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Investigation  
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October 24, 2017

**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  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Determination in the  
Antidumping Duty Investigation of Carbon and Alloy Steel Wire  
Rod from Ukraine

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## I. SUMMARY

The Department of Commerce (Department) preliminarily determines that carbon and alloy steel wire rod (wire rod) from Ukraine is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On March 28, 2017, the Department received an antidumping duty (AD) petition concerning imports of wire rod from Ukraine,<sup>1</sup> which was filed in proper form on behalf of Charter Steel, Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation, (collectively, the petitioners). The Department initiated the investigations on April 17, 2017.<sup>2</sup>

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<sup>1</sup> See Letter to the Secretary of Commerce and the Secretary of the U.S. International Trade Commission, “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 – Petitions for the Imposition of Antidumping and Countervailing Duties,” dated March 28, 2017 (the Petitions).

<sup>2</sup> See *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: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

In the *Initiation Notice*, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>3</sup> Accordingly, on April 19, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>4</sup> On April 27, 2017, we received comments on behalf of the petitioners regarding the respondent selection process.<sup>5</sup> On May 5, 2017, we received rebuttal comments from Public Joint Stock Company (PJSC) Yenakiieve Steel (Yenakiieve) regarding the respondent selection process.<sup>6</sup> On May 8, 2017, the petitioners submitted a letter requesting that the Department reject Yenakiieve's rebuttal comments because they contained new factual information that did not rebut or clarify the petitioners' April 27, 2017, comments.<sup>7</sup> On May 10, 2017, Yenakiieve filed a letter requesting that the Department accept its rebuttal comments because they were timely filed and were submitted to rebut Nucor's respondent selection comments.<sup>8</sup> On May 22, 2017, the Department limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the merchandise under consideration by volume, ArcelorMittal Steel Kryvyi Rih OJSC (AMKR) and Yenakiieve.<sup>9</sup>

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of wire rod to be reported in response to the Department's AD questionnaire.<sup>10</sup> The Department received a number of timely scope comments on the record of this investigation, as well as on the records of the companion wire rod investigations following Belarus, Italy, Korea, Spain, South Africa, Turkey, United Kingdom, and the United Arab Emirates.<sup>11</sup> On April 26, 2017, the Department issued a letter to interested parties identifying the list of physical characteristics that the Department proposed using to identify specific products of wire rod, and provided deadlines for

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<sup>3</sup> See *Initiation Notice*, 82 FR at 19211.

<sup>4</sup> See Memorandum to The File, entitled "Certain Carbon and Alloy Wire Rod from Ukraine: U.S. Customs and Border Protection Data for Respondent Selection Purposes," dated April 19, 2017 (CBP Data).

<sup>5</sup> See Letter to the Secretary of Commerce from the petitioners, entitled, "Carbon and Certain Alloy Steel Wire Rod from Ukraine: Respondent Selection Comments," dated April 26, 2017.

<sup>6</sup> See Letter to the Secretary of Commerce from Yenakiieve "Re: Carbon and Alloy Steel Wire Rod from Ukraine: Rebuttal Comments on Respondent Selection" (May 5, 2017) (Yenakiieve Respondent Selection Rebuttal Comments).

<sup>7</sup> See Letter from Nucor Corporation, "Request to Reject Yenakiieve/Makiivka's Rebuttal Respondent Selection Comments," dated May 8, 2017.

<sup>8</sup> See Letter from Public Joint Stock Company (PJSC) Yenakiieve Steel (including its Makiivka branch, PJSC Makiivka Iron and Steel Works), "Carbon and Alloy Steel Wire Rod from Ukraine: Response to Petitioners' May 8 Letter," dated May 10, 2017.

<sup>9</sup> See Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Respondent Selection," dated May 22, 2017.

<sup>10</sup> See *Initiation Notice* at 19208.

<sup>11</sup> For further discussion of these comments, 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: Scope Comments Decision Memorandum for the Preliminary Determination," dated August 7, 2017 (Preliminary Scope Memorandum).

interested parties to submit comments on the proposed product characteristics.<sup>12</sup> On May 10, 2017, the petitioners and various other interested parties in this investigation and the companion AD investigations of wire rod submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.<sup>13</sup> On May 15, 2017, the petitioners and various other interested parties filed rebuttal comments.<sup>14</sup> Based on the comments, the Department issued the AD questionnaire to AMKR and Yenakiieve, which identified the product characteristics<sup>15</sup>

On May 18, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire rod from Ukraine.<sup>16</sup>

On June 20, 2017, after receiving multiple extensions, AMKR submitted its response to Section A of the AD questionnaire. Subsequently, on June 29, 2017, AMKR requested that the Department toll the deadlines of the preliminary determination and other sections of the AD questionnaire due to the cyberattack on AMKR's computer system.<sup>17</sup> On June 30, 2017, Department officials met with AMKR's counsel to discuss the cyberattack on its computer system and AMKR's request that the Department toll the deadline of the preliminary determination.<sup>18</sup> In light of the cyberattack on AMKR's computer system, the Department granted AMKR extensions to submit its responses to sections B through D of the original questionnaire and the supplemental section A questionnaire.<sup>19</sup> Between July 7, 2017, and August

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<sup>12</sup> See Letter to All Interested Parties from Elizabeth Eastwood, Program Manager, Office II, dated April 26, 2017.

<sup>13</sup> See Letter to the Secretary of Commerce from the petitioners, entitled, "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 – Comments on the Department's Proposed Product Comparison Hierarchy" dated May 10, 2017; and Letter to the Secretary of Commerce from POSCO, entitled, "Comments on Product Characteristics and Model Match Methodology," dated May 10, 2017.

<sup>14</sup> See Letter to the Secretary of Commerce from British Steel, entitled, "British Steel's Rebuttal Comments on Product Characteristics," dated May 15, 2017; Letter to the Secretary of Commerce from the petitioners, entitled, "Petitioners' Rebuttal Comments in Response to POSCO's May 10, 2017 Letter," dated May 15, 2017; and Letter to the Secretary of Commerce from CELSA, entitled, "Spain: Rebuttal Comments Regarding Product-Matching Characteristics," dated May 15, 2017.

<sup>15</sup> See Letters to AMKR and Yenakiieve from Paul Walker, Program Manager, Office V, regarding the AD questionnaire, dated May 23, 2017 (AMKR AD Questionnaire) (Yenakiieve AD Questionnaire). On June 1, 2017, the Department issued a memorandum correcting a typographical error in the product characteristic for minimum specified sulfur content. See Memorandum to the File, entitled, "Correction of Typographical Errors in Field 3.11 (Minimum Specified Sulfur Content)," dated June 1, 2017.

<sup>16</sup> See *Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom*; *Determinations*, 82 FR 22846 (May 18, 2017) (ITC Preliminary Affirmative Injury Determination); see also "International Trade Commission Preliminary Report Carbon and Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom," ITC Publication 4615, May 2017.

<sup>17</sup> See Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Section A of the Department's Questionnaire," dated June 21, 2017 (AMKR Section A Response); and Letter to Secretary of Commerce from AMKR, entitled, "Carbon And Alloy Steel Wire Rod from Ukraine: Request to Toll Investigation Deadlines," dated June 29, 2017 (AMKR Request to Toll Deadlines).

<sup>18</sup> See Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Meeting with Arcelor Mittal Steel Kryvyi Rih (AMKR)," dated June 30, 2017.

<sup>19</sup> See Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, entitled, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Second Sections, B, C, and D Extension," dated July 6, 2017;

7, 2017, AMKR submitted its responses to the outstanding sections of the AD questionnaire and the high inflation questionnaire.<sup>20</sup> Additionally, between July 31, 2017, and August 29, 2017, AMKR submitted responses to the Department's supplemental questionnaires and also submitted responses addressing translation deficiencies in its original responses.<sup>21</sup>

On June 6, 2017, Yenakiieve submitted a follow-up letter to its May 5, 2017, submission requesting to be excused from responding to the AD questionnaire because its company records and offices had been seized by foreign-based separatists in the Donetsk Region of Ukraine.<sup>22</sup> On June 15, 2017, the petitioners submitted comments regarding Yenakiieve's request to be excused from responding to the AD questionnaire.<sup>23</sup> On June 19, 2017, the Department issued a questionnaire to Yenakiieve regarding its difficulties in responding to the AD questionnaire and requested that Yenakiieve identify alternative forms in which it could respond to the AD questionnaire.<sup>24</sup> After receiving multiple extensions to respond to the AD questionnaire, on June 30, 2017, Yenakiieve notified the Department that it could not file any further questionnaire responses.<sup>25</sup>

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Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, entitled, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Third Sections, B and C Extension and Extension Request for Supplemental Section A Questionnaires," dated July 19, 2017; Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, entitled, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Fourth Extension Request for Section D Questionnaire," dated August 2, 2017.

<sup>20</sup> See Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: ArcelorMittal Kryvyi Rih's Response to Section C of the Department's Questionnaire," dated July 7, 2017 (AMKR's July 7 Section C Response); Letter to Secretary of Commerce from AMKR, entitled, "Carbon And Alloy Steel Wire Rod from Ukraine – ArcelorMittal Kryvyi Rih's Sections B&C Questionnaire Response," dated July 25, 2017 (AMKR's July 25 Sections B and C Response); and Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Section D of the Department's Questionnaire," dated August 7, 2017 (AMKR's August 7 Section D Response).

<sup>21</sup> See Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to First Supplemental Section A of the Department's Questionnaire," dated August 1, 2017; Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Second Supplemental Section A of the Department's Questionnaire," dated July 31, 2017; Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Supplemental Section C of the Department's Questionnaire," dated August 11, 2017; Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR Errata to Supplemental Section C," dated August 14, 2017; Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to First Supplemental Section B of the Department's Questionnaire," dated August 24, 2017; Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Second Supplemental Section B of the Department's Questionnaire," dated August 24, 2017; and Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Second Supplemental Section D of the Department's Questionnaire," dated August 29, 2017.

<sup>22</sup> See Letter to Secretary of Commerce from Yenakiieve, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Follow-Up Notification of Difficulty Responding to Questionnaire," dated June 6, 2017 (Yenakiieve June 6, 2017 Letter).

<sup>23</sup> See Letter to Secretary of Commerce from the petitioners, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Comments on Yenakiieve's Notification of Inability to Respond," dated June 15, 2017 (Petitioner's June 15th Letter).

<sup>24</sup> See Letter to Yenakiieve from Paul Walker, Program Manager, Office V, dated June 19, 2017 (Yenakiieve June 19, 2017 Supplemental Questionnaire).

<sup>25</sup> See Memorandum to the File, entitled, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Clarification of Deadlines," dated June 26, 2017; and Letter to Secretary of Commerce from Yenakiieve, entitled,

On June 22, 2017, the Department selected the next largest publicly identifiable producer/exporter of subject merchandise, Duferco S.A. (Duferco), as an additional mandatory respondent.<sup>26</sup> Accordingly, on June 23, 2017, the Department issued the AD questionnaire to Duferco.<sup>27</sup> On June 29, 2017, Duferco filed a submission arguing (1) that it was not a producer/exporter of subject merchandise; (2) it only purchases subject merchandise from Ukrainian producers; and (3) it is not the first party that has knowledge of the destination of the sales to the United States.<sup>28</sup> On July 7, 2017, the Department issued a letter notifying Duferco that the CBP data placed on the record of the proceeding indicated that Duferco was the next largest publicly identifiable producer/exporter of the subject merchandise and informed Duferco of the deadlines for responding to the AD questionnaire.<sup>29</sup> On July 17, 2017, Duferco submitted additional comments and factual information to demonstrate that it is not a producer or exporter of subject merchandise and should not be examined as a mandatory respondent.<sup>30</sup> On August 7, 2017, Duferco submitted its supplemental questionnaire response to the Department's knowledge of destination questionnaire.<sup>31</sup>

On August 11, 2017, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).<sup>32</sup> Thereafter, pursuant to section 733(c)(1)(A) of the Act, the Department published in the *Federal Register* a postponement of the preliminary determination until no later than October 24, 2017.<sup>33</sup>

Additionally, in October 2017, the petitioners, AMKR, and Yenakiieve submitted comments that the Department considered in making its preliminary determination.<sup>34</sup> On October 18, 2017,

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"Carbon and Alloy Steel Wire Rod from Ukraine: Notification of Inability to Respond to Further Questionnaires," dated June 30, 2017 (Yenakiieve June 30, 2017, Letter).

<sup>26</sup> See Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Selection of Additional Mandatory Respondent," dated June 22, 2017.

<sup>27</sup> See Letter to Duferco from Paul Walker, Program Manager, Office V, regarding the AD questionnaire, dated June 22, 2017.

<sup>28</sup> See Letter to the Secretary of Commerce from Duferco, entitled, "Certain Carbon and Alloy Wire Rod from Ukraine; Duferco Comments on Receipt of Questionnaire," dated June 29, 2017.

<sup>29</sup> See Letter to Duferco from Paul Walker, Program Manager, Office V, dated July 7, 2017.

<sup>30</sup> See Letter to the Secretary of Commerce from Duferco, entitled, "Certain Carbon and Alloy Wire Rod from Ukraine; Duferco Comments on Receipt of Questionnaire," dated July 17, 2017.

<sup>31</sup> See Letter to Duferco from Paul Walker, Program Manager, Office V, dated June 21, 2017; and Letter to the Secretary of Commerce from Duferco, entitled, "Certain Carbon and Alloy Wire Rod from Ukraine; Duferco's Supplemental Questionnaire Response" (August 4, 2017).

<sup>32</sup> See the petitioners' Letter, "Carbon and Alloy Steel Wire Rod from Ukraine: Petitioners' Request to Extend the Preliminary Determination Due Date for Certain Cases," dated August 11, 2017.

<sup>33</sup> See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 39564 (August 21, 2017).

<sup>34</sup> See Letter to the Secretary of Commerce from the petitioners, entitled, "Nucor's Pre-Preliminary Determination Comments," dated October 5, 2017 (the petitioners' Pre-Preliminary Comments); Letter to the Secretary of Commerce from AMKR, entitled, "Response to Nucor's Pre-Preliminary Determination Comments," dated October 18, 2017 (AMKR's Pre-Preliminary Comments); and Letter to the Secretary of Commerce from Yenakiieve, entitled, "Response to Nucor's Pre-Preliminary Determination Comments," dated October 10, 2017.

AMKR argued that it had insufficient time to respond to the Department's questionnaires due to the cyberattack it suffered, and proposed certain remedies.<sup>35</sup> However, as discussed below in section on "Application of Facts Available and Use of Adverse Inference," the Department preliminarily determines that AMKR had an adequate amount of time, and thus no remedy is required.

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

### III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2017.<sup>36</sup>

### IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,<sup>37</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.<sup>38</sup> Certain interested parties from the companion wire rod investigations commented on the scope of the wire rod investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.<sup>39</sup> We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.<sup>40</sup> In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties, and since the issuance of the Preliminary Scope Decision Memorandum, certain parties submitted scope case briefs or scope rebuttal briefs.<sup>41</sup> We will issue a final scope decision on the records of the wire rod investigations after considering the comments submitted in the scope case and rebuttal briefs.

### V. PRELIMINARY DETERMINATION OF NO SALES

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(Yenakiieve's Pre-Preliminary Comments).

<sup>35</sup> See AMKR's Pre-Preliminary Comments at 4-8.

<sup>36</sup> See 19 CFR 351.204(b)(1).

<sup>37</sup> See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>38</sup> See *Initiation Notice*, 82 FR at 19207-08.

<sup>39</sup> For further discussion of these comments, *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: Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 7, 2017 (Preliminary Scope Decision Memorandum).

<sup>40</sup> *Id.*

<sup>41</sup> See Letter from POSCO dated September 6, 2017, entitled "Scope Issues Case Brief," Letter from British Steel Limited dated September 6, 2017, entitled "British Steel's Scope Case Brief," and Letter from petitioners dated September 13, 2017, entitled "Rebuttal Brief in Response to the Scope Case Briefs of British Steel and POSCO."

On June 22, 2017, the Department selected Duferco as an additional respondent.<sup>42</sup> On June 29, 2017, Duferco provided a narrative response with supporting documentation demonstrating that it was not the first party in the chain of distribution who had knowledge that subject merchandise was destined for the United States.<sup>43</sup> Duferco indicated that it was not a producer of subject merchandise, had no legal presence in Ukraine, and only purchased subject merchandise from companies in Ukraine.<sup>44</sup> Therefore, the Department has preliminarily determined not to further examine Duferco as a part of this investigation, and preliminarily finds that Duferco had no sales of subject merchandise during the POI.<sup>45</sup> As such, any entries of subject merchandise exported by Duferco will be subject to the All-Others Rate.<sup>46</sup>

## **VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE**

### **A) Legal Standard**

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

Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts

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<sup>42</sup> See Memorandum, “RE: Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Selection of Additional Mandatory Respondent,” dated June 22, 2017.

<sup>43</sup> See Letter to the Secretary of Commerce from Duferco, entitled, “Re: Certain Carbon and Alloy Wire Rod from Ukraine; Duferco Comments on Receipt of Questionnaire,” dated June 29, 2017.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> See Letter to the Secretary of Commerce from Duferco, entitled, “Re: Certain Carbon and Alloy Wire Rod from Ukraine; Duferco Comments on Receipt of Questionnaire,” dated July 17, 2017.

<sup>46</sup> See, e.g., *Silicon Metal from Norway: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Preliminary Determination of No Shipments, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 47475, 47476 (October 12, 2017).

otherwise available.<sup>47</sup> In doing so, and under the Trade Preferences Extension Act of 2015 (TPEA),<sup>48</sup> the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>49</sup> In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>50</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>51</sup> It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>52</sup>

#### B) *Application of Facts Available to AMKR with Adverse Inference*

Sections 776(a)(1) and 776(a)(2)(B) and (C) of the Act provide that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if necessary information is not on the record, if an interested party fails to provide information in the form and manner requested by the Department, or if an interested party significantly impedes a proceeding. Record evidence demonstrates that AMKR failed to provide information in the form or the manner requested by the Department, even after having taken into account the effects of the cyberattack. As a result, necessary information is not available on the record, which significantly impeded the conduct of the investigation. Specifically, the Department has preliminarily determined that during this investigation, AMKR provided: (1) incomplete questionnaire responses, containing self-granted extensions without complete fully legible, English translations;<sup>53</sup> (2) inaccurate control numbers

<sup>47</sup> See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *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).

<sup>48</sup> On June 29, 2015, the TPEA made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). Therefore, the amendments apply to this investigation. The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

<sup>49</sup> See section 776(b)(1)(B) of the Act.

<sup>50</sup> See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>51</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

<sup>52</sup> 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 Issues and 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).

<sup>53</sup> In the original questionnaire, the Department placed AMKR on notice that:

If you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must



(CONNUMs) in its sales and cost databases; (3) sales databases with the incorrect date of sale and thus inaccurate sales reconciliations;<sup>54</sup> and (4) contradictory responses on these main issues along with other subsidiary calculations, where AMKR would provide different responses to the same questions posed by the Department in different questionnaire responses.<sup>55</sup>

Furthermore, we preliminarily determine that the Department considered the ability of AMKR to submit the requested necessary information in accordance with section 782(c) of the Act, and we acted consistent with our obligations under that provision. In addition, we find that AMKR was provided sufficient opportunity to correct its deficient submissions, and did not do so under section 782(d) of the Act. Finally, we preliminarily find that the information provided by AMKR did not satisfy the requirements of 782(e) of the Act, and therefore the Department was not required to use, and indeed could not use, that incomplete data in its preliminary determination.

*AMKR did not provide necessary information in the form and manner requested, thereby impeding the proceeding*

AMKR's home market and U.S. sales databases contain numerous discrepancies, such as: (i) inaccurate date of sale variables not based on when the material terms are set; (ii) incomplete

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notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. *Statements included within a questionnaire response regarding a respondent's ongoing efforts to collect part of the requested information, and promises to supply such missing information when available in the future, do not substitute for a written extension request.* Section 351.302(c) of the Department's regulations requires that all extension requests be in writing and state the reasons for the request. Any extension granted in response to your request will be in writing; otherwise the original deadline will apply.

*See AMKR's AD Questionnaire at 3 (emphasis added); and see also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (Final Rule).* Additionally, the original questionnaire also gave detailed instructions to AMKR regarding the Department's filing requirements on submitting original source documentation along with English translations. Specifically, the questionnaire stated: "{I}nclude an original and translated version of all pertinent portions of non-English language documents that accompany your response, including financial statements." *See AMKR AD Questionnaire at G-3; and 19 CFR 351.303(d) and (e).* 19 CFR 351.303(e) further provides: "A document submitted in a foreign language must be accompanied by an English translation of the entire document or of only pertinent portions, where appropriate, unless the Secretary waives this requirement for an individual document. *A party must obtain the Department's approval for submission of an English translation of only portions of a document prior to submission to the Department.*" (emphasis added). In each of the Department's questionnaires to AMKR, the Department informed AMKR that it needed to provide complete English translations of each source document, citing to 19 CFR 351.303(e).

<sup>54</sup> *See e.g.,* AMKR's Supplemental Section A Response and AMKR's Second Supplemental Section A Response, which include incomplete sales process flow charts, incomplete sales packages, incomplete chart of accounts and financial statements for multiple affiliates, and untranslated exhibits; AMKR's Supplemental Section B Response and AMKR's Second Supplemental Section B Response, which includes a home market sales database with an incorrect date of sale and thus does not reconcile to the sales information, incomplete/inaccurate CONNUMs, and missing or incorrectly calculated movement/selling expenses; and AMKR's Supplemental Section C response, which includes U.S. sales database with an incorrect date of sale and thus does not reconcile to the sales information, incomplete/inaccurate CONNUMs, and missing or incorrectly calculated movement/selling expenses.

<sup>55</sup> *Id.*

quantity and value reconciliations; (iii) inaccurate/misreported CONNUMs; and (iv) missing/incorrectly calculated movement expenses and selling expenses. The Department has provided a brief description of each these items below and cited to relevant sections of AMKR's submissions.

*i. Home Market Sales Database*

AMKR's most recent questionnaire response lacks a complete quantity and value reconciliation between its home market sales database to its accounting records.<sup>56</sup> Although AMKR provided some information, the submitted information does not reconcile the total quantity and value of AMKR's home market sales database to its total sales (*i.e.*, subject and non-subject merchandise sales) recorded in its accounting records.<sup>57</sup> Obtaining complete sales reconciliations allows the Department to ensure the completeness and accuracy of a respondent's reported sales used in the margin calculation.

Additionally, AMKR reported invoice date as the date of sale for its home market sales, including its consignment sales<sup>58</sup> that were added in its most recent home market sales database and after AMKR revised its sales channels also in the most recent response, but failed to explain why shipment date is not the proper date of sale.<sup>59</sup> The information AMKR submitted regarding the date of sale for its consignment sales and the sales in its other channels of distribution is incomplete.<sup>60</sup> Therefore, the Department cannot determine when the material terms of sale are established for AMKR's home market sales.<sup>61</sup> It is essential that a respondent report the correct date of sale because this ensures that the proper universe of sales is used in the Department's margin calculation. Thus, the Department may use a date other than the date of invoice if the essential terms of sale (*e.g.*, quantity and price) better reflects the date on which the material terms of sale are established.<sup>62</sup> The lack of clarity of AMKR's responses in this regard raises questions about the accuracy of AMKR's home market sales database and sales reconciliation, given the centrality of the correct date of sale and thus the reconciliation process of the total

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<sup>56</sup> See AMKR AD Questionnaire; AMKR's Supplemental Section A Questionnaire; AMKR's Second Supplemental Section A Questionnaire; and AMKR's Supplemental Section B Questionnaire.

<sup>57</sup> *Id.*

<sup>58</sup> The Department finds that AMKR was reporting the invoice date for both the date of sale and shipment date for these recently added consignment sales, which comprise a significant portion by volume of the revised home market sales database. While AMKR acknowledges that it is the Department's practice to use warehouse withdrawal date as the date of sale for consignment sales, the record evidence for these sales is incomplete, and thus, the Department cannot establish conclusively when the terms of sale were set for these consignment sales. See AMKR's Supplemental Section B Response at 23-4 and Exhibits B-19 through B-22.

<sup>59</sup> See AMKR's Section B Response at B-23 and B-24 and Exhibit B-1; and Letter to Secretary of Commerce from the petitioners, entitled, "Comments on AMKR's Sections B and C Questionnaire Responses," dated July 31, 2017, at 6. Additionally, several of AMKR's home market sales had shipment dates that fell outside the POI.

<sup>60</sup> See AMKR's Supplemental Section B Response at Exhibits B-19 through B-22.

<sup>61</sup> *Id.* AMKR submitted separate sales packages for each channel of distribution, but failed to submit cover pages or dividers so the Department cannot determine what documents go with each channel of distribution. Additionally, almost all of the documents are untranslated.

<sup>62</sup> See 19 CFR 351.401(i); see also *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

reported sales to the Department's evaluation of the completeness and accuracy of the reported information.

ii. *U.S. Sales Database*

AMKR reported that all its sales of subject merchandise were made through its affiliated U.S. reseller, Arcelor Mittal International (AMI). Additionally, AMKR reported AMI's order acknowledgement date as the date of sale rather than the date of shipment, which the record evidence suggests, in fact, is when the material terms of sale were set for AMKR's U.S. sales.<sup>63</sup> Based on the information in its questionnaire responses, AMKR also did not report the correct date of shipment in its U.S. sales database (*i.e.*, likely either date when the merchandise left AMKR's factory/distribution warehouse or the bill of lading date).<sup>64</sup> As previously mentioned, obtaining the correct date of sale ensures that the correct sales are used in the Department's margin calculation. Given that AMKR misreported the date of sale and/or shipment date for all of its U.S. sales, the Department cannot determine whether AMKR's total U.S. quantity and value reconciliation is accurate.<sup>65</sup>

iii. *Inaccurate and Missing CONNUMS*

AMKR failed to provide accurate CONNUMS with corresponding matches in its sales and cost databases. The proper reporting of physical characteristics in the CONNUM hierarchy is critical for the Department's margin calculation. The physical characteristics form the basis of the Department's model matching criteria and ensure that home market and U.S. sales are matched with identical or similar merchandise.<sup>66</sup> Matches of identical or similar merchandise are determined by the physical characteristics in the product matching hierarchy.<sup>67</sup> The Department

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<sup>63</sup> The Department finds that AMKR did not acknowledge until its most recent U.S. sales response for the first time that there was a variation in quantity between the order acknowledgment document and the commercial invoice document due to a commercial weight tolerance range. However, while there is a specified weight tolerance range on the order acknowledgment document for AMKR's submitted sample U.S. sales packages, the reported quantity based on commercial invoice for most sales *significantly exceeds this weight tolerance* in the U.S. sales database. As such, the Department finds that the record evidence demonstrates that the material terms of sale (*i.e.*, price and quantity) were not set by the order acknowledgment document but instead by a later document. Since AMKR acknowledged that the material terms of sale (*i.e.*, quantity) do not change after the subject merchandise is shipped and invoiced to the United States, the record evidence demonstrates that the appropriate date of sale should be a later date, such as the date of shipment, as reported on such documents as the bill of lading, which the record evidence show pre-date the commercial invoice issued by AMKR's U.S. affiliate (AMI) to the first unaffiliated U.S. customer. See AMKR's Supplemental Section C Response at 20-21; Exhibit C-11 (*emphasis added*); and AMKR's Section A Response at Exhibit A-8; and AMKR's Second Supplemental Section A Response at Exhibit A-82.

<sup>64</sup> See AMKR's Section C Response at 23.

<sup>65</sup> See AMKR's Supplemental Section C Response at 20-21. This is further supported by AMKR's own recognition that the bill-of-lading precedes the posting date by a few days, and thus, the Department does not have the correct date of shipment reported for all of the U.S. sales.

<sup>66</sup> See AMKR AD Questionnaire at B-6 and B-8.

<sup>67</sup> See, *e.g.*, *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 63 FR 18879 (April 16, 1998), and accompanying Issues and Decision Memorandum at Comment 2 ("The creation of a product concordance inherently relies upon the matching of significant physical characteristics."); and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Model Match Comment 1 ("...the Department focuses its

is unable to perform an accurate margin calculation for AMKR without an accurate reporting of physical characteristics.<sup>68</sup>

In its section C questionnaire response, AMKR reported that all of its U.S. sales underwent a heat treatment process.<sup>69</sup> Yet, when the Department requested that AMKR clarify what type of heat treatment process was used for all of its U.S. sales, AMKR stated that none of its U.S. sales underwent a heat treatment process and that its U.S. sales database was revised accordingly.<sup>70</sup> However, contrary to its revised narrative response, AMKR continued to report that all of its U.S. sales underwent a heat-treatment process in its revised U.S. sales database.<sup>71</sup>

Additionally, in its home market sales database, for the physical characteristic maximum allowable depth of decarburization (decarburization), AMKR failed to provide sample sales and production documentation that identified the actual measure of decarburization for its home market sales.<sup>72</sup> AMKR claimed that none of its home market sales documents reference an acceptable maximum depth of decarburization, but this is contradicted by other information submitted by AMKR in this investigation.<sup>73</sup> Furthermore, in its revised home market sales database, AMKR modified the physical characteristic for decarburization for approximately one fourth of its total sales observations, but never requested permission from the Department or explained why it was making a change to its reporting of decarburization with supporting documentation.<sup>74</sup> AMKR made a similar unsolicited change for the maximum specified phosphorous and sulfur content (phosphorous and sulfur content) physical characteristic in its revised home market sales database that was made to almost all of AMKR's home market sales.<sup>75</sup> Finally, there are multiple CONNUMS in its revised home market and U.S. sales databases that do not have matching CONNUMs in its cost database.<sup>76</sup> This is a key failure as without matching CONNUMs in these databases, the Department can neither perform the HM cost test or calculate accurate constructed values, both of which are crucial to a complete, accurate antidumping analysis.

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selection of model match characteristics on unique measurable physical characteristics that the product can possess....").

<sup>68</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 33396 (June 12, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (*Hot-Rolled from Thailand Final Results*); and *Xanthan Gum from Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 1 (*Xanthan Gum from Austria Final*).

<sup>69</sup> See AMKR's Supplemental Section C Response at C-16; AMKR's Sections B and C Response at Exhibit C-1.

<sup>70</sup> See AMKR's Supplemental Section C Response at C-17.

<sup>71</sup> *Id.*, at Exhibit C-1; and Memorandum to File, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Analysis of AMKR's Databases for Preliminary Determination," dated concurrently with this memorandum, at Attachments 1, 2, and 3 (Analysis of AMKR's Databases for Preliminary Determination).

<sup>72</sup> See AMKR's Sections B and C Response at B-14.

<sup>73</sup> See AMKR's Supplemental Section B Response at 11 and 13, and Exhibit B-18 (AMKR submitted a mill certificate for a home market sale listing a measurement for the decarburized layer of wire rod); AMKR's AD Questionnaire at B-12 (listing reporting of decarburization codes).

<sup>74</sup> See AMKR's Second Supplemental Section B Response, at Exhibit B-31; *see also* Letter to Secretary of Commerce from the petitioners, entitled, "Nucor's Deficiency Comments Regarding AMKR's Supplemental Section B Questionnaire Responses," dated September 5, 2017, at 5.

<sup>75</sup> *Id.*

<sup>76</sup> See Analysis of AMKR's Databases for Preliminary Determination at Attachments 1, 2, and 3.

iv. *Missing and Incorrectly Calculated Variables in Home Market and U.S. Sales Databases*

AMKR's most recent home market sales questionnaire response contains the following discrepancies, among others: (1) missing calculation worksheets and supporting documentation for billing adjustments, rebates, inland freight (plant/warehouse to customer), and warranty expenses; (2) calculation worksheets that do not reconcile the values reported in the home market sales database for inland freight (plant to distribution); (3) calculations that contradict AMKR's narrative responses for warehousing expenses; and (4) calculations for inland insurance and indirect selling expenses that were not submitted in accordance with the Department's instructions.<sup>77</sup> Additionally, AMKR's most recent U.S. sales questionnaire response contains the following discrepancies, among others: (1) missing calculation worksheets and supporting documentation for billing adjustments, inland freight (plant/distribution warehouse to customer), and inland freight (plant/warehouse to port of exportation); and (2) missing variables contrary to AMKR's narrative response or variables not calculated pursuant to the Department's instructions, which include inland insurance, marine insurance, U.S. inland freight from port to warehouse, U.S. warehousing, U.S. inland insurance, U.S. customs duty, indirect selling expenses in the country of manufacture or the United States, inventory carrying cost, and destination (zip or state).<sup>78</sup>

Accordingly, in light of all this necessary information, which was not reported by AMKR in the form or manner requested by the Department, we have determined that the application of facts available, in accordance with sections 776(a)(1) and 776(a)(2)(B) is warranted.

*The Department has met its requirements under Sections 782(c), (d), and (e) of the Act*

The Department's application of facts available is subject to section 782 of the Act. Specifically, section 782(c)(1) of the Act requires the Department to consider an interested party's ability to provide requested information, after being notified by the party that it is unable to submit the information in the form and manner requested by the Department, and provides a full explanation for the difficulty and suggests an alternative form to provide the information. Additionally, pursuant to section 782(d) of the Act, the Department must notify a party that its response to the Department's questionnaire does not comply with the Department's request for information, inform the party of the nature of the deficiency, and provide the party with an opportunity to resolve the deficiency. If an interested party fails to provide a satisfactory and timely questionnaire response, after being given a second opportunity, the Department may disregard all or part of its original and subsequent responses. Finally, under section 782(e) of the Act, the Department shall not disregard necessary information submitted by an interested party if it meets certain requirements specified under this section of the Act.

As discussed below, the Department has met its requirements under sections 782(c), (d), and (e) of the Act for purposes of this preliminary determination. Specifically, on June 29, 2017, after submitting its section A response, AMKR notified the Department that it suffered a cyberattack

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<sup>77</sup> See AMKR's Supplemental Section B Questionnaire at 12-15; and AMKR's Second Supplemental Section B Questionnaire at 4-6.

<sup>78</sup> See AMKR's Supplemental Section C Questionnaire at 13-27.

on June 27, 2017, which resulted in its computer system being totally inaccessible, prevented it from inputting orders, transmitting instructions to its manufacturing facilities, or being able to ship finished goods.<sup>79</sup> Therefore, AMKR requested that the Department toll the deadline of the preliminary determination until normal operations resumed for AMKR.<sup>80</sup>

Upon receiving notification of the cyberattack on AMKR's computer system, the Department met with AMKR to discuss AMKR's ability to respond to the outstanding sections of the original questionnaire.<sup>81</sup> Additionally, in accordance with section 782(c) of the Act, the Department issued a supplemental questionnaire to AMKR requesting further information of AMKR's accounting, sales, and production documentation, including cost centers, in both electronic and hardcopy form, and also allowed AMKR to respond to the outstanding sections of the AD questionnaire in an alternative form, if necessary.<sup>82</sup> Furthermore, the Department granted AMKR multiple extensions to submit the outstanding sections of the AD questionnaire (*i.e.*, home market/U.S. sales information, cost of production data).<sup>83</sup> Based on the information AMKR provided in its submissions, and discussed during meetings regarding the cyberattack, the Department provided AMKR with multiple extensions, within the restrictions of the statutory deadlines of the investigation, to restore its computer/accounting systems and to respond to the AD questionnaire once its system had been restored.<sup>84</sup> Although AMKR claims that it was only granted two weeks to prepare complete responses after the cyberattack, in fact the Department granted AMKR over 30 days to submit its questionnaire responses.<sup>85</sup>

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<sup>79</sup> See Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Request to Toll Investigation Deadlines," dated June 29, 2017 (AMKR Toll Deadline Submission).

<sup>80</sup> *Id.* at 2-3.

<sup>81</sup> See Memorandum to File, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Meeting with Arcelor Mittal Steel Kryvyi Rih (AMKR)," dated July 3, 2017.

<sup>82</sup> See Letter to AMKR from Paul Walker, Program Manager, entitled, "Section A Supplemental Questionnaire," dated July 11, 2017.

<sup>83</sup> In total, AMKR was granted 62-days to submit its complete response to Sections B and C of the original questionnaire, and 74-days to submit its complete high-inflation response to Section D of the original questionnaire. See Letter to Secretary of Commerce from AMKR, entitled, "Section B and C Questionnaire Response," dated July 25, 2017 (AMKR's Section B and C Response); Letter to Secretary of Commerce from AMKR, entitled, "Section C Questionnaire Response," dated July 13, 2017 (AMKR's Section C Response); and Letter to Secretary of Commerce from AMKR, entitled, "Section D Questionnaire Response," dated August 4, 2017 (AMKR's Section D Response).

<sup>84</sup> See Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Extension Request for the First & Second Supplemental Section A Questionnaire Response and for the B-D Questionnaire Response," dated July 17, 2017, at 3.

<sup>85</sup> In total, the Department granted AMKR 35 days to submit its complete Section A response, which included extensions to file complete, English translations for untranslated exhibits. See Letter from Paul Walker, Program Manager, to AMKR, entitled, "Request for Translated Wire Rod Specifications," dated July 13, 2017; Letter to Secretary of Commerce from AMKR, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Section A of the Department's Questionnaire," dated June 20, 2017 (AMKR's Section A Response); Letter to Secretary of Commerce from AMKR, entitled, "Carbon And Alloy Steel Wire Rod from Ukraine – Submission of AMI's Full Chart of Accounts," dated July 7, 2017 (AMI's Full Chart of Accounts Response); Letter to Secretary of Commerce from AMKR, entitled, "Carbon And Alloy Steel Wire Rod from Ukraine – Re-Submission of Certain Financial Statements," dated July 13, 2017, (AMKR's Refiling of Financial Statements); Letter to Secretary of Commerce from AMKR, entitled, "Carbon And Alloy Steel Wire Rod from Ukraine – Re-Submission of Certain Financial Statements and Wire Rod Specifications," (AMKR's July 10 Refiling of Financial Statements and Wire Rod Specifications); and Letter to Secretary of Commerce from AMKR, entitled, "Carbon And Alloy Steel Wire Rod from Ukraine – AMKR Submission of Fully Translated Wire Rod Specifications," dated July 18, 2017 (AMKR July 18 Wire Rod Specifications Submission).

In any case, AMKR failed to answer a significant number of questions in the AD questionnaire and to provide requested calculation worksheets and supporting documentation.<sup>86</sup> Specifically, as noted above, AMKR's U.S. sales questionnaire response: (1) lacked a complete U.S. sales quantity and value reconciliation; (2) omitted numerous sales and movement expenses with the requested calculation worksheets and supporting source documentation; and (3) included over 20 questions with deficient answers that either could not be used in the Department's margin calculation or were contradicted by other areas of its response.<sup>87</sup> Therefore, pursuant to section 782(d) of the Act, the Department notified AMKR that its response to the Department's AD Questionnaire did not comply with the Department's request for information.<sup>88</sup> Additionally, the Department provided AMKR with an opportunity to remedy the numerous deficiencies in its questionnaire responses by issuing supplemental questionnaires that identified the discrepancies in its questionnaire responses.<sup>89</sup> Despite being given additional opportunities to properly respond to the Department's AD Questionnaire, there remain significant deficiencies in AMKR's questionnaire responses.<sup>90</sup>

Furthermore, because the Department cannot use the information provided by AMKR to calculate an accurate dumping margin, AMKR has not acted to the best of its ability in providing the requested information, and AMKR's submitted information cannot be used without undue difficulties, the Department is not required to consider AMKR's incomplete data pursuant to section 782(e) of the Act. Furthermore, we disagree with AMKR that the Department has a statutory obligation to provide it with even more opportunities to provide the requested information.

## 2. *Use of Adverse Inference to AMKR*

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information."<sup>91</sup> In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.<sup>92</sup> Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable

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<sup>86</sup> See AMKR's Section B and C Response; and AMKR's Section D Response.

<sup>87</sup> See Letter to AMKR from Paul Walker, Program Manager, entitled, "Supplemental Section C Questionnaire," dated August 1, 2017, at 1 (AMKR's Supplemental Section C Questionnaire).

<sup>88</sup> See AMKR's Supplemental Section B Questionnaire at 1; AMKR's Second Supplemental Section B Questionnaire at 1; and AMKR's Supplemental Section C Questionnaire at 1.

<sup>89</sup> *Id.*

<sup>90</sup> See AMKR's Supplemental Section B Questionnaire; AMKR's Second Supplemental Section B Questionnaire; AMKR's Supplemental Section C Questionnaire; Letter to AMKR from Paul Walker, Program Manager, entitled, "Supplemental Section A Questionnaire," dated July 11, 2017 (AMKR's Supplemental Section A Questionnaire); Letter to AMKR from Paul Walker, Program Manager, entitled, "Second Supplemental Section A Questionnaire," dated July 13, 2017 (AMKR's Second Supplemental Section A Questionnaire); and Letter to AMKR from Michael Martin, Senior Accountant, "Supplemental Section D Questionnaire," dated August 16, 2017 (AMKR's Supplemental Section D Questionnaire).

<sup>91</sup> See section 776(b) of the Act.

<sup>92</sup> *Id.*; see also SAA at 870.

result by failing to cooperate than if it had cooperated fully.”<sup>93</sup> The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that 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.<sup>94</sup> The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.<sup>95</sup> Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.<sup>96</sup> The CAFC further held that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>97</sup>

Within the meaning of section 776(b) of the Act, the Department preliminarily finds that AMKR failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information, as noted above, and that the application of AFA is warranted. In sum, despite the Department’s detailed and specific questionnaires and instructions in these questionnaires, and the provision of adequate response time in light of the cyberattack, AMKR did not report accurately and completely to requests for information regarding: 1) its reported CONNUMS and corresponding matching CONNUMs in both sales databases and cost database; 2) its reported home market database; 3) its reported U.S. sales database; and 4) its reconciliations. For all of the aforementioned reasons, the Department finds that AMKR failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Therefore, we are applying total AFA to AMKR for this preliminary determination.

C) *Application of Facts Available with Adverse Inference for Yenakiieve*

1. *Application of Facts Available*

Pursuant to sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act, the Department preliminarily finds that the application of facts available is warranted with respect to Yenakiieve because Yenakiieve withheld necessary information requested by the Department and Yenakiieve failed to provide any information requested by the Department in the form and manner requested, thereby significantly impeding this investigation.

During the respondent selection stage of this investigation, Yenakiieve and its parent company, Metinvest International S.A. (Metinvest)<sup>98</sup> notified the Department that they were experiencing

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<sup>93</sup> See SAA at 870.

<sup>94</sup> See *Nippon Steel*, 337 F.3d at 1382.

<sup>95</sup> *Id.* at 1380.

<sup>96</sup> *Id.* at 1382.

<sup>97</sup> *Id.*

<sup>98</sup> See Memorandum, entitled, “Carbon and Alloy Steel Wire Rod from Ukraine: Placing on the Record Information Regarding Yenakiieve and Metinvest Group,” dated concurrently with this memorandum for the preliminary determination (Yenakiieve and Metinvest Group Memo).



difficulties analyzing the CBP data because they no longer controlled their production plants in the separatist-controlled areas of Eastern Ukraine.<sup>99</sup> In particular, Metinvest stated that since March 15, 2017, it no longer controlled or operated Yenakiiieve because its facilities and records were seized by foreign-backed separatists.<sup>100</sup> As a result, Yenakiiieve claimed that it could neither respond to the Department's questionnaire, nor submit to verification, and therefore, should not be selected as a mandatory respondent.<sup>101</sup>

In support of its claim that it could not respond to the Department's questionnaire or participate in verification, Yenakiiieve and its parent company, Metinvest, submitted press releases documenting the seizure of its facilities in Eastern Ukraine by foreign-backed separatists as well as an affidavit from Metinvest's legal department.<sup>102</sup> In the affidavit, Metinvest claimed that: (1) it had lost access to all of Yenakiiieve's paper records; (2) did not have full access to Yenakiiieve's accounting system; (3) could only perform limited queries of historical data regarding Yenakiiieve's accounting system; and (4) no longer had employees with sufficient knowledge of Yenakiiieve's data to prepare accurate questionnaire responses.<sup>103</sup>

After receiving notification of Yenakiiieve's inability to participate in this investigation, the Department met with Yenakiiieve's American legal counsel to discuss how events precluded it from being selected as a mandatory respondent and completing the AD questionnaire.<sup>104</sup> The Department concluded that its respondent selection determination was a separate legal issue from determining whether a company has provided satisfactory reasons for being unable to respond to the Department's questionnaires and requests for information.<sup>105</sup> Accordingly, because the Department found that Yenakiiieve was one of the two largest exporters/producers of subject merchandise during the POI according to the CBP data, and no interested party had identified any errors in the CBP data to question its reliability, the Department selected Yenakiiieve as a mandatory respondent.<sup>106</sup> Nonetheless, the Department acknowledged Yenakiiieve's alleged situation in the respondent selection memorandum and noted that the Department would request further information from Yenakiiieve as part of the investigation on this matter.<sup>107</sup>

Following the Department's respondent selection determination, the Department issued Yenakiiieve its antidumping questionnaire.<sup>108</sup> That questionnaire is divided into four sections: 1) Section A covers corporate structures and affiliations, a company's sales practices, its accounting systems and its production process; 2) Section B covers information pertaining to a company's

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<sup>99</sup> See Letter to Secretary of Commerce from Yenakiiieve, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Request for Extension of Time to Submit Comments on CBP data," dated April 26, 2017, at 1.

<sup>100</sup> See Letter to Secretary of Commerce from Yenakiiieve, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Rebuttal Comments on Respondent Selection," dated May 5, 2017, at 1-2 (Yenakiiieve CBP Rebuttal Comments).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at Exhibits 1-4.

<sup>103</sup> *Id.* at Exhibit 4.

<sup>104</sup> See Memorandum to the File, entitled, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: *Ex Parte* Meeting," dated April 26, 2017.

<sup>105</sup> See Memorandum, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Respondent Selection," (May 22, 2017) (Respondent Selection Memorandum) at 6.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See Yenakiiieve AD Questionnaire.

home market sales; 3) Section C covers information pertaining to a company's United States' sales; and 4) Section D covers the cost of production for both the home market and United States sales for the company.<sup>109</sup> In response, Yenakiiieve and Metinvest submitted a letter reiterating that they were unable to respond to the Department's requests for information because of the seizure of Yenakiiieve's facilities and records by foreign-backed separatists in Eastern Ukraine.<sup>110</sup> Specifically, Yenakiiieve and Metinvest stated that they could not respond to the Department's questionnaire because: (1) They experienced a complete loss of control of Yenakiiieve's facilities, paper records, and accounting system and (2) Metinvest's employees lacked the knowledge to provide an accurate assessment of Yenakiiieve's production and sales data, including certain affiliates whose facilities were also seized by foreign-backed separatists.<sup>111</sup> In support of its assertion of not being able to respond to the questionnaire, Yenakiiieve and Metinvest provided an affidavit from an economic consultant who claimed that based on his knowledge from working in prior cases, it would be impossible for Yenakiiieve or Metinvest to participate in this investigation because they no longer had custody or access to Yenakiiieve's normal books and records.<sup>112</sup>

In light of Yenakiiieve's second notification that it was experiencing difficulty responding to the questionnaire, the Department met with Yenakiiieve's counsel again and subsequently issued a supplemental questionnaire to Yenakiiieve and Metinvest.<sup>113</sup> In the supplemental questionnaire, the Department asked that the companies reconsider their ability to respond to the questionnaire and offered to provide assistance, to the extent practicable, in accordance with sections 782(c) and 782(d) of the Act.<sup>114</sup> In the supplemental questionnaire, the Department requested that for "each question in the antidumping questionnaire that Yenakiiieve" believed it could not answer, it (including Metinvest) "provide supporting documentation to demonstrate that it could not provide the requested information."<sup>115</sup> To the extent that Yenakiiieve and Metinvest could not provide information in the form requested, the Department further requested that Yenakiiieve suggest alternative forms for how it "could submit the necessary information along with supporting documentation."<sup>116</sup> Additionally, the Department requested that Yenakiiieve and Metinvest explain with supporting documentation whether they had personnel at Yenakiiieve's facilities, other facilities in Ukraine, or other parts of Europe who had some knowledge or could become knowledgeable to provide the requested information for this investigation.<sup>117</sup> Moreover, the Department requested that Yenakiiieve and Metinvest explain: (1) how long their computer systems maintain archived electronic sales, financial, cost, logistics, and production information; (2) the extent of integration between the Metinvest Group's accounting systems; and (3) whether

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<sup>109</sup> *Id.*

<sup>110</sup> See Letter to the Secretary of Commerce from Yenakiiieve, entitled, "Carbon and Alloy Steel Wire Rod from Ukraine: Follow-Up Notification of Difficulty Responding to Questionnaire," dated June 6, 2017 (Yenakiiieve's June 6 Letter); and Yenakiiieve AD Questionnaire.

<sup>111</sup> See Yenakiiieve's June 6, 2017, Letter at 5-7.

<sup>112</sup> *Id.* at Appendix 1.

<sup>113</sup> See Memorandum to the File, entitled, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: *Ex Parte* Meeting," dated June 15, 2017; see also Yenakiiieve June 19, 2017 Supplemental Questionnaire.

<sup>114</sup> See Yenakiiieve June 19, 2017, Supplemental Questionnaire.

<sup>115</sup> *Id.* at 3 (question 1).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 3 (question 2).

necessary information requested by the Department (*i.e.*, sales, logistic, production, and financial data) could be extracted from Metinvest's or accounting systems of its other branches.<sup>118</sup> Finally, the petitioners pointed out that Yenakiieve was able to complete a foreign producer questionnaire it was issued by the ITC in the companion ITC investigation.<sup>119</sup> Accordingly, the Department also requested that Yenakiieve and Metinvest explain why Yenakiieve was able to complete the ITC's foreign producer questionnaire, but could not respond to the Department's questionnaire.<sup>120</sup>

After receiving multiple extensions to respond to the original questionnaire and an extension to respond to the Department's supplemental questionnaire, Yenakiieve and Metinvest concluded that they would not respond to any of the Department's questions and informed the Department accordingly.<sup>121</sup>

The Department finds that the application of facts available is warranted because the record is devoid of any information pertaining to Yenakiieve because Yenakiieve did not respond to any of the Department's requests.<sup>122</sup> Although we understand and acknowledge that Yenakiieve may have not been able to respond to all of the Department's requests for information given its unique and unfortunate situation, the information on the record suggests that there was at least some information requested by the Department, such as the company's corporate structure and affiliation information, which Yenakiieve or its parent company, Metinvest, could have provided, but elected not to do so. Such information could have permitted the Department to more completely evaluate the options available for the provision of information pursuant to this investigation.

As previously mentioned, the Department met with Yenakiieve's counsel twice and issued a supplemental questionnaire to provide Yenakiieve with an express opportunity to suggest alternative forms in which it could respond to the antidumping questionnaire so that the Department could determine whether it could calculate an accurate margin for Yenakiieve in the preliminary determination based on the submitted information.<sup>123</sup> The Court of International Trade (CIT) has held that where the request for information was clear and relates to some of the central issues in an antidumping case, such as corporate structure/affiliations, accurate sales/cost databases and underlying reconciliations, and underlying accounting systems of the respondent and its affiliates or parent company, the respondent has, to the best of its ability, "a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce."<sup>124</sup> Further, the CIT has stated that the terms of section 782(e) do not give rise to an

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<sup>118</sup> *Id.* at 4 (question 3).

<sup>119</sup> On June 15, 2017, the petitioners argued and provided supporting documentation that Yenakiieve responded to the ITC's foreign-producer questionnaire approximately one month after it lost control of its facilities in Eastern Ukraine. See Petitioner's June 15th Letter at 9-10.

<sup>120</sup> See Yenakiieve June 19, 2017, Supplemental Questionnaire., at 4-5 (question 4).

<sup>121</sup> See Yenakiieve June 30, 2017, Letter at 1.

<sup>122</sup> See Yenakiieve AD Questionnaire at Sections A, B, C, and D.

<sup>123</sup> See Yenakiieve June 19, 2017, Supplemental Questionnaire.

<sup>124</sup> See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (July 3, 2001) (*Tung Mung*); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (June 4, 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the

obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of that provision.<sup>125</sup>

Here, the Department's requests for information were clear. In accordance with section 782(c) of the Act, Yenakiiie was required to submit the requested information or suggest alternative forms in which it could provide the questionnaire. Furthermore, in accordance with section 782(d) of the Act, the Department met with Yenakiiie's counsel and issued its supplemental questionnaire in an attempt to help Yenakiiie remedy or explain its inability to respond to any of the Department's questions. However, Yenakiiie and Metinvest provided no information whatsoever, and failed to explain why they could not provide, at a minimum, certain data presumably not tied solely to the physical plants which were taken over by foreign-backed separatists. For example, presumably Yenakiiie's corporate structure and/or affiliation information would have been available to Yenakiiie, at least through its parent company, Metinvest, or other branches/affiliates of Metinvest throughout Europe.<sup>126</sup> Despite this, Yenakiiie and Metinvest provided zero data in response to the parts of the Section A questionnaire pertaining to the company's corporate structure and affiliations.

Additionally, in the companion ITC investigation, Yenakiiie and Metinvest elected to actively participate -- responding to the foreign producer questionnaire, which requested annual sales/production data from Yenakiiie during the POI and was subject to verification, and submitting a post-conference brief.<sup>127</sup> Given that Yenakiiie and Metinvest responded to the ITC's requests for information, the Department finds that Yenakiiie and Metinvest should have been able to provide certain sales and production information, *albeit* in an alternative form (*e.g.*, aggregate data), to the Department's original and supplemental questionnaires.<sup>128</sup> Yet, even after the Department issued a supplemental questionnaire to Yenakiiie and Metinvest to determine what information, if any, was available, and pointed specifically to the ITC questionnaire response, Yenakiiie and Metinvest declined to provide any information whatsoever to the Department.<sup>129</sup>

In their pre-preliminary comments, Yenakiiie and Metinvest maintain that their ITC foreign producer questionnaire response shows that they could not have provided any information requested in the Department's questionnaire because the production/sales data provided to the ITC was on an annual basis and not on a transaction-basis, as required in the AD questionnaire.<sup>130</sup> However, Yenakiiie and Metinvest failed to suggest providing annual sales and production information, as an alternative, in responding to the Department's questionnaire, or any other alternative based on that data, as provided under section 782(c) of the Act.<sup>131</sup> To be

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respondent's obligation to create an accurate record and provide Commerce with the information requested).

<sup>125</sup> See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

<sup>126</sup> See Yenakiiie June 19, 2017 Supplemental Questionnaire at 3 (question 1).

<sup>127</sup> See Memorandum to the File, entitled, "Carbon and Certain Alloy Steel Wire Rod from Ukraine: Placing the U.S. International Trade Commission's Preliminary Report and Foreign Producer Questionnaire on Record," dated October 5, 2017 (Yenakiiie's ITC Submissions Memorandum), at Attachments 1, 2, and 3.

<sup>128</sup> *Id.* at Attachments 1 and 2.

<sup>129</sup> See Yenakiiie June 30 Letter at 1.

<sup>130</sup> See Yenakiiie's Pre-Preliminary Comments at 2-3.

<sup>131</sup> See Yenakiiie June 19, 2017 Supplemental Questionnaire at 3-5 (questions 1-4).

clear, Yenakiiieve and Metinvest provided nothing in response to the Department's questionnaire and supplemental questionnaire. Accordingly, the Department was precluded from considering, for example, whether annual sales and production information could be used as facts available under section 776(a) in some capacity in calculating an accurate dumping margin for Yenakiiieve.

In the supplemental questionnaire, the Department advised Yenakiiieve and Metinvest of their obligation to suggest alternative forms in which the requested information could be provided, but as we've explained, they elected not to do so.<sup>132</sup> As a result, there is no information on the record which the Department may use to calculate a margin for Yenakiiieve.

For the foregoing reason, the Department preliminarily determines that the application of facts available pursuant to sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act is warranted with respect to Yenakiiieve.

## 2. *Use of Adverse Inference to Yenakiiieve*

Record evidence demonstrates that Yenakiiieve failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Specifically, Yenakiiieve and Metinvest, did not provide any of the information requested in the Department's initial or supplemental questionnaires or suggest alternative forms in which they could provide the requested information. In analyzing whether Yenakiiieve failed to cooperate to the best of its ability, the Department is cognizant that unusual circumstances beyond its control inhibited its ability to fully respond to the questionnaire. Yet, Yenakiiieve failed to respond to any of the Department's questions, such as information regarding its corporate structure and affiliations, to which it likely had access, based on the record evidence. Additionally, the fact that Yenakiiieve and Metinvest responded to the ITC's foreign producer questionnaire and submitted a post-conference brief in the ITC investigation demonstrates that Yenakiiieve had the ability to respond to some sections of the questionnaire, but elected to provide no information to the Department at all.<sup>133</sup>

Yenakiiieve argues that, based on the evidence in this case and in accordance with the Department's decision in *Steel Nails from UAE*, Yenakiiieve should be exempted from responding to the questionnaire and assigned the "all others" rate in this investigation.<sup>134</sup> In *Steel Nails from UAE*, the facts regarding the "non-operating" status of the respondent were fully documented in the previous review and the respondent, including its importer, provided significant record evidence, including email exchanges, court settlements, cancellation of employment contracts, and import statistics showing that the respondent was not exporting to the United States, as requested by the Department.<sup>135</sup> We find that this case is distinguishable from *Steel Nails from UAE* because in that case the Department found that the respondent did not have

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<sup>132</sup> *Id.*

<sup>133</sup> See Yenakiiieve's ITC Submissions Memorandum at Attachments 1, 2, and 3.

<sup>134</sup> See Yenakiiieve's Pre-Preliminary Comments; see also *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32527 (June 9, 2015) (*Steel Nails from UAE*) and accompanying Issues and Decision Memorandum (IDM) at Cmt. 1.

<sup>135</sup> See *Steel Nails from UAE*, and accompanying IDM at Cmt 1.

employees capable of providing company certifications for its questionnaire responses.<sup>136</sup> However, in this case, Yenakiieve provided company certifications with its submissions containing factual information, responded to foreign producer questionnaire in the ITC investigation, and submitted a post conference brief in the ITC investigation.<sup>137</sup> Accordingly, for the foregoing reasons, pursuant to section 776(b) of the Act, the Department preliminarily finds that Yenakiieve failed to cooperate to the best of its ability to comply with the Department's requests for information and that the use of an adverse inference in selecting among facts available is warranted with respect to Yenakiieve.

*D) Selection and Corroboration of AFA Rate for both AMKR and Yenakiieve*

When the Department applies adverse facts available (AFA) because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to base the AFA rate on information derived from the petition, a final determination, a previous administrative review, or any other information placed on the record.<sup>138</sup> In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>139</sup> The Department's practice, in less-than-fair-value investigations, is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.<sup>140</sup>

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as information in the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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.<sup>141</sup>

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>142</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the

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<sup>136</sup> *Id.*

<sup>137</sup> *See e.g.*, Yenakiieve Respondent Selection Rebuttal Comments at Company Certification.

<sup>138</sup> *See also* 19 CFR 351.308(c); SAA, at 868-870.

<sup>139</sup> *See* SAA, at 870.

<sup>140</sup> *See Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>141</sup> *See* SAA, at 870.

<sup>142</sup> *Id.*; *see also* 19 CFR 351.308(d).

information to be used.<sup>143</sup> Further, under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>144</sup>

In this investigation, the highest dumping margin calculated in the Petition is 44.03 percent and no dumping margin was calculated for an individually-examined respondent.<sup>145</sup> Thus, consistent with our practice, we selected the highest dumping margin alleged in the Petition as the AFA rate applicable to AMKR and Yenakiieve in this investigation.<sup>146</sup> Because the AFA rates applied to AMKR and Yenakiieve, the mandatory respondents in this investigation, are derived from the Petition and, consequently, are based upon secondary information, the Department must corroborate the rates to the extent practicable.

For purposes of this investigation, the Department has preliminarily determined that the margins in the Petition are reliable based upon the record information. Specifically, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination, and on that basis concluded that the petition margins meet the reliability requirement of our corroboration analysis.<sup>147</sup> We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the alleged dumping margin calculations (*i.e.*, export price (EP), constructed export price (CEP), normal value (NV), and constructed value (CV)).<sup>148</sup> Furthermore, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP, CEP, CV, and NV calculations used in the Petition to derive the dumping margins alleged in the petition.<sup>149</sup>

Based on our examination of the information, as discussed in detail in Ukraine Initiation Checklist, we consider the petitioners’ EP, CEP, CV, and NV calculations to be reliable. Notably, we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the U.S. price, CV, and NV calculations provided in the Petition. Thus, because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by

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<sup>143</sup> See, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>144</sup> See sections 776(d)(3)(A) and (B) of the Act.

<sup>145</sup> See *Initiation Notice*, 81 FR at 27094; see also Ukraine AD Initiation Checklist.

<sup>146</sup> See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016) and accompanying Issues and Decision Memorandum at Comment 14 (*PET Resin from India Final Determination*).

<sup>147</sup> See Ukraine Initiation Checklist.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margins alleged in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. Because there are no other participating cooperative respondents in these investigations, we relied upon the dumping margins alleged in the Petition, which is the only information regarding the steel wire rod industry reasonably at the Department’s disposal. Furthermore, as noted in *GOES from China*, in which the only mandatory respondent also received AFA, “there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information.”<sup>150</sup>

Accordingly, the Department preliminarily determines that the highest dumping margin alleged in the Petition has probative value, and the Department has corroborated the AFA rate of 44.03 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant to the uncooperative mandatory respondents.<sup>151</sup>

#### E) *All-Others’ Rate*

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

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<sup>150</sup> See *Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES from China*), and accompanying Issues and Decision Memorandum at 20; see also *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with the Department that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that “[t]he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition”).

<sup>151</sup> See section 776(c) of the Act and 19 CFR 351.308(c) and (d); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.



As we indicated above, AMKR and Yenakiieve are the mandatory respondents in this investigation, and their estimated dumping margin are determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances has been to assign, as the "all-others" rate, a simple average of the Petition rates.<sup>152</sup> Consistent with its practice, the Department is using the simple average of the six dumping margins provided in the Petition (34.86 percent, 32.98 percent, 21.23 percent, 44.03 percent, 42.03 percent, and 34.75 percent) which is 34.98 percent as the "all-others" rate to entities not individually examined in this investigation.<sup>153</sup>

## VII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

10/24/2017

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

<sup>152</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>153</sup> See *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014).