. Because the date of sale occurred after importation for these sales, Commerce will appropriately treat them as CEP sales for the final determination.[73]

[70] *See* Petitioner's Case Brief, at 4, citing *Rubber from Mexico* at comment 3.

[71] *See Ferrovanadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 14874 (Mar. 23, 2017) (*Ferrovanadium from Korea*), and accompanying Issues and Decision Memorandum, at 7 (Commerce's "preference is to use a uniform date of sale rather than different dates of sales for different sales"); *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 62791 (October 17, 2012) (*Solar Cells from China*), and accompanying Issues and Decision Memorandum at comment 3 (determining to use a single date of sale for each sale because Commerce had previously stated that it would be impractical to have different dates of sale for each sale); *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) (*Large Power Transformers from Korea*) (determining to use a single date of sale because "it would be impractical to have different dates of sale for each sale"), and accompanying Issues and Decision Memorandum, at comment 1; *see also Antidumping Duties; Countervailing Duties; Final Rule* (*Preamble*), 62 FR 27296, 27349 (May 19, 1997) (explaining Commerce's "preference for using a single date of sale for each respondent, rather than a different date of sale for each sale").

[72] Commerce treated these sales as EP sales in the *Preliminary Determination*, based on the use of the shipping invoice as the date of sale. Because we have revised the date of sale for the final determination, we also revised our treatment of these sales as EP sales, and now treat them as CEP sales.

[73] *See* CELSA Analysis Memorandum.

Comment 2: Inclusion of Certain Extraordinary Expenses in GSW's Net General and Administrative Expenses

CELSA's Arguments[74]

- Commerce should reverse an adjustment it made in the *Preliminary Determination* and exclude an extraordinary expense from the calculation of GSW's net general and administrative (G&A) expenses.
- Section 773(f)(1)(A) of the Act requires that Commerce rely on a respondent's normal books and records when they are kept in accordance with the Generally Accepted Accounting Principles (GAAP) of the producer's country and are not distortive.
- GSW's financial statements are prepared in accordance with Spanish GAAP, the auditor made no mention of the classification of certain expenses as extraordinary, and there is no evidence that the classification is distortive.

The Petitioner's Rebuttal Arguments[75]

- Commerce should continue to include the extraordinary expenses in the calculation of GSW's G&A expenses.
- Commerce's practice is to include expenses and revenues relating to the general operations of the company in the calculation of the G&A expense rate.[76]
- The classification of an expense as extraordinary in the financial statements is not dispositive.
- The extraordinary expense at issue in this proceeding is similar to expenses which Commerce has included in the calculation of G&A expenses in other proceedings.

Commerce's Position

Commerce will exclude expenses deemed "extraordinary" if they pertain to an event which is "unusual in nature and infrequent in occurrence."[77] An event is "unusual in nature" if it is highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the entity, in light of the entity's environment.[78] An event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future.[79] We have continued to include the expense at issue in the calculation of GSW's G&A expenses because the expense at issue relates

[74] *See* CELSA Case Brief, at 5-6.
[75] *See* Petitioner's Rebuttal Brief, at 8-9.
[76] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004) (*India Shrimp LTFV*) and accompanying Issues and Decision Memorandum at Comment 16; *see also Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") from Taiwan*, 64 FR 56308, 56323 (October 19, 1999).
[77] *See Floral Trade Council of Davis, CA v. United States*, 16 CIT 1014, 1016 (1992); *see also India Shrimp LTFV* and accompanying Issues and Decision Memorandum at comment 16.
[78] *See Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005) (*Pasta from Italy*) and accompanying Issues and Decision Memorandum at Comment 11.
[79] *Id.*

to the general operations of the company as a whole and is considered a typical expense incurred by companies.

Although the expense at issue is classified on GSW's audited financial statements as a non-recurring (*i.e.*, extraordinary) expense, we do not find this classification dispositive. While section 773(f)(1)(A) of the Act mandates that Commerce rely on data from a respondent's normal books and records, where those records are prepared in accordance with home country GAAP and reasonably reflect the cost of producing the merchandise, Commerce has explained that many countries' GAAP have a loose test of classifying items as extraordinary.[80] Accordingly, Commerce tests the classification of expenses as extraordinary in accordance with U.S. GAAP, which prescribes that only events that are unusual in nature and infrequent in occurrence are classified as extraordinary.[81] We have examined the expense at issue and determined that the expense relates to the general operations of the company and is a typical expense borne by companies.[82] Moreover, record evidence demonstrates that GSW incurred this expense during both the current and previous fiscal years.[83] Accordingly, we have continued to include the expense in the calculation of GSW's G&A expense rate.

Comment 3: Correction of Certain Data Errors

The Petitioner's Arguments

- Commerce should correct several errors discovered at verification, as specified in the Sales Verification Report.[84]
- Commerce should remove the billing adjustment for a certain sale examined in Commerce's sales traces at verification. This credit was a correction, and the credit was applied to another sale.[85]
- Commerce should correct a destination coding error that CELSA presented at verification. CELSA informed Commerce officials that the destination codes for sales out of a certain warehouse contained the wrong numeric destination code.[86]

No other interested parties commented on this issue.

Commerce's Position

We disagree with the petitioner that we should modify the reported billing adjustment for the specific sale transaction identified by the petitioner. The customer in this sale was overcharged in error. The error was discovered after payment had been made by the customer. Accordingly,

[80] *Id.*; *see also Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not to Revoke in Part*, 69 FR 64731 (November 8, 2004) and accompanying Issues and Decision Memorandum at Comment 13.
[81] *See Pasta from Italy*, at Comment 11.
[82] Due to the proprietary treatment of the expense at issue, for further discussion and analysis, *see* CELSA Final Cost Calculation Memo.
[83] *Id.*
[84] *See* Petitioner's Case Brief, at 27.
[85] *Id.* at 28 (citing Sales Verification Report, at 19).
[86] *Id*. at 29.

CELSA issued a credit to the customer in a subsequent order to complete the sale in question, ensuring that the customer was not overcharged. But the sale with this particular sale number is where the error occurred and where the adjustment to the price is necessary to accurately reflect the cost of that particular sale.[87] Commerce finds that the timing and the established conditions of the adjustment, which were understood by both CELSA and the customer, confirm that the adjustment was made correctly.[88]

We agree with the petitioner that the destination field (DETSU) for merchandise released from a specific CELSA warehouse was reported with an incorrect destination code, as explained by CELSA officials at the sales verification.[89] We have corrected the margin program to reflect the correct destination code for the final determination.

Comment 4: Inclusion of Income Attributable to Certain Scrap Sales in GSW's Net General and Administrative Expenses

CELSA's Arguments[90]

- Commerce should reverse an adjustment made in the *Preliminary Determination* and allow an offset to GSW's G&A expenses for income attributable to sales of certain scrap.
- The scrap income is attributable to sales of purchased raw materials and scrapped finished goods.
- Record evidence demonstrates that the income in question is neither generated during the production process nor included in the calculation of GSW's scrap offset to the cost of direct materials.

The Petitioner's Rebuttal Arguments[91]

- Commerce should continue to deny an offset to GSW's G&A expenses for income attributable to certain scrap sales because it is not attributable to GSW's general operations.

Commerce's Position

We have revised our calculation of GSW's net G&A expenses to include the income attributable to the sale of purchased scrap (*i.e.*, scrap of the kind normally used as a raw material input) which could not be consumed internally, for quality reasons, but we have continued to exclude the income attributable to scrapped finished goods.

[87] *See* CELSA Analysis Memorandum.
[88] See, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan," dated March 29, 2017, at 44; citing *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24. 2016) and section 351.401(c) of the Department's Regulations
[89] *Id*.
[90] *See* CELSA Case Brief, at 7-8.
[91] *See* Petitioner's Rebuttal Brief, at 9-11.

Commerce's well-established practice is to use the sales value of the scrap generated during a given period as an offset to the manufacturing costs of the corresponding finished products produced during the period.[92] In the current proceeding, the income in question was not generated during the production process.[93] Rather, the income in question is attributable to GSW's purchases of raw materials and occasional scrapping of finished goods in inventory.[94] Accordingly, because neither of these income items was attributable to the production process nor an appropriate component of GSW's scrap offset to its cost of manufacturing, we have analyzed the income items and their relationship to GSW's general operations to determine whether an offset to GSW's net G&A expenses is appropriate.[95]

For the income attributable to sales of scrap which cannot be consumed due to quality reasons, GSW demonstrated that, because it was unable to consume the scrap in question, it included the cost of such scrap in its G&A expenses.[96] Accordingly, because GSW routinely purchases scrap as an input and will periodically determine that some of that scrap cannot be used, and will have to be resold, and because the related costs were included in the G&A rate calculation, we determine that it is appropriate to include this income as an offset to G&A expenses.[97]

For the income attributable to scrapped finished goods, Commerce may allow an offset for sales of scrapped finished goods as long as the associated cost of producing the scrapped finished goods are also included.[98] We have not granted an offset to GSW's G&A expenses for these scrapped finished goods because GSW did not demonstrate that it had included the cost of the scrapped finished goods in its calculations.[99]

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[92] *See 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 Issues and Decision Memorandum, at comment 5.
[93] *See* Response of Global Steel Wire S.A., CELSA Atlantic SA, and Compania Espanola de Laminacion to Second Supplemental Section D Questionnaire, dated October 4, 2017 (DSQR2), at 34-35.
[94] *Id.*
[95] Importantly, GSW did not include these income items in question in the calculation of its cost of manufacturing scrap offset. *See* Cost Verification Report, at Exhibit 8.
[96] *See* Cost Verification Report, at Exhibit 19.
[97] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*France CTL*) and accompanying Issues and Decision Memorandum at Comment 13 (allowing an income offset to G&A and noting that the costs associated with the ancillary activities were included in the reported costs).
[98] *Id.*
[99] *See Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011), and accompanying Issues and Decision Memorandum at Comment 6.

Comment 5: Adjustment of GSW's Reported Costs to Reflect the Yield Loss Attributable to the Cutting Stage of the Production Process

CELSA's Arguments[100]

- Because there is no appreciable yield loss during the cutting stage of the production process, Commerce should not make a yield loss adjustment to GSW's reported costs in the final determination.
- If Commerce continues to adjust GSW's costs for the unreported yield loss, Commerce should ensure that the adjustment only affects CONNUMs which had passed through the cutting stage of the production process.

The Petitioner's Rebuttal Arguments[101]

- Commerce should continue to adjust GSW's reported costs to reflect the yield loss calculated by Commerce for the *Preliminary Determination* because GSW neither demonstrated that it did not incur a yield loss nor demonstrated that its actual yield loss was lower than the rate calculated by Commerce.

Commerce's Position:

We have continued to adjust GSW's reported per-unit costs to reflect a yield loss attributable to the cutting stage of the production process. Record evidence demonstrates that there can be differences in weight at both the end of the rolling line and at the end of the cutting line.[102] Indeed, GSW acknowledged that "the only yield loss that occurs is steel scale, miniscule amounts of which may be dislodged in the cutting process."[103] Moreover, while GSW stated during the cost verification that any potential yield loss attributable to the cutting process would be less than that calculated by Commerce for the *Preliminary Determination*, GSW did not present documentation to support a lower yield loss rate.[104] Therefore, we have continued to adjust GSW's reported costs to reflect the calculated cutting yield loss. However, because we agree with CELSA that it is not appropriate to impute a cutting yield loss to products which have not gone through the cutting stage of the production process, we have revised the application of the calculated yield loss so that it is only applied to cut products.

Comment 6: Whether GSW Understated its Per-Unit Costs by Reporting Sales Quantities

The Petitioner's Arguments[105]

- GSW based its reported costs on POI sales quantities rather than POI production quantities.

[100] *See* CELSA Case Brief, at 9.
[101] *See* Petitioner's Rebuttal Brief, at 11.
[102] *See* DSQR2, at 20.
[103] *Id.*
[104] *See* Cost Verification Report, at 25.
[105] *See* Petitioner's Case Brief, at 27-28.

- GSW's POI sales quantities exceeded its POI production quantities.
- Commerce should adjust GSW's reported per-unit costs by the percentage difference between POI sales quantities and POI production quantities.

CELSA's Rebuttal Arguments[106]

- GSW did not understate its per-unit costs by reporting POI sales quantities rather than POI production quantities.
- GSW reported its actual POI per-unit cost of manufacturing for the merchandise under consideration.
- GSW demonstrated that its POI per-unit product-specific cost of manufacturing calculations reconciled with the aggregate costs incurred in each stage of the production process.

Commerce's Position:

GSW calculated the POI product-specific manufacturing costs attributable to each stage of the production process (*e.g.*, melt shop, rolling, *etc*.) based on POI stage-specific production quantities, not on sales quantities.[107] GSW used POI sales quantities to weight-average the product-specific POI manufacturing costs assigned to the CONNUM level because its system does not enable it to determine whether wire rod which underwent further processing had been made from wire rod made prior to or during the POI.[108] Finally, because GSW used POI sales quantities to weight-average the cost of products to the CONNUM level, GSW demonstrated that the extended cost database was greater than the actual corresponding cost manufacturing. Specifically, GSW's cost reconciliation included an upward reconciling adjustment to reflect the difference between the extension of POI manufacturing costs by sales quantities and the overall POI manufacturing cost.[109] Accordingly, because GSW's reported per-unit costs reflect its POI cost of producing the merchandise under consideration, it is neither necessary nor appropriate to adjust GSW's reported per-unit costs by the difference between POI sales quantities and POI production quantities.

[106] *See* CELSA Rebuttal Brief, at 20-25.
[107] *See*, *e.g.*, Cost Verification Report at 20 (explaining that the "first step in its calculation of {GSW's} direct materials cost was to identify the POI manufacturing costs of the billet type(s) consumed during the production of the finished good") and 26-27 (explaining that GSW determined POI product-specific conversion costs attributable to the melt shop and rolling mill using POI stage-specific production quantities).
[108] *See* Response of Global Steel Wire S.A., CELSA Atlantic S.A., and Compania Espanola de Laminacion to Section D of the Antidumping Questionnaire, dated July 17, 2017, at 32-34. We note that GSW demonstrated that it had included the costs of additional processing in the product-specific costs of those products which underwent the additional processing. *See* Cost Verification Report, at 30-31.
[109] *See* Cost Verification Report, at 14.

Comment 7: Whether GSW Improperly Calculated Direct Materials Cost on a Product-Group Basis

The Petitioner's Arguments[110]

- Rather than report the direct materials cost recorded in its cost-accounting system, GSW understated its direct materials cost by reporting its costs on a less specific product-group basis.
- Commerce should adjust GSW's reported direct materials cost to reflect product-specific billet consumption.

CELSA's Rebuttal Arguments[111]

- Record evidence demonstrates that GSW's reported direct materials (*i.e.*, billet) production costs were calculated on a material-code specific, not product-group, basis.

Commerce's Position

We have not adjusted GSW's reported direct materials cost. GSW neither calculated its direct materials cost on a less-specific product-group basis nor understated its direct materials cost. The first step in GSW's calculation of its product-specific manufacturing costs is the determination of the product-specific POI cost of manufacturing for the billet consumed in the production of the merchandise under consideration.[112] Importantly, during this step of GSW's calculations, GSW identified the specific billet material code(s) used in the production of the specific finished good and determined the POI cost of producing that billet material code.[113]

The second step in GSW's product-specific direct materials cost calculations involves determining the quantity of billet consumed in the production of the merchandise under consideration.[114] GSW demonstrated that, on a product-specific basis, it determined the quantity of billet consumed in the production of the merchandise under consideration by dividing the product-specific POI production quantity by the billet product-group yield rate.[115] GSW used the billet product-group yield rate because, rather than track billet inventory movement on a material-specific basis, GSW tracks billet inventory movement by billet product group.[116] Commerce tied both the figures used in the calculation of the billet-group yield rate calculations to the overall cost reconciliation.[117] The slight difference noted by the petitioner between the reported calculated product-specific billet consumption and the product-specific billet consumption shown in GSW's system is due to two factors. First, the reported billet consumption quantity is based on actual consumption and on a billet-group basis. Second, the

[110] *See* Petitioner's Case Brief, at 27-28.
[111] *See* CELSA Rebuttal Brief, at 27.
[112] *See* Cost Verification Report, at 20.
[113] *Id.*
[114] *Id.* at 23.
[115] *Id.*
[116] *Id.*
[117] *Id.* at 25.

consumption referred to by the petitioner is at standard cost and is for only one product within the product group.[118] We find that GSW's method was reasonable and reflected the methodology from their normal books and records.

Comment 8: Inclusion of Certain Items in the Calculation of the CELSA Companies' General and Administrative Expense Rates

The Petitioner's Arguments[119]

- CELSA consistently delayed the submission of the FY 2016 audited financial statements for several affiliates involved in the production and sale of the subject merchandise.
- Due to CELSA's delay, Commerce was apparently unable to examine certain costs and/or expenses reflected in several of the affiliates' FY 2016 financial statements.
- Commerce should follow its standard practice and include certain additional costs/expenses in the calculation of the affiliates' respective G&A expense rates.

CELSA's Rebuttal Arguments[120]

- CELSA did not delay the submission of its audited financial statements.
- Commerce does not include the types of specific costs/expenses identified by the petitioner in the calculation of G&A expenses.
- One of the items characterized as an expense by the petitioner is actually an income item.
- Commerce does not include losses/expenses which pertain to investing activity in the calculation of G&A expenses.
- Commerce does not include the other categories of expenses/losses in the calculation of G&A expense rates.

Commerce's Position

We find no evidence that CELSA delayed the submission of its audited financial statements. Although the estimated date of completion changed, CELSA informed Commerce of the status of its audited financial statements and their estimated completion date throughout the course of this investigation. Additionally, CELSA submitted draft versions of the companies' balance sheets and income statements along with the fiscal year trial balances, as requested. CELSA submitted the FY 2016 audited financial statements of CELSA Barcelona and CELSA France prior to the *Preliminary Determination*. On November 20, 2017, in response to Commerce's previous request that CELSA submit the audited financial statements as soon as they became available, CELSA submitted the FY 2016 audited financial statements for the remaining companies. Record evidence demonstrates that, with the exception of one affiliated supplier, the

[118] *Id.* For a detailed explanation of GSW's billet inventory management, see Response of Global Steel Wire S.A., CELSA Atlantic SA, and Compania Espanola de Laminacion to the First Section D Supplemental Questionnaire, dated September 5, 2017, at 41.
[119] *See* Petitioner's Case Brief, at 24-27.
[120] *See* CELSA Rebuttal Briefs, at 11-20.

FY 2016 financial statements had been submitted within a few days of the date of the auditor's signature.

We have revised our calculation of several of the CELSA companies' respective G&A expense rates to include several items noted by the petitioner.[121] Section 773(b)(3)(B) of the Act states that for purposes of calculating the cost of production, Commerce shall include "an amount for selling, general, and administrative expenses based on the actual data pertaining to the production and sales of the foreign like product by the exporter in question." By definition, G&A expenses relate to the general operations of the company as a whole and not to specific products or processes.[122] Moreover, G&A expenses represent period costs, not product costs, and as such they should be spread proportionately over all merchandise produced and sold in that period.[123]

In calculating the G&A expense ratio, Commerce normally includes certain expenses and revenues that relate to the general operations of the company as a whole, as opposed to including only those expenses that directly relate to the production of the subject merchandise.[124] To determine whether it is appropriate to include particular items in the calculation of G&A expenses, Commerce reviews the nature of the items and their relationship to the general operations of the company.[125] Accordingly, we have reviewed each of the items noted by the petitioner and analyzed whether the item represents a period cost related to the general operations of the CELSA companies and made adjustments accordingly.[126]

Comment 9: AFA

The Petitioner's Arguments[127]

- Commerce should continue to apply AFA to AME, as AME has failed to act to the best of its ability by refusing to participate in this investigation and there is no reason to depart from Commerce's decision in the *Preliminary Determination.*

No other interested parties commented on this issue.

Commerce's Position

We agree with the petitioner. In the *Preliminary Determination*, we applied AFA to AME, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308, due to AME's failure to respond to Commerce's antidumping duty questionnaire.[128] For the reasons described in the

[121] S*ee* CELSA Final Cost Calculation Memorandum.
[122] *See Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and accompanying Issues and Decision Memorandum, at Comment 6.
[123] *Id*.
[124] *Id.*
[125] *Id.*
[126] Due to the proprietary treatment of the individual items, *see* CELSA Final Cost Calculation Memorandum for further discussion and analysis.
[127] *See* Petitioner's Case Brief, at 1.
[128] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum, at 14-17.

Preliminary Determination, and in the "Use of Adverse Facts Available" section of this memorandum, we continue to apply AFA to AME for this final determination.

IX. Recommendation

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

☒ ☐

Agree Disagree

3/19/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance