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January 8, 2018

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

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of Carbon
and Alloy Steel Wire Rod from Ukraine

I. SUMMARY

The Department of Commerce (Commerce) 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). We analyzed the comments of the interested parties, and are continuing to assign a margin based on total adverse facts available (AFA) to ArcelorMittal Steel Kryvyi Rih (AMKR) and Public Joint Stock Company Yenakiieve Steel (Yenakiieve), two of the mandatory respondents, which failed to act to the best of their abilities by withholding necessary information, failing to provide information in the form and manner requested, subject to section 782(c)(1) and (e) of the Act, and significantly impeding the proceeding. Additionally, Commerce continues to find that there is no need to further examine Duferco S.A. as part of this investigation because the record evidence shows that it did not make any sales of subject merchandise in the United States during the period of investigation (POI). Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Comment 1: Application of Total AFA to AMKR

Comment 2: Application of Total AFA to Yenakiieve



II. BACKGROUND

On October 31, 2017, Commerce published the *Preliminary Determination* for the LTFV investigation of carbon and alloy steel wire rod from Ukraine.¹ We invited interested parties to comment on the *Preliminary Determination*.² Between November 15, and 16, 2017, we received case briefs from Yenakiieve and AMKR, respectively, and a rebuttal brief from Nucor Corporation (Nucor), one of the petitioners³, on November 21, 2017.⁴ AMKR requested a hearing on November 16, 2017, which was held on December 20, 2017.⁵ Based on our analysis of the comments received, we have not revised the weighted-average dumping margins from those assigned in the *Preliminary Determination*.

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 2017.⁶

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.*, products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or

¹ See *Carbon and Alloy Steel Wire Rod from Ukraine: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50375 (October 31, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² *Id.*

³ Charter Steel, Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation, (collectively, the petitioners).

⁴ See Letter from Yenakiieve, “Carbon and Alloy Steel Wire Rod from Ukraine: Case Brief from Yenakiieve,” dated November 15, 2017 (Yenakiieve’s Case Brief); Letter from AMKR, “Carbon and Alloy Steel Wire Rod from Ukraine: Case Brief of ArcelorMittal Steel Kryvyi Rih,” dated November 16, 2017 (AMKR’s Case Brief); Letter from Nucor Corporation, “Carbon and Alloy Steel Wire Rod from Ukraine: Rebuttal Brief of Nucor Corporation,” dated November 20, 2017 (Nucor’s Rebuttal Brief).

⁵ See Letter from AMKR, “Carbon and Alloy Steel Wire Rod from Ukraine – AMKR’s Request for Hearing,” dated November 16, 2017; Letter from Commerce, “Carbon and Alloy Steel Wire Rod from Ukraine: Hearing Schedule,” dated November 21, 2017; see also Transcript of Public Hearing, Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Ukraine, dated December 20, 2017.

⁶ 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; see also 19 CFR 351.204(b)(1).

more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

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

V. DETERMINATION OF NO SALES

On June 22, 2017, Commerce selected Duferco as an additional respondent.⁷ 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.⁸ 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.⁹ Therefore, in the *Preliminary Determination*, Commerce determined not to further examine Duferco as a part of this investigation, and found that Duferco had no sales of subject merchandise during the POI.¹⁰ No party commented on our preliminary findings with respect to Duferco; therefore, we have made no changes in our treatment of Duferco for the final determination. As such, any entries of subject merchandise exported by Duferco will be subject to the All-Others Rate.¹¹

VI. DISCUSSION OF THE ISSUES

Comment 1: Application of Total AFA to AMKR

AMKR's Comments

- Prior to this investigation, no other respondent has ever been subject to an act of “cyber warfare” during an investigation.¹² The hostile act crippled AMKR’s information technology

⁷ See Memorandum, “Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Selection of Additional Mandatory Respondent,” dated June 22, 2017.

⁸ See Letter from Duferco, “Certain Carbon and Alloy Wire Rod from Ukraine; Duferco Comments on Receipt of Questionnaire,” dated June 29, 2017.

⁹ *Id.* at 2.

¹⁰ See *Preliminary Determination*, 82 FR at 50375.

¹¹ 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).

¹² See AMKR’s Case Brief at 1.

(IT) systems and caused AMKR to lose a substantial amount of data that had been prepared for this case.¹³

- Commerce should follow its case precedent in this case and assign AMKR a non-adverse “facts available” margin, which is consistent with the fact that AMKR acted to the “best of its ability” during the investigation.¹⁴
- Commerce must determine a respondent’s level of “ability” before concluding that the respondent failed to act to the best of its ability in responding to Commerce’s initial and supplemental questionnaires.¹⁵ Commerce committed a legal error in this investigation by concluding that AMKR failed to act to the best of its ability.¹⁶
- Commerce has an affirmative obligation to assess the impact of the cyberattack on AMKR’s ability to respond, but there is no evidence on the record that Commerce performed this analysis. Instead, Commerce conflated what AMKR submitted in its questionnaire responses with AMKR’s “ability” to submit information in response to Commerce’s requests. In *Fujian Machinery and Equipment*, the CIT specifically rejected this analysis as “tautological.”¹⁷
- The rationale provided by Commerce in its *Preliminary Determination* is wholly inadequate to justify an AFA determination and to prematurely terminate the investigation with respect to AMKR.¹⁸ The mere fact that Commerce cannot use the information provided by AMKR is not of itself a basis to conclude that AMKR did not act to the “best of its ability” and to calculate its margin using total AFA.¹⁹
- Although Commerce routinely issues multiple supplemental questionnaires to clarify information provided in initial and supplemental questionnaire responses, in this investigation, Commerce issued one supplemental questionnaire for each section of AMKR’s response and issued no further supplemental questionnaires even though nearly two months remained in the investigation to do so.²⁰
- Commerce was wrong in stating that it “granted AMKR over 30 days to submit its questionnaire responses.”²¹ This assertion solely focuses on AMKR’s response to Section A of the questionnaire. Given that AMKR’s data systems only came back online early in the week of July 10, 2017, AMKR only was allotted 14 days to respond to Sections B and C of the questionnaire (*i.e.*, the sections of the questionnaire in which Commerce identified the most errors).²²
- The time available for AMKR to respond to the initial sections of the questionnaire was less than the 30 days required by the Agreement on Antidumping Measures under the World

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 2-4.

¹⁶ *Id.*

¹⁷ *Id.* at 6 citing to, *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 178 F. Supp. 2d 1305 (CIT 2001).

¹⁸ See AMKR’s Case Brief at 6.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 7-8.

²¹ *Id.* at 8-9.

²² *Id.*

Trade Organization.²³ Thus, the limited time provided makes Commerce's determination to apply AFA unjustified.²⁴

- Commerce overstated the degree to which AMKR's questionnaire responses were deficient.²⁵ However, a careful review of AMKR's questionnaire responses demonstrates that its reporting was sound.²⁶ AMKR has accurately reported its home market sales reconciliation and U.S. date of sale.²⁷
- Commerce failed to show AMKR's control numbers (CONNUMs) were incorrect regarding heat treatment, decarburization, and phosphorous and sulfur.²⁸
- Commerce never responded to multiple requests from AMKR to toll the deadline of the preliminary determination.²⁹
- Nevertheless, a few weeks before the preliminary determination in the *Aluminum Foil from China* investigation, Commerce deferred its issuance of the preliminary determination until after the fully extended deadline without providing any legal basis for this deferral. Therefore, it is evident that Commerce has the inherent authority to defer the issuance of its determinations beyond the regulatory and statutory deadlines when circumstances warrant such deferral.³⁰
- If Commerce determines that it still cannot use AMKR's data to calculate a margin, Commerce should apply neutral facts available to AMKR and assign the lowest dumping margin from the Petition, 21.23 percent, to AMKR for the final determination.

Nucor's Comments

- Commerce properly applied AFA to AMKR. There were substantial deficiencies throughout its responses and AMKR failed to demonstrate it cooperated to the best of its ability.³¹
- Commerce was under no obligation to provide AMKR with additional time or opportunities to correct these deficiencies, or to toll the proceeding.³²

²³ *Id.* at 9; *see also* Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Art. 6.1.1.

²⁴ *Id.*

²⁵ *See* AMKR's Case Brief at 10-13.

²⁶ For a detailed discussion of this information, *see* AMKR's Case Brief at 10-27.

²⁷ *Id.*

²⁸ *Id.* at 15-17.

²⁹ *Id.* at 27-28. AMKR references: (1) Letter to Secretary of Commerce from AMKR, "Carbon and Alloy Steel Wire Rod from Ukraine: Request to Toll Investigation Deadlines," dated June 29, 2017 (AMKR Request to Toll Deadlines); and (2) Letter to Secretary of Commerce from AMKR, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Petitioner's Pre-Preliminary Comments," dated October 18, 2017. AMKR also mentions nine of its extension requests, but does not provide a citation for those documents.

³⁰ *Id.* at 29 (citing to *Certain Aluminum Foil from the People's Republic of China: Deferral of Preliminary Determination of the Less-Than-Fair Value Investigation*, 82 FR 47481 (October 12, 2017) and *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair-Value and Postponement of Final Determination*, 82 FR 50859 (November 8, 2017) (*Aluminum Foil from China Preliminary Determination*)).

³¹ *See* Nucor's Rebuttal Brief at 1.

³² *Id.*

- AMKR failed to demonstrate that Commerce’s finding was in error because its argument is based solely on AMKR’s assertion that Commerce needed to provide a more detailed discussion.³³
- AMKR was provided with a full opportunity to correct all its deficiencies in its supplemental responses, but failed to do so.³⁴

Commerce Position: We continue to find it appropriate to base AMKR’s dumping margin on total AFA because AMKR did not act to the best of its ability by: (1) withholding necessary information; (2) failing to provide requested information in the form and manner requested; and (3) significantly impeding the proceeding. Sections 776(a)(1) and (2) of the Act provide that, subject to section 782(d) of the Act, Commerce shall apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

If an interested party, promptly after receiving a request for information from Commerce, notifies Commerce that such party is unable to submit the information requested in the requested form and manner together with a full explanation and suggested alternative forms in which such party is able to submit the information, section 782(c)(1) of the Act provides that Commerce shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to avoid imposing an unreasonable burden to the party. Section 782(c)(2) of the Act provides that Commerce shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by Commerce in connection with investigations and reviews, and shall provide interested parties any assistance that is practicable in supplying such information.

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

On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) was signed into law and made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the

³³ *Id.* at 3.

³⁴ *Id.* at 7.

Act.³⁵ The amendments to section 776 the Act are applicable to all determinations made on or after August 6, 2015, and therefore apply to this investigation.³⁶

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁷ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the Petition, the final determination or other information placed on the record.³⁸

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.³⁹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise.⁴⁰

Commerce Considered AMKR's Arguments and Responses to Commerce's Questions Before Determining that AMKR Failed to Act to Best of Its Ability in Providing Requested Information

On June 29, 2017, AMKR requested that Commerce toll the deadlines of the preliminary determination, and other sections of the AD questionnaire, due to the cyberattack on AMKR's computer system.⁴¹ As noted above, section 782(c)(2) of the Act requires Commerce to take account of any difficulties experienced by interested parties, in supplying requested information, and to provide assistance that is practicable in supplying such information. Therefore, the following day, June 30, 2017, Commerce officials met with AMKR's counsel to discuss the cyberattack on its computer system as well as AMKR's request that Commerce toll the deadline

³⁵ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015); see also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

³⁶ See *Applicability Notice*, 80 FR at 46794-95.

³⁷ See section 776(b)(1)(B) of the Act.

³⁸ See 19 CFR 351.308(c).

³⁹ *Id.*

⁴⁰ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA) at 870.

⁴¹ See Letter to Secretary of Commerce from AMKR, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Section A of Commerce's Questionnaire," dated June 21, 2017 (AMKR Section A Response); (AMKR Request to Toll Deadlines).

of the preliminary determination.⁴² Commerce also requested that AMKR provide routine updates regarding the cyberattack and the restoration of AMKR's computer systems.⁴³

A few days later, on July 5, 2017, AMKR notified Commerce that its computer systems were functioning, but that a significant amount of data was lost as a result of the cyberattack.⁴⁴ AMKR also requested a one month extension of time to respond to Sections B and D of the questionnaire and certain portions of Section C of the questionnaire that required input from company officials.⁴⁵ AMKR stated that it would file all other portions of Section C of the questionnaire by the original July 6, 2017 deadline.⁴⁶ On July 6, 2017, the petitioners submitted comments requesting that Commerce not grant AMKR's extension request in full.⁴⁷

In consideration of AMKR's extension request and the cyberattack on its computer system, Commerce granted AMKR a partial extension of two weeks to submit its responses to Sections B and D of the original questionnaire, as well as the information requested in Section C of the questionnaire that was not available due to the cyberattack.⁴⁸ Moreover, in light of the cyberattack on AMKR's computer system, Commerce granted AMKR further extensions throughout the course of the investigation. Specifically, Commerce provided AMKR with the following extensions: (1) On July 14, 2017, Commerce granted AMKR an extension to submit full English translations of its financial statements and product specifications that were initially due on June 13, 2017, prior to the cyberattack;⁴⁹ (2) On July 25, 2017, Commerce granted AMKR extensions to respond to the first and second supplemental Section A questionnaires;⁵⁰ (3) On August 16, 2017, Commerce granted AMKR an extension to submit its responses to the first and second Section B supplemental questionnaires;⁵¹ (4) On August 18, 2017, Commerce granted AMKR a *second* extension to submit its response to the first and second Section B supplemental questionnaires;⁵² (5) On August 22, 2017, Commerce granted AMKR an extension

⁴² See Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, "Carbon and Alloy Steel Wire Rod from Ukraine: Meeting with Arcelor Mittal Steel Kryvyi Rih (AMKR)," dated June 30, 2017.

⁴³ On June 30, 2017, the petitioners submitted comments opposing AMKR's request to indefinitely toll the deadlines of the preliminary determination. See Letter to Secretary of Commerce from Petitioners, "Carbon and Alloy Steel Wire Rod from Ukraine: Opposition to AMKR's Request to Toll Investigation Deadlines," dated June 30, 2017.

⁴⁴ See Letter to Secretary of Commerce from AMKR, "Carbon and Alloy Steel Wire Rod from Ukraine: Sections B, C, & D Second Extension Request," dated June 30, 2017.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Letter to Secretary of Commerce from the petitioners, "Carbon and Alloy Steel Wire Rod from Ukraine: Opposition to AMKR's Request for Extension," dated July 6, 2017.

⁴⁸ See Memorandum to File, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Second Sections B, C, and D Extension," dated July 6, 2017. The petitioners submitted comments requesting that Commerce not grant AMKR any further extensions.

⁴⁹ See Memorandum to the File, from Annathea Cook, International Trade Compliance Analyst, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine," dated July 14, 2017 (AMKR Fourth SQ).

⁵⁰ See Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Second Extension Requests for Supplemental Section A Questionnaires," dated July 25, 2017.

⁵¹ See Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Extension Request for 1st and 2nd Section B Supplemental Questionnaires," dated August 16, 2017.

⁵² See Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, "Investigation of Carbon

to submit its response to the Section D supplemental questionnaire;⁵³ and (6) on August 24, 2017, Commerce granted AMKR a *second* extension to submit its response to the Section D supplemental questionnaire.⁵⁴

Moreover, as detailed below, Commerce identified significant discrepancies in AMKR's questionnaire responses, but provided AMKR multiple opportunities to correct these deficiencies. In particular, Commerce issued the following supplemental questionnaires to AMKR: (1) July 11, 2017, supplemental questionnaire regarding deficiencies in AMKR's original Section A questionnaire response;⁵⁵ (2) July 13, 2017, supplemental questionnaire regarding additional deficiencies in AMKR's Section A questionnaire response;⁵⁶ (3) August 1, 2017, supplemental questionnaire regarding deficiencies in AMKR's Section C questionnaire response;⁵⁷ (4) August 10, 2017, supplemental questionnaire regarding deficiencies in AMKR's Section B questionnaire response;⁵⁸ (5) August 16, 2017, supplemental questionnaire regarding deficiencies in AMKR's Section A and D questionnaire responses.⁵⁹

Pursuant to section 782(d) of the Act, when an interested party submits a response to a request for information that does not comply with the request, Commerce must inform the party and, to the extent practicable, provide that party with the opportunity to remedy or explain the deficiency. It is indisputable that Commerce provided AMKR with an opportunity to correct the deficiencies in each section of the questionnaire. AMKR argues that Commerce should have provided additional extensions and opportunities to correct the deficiencies in its response.⁶⁰ However, the statute does not require Commerce to provide a respondent with repeated notices of a party of the deficiencies in its questionnaire response and it fails to remedy the deficiencies within the time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Nevertheless, given the unique circumstances of this case, Commerce provided AMKR with multiple extensions and additionally requested detailed information to fully examine the extent of the IT problem so as to analyze AMKR's ability to provide the information needed to perform

and Alloy Steel Wire Rod from Ukraine: Second Extension Request for 1st and 2nd Section B Supplemental Questionnaires," dated August 18, 2017.

⁵³ See Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Extension Request for Section D Supplemental Questionnaires," dated August 22, 2017.

⁵⁴ See Memorandum to the File, from Annatheia Cook, International Trade Analyst, "Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: Second Extension Request for Section D Supplemental Questionnaires," dated August 24, 2017.

⁵⁵ See Department Letter re: First Section A Supplemental Questionnaire for AMKR, dated July 11, 2017 (AMKR First SQ).

⁵⁶ See Department Letter re: Second Section A Supplemental Questionnaire for AMKR, dated July 13, 2017 (AMKR Section C SQ).

⁵⁷ See Department Letter re: Section C Supplemental Questionnaire for AMKR, dated July 13, 2017 (AMKR Section C SQ).

⁵⁸ See Department Letter re: Section B Supplemental Questionnaire for AMKR, dated August 10, 2017 (AMKR Section B SQ).

⁵⁹ See Department Letter re: Section A and D Supplemental Questionnaire for AMKR, dated August 16, 2017 (AMKR Section A&D SQ).

⁶⁰ See AMKR's Case Brief at 5.

its margin calculation. For example, in the July 11, 2017, supplemental questionnaire, Commerce posed AMKR with detailed questions regarding its financial, sales, and production/cost records, maintained in both electronic and hard copy at all locations in Ukraine to determine if AMKR needed to provide the required information in an alternative form.⁶¹ However, AMKR did not fully answer all of these questions regarding its SAP software, cost centers, electronic and hardcopy record, which impacted our ability to determine whether AMKR could have answered parts of the original questionnaire prior to getting its SAP software fully functional in mid-July 2017.⁶²

Moreover, Commerce granted AMKR multiple extensions⁶³ to submit the outstanding sections (home market sales, U.S. sales, and cost) of the original questionnaire.⁶⁴ Specifically, Commerce granted multiple extensions to allow AMKR to restore its IT system, including modules for its accounting system and to have sufficient time to prepare the required data requested in the original questionnaire that may have been inaccessible during the cyberattack. AMKR did inform Commerce multiple times over the course of the investigation on the progress that it made in restoring the functionality of its SAP system and the improving conditions factored into Commerce's assessment of AMKR's ability to respond along with the additional extensions granted.⁶⁵ Commerce was also cognizant of other business obligations that AMKR had when it granted these multiple extensions, such as scheduled verifications for investigations with other foreign governments.⁶⁶

Furthermore, AMKR argues that Commerce should have tolled the statutory deadline in this case as it did in the investigation of *Aluminum Foil from China* and *Hardwood Plywood from China*.⁶⁷ However, we note that Commerce has normally tolled deadlines only due to exigent

⁶¹ See AMKR First SQ at 10-11 (questions 23, 24, and 27).

⁶² See Nucor's Comments on AMKR's Section A SQR, dated August 17, 2017, at 8-10; and AMKR's Section A SQR at 15-19.

⁶³ See Appendix I.

⁶⁴ 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, "Section B and C Questionnaire Response," dated July 25, 2017 (AMKR's Section B and C Response); Letter to Secretary of Commerce from AMKR, "Section C Questionnaire Response," dated July 13, 2017 (AMKR's Section C Response); and Letter to Secretary of Commerce from AMKR, "Section D Questionnaire Response," dated August 4, 2017 (AMKR's Section D Response). Additionally, Commerce issues the entirety of the original questionnaire to respondents with the expectation that the respondent will immediately start working on all sections and does not issue each section of the questionnaire sequentially with the expectation that the respondent would work on each section after the previous section is completed, as AMKR attempts to argue.

⁶⁵ See Letter to Secretary of Commerce from AMKR, "Extension Request," dated July 18, 2017.

⁶⁶ See Letter to Secretary of Commerce from AMKR, "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.

⁶⁷ Questionnaire Response," dated July 17, 2017, at 3.

⁶⁷ See AMKR's Case Brief at 30; *Certain Hardwood Plywood Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017) (*Hardwood Plywood from China*) and accompanying Issues and Decision Memorandum at Comment 1; *Aluminum Foil from China Preliminary Determination*, 82 FR at 50859.

circumstances beyond our control, such as closure of the Federal government due to a snowstorm, that impacts our ability to administer all cases equivalently and respond to inquiries from interested parties, and additionally to meet our statutory deadlines, not on a case-by-case basis.⁶⁸ AMKR is incorrect that Commerce tolled or deferred the deadline for *Hardwood Plywood from China* since Commerce did not toll or defer the deadline for this case beyond the statutory deadline.⁶⁹ Additionally, Commerce deferred issuance of *Aluminum Foil from China* beyond the fully postponed statutory deadline because Commerce needed additional time to analyze comments on China's non-market economy status and thus this case was extraordinarily complicated, which is not the circumstance here.⁷⁰ However, as noted above, Commerce granted AMKR multiple extensions and opportunities to submit the requested information and did not find that tolling the statutory deadlines in this case was necessary.

Accordingly, Commerce considered AMKR's arguments and responses to its questionnaires in light of the cyberattack on its computer system. Commerce provided AMKR with multiple opportunities and extensions of time to submit the requested information, but, for the reasons below, continues to find that AMKR failed to cooperate by not acting to the best of its ability in supplying the requested information.

AMKR Withheld Necessary Information That Had Been Requested, Failed to Provide Information in the Form and Manner Requested, and Significantly Impeded the Proceeding

As discussed below, pursuant to sections 776(a)(1), (2)(A), (2)(B), and (2)(C) of the Act, Commerce continues to find that the use of facts otherwise available is warranted with respect to AMKR. During the course of this investigation, Commerce discovered that AMKR withheld information that was requested by Commerce and was necessary to calculate an accurate margin. AMKR also failed to provide the following information, in the form and manner requested by Commerce: (1) complete questionnaire responses, without self-granting extensions; (2) accurate, reliable control numbers (CONNUMs) in both sales databases with matching CONNUMs in the cost database; (3) accurate, reliable sales reconciliations in both the home market and U.S. market with correct dates of sale and sales quantities; and (4) accurate, reliable sales databases for both the home market and U.S. with reported variables calculated properly.⁷¹ Moreover, AMKR provided contradictory responses to the same questions posed by Commerce in different sections of the questionnaire.⁷²

The Court of International Trade (CIT) has held that a respondent has "a statutory obligation to

⁶⁸ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part*, 81 FR 35326, 35326 (June 2, 2016).

⁶⁹ See *Hardwood Plywood from China*, 82 FR at 53460.

⁷⁰ See *Aluminum Foil from China Preliminary Determination*, 82 FR at 50859; and *Certain Aluminum Foil From the People's Republic of China: Deferral of Preliminary Determination of the Less-Than-Fair-Value Investigation*, 82 FR 47481 (October 12, 2017).

⁷¹ See AMKR's multiple questionnaire responses on the record and Commerce's original questionnaire and multiple supplemental questionnaires; for a full discussion of each section, please see our analysis below in this memorandum.

⁷² *Id.*

prepare an accurate and complete record in response to questions plainly asked by Commerce.”⁷³ Further, the CIT has held that the terms of sections 782(d) and (e) of the Act do not give rise to an obligation for Commerce to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).⁷⁴ In this investigation, Commerce’s requests for information were clear and informed AMKR of its obligation to report complete, accurate, and reliable sales data for both sales of foreign like product and subject merchandise during the POI.⁷⁵ Among other things, Commerce informed AMKR of its obligation to report CONNUMs in both sales databases with matching CONNUMs in the cost database to enable Commerce to calculate an accurate dumping margin.⁷⁶ AMKR had an obligation to provide complete, accurate, and reliable sales and cost databases, or pursuant to section 782(c) of the Act offer an acceptable alternative, but failed to do so. Thus, for the reasons provided below, Commerce does not have reliable information to calculate an accurate margin for AMKR in this investigation.

Despite specific instructions and being granted multiple extensions, AMKR failed to follow

⁷³ See *Tung Mung Dev. Co. v. United States*, No. 99-07-00457, 2001 WL 844484, at *27-28 (CIT July 3, 2001) (*Tung Mung*), *aff’d*; 354 F.3d 1371 (Fed. Cir. 2004); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, Commerce questioned the respondent regarding the information, and Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent’s obligation to create an accurate record and provide Commerce with the information requested).

⁷⁴ See *Tung Mung*, 2001 WL 844484, *28 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

⁷⁵ See Commerce’s original questionnaire and multiple supplemental questionnaires.

⁷⁶ *Id.*

Commerce's instructions,⁷⁷ from the onset of this investigation,⁷⁸ in several key areas.⁷⁹ In reviewing AMKR's questionnaire responses for its home market and U.S. sales, Commerce found that AMKR failed to answer a significant number of questions and/or provide requested calculation worksheets/supporting documentation.⁸⁰

Specifically, Commerce found that in reviewing AMKR's U.S. sales response that: (1) the total quantity and value of sales reported in the U.S. sales database did not reconcile to the submitted U.S. sales reconciliation;⁸¹ (2) there were numerous sales and movement expenses reported in the U.S. sales database that did not have requested calculation worksheets and supporting source

⁷⁷ See Appendix 1 regarding a list of all extensions granted to AMKR.

⁷⁸ In the original questionnaire, Commerce 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 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 Commerce'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 Commerce'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 provide: "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 Commerce's approval for submission of an English translation of only portions of a document prior to submission to Commerce.*" (*emphasis added*). In each of Commerce's questionnaires to AMKR, Commerce informed AMKR that it needed to provide complete English translations of each source document, citing to 19 CFR 351.303(e).

⁷⁹ In total, Commerce 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, "Request for Translated Wire Rod Specifications," dated July 13, 2017; Letter to Secretary of Commerce from AMKR, "Carbon and Alloy Steel Wire Rod from Ukraine: AMKR's Response to Section A of Commerce's Questionnaire," dated June 20, 2017 (AMKR's Section A Response); Letter to Secretary of Commerce from AMKR, "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, "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, "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, "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).

⁸⁰ See AMKR's Section B and C Response and AMKR's Section D Response; AMKR's Section B SQ at questions 1, 6-10, 11-12, and 20-31; AMKR's Section C SQ at 1-2 and questions 1-5, 10-12, 16, and 23-52; and AMKR's Section D SQ at questions 1-21.

⁸¹ See AMKR's Section C SQ at 6 (question 3).

documentation;⁸² (3) there were numerous sales and movement expenses that should have been reported in the U.S. sales database based on AMKR's narrative response;⁸³ and (4) there were over 20 questions from the original questionnaire to which the answer provided was so deficient that it could not be used in Commerce's margin calculation or was directly contradicted in other areas of AMKR's response.⁸⁴

Regarding AMKR's home market sales response, Commerce found that: (1) many of the questions requested in the original questionnaire were severely deficient because AMKR did not follow Commerce's explicit instructions, provide complete answers to each question, and submit requested calculation worksheets and/or fully-translated supporting documentation;⁸⁵ (2) the total quantity and value of sales reported in the home market sales database did not reconcile to the submitted home market sales reconciliation; (3) AMKR's answers to certain questions, such as channels of distribution, directly contradicted other responses;⁸⁶ and (4) movement and selling expenses requested by Commerce were not reported.⁸⁷

i. Inaccurate Sales Databases and Reconciliations

We disagree with AMKR that it provided accurate home market and U.S. sales reconciliations. In the original questionnaire, Commerce explained "The date of sale for your sales to the United States and the foreign market is important to Commerce's analysis. It will determine which sales records are reported in response to Sections B and C of this questionnaire and the exchange rate used to convert normal value into U.S. dollars."⁸⁸ In determining the appropriate date of sale, the original questionnaire also stated:

Commerce will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, Commerce may use a date other than the date of invoice (*e.g.*, the date of contract in the case of a long-term contract) if satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.*, price, quantity).⁸⁹

⁸² *Id.* at 1-2.

⁸³ *Id.*

⁸⁴ See Letter to AMKR from Paul Walker, Program Manager, "Supplemental Section C Questionnaire," dated August 1, 2017, at 1 (AMKR's Supplemental Section C Questionnaire).

⁸⁵ See AMKR's Second Section B SQ at 1 and 4-6 (questions 1-9); AMKR's Section B SQ at 1 and 6-15 (questions 6-31).

⁸⁶ See AMKR's Section B SQ at 4 (question 1).

⁸⁷ See Letter to AMKR from Paul Walker, Program Manager, "Supplemental Section B Questionnaire," dated August 10, 2017 (AMKR's Supplemental Section B Questionnaire); and Letter to AMKR from Paul Walker, Program Manager, "Second Supplemental Section B Questionnaire," dated August 11, 2017 (AMKR's Second Supplemental Section B Questionnaire).

⁸⁸ See AMKR AD Questionnaire at A-9.

⁸⁹ *Id.* at I-5 and I-6.

Additionally, Commerce's original questionnaire requested that AMKR provide sales reconciliations for both its total universe of home market and U.S. sales that reconcile to the total quantity and value reported in each sales database.⁹⁰ Specifically, for both home market and U.S. sales, the original questionnaire instructed AMKR to "{p}lease provide a complete package of documents and worksheets demonstrating how you identified the sales you reported to Commerce and reconciling the reported sales to the total sales listed in your general ledger."⁹¹ However, AMKR failed to provide the information in the form and manner requested.

ii. Home Market Date of Sale

In its case brief, AMKR claims Commerce erred in concluding that AMKR reported an erroneous date of sale for its home market sales because the invoice date was the same as its shipment date in virtually every case.⁹² As detailed below, we disagree. It is Commerce's practice to select date of shipment over dates that follow shipment date because, normally, the essential terms of sale (*i.e.*, quantity and price) will be established when the merchandise is shipped to the customer.⁹³ Commerce continues to find that AMKR did not report the correct date of sale or date of shipment.⁹⁴ In its initial home market questionnaire response, AMKR reported that it sold the foreign like product through three channels of distribution⁹⁵ and reported invoice date as the date of sale.⁹⁶ However, over half of AMKR's total home market sales had a shipment date that preceded the invoice date and some of these sales had a shipment date that fell outside the POI.⁹⁷

Because AMKR's original questionnaire response was unclear as to when the final terms of sale were established and, therefore, whether the reported home market database used the correct date of sale, Commerce issued a detailed supplemental questionnaire.⁹⁸ In the supplemental questionnaire, Commerce requested specific information and supporting documentation regarding AMKR's home market channels of distribution and sales process (*e.g.*, order, sales,

⁹⁰ See AMKR AD Questionnaire at B-6 and C-4.

⁹¹ *Id.* at B-4 and C-4.

⁹² See AMKR's Case Brief at 12-13.

⁹³ See 19 CFR 351.401(i); and *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.

⁹⁴ The original questionnaire instructed AMKR to report the date of shipment as "date of shipment from the last facility under your control, *e.g.*, factory or distribution warehouse, to the unaffiliated customer." See AMKR AD Questionnaire at B-12 and B-23.

⁹⁵ See AMKR's Section A Response at Exhibit A-6. The three channels of distribution were identified as: 1) factory to home market customer facility; 2) factory to warehouse where the customer took delivery at the warehouse; and 3) factory where the customer took delivery at AMKR's factory.

⁹⁶ *Id.* at A-23.

⁹⁷ 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, "Comments on AMKR's Sections B and C Questionnaire Responses," dated July 31, 2017, at 6.

⁹⁸ Specifically, AMKR referenced framework agreements, pre-payment invoices, and additional purchase orders in its original description of the home market sales process. See AMKR's Section A Response at A-25 and A-26.

shipment, payment documents) which demonstrated when the material terms of sale were established in the home market.⁹⁹

However, AMKR continued to report that it made home market sales through three channels of distribution and that the essential terms of sale were established by the invoice date, given that prices are set monthly and the invoiced quantity can change after the issuance of the customer's purchase order.¹⁰⁰ Contrary to Commerce's explicit instructions, AMKR did not provide a chart identifying all documentation issued during the sales process for the three channels of distribution in the home market (e.g., negotiation, production, sales, shipment, payment, and accounting documentation).¹⁰¹ Instead, AMKR provided an incomplete chart identifying a few sales documents used in the sales process, but did not provide a complete list of all documents issued by AMKR for each channel of distribution in its home market.¹⁰² Additionally, AMKR failed to identify, in accordance with Commerce's instructions, the document in the sales process chart which reflected the date on which the final terms of sale were established.¹⁰³

Subsequently, AMKR reported another channel of distribution consisting of home market sales shipped from the port to home market customers because sales terms for export sales are not finalized until the merchandise is shipped and there was excess quantity at the port found to not be needed for certain export sales.¹⁰⁴ Despite being asked detailed questions in the initial and supplemental questionnaires about its sales process in its home market, AMKR identified sales made through this channel of distribution for the first time in its second supplemental Section A questionnaire response.¹⁰⁵ However, AMKR's late reporting of these sales in its supplemental questionnaire response precluded Commerce from fully gathering information and determining how to treat these sales in this investigation.

Furthermore, although AMKR stated that it submitted complete sample sales packages for each channel of distribution, AMKR submitted a large amount of sales documents in a single unexplained exhibit, which were not identified by sales channel, with many documents cut off, illegible, and/or untranslated.¹⁰⁶ This information and documentation for AMKR's new channel of distribution for consignment sales, which constituted over half of AMKR's reported sales database, was critical to Commerce's date of sale analysis.¹⁰⁷ AMKR acknowledges that it is Commerce's practice to use warehouse withdrawal date as the date of sale for consignment sales, but the record evidence it provided for these sales is incomplete and Commerce thus cannot establish conclusively when the terms of sale were established.¹⁰⁸ Commerce continues to find

⁹⁹ See AMKR's Second Supplemental Section A Questionnaire.

¹⁰⁰ See AMKR's Second Supplemental Section A Response at 14-15 and Exhibit A-84.

¹⁰¹ *Id.* at Exhibit A-84.

¹⁰² *Id.*

¹⁰³ *Id.* at Exhibits A-84, A-85, and A-86.

¹⁰⁴ *Id.* at 5.

¹⁰⁵ See AMKR AD Questionnaire; AMKR's Supplemental Section A Questionnaire; AMKR's Second Supplemental Section A Questionnaire; and AMKR's Supplemental Section B Questionnaire.

¹⁰⁶ See AMKR's Supplemental Section B Response at Exhibits B-19 through B-22. Commerce observes that AMKR claimed to submit separate sales packages for each channel of distribution but there is no separate cover page for each channel of distribution and Commerce cannot ascertain what document goes to which channel of distribution.

¹⁰⁷ See AMKR's Section B SQR at 22-3 and 24-5.

¹⁰⁸ *Id.* at 22-3, 24-5, Exhibits B-19 through B-22 and Exhibit B-26.

that AMKR has not established that its date of sale should be the invoice date for home market sales because AMKR submitted questionnaire responses and supporting documentation that was not in the form and manner requested by Commerce.¹⁰⁹ Thus, we find that AMKR's claims that Commerce erred in concluding that AMKR had reported an erroneous date of sale for its home market sales to be unpersuasive.¹¹⁰

iii. Home Market Sales Reconciliation

AMKR disputes Commerce's claims that AMKR submitted an inaccurate and incomplete home market sales reconciliation and that AMKR's most recent questionnaire response lacks a complete quantity and value reconciliation.¹¹¹ In its case brief, AMKR confuses Commerce's request for information in a supplemental question as meaning it should have revised its reconciliation; however, this is not the issue.¹¹² AMKR's original reconciliation only reconciled the total *value* of home market sales reported in its home market sales database to AMKR's general ledger and financial statement, but did not reconcile AMKR's reported total home market sales *quantity*, pursuant to Commerce's instructions.¹¹³ As such, we issued extensive supplemental questions on this topic to AMKR.¹¹⁴ Importantly, among other questions, we asked AMKR to:

Please provide a revised home market sales reconciliation that reconciles from AMKR's total sales revenue in its FY 2016 financial statement breaking out sales of subject and non-subject merchandise by total volume and value. Then, reconcile these amounts through AMKR's accounting/sales records to the total volume and value reported in AMKR's revised home market sales database.¹¹⁵

However, Commerce continues to find that AMKR did not reconcile the total quantity of its home market sales from its sales database to its financial statement, as requested.¹¹⁶ Instead, AMKR only provided a download of total *quantity* for steel products from its accounting software and reconciled this amount to its home market sales database. However, this does not reconcile the total quantity and value of AMKR's home market sales database to total sales (*i.e.*, subject and non-subject, and domestic/export) of all products in its accounting records through to the financial statement, as requested by Commerce.¹¹⁷

¹⁰⁹ See AMKR's Second Supplemental Section A Response, at Exhibits A-84, A-85, and A-86.

¹¹⁰ See AMKR's Case Brief at 12 – 13.

¹¹¹ *Id.* at 11 – 12.

¹¹² *Id.*

¹¹³ See AMKR's Section B Response at Exhibit B-2.

¹¹⁴ See Commerce's August 10, 2017 letter to AMKR at question 1, which details the many deficiencies found in AMKR's reconciliation.

¹¹⁵ *Id.*

¹¹⁶ See AMKR's Section B Response at Exhibit B-3.

¹¹⁷ *Id.*

iv. U.S. Date of Sale

Contrary to AMKR's arguments, Commerce continues to find that AMKR's U.S. sales database and reconciliation are unreliable and incomplete for calculating a margin in this final determination. Regarding U.S. sales reported in its original questionnaire responses, AMKR reported that it sold the subject merchandise through a single channel of distribution, its affiliated U.S. reseller, Arcelor Mittal International (AMI), and reported the order acknowledgement date as the date of sale.¹¹⁸ Specifically, AMKR stated that it was reporting the order acknowledgement date as the date of sale because all sales were produced on an order-specific basis and neither AMKR nor AMI accept changes to the material terms of sales after issuance of the order acknowledgement document.¹¹⁹ However, in reviewing AMKR's submitted reconciliation for U.S. sales, Commerce continues to find that the total quantity and value of U.S. sales based on order acknowledgement date does not reconcile to the total quantity and value reported in the U.S. sales database.¹²⁰ AMKR reported the per-unit quantity of its U.S. sales in various units of measurement and converted these units into metric tons, but the conversions were inaccurate.¹²¹

Additionally, in its most recent U.S. sales questionnaire response, AMKR continued to report that the order acknowledgement date was the proper date of sale because this is when the material terms of sale are fixed.¹²² AMKR claimed that any variations between the quantities in the order acknowledgement form and commercial invoice is due to a commercial weight tolerance within the range specified on the order acknowledgement document.¹²³ However, in reviewing the sample sales packages for U.S. sales, we found that the reported quantity on the commercial invoice of most transactions in the U.S. sales database *greatly exceeded this weight tolerance* on the order acknowledgement form.¹²⁴ As such, Commerce continues to find that the record evidence demonstrates that the material terms of sale (*i.e.*, price and quantity) were not set by the order acknowledgement form, but instead by a later document (*e.g.*, bill of lading for export).

Furthermore, in reviewing the sample sales packages provided by AMKR, Commerce found that the sales quantity reported on the commercial invoices was consistent with the sales quantity reported on the bill of lading.¹²⁵ Given that AMKR acknowledged that the material terms of sale (*e.g.*, sales quantity) do not change after the subject merchandise is shipped and invoiced to the United States, Commerce finds that the appropriate date of sale should be the date of shipment, which pre-dates the commercial invoice issued by AMKR's U.S. affiliate (AMI) to the first

¹¹⁸ See AMKR's Section A Response at A-12, A-23, and A-24.

¹¹⁹ *Id.* at A-24 and A-25.

¹²⁰ See AMKR's Section C Response at Exhibit C-2; and Letter to Secretary of Commerce from the petitioners, "Comments on AMKR's Section C Questionnaire Response," dated July 17, 2017, at 3.

¹²¹ See AMKR's Section C Response at 26-8; and Comment's on AMKR's Section C Questionnaire Response at 8.

¹²² See AMKR's Supplemental Section C Response at 24.

¹²³ *Id.*

¹²⁴ See AMKR's Section A Response at Exhibit A-8; AMKR's Second Supplemental Section A Response at Exhibit A-82, and AMKR's Supplemental Section C Response at Exhibit C-11 (*emphasis added*).

¹²⁵ *Id.*

unaffiliated U.S. customer.¹²⁶ However, contrary to Commerce's instructions, AMKR continued to report the posting date of when AMKR recorded AMI's purchase of the merchandise.¹²⁷ Thus, Commerce finds that AMKR's reported U.S. sales database is unreliable because the total universe of U.S. sales is based on the wrong date of sale. As a result, Commerce also does not have a complete, accurate U.S. sales reconciliation because it is based on the incorrect date of sale.

v. U.S. Date of Shipment

AMKR also did not report the date of shipment for its U.S. sales, in accordance with Commerce's questionnaire's instructions. AMKR reported shipment date as the date the merchandise was released to the customer at the U.S. port of delivery.¹²⁸ However, the questionnaire instructions requested that AMKR report the date of shipment from the last facility under AMKR's control (*i.e.*, the factory or distribution warehouse to the customer).¹²⁹

vi. Inaccurate and Missing CONNUMS

Contrary to AMKR's arguments, Commerce continues to find that AMKR failed to provide accurate CONNUMS with corresponding matches in the sales and cost databases. In the initial questionnaire, AMKR was instructed to report unique CONNUMs in its sales and cost databases for each sale based on the physical characteristics of the products.¹³⁰ As explained in the initial questionnaire, the CONNUM is used by Commerce:

in the calculation of the dumping margin" and that "{i}dential products should be assigned the same control number in each record in every file in which the product is referenced (*e.g.*, products with identical physical characteristics reported in the foreign market sales file and the U.S. market sales file should have the same control number).¹³¹

The proper reporting of physical characteristics in the CONNUM-hierarchy and matching CONNUMS in AMKR's home market sales, U.S. sales, and cost databases is pivotal to Commerce's margin calculation. These physical characteristics form the basis of Commerce's model match criteria, which identifies the home markets sales and U.S. sales of either identical or the most similar merchandise as the basis for normal value. The identification of identical or the most similar merchandise is determined with respect to the unique measurable physical characteristics of the merchandise.¹³² Without accurate reporting of physical characteristics and

¹²⁶ See AMKR's Section A Response at Exhibit A-8; AMKR's Second Supplemental Section A Response at Exhibit A-82, and AMKR's Supplemental Section C Response at Exhibit C-11.

¹²⁷ See AMKR's Supplemental Section C Response at 20-1.

¹²⁸ See AMKR's Section C Response at 23.

¹²⁹ *Id.*

¹³⁰ See AMKR AD Questionnaire at B-7 and C-7.

¹³¹ *Id.* at B-6 and B-8.

¹³² 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, 18880 (April 16, 1998), at Comment 2 ("The creation of a product concordance inherently relies upon the matching of significant physical characteristics."); and

matching CONNUMS in AMKR's databases, Commerce does not have the primary components to perform an accurate, reliable margin calculation for AMKR.¹³³ We continue to find that AMKR misreported the following product characteristics used by Commerce for model-matching purposes:

1. Heat Treatment

In the initial questionnaire, Commerce identified 14 physical characteristics, including heat treatment, maximum specified phosphorous and sulfur content, and maximum allowable total depth of decarburization, that comprise the sixth, seventh, and fourteenth physical characteristics in the CONNUM structure.¹³⁴ In its initial questionnaire response, AMKR reported that all of its U.S. sales underwent a heat treatment process.¹³⁵ When Commerce requested in a supplemental questionnaire that AMKR clarify what type of heat treatment process was used for 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.¹³⁶ However, in its most recent U.S. sales database, AMKR continued to report that all U.S. sales underwent a heat treatment process despite the fact that Commerce sent AMKR two questionnaires on this issue.¹³⁷ Moreover, in its supplemental questionnaire response, AMKR failed to provide a narrative description for each physical characteristic with supporting documentation for a sample sale of subject merchandise, as requested by Commerce.¹³⁸

Based on the inconsistencies in AMKR's reporting of heat treatment AMKR failed to provide accurate and reliable CONNUMs in its U.S. sales database.¹³⁹ More importantly, AMKR's revised U.S. sales and cost databases (*i.e.*, high inflation) do not have matching CONNUMs. Without matching CONNUMS, Commerce cannot perform an accurate margin calculation for AMKR.¹⁴⁰

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

¹³³ 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*).

¹³⁴ See AMKR's AD Questionnaire.

¹³⁵ See AMKR's Supplemental Section C Response at C-16; and AMKR's Sections B and C Response at Exhibit C-1.

¹³⁶ See AMKR's Supplemental Section C Response at C-17.

¹³⁷ *Id.* at Exhibit C-1.

¹³⁸ *Id.* at C-16 (question 10) and Exhibit C-24.

¹³⁹ See AMKR's Supplemental Section C Response at C-16, Exhibit C-1, and Exhibit C-24; and AMKR's Sections B and C Response.

¹⁴⁰ See Memorandum to File, "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).

2. Decarburization

Commerce also finds that there are inconsistencies in AMKR's reporting of the product characteristics for maximum allowable depth of decarburization (decarburization). Commerce requested supporting documentation for AMKR's reporting of decarburization in its initial questionnaire.¹⁴¹ However, AMKR failed to provide supporting documentation, including sample sales and production documentation, that identified the actual measure of decarburization for subject merchandise.¹⁴² When Commerce made a second request that AMKR provide supporting documentation for its reporting of decarburization, AMKR again failed to provide this information.¹⁴³ Instead, AMKR claimed that none of its home market sales documents reference an acceptable maximum depth of decarburization. However, AMKR's supplemental questionnaire responses contradict this statement because AMKR submitted a mill certificate that lists a measurement for the decarburized layer of the wire rod.¹⁴⁴ Although AMKR argues that the submission of the mill certificate identifying a maximum allowable depth of decarburization shows that it reported decarburization correctly, Commerce disagrees.¹⁴⁵ AMKR's submission of a mill certificate that identifies the specific decarburization level for a sample sale does not explain its contradictory responses regarding this physical characteristic for its home market sales.¹⁴⁶

Moreover, AMKR revised the reporting of decarburization for almost a quarter of the total sales observations without being requested by Commerce.¹⁴⁷ Although AMKR argues that Commerce's request for supporting documentation regarding decarburization prompted it to revise its reporting of this physical characteristic, Commerce disagrees that this demonstrates AMKR's reporting of this physical characteristic is correct.¹⁴⁸ AMKR never explained why it was changing its reporting of decarburization in the narrative portion of its supplemental questionnaire response, and, despite AMKR's arguments, the change was not identified in response to a request by Commerce. Consequently, this represented a wholesale, unsolicited change to the reporting of decarburization for almost a quarter of AMKR's total sales in its revised home market sales database.

3. Phosphorous and Sulfur

AMKR also made unsolicited changes for maximum specified phosphorous and sulfur content (phosphorous and sulfur content), in its revised home market sales database.¹⁴⁹ This unsolicited

¹⁴¹ See AMKR's Sections B and C Response at B-14.

¹⁴² *Id.* at B-14.

¹⁴³ See AMKR's Supplemental Section B Response at 11 and 13.

¹⁴⁴ *Id.* at 11 and 13, and Exhibit B-18; and AMKR's AD Questionnaire at B-12 (listing reporting of decarburization codes).

¹⁴⁵ See AMKR's Case Brief at 16-17.

¹⁴⁶ See AMKR's Supplemental Section B Response at 11 and 13, and Exhibit B-18 and AMKR's AD Questionnaire at B-12 (listing reporting of decarburization codes).

¹⁴⁷ See Letter to Secretary of Commerce from the petitioners, "Nucor's Deficiency Comments Regarding AMKR's Supplemental Section B Questionnaire Responses," dated September 5, 2017, at 5 and AMKR's Second Supplemental Section B Response, at Exhibit B-31.

¹⁴⁸ See AMKR's Case Brief at 16.

¹⁴⁹ *Id.*

change for the reporting of phosphorous and sulfur content was also made for all of AMKR's home market sales without identifying this change in its narrative response, providing supporting documentation to demonstrate the accuracy of the change, or being made in response to a question from Commerce.¹⁵⁰

As a result of these unsolicited changes to two of the physical characteristics, listed sixth and seventh on the product hierarchy, Commerce finds that the CONNUMs contained in AMKR's home market database are unreliable.¹⁵¹

4. Non-matching CONNUMS

Additionally, there are multiple CONNUMS in the revised home market sales database that do not have matching CONNUMs in the revised cost database.¹⁵² Commerce initially identified this problem when it received the original home market sales and cost databases from AMKR. Commerce issued a supplemental questionnaire to AMKR inquiring why there were multiple CONNUMS in the home market sales database that did not have matching CONNUMS in the cost database.¹⁵³ In its supplemental questionnaire response, AMKR stated that these CONNUMS did not have matching cost CONNUMS because they were not produced during the POI, but that it provided surrogate CONNUMS for these CONNUMS in its revised cost database.¹⁵⁴

However, Commerce found that AMKR failed to provide matching surrogate cost CONNUMS. In fact, in AMKR's revised home market sales database there were additional CONNUMs that did not have matching CONNUMs in the cost database.¹⁵⁵ As such, Commerce finds that AMKR submitted defective sales and cost databases, making certain comparisons unusable for Commerce to perform its margin calculation.

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

Contrary to AMKR's arguments, Commerce continues to find that AMKR submitted missing variables and/or incorrectly calculated variables in AMKR's home market and U.S. sales databases.

In AMKR's original questionnaire in this investigation for both home market and U.S. sales, Commerce requested that AMKR report "{t}he sale price, discounts, rebates and all other revenues and expenses in the currencies in which they were earned or incurred and net of taxes rebated or not collected..."¹⁵⁶ Additionally, Commerce instructed when reporting each discount,

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² See Analysis of AMKR's Databases for Preliminary Determination at Attachments 1, 2, and 3.

¹⁵³ See AMKR's Supplemental Section D Response at 7 (question 6).

¹⁵⁴ *Id.* at 7-8.

¹⁵⁵ See Letter to Secretary of Commerce from the petitioners, "Deficiency Comments Regarding AMKR's Supplemental Section D Questionnaire Response," dated September 15, 2017, at 7.

¹⁵⁶ See AMKR's AD Questionnaire at B-21 and C-21.

rebate, other revenues, movement expenses, and selling expenses earned or incurred on home market and U.S. sales that AMKR needed to provide a calculation worksheet along with supporting source documentation for each variable reported in the sales databases.¹⁵⁷

When AMKR submitted its original responses on home market and U.S. sales, Commerce found that AMKR did not: (1) provide calculation worksheets and the supporting source documentation for numerous movement expenses or selling expenses reported in the sales databases;¹⁵⁸ (2) report or calculate movement expenses, as requested by Commerce's instructions in the original questionnaire;¹⁵⁹ and (3) report or calculate selling expenses, as requested by Commerce's instructions in the original questionnaire.¹⁶⁰

In its supplemental questionnaires,¹⁶¹ Commerce requested that AMKR revised its home market sales and U.S. sales databases along with providing calculation worksheets and supporting source documents for these movement and selling expense variables identified in Commerce's supplemental questionnaires. However, in reviewing AMKR's supplemental responses along with revised sales databases, Commerce continues to find that AMKR did not follow Commerce's explicit instructions in submitting the revised home market and U.S. sales databases along with calculation worksheets and source documentation for the reported movement and selling expenses.¹⁶²

1. Home Market Sales Database

For AMKR's revised home market sales database, AMKR continued to either report incorrectly or not report at all rebates, inland freight, inland insurance, indirect selling expenses, inventory carrying cost, and royalties, in a manner that did not follow Commerce's instructions for reporting such expenses or instructions for calculating such expenses with supporting documentation.¹⁶³ While AMKR argues that it submitted sample documentation and a complete narrative explanation for rebates regarding home market sales, Commerce disagrees.¹⁶⁴ Commerce finds that AMKR did not follow Commerce's instructions for calculating rebate expenses, which AMKR revised in its supplemental response for both distributor and end-user customers, because the supporting documentation was only for a distributor customer and AMKR provided contradictory responses regarding whether these were rebates or, in fact, billing adjustments based on the record evidence.¹⁶⁵ Although AMKR argues that it did not maintain an

¹⁵⁷ See AMKR's AD Questionnaire at Sections B and C.

¹⁵⁸ See AMKR's Section B SQ at questions 1, 6-10, 11-12, and 20-31; and AMKR's Section C SQ at 1-2 and questions 1-5, 10-12, 16, and 23-52.

¹⁵⁹ *Id.*

¹⁶⁰ See AMKR's Sections B and C Response; AMKR's Supplemental Section B Questionnaire; AMKR's Second Supplemental Section B Questionnaire; and AMKR's Supplemental Section C Questionnaire.

¹⁶¹ See AMKR's Supplemental Section B Questionnaire at 12-15; AMKR's Second Supplemental Section B Questionnaire at 4-6; and AMKR's Supplemental Section C Questionnaire at 13-27.

¹⁶² See AMKR's Supplemental Section B Response; AMKR's Second Supplemental B Response; and AMKR's Supplemental Section C Response.

¹⁶³ See AMKR's Supplemental Section B Response at 15-35; AMKR's Second Supplemental Section B Response at 1-7; and AMKR's Supplemental Section C Response at 26-67.

¹⁶⁴ See AMKR's Case Brief at 19.

¹⁶⁵ See AMKR's Section B SQR at 29-31 and Exhibits B-35 and B-36; and Nucor's Pre-Preliminary Comments at

inland insurance policy in its supplemental questionnaire response, Commerce finds that AMKR's responses were contradictory regarding inland insurance and AMKR did not provide supporting documentation showing that AMKR does not incur this expense, pursuant to Ukraine government regulations.¹⁶⁶

For inland freight for which AMKR claims that it submitted calculation worksheets reconciling to the values in the home market sales database, Commerce disagrees.¹⁶⁷ Contrary to Commerce's request, AMKR did not provide supporting documentation regarding the standard weight used to calculate the inland freight (plant/distribution warehouse) expense and also did not provide supporting documentation for inland freight for sales made from port.¹⁶⁸

Additionally, regarding AMKR's argument that the reported indirect selling expenses for home market sales were consistent with Commerce's instructions, Commerce also disagrees.¹⁶⁹ In fact, AMKR did not follow our instructions to report indirect selling expenses, including selling, general and administrative, and overhead expenses, segregated by domestic sales of foreign like product and all sales of non-subject merchandise, but instead AMKR simply reported indirect selling expenses for all sales, making no attempt to revise its calculations, as requested by Commerce.¹⁷⁰

Finally, contrary to AMKR's claim that its reported inventory carrying cost expense for home market sales reconciles to its supporting calculation worksheets, Commerce disagrees.¹⁷¹ In fact, AMKR failed to submit a calculation worksheet for average days in inventory for each material code, as requested by Commerce.¹⁷²

2. U.S. Sales Database

For AMKR's U.S. sales database, AMKR did not report multiple movement expense variables, such as marine insurance, international freight commission, discharge, handling, inland insurance in its revised U.S. sales databases but identified these variables in its narrative response.¹⁷³ Although AMKR argues that it did not maintain an inland insurance policy in its supplemental questionnaire response, Commerce finds that AMKR's responses were contradictory regarding inland insurance and AMKR did not provide supporting documentation showing that AMKR does not incur this expense, pursuant to Ukraine government regulations.¹⁷⁴ Additionally,

12-14.

¹⁶⁶ See AMKR's Sections B and C Response at B-34 and Exhibit B-12; and AMKR's Second Section B SQR at 4 (AMKR stated here that it did not incur an inland insurance policy based on Ukraine government regulations but did not provide these regulations).

¹⁶⁷ See AMKR's Case Brief at 20.

¹⁶⁸ See AMKR's Section B SQR at 31-2 and Exhibits 40-1.

¹⁶⁹ See AMKR's Case Brief at 22.

¹⁷⁰ See AMKR's AD Questionnaire and AMKR's Section B SQR at 33-4.

¹⁷¹ See AMKR's Case Brief at 25.

¹⁷² See AMKR's Section B SQR at 35 (Commerce notes that AMKR stated it was submitting an Exhibit B-43 but this was not submitted in AMKR's response).

¹⁷³ See the petitioner's Pre-Preliminary Determination Comments on AMKR at 9 and footnote 27.

¹⁷⁴ See AMKR's Sections B and C Response at C-35 and Exhibit B-12; and AMKR's Section C SQR at 33 (AMKR stated here that it did not incur an inland insurance policy based on Ukraine government regulations but did not

contrary to AMKR's argument, Commerce finds that AMKR did not comply with our request to report marine insurance expenses in AMKR's revised U.S. sales database because marine insurance was simply not reported in AMKR's revised U.S. sales database.¹⁷⁵

Additionally, for AMKR's U.S. sales database, AMKR continued to not calculate indirect selling expense, inventory carrying costs, U.S. customs duty, or packing expenses, pursuant to Commerce's original questionnaire instructions, and did not report the destination (zip code or state) of the customer's place of delivery), pursuant to Commerce's original questionnaire instructions.¹⁷⁶

Regarding AMKR's claim argument that the reported indirect selling expenses for U.S. sales followed Commerce's instructions, Commerce disagrees.¹⁷⁷ Specifically, AMKR did not follow our instructions to report indirect selling expenses, including its selling, general and administrative, and overhead expenses, segregated by export sales of subject merchandise and all sales of non-subject merchandise, but instead reported indirect selling expenses for all sales and made no attempt to revise its calculations, as requested by Commerce.¹⁷⁸

Furthermore, contrary to AMKR's argument that its reported inventory carrying cost expense for U.S. sales reconciles to its supporting calculation worksheets, Commerce disagrees.¹⁷⁹ Commerce finds that AMKR failed to submit a calculation worksheet for average days in inventory for each material code, as requested by Commerce.¹⁸⁰ Despite AMKR's argument that U.S. customs duties was reported correctly, Commerce finds that AMKR did not report U.S. customs duties, pursuant to our instructions.¹⁸¹ Specifically, we requested that AMKR report U.S. customs duties based on entered value and not based on tonnage, which AMKR declined to do, and we also find that this expense was not reported for a number of U.S. sales.¹⁸²

Finally, contrary to AMKR's claim that it properly reported the destination of the customer's delivery as the relevant ocean or river port, Commerce's original questionnaire and supplemental questionnaire clearly instructed AMKR to report customer's place of delivery and not the ocean port of delivery, which Commerce informed AMKR should be the "ship-to-address" on the commercial invoice.¹⁸³ Commerce requested AMKR to report the specific zip code or state of the customer's place of delivery listed on the commercial invoice because this specific information is requisite to perform an accurate calculation of Commerce's differential pricing analysis by the purchaser, region, etc.¹⁸⁴ However, by AMKR refusing to adhere to Commerce's

provide these regulations).

¹⁷⁵ See AMKR's Section C SQR at 39-40 and Exhibit C-41; and AMKR's Case Brief at 26-7.

¹⁷⁶ See AMKR's Supplemental Section C Response at 26-67; and AMKR's AD Questionnaire.

¹⁷⁷ See AMKR's Case Brief at 25.

¹⁷⁸ See AMKR's AD Questionnaire; and AMKR's Section C SQR at 57-8.

¹⁷⁹ See AMKR's Case Brief at 25.

¹⁸⁰ See AMKR's Section B SQR at 35 (Commerce notes that AMKR stated it was submitting an Exhibit B-43 but this was not submitted in AMKR's response).

¹⁸¹ See AMKR's Case Brief at 24-5.

¹⁸² See AMKR's Section C SQR at 45; and Nucor's Pre-Prelim Comments at 17-8.

¹⁸³ See Commerce's Supplemental Section C Questionnaire at 20 (questions 39 and 40).

¹⁸⁴ See *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and accompanying Issues and Decision Memorandum at Comment 5.

instructions in reporting the destination of the customer's place of delivery, AMKR failed to provide the most specific information needed for Commerce to perform the differential pricing analysis of AMKR's prices in the U.S. market for this investigation.

Even after Commerce granted AMKR two opportunities to report and calculate price/billing adjustments, movement expenses, and selling expenses, along with other important components to Commerce's calculation, such as destination to the customer's place of delivery for our differential pricing analysis, Commerce finds that AMKR did not follow our instructions. As such, for these reasons, along with the many problems identified above regarding in AMKR's reported home market sales and U.S. sales databases, Commerce continues to find that AMKR submitted incomplete responses that are entirely inaccurate and unreliable for calculating a margin in this investigation.

Finally, although AMKR finds that Commerce substantially overstated the degree to which AMKR's questionnaire responses were deficient, Commerce concludes that, in totality, the widespread errors throughout AMKR's sales and cost databases necessitate the use of facts available.

B. Use of an Adverse Inference

AMKR failed to cooperate by not acting to the best of its ability in this investigation within the meaning of section 776(b) of the Act. As noted above, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹⁸⁵ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁸⁶ In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁸⁷ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce

¹⁸⁵ 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).

¹⁸⁶ See section 776(b)(1)(B) of the Act.

¹⁸⁷ See SAA 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).

may make an adverse inference.¹⁸⁸ It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.¹⁸⁹

Commerce continues to find that AMKR did not act to the best of its ability to comply with Commerce's request for information. The best-of-its-ability standard asks whether the respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a proceeding. While we agree with AMKR that the standard requires that Commerce examine respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information, the Federal Circuit states that the standard "does not condone inattentiveness, carelessness, or inadequate record keeping."

In the supplemental questionnaires issued to AMKR for its home market and U.S. sales, Commerce notified AMKR that if its questionnaire responses did not follow Commerce's explicit instructions and provide complete answers to each question along with calculation worksheets and fully-translated supporting documentation along with all originals, Commerce would reject AMKR's response in its entirety and possibly apply facts available to AMKR.¹⁹⁰

Because of the significant discrepancies and contradictory information in AMKR's initial questionnaire response, submitted prior to the cyberattack, and in response to Commerce's supplemental questionnaires, there remains significant deficiencies in AMKR's questionnaire responses including date of sale, channels of distribution, movement and selling expenses, non-matching CONNUMs in the sales and cost databases, and transactions with affiliates involved in production/sale of subject merchandise, found in AMKR's responses.¹⁹¹ As previously explained, while cognizant of the cyberattack suffered by AMKR, Commerce granted multiple extensions to AMKR so that it had sufficient time to provide necessary information (*i.e.* sales, cost, financial, and affiliated transaction) for Commerce to calculate an accurate, reliable margin.¹⁹² However, even after Commerce granted AMKR multiple extensions and notified

¹⁸⁸ 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); *Antidumping Duties; Countervailing Duties; Final Rule*; 62 FR 27295, 27340 (Preamble).

¹⁸⁹ 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).

¹⁹⁰ 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.

¹⁹¹ 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, "Supplemental Section A Questionnaire," dated July 11, 2017 (AMKR's Supplemental Section A Questionnaire); Letter to AMKR from Paul Walker, Program Manager, "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).

¹⁹² In total, AMKR was granted 20-days to submit its supplemental Section A response, 18-days to submit its second supplemental Section A response, 15.5 days to submit its supplemental Section B response, 14.5 days to submit its second supplemental Section B response, 10-days to submit its supplemental Section C response, and 17.5 days to

AMKR that it needed to file complete responses, with all questions answered in accordance with Commerce's explicit instructions, AMKR continued to submit incomplete, contradictory, and ultimately insufficient responses.¹⁹³

Specifically, Commerce continues to find that in reviewing AMKR's responses that numerous questions were unanswered and AMKR granted itself extensions by only providing some of the requested documents.¹⁹⁴ Specifically, it failed to provide fully translated documents, it repeatedly did not answer questions, it consistently only referenced the narrative of its previous questionnaire responses, and it failed to submit exhibits identified in such responses.

Within the meaning of section 776(b) of the Act, Commerce finds that AMKR failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information, as noted above, and that the application of AFA is warranted. In sum, despite Commerce'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: (1) accurate CONNUMS with corresponding matches in the sales and cost databases; 2) complete questionnaire responses in accordance with Commerce's instructions; and (3) sales databases with properly reported selling and movement expenses.

For the reasons set forth in detail above, and pursuant to 776(a)(1), 776(a)(2)(A)-(C) and 776(b) of the Act, Commerce continues to find that the application of AFA to AMKR is warranted. Specifically, Commerce has assigned to AMKR, as AFA, a dumping margin of 44.03 percent, which is the highest dumping margin calculated in the Petition.¹⁹⁵

Comment 2: Application of Total AFA to Yenakiieve

Yenakiieve's Comments

- Yenakiieve was incapable of responding to Commerce's questionnaire because of the seizure of Yenakiieve's plants and facilities in March 2017 due to military activity in the region, and total loss of all company records.¹⁹⁶ Therefore, Commerce should not apply AFA because

submit its supplemental Section D response.

¹⁹³ See AMKR's Supplemental Section A Response; AMKR's Second Supplemental Section A Response; AMKR's Supplemental Section B Response; AMKR's Second Supplemental Section B Response; AMKR's Supplemental Section C Response; and AMKR's Supplemental Section D Response.

¹⁹⁴ See AMKR's Supplemental Section A Response at 8-9, and 20 (where AMKR stated that it was unable to submit the requested information at the time of submission) and Exhibits A-26, A-27, A-29, A-33, A-35, A-38, and A-40; AMKR's Supplemental Section B Response at 18 and 35, and Exhibits B-19, B-34, and B-35; and AMKR's Supplemental Section C Response at Exhibits C-31, C-32, C-38, and C-37; AMKR's Second Supplemental Section A Response at Exhibits A-64, A-65, A-90, and A-91; and AMKR's Supplemental Section D Response at Exhibits D-37, D-38, D-39, D-40, D-41, D-44, and D-45.

¹⁹⁵ 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*); Memorandum, "Initiation Checklist: Carbon and Alloy Steel Wire Rod from Ukraine," dated April 1, 2017 (Ukraine AD Initiation Checklist).

¹⁹⁶ See Yenakiieve's Case Brief at 1.

the circumstances underlying Yenakiiieve's inability to respond were entirely the result of geopolitical issues outside of Yenakiiieve's control.¹⁹⁷

- Commerce should use its discretion and assign the lowest rate determined in the Petition, which is 21.23 percent to Yenakiiieve.¹⁹⁸ Pursuant to section 776(b) of the Act, Commerce "may" use an adverse inference,¹⁹⁹ but courts have recognized that this is discretionary and upheld Commerce's choice not to do so.²⁰⁰
- Yenakiiieve's responses to the ITC's questionnaires should have no bearing on Commerce's assessment of Yenakiiieve's ability to respond to Commerce's antidumping duty questionnaires.²⁰¹
- The ITC requests information from respondents on broad product categories, whereas, Commerce requests transaction-specific, and product-specific, data that the company could not provide.²⁰²
- In its submissions to Commerce, Yenakiiieve fully explained the circumstances that prevented it from fully participating in this investigation; citing loss of records, resources, and facilities.²⁰³
- Yenakiiieve's parent company, the Metinvest Group (Metinvest), no longer employs any employees that have direct knowledge or understanding of Yenakiiieve's accounting systems.²⁰⁴ Following the seizure of Yenakiiieve's assets, Metinvest terminated all of Yenakiiieve's employees with the exception of the two directors.²⁰⁵
- There are also several affiliated suppliers that provided raw materials to Yenakiiieve whose facilities were also seized, which prevented Yenakiiieve and Metinvest from providing reliable cost of production information.²⁰⁶
- Supplying Commerce with corporate and affiliate information would have been insufficient to meet Commerce's reporting requirements of providing transaction-specific sales and cost data.²⁰⁷ Thus, providing this information would serve no purpose and would not have altered the fundamental condition of Yenakiiieve's, or Metinvest's inability to provide the required information.²⁰⁸
- Commerce cannot differentiate the facts of this case from those underlying the determination in *Steel Nails from UAE*.²⁰⁹ In its respondent selection rebuttal comments, Yenakiiieve provided Commerce with a company certification of its inability to respond to the questionnaire.²¹⁰

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 2.

¹⁹⁹ *Id.* at 10.

²⁰⁰ *Id.* at 2 and 10 (citing as an example to *AK Steel Corp. v. United States*, 346 F. Supp. 2d 1348 (CIT 2004)).

²⁰¹ *Id.* at 2.

²⁰² *Id.*

²⁰³ *Id.* at 2-4.

²⁰⁴ *Id.* at 5.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 7.

²⁰⁷ *Id.* at 8.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 9.

²¹⁰ *Id.*

- As such, Commerce should apply neutral facts available to Yenakiiieve.²¹¹ Commerce previously used the lowest rate in the petition, as AFA, to penalize a respondent that falsely claimed it had no subject merchandise shipments during an administrative review period.²¹² The facts do not support a finding of non-cooperation because Yenakiiieve simply was incapable of responding.²¹³

Nucor's Comments

- Commerce properly applied total AFA to Yenakiiieve. Yenakiiieve failed to submit any responses to Commerce's questionnaires, demonstrating that it did not cooperate to the best of its abilities.²¹⁴
- Regardless of whether Yenakiiieve believes that it provided sufficient information to Commerce is irrelevant because it is Commerce who determines what information is needed.²¹⁵
- The result in *Steel Nails from UAE* is inconsistent with the facts in this case because the respondent's inability in that case to respond was "examined extensively in the previous administrative review."²¹⁶
- Although Yenakiiieve refused to provide the information requested by Commerce,²¹⁷ it has presented no argument why it could not respond to Commerce's questions, or submit additional information about its inability to respond.²¹⁸

Commerce Position: We continue to find it appropriate to base Yenakiiieve's dumping margin on total AFA pursuant to sections 776(a)(1) and 776(a)(2)(A), (2)(B) and (2)(C) of the Act, and section 776(b) of the Act. In this investigation, Yenakiiieve withheld necessary information, failed to provide information requested by Commerce in the form and manner requested, and significantly impeded the investigation. Additionally, Yenakiiieve failed to suggest any alternative forms in which it was able to submit the requested information in accordance with section 782(c) of the Act.

During the respondent selection stage of this investigation, Yenakiiieve and its 100-percent owning parent company, Metinvest,²¹⁹ notified Commerce that they were experiencing difficulties analyzing the U.S. Customs and Border Protection (CBP) data because they no longer controlled their production plants in Eastern Ukraine.²²⁰ In particular, Metinvest stated that since

²¹¹ *Id.*

²¹² *Id.* at 10. See also *Certain Polyester Staple Fiber from the Republic of Korea*, 72 FR 69663 (December 10, 2007).

²¹³ *Id.* at 10.

²¹⁴ See Nucor's Rebuttal Brief at 1.

²¹⁵ *Id.*

²¹⁶ *Id.* at 18

²¹⁷ *Id.* at 19.

²¹⁸ *Id.*

²¹⁹ See Memorandum to the File, "Carbon and Alloy Steel Wire Rod from Ukraine: Placing on the Record Information Regarding Yenakiiieve and Metinvest Group," dated October 5, 2017 (Yenakiiieve and Metinvest Group Memo).

²²⁰ See Letter from Yenakiiieve, "Carbon and Alloy Steel Wire Rod from Ukraine: Request for Extension of Time to

March 15, 2017, it no longer controlled or operated Yenakiieve because its facilities and records were unavailable due to military activity at its facilities.²²¹ As a result, Yenakiieve claimed that it could neither respond to Commerce's questionnaire, nor submit to verification, and therefore, should not be selected as a mandatory respondent.²²²

After receiving notification of Yenakiieve's inability to participate in this investigation, Commerce met with Yenakiieve's counsel to discuss its filing as to how events precluded it from being selected as a mandatory respondent, and completing the AD questionnaire. Commerce 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 Commerce's questionnaires and requests for information. Accordingly, because Commerce found that Yenakiieve 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, Commerce selected Yenakiieve as a mandatory respondent. Nonetheless, in the respondent selection memorandum, Commerce acknowledged the situation Yenakiieve's described and noted that Commerce would request further information from Yenakiieve on this matter as part of the investigation.²²³

Following Commerce's respondent selection determination, Commerce issued Yenakiieve its antidumping questionnaire.²²⁴ In response, Yenakiieve and Metinvest submitted a letter reiterating that they were unable to respond to Commerce's requests for information because of the seizure of Yenakiieve's facilities and records in Eastern Ukraine.²²⁵ Specifically, Yenakiieve and Metinvest stated that they could not respond to Commerce's questionnaire because: (1) they experienced a complete loss of control of Yenakiieve's facilities, paper records, and accounting system; and (2) Metinvest's employees lacked the knowledge to provide an accurate assessment of Yenakiieve's production and sales data, including certain affiliates whose facilities were also seized.²²⁶ In support of its assertion of not being able to respond to the questionnaire, Yenakiieve 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 Yenakiieve or Metinvest to participate in this investigation because they no longer had custody or access to Yenakiieve's normal books and records.²²⁷

In light of Yenakiieve's second notification that it was experiencing difficulty responding to the questionnaire, Commerce again met with Yenakiieve's counsel, and subsequently issued a

Submit Comments on CBP data," dated April 26, 2017, at 1.

²²¹ See Letter from Yenakiieve, "Carbon and Alloy Steel Wire Rod from Ukraine: Rebuttal Comments on Respondent Selection," dated May 5, 2017, at 1-2 (Yenakiieve CBP Rebuttal Comments).

²²² *Id.*

²²³ 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.

²²⁴ See Yenakiieve AD Questionnaire.

²²⁵ See Letter from Yenakiieve, "Carbon and Alloy Steel Wire Rod from Ukraine: Follow-Up Notification of Difficulty Responding to Questionnaire," dated June 6, 2017 (Yenakiieve's June 6 Letter); and Yenakiieve AD Questionnaire.

²²⁶ See Yenakiieve's June 6, 2017, Letter at 5-7.

²²⁷ *Id.* at Appendix 1.

supplemental questionnaire to Yenakiiie and Metinvest.²²⁸ In the supplemental questionnaire, Commerce 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.²²⁹ Additionally, Commerce requested that for “each question in the antidumping questionnaire that Yenakiiie” believed it could not answer, it (including Metinvest) “provide supporting documentation to demonstrate that it could not provide the requested information.”²³⁰ To the extent that Yenakiiie and Metinvest could not provide information in the form requested, Commerce further requested that Yenakiiie suggest alternative forms for how it “could submit the necessary information along with supporting documentation.”²³¹ Additionally, Commerce requested that Yenakiiie and Metinvest explain with supporting documentation whether they had personnel at Yenakiiie’s facilities, other facilities in Ukraine, or other parts of Europe²³² who had some knowledge or could become knowledgeable to provide the requested information for this investigation.²³³ Moreover, Commerce requested that Yenakiiie 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’s accounting systems; and (3) whether necessary information requested by Commerce (*i.e.*, sales, logistic, production, and financial data) could be extracted from Metinvest, or the accounting systems of its other branches.²³⁴ Furthermore, the petitioners noted that Yenakiiie was able to complete a foreign producer questionnaire it was issued by the ITC in the companion ITC investigation.²³⁵ Therefore, Commerce requested that Yenakiiie and Metinvest explain why Yenakiiie was able to complete the ITC’s foreign producer questionnaire, but could not respond to Commerce’s questionnaire.²³⁶ Finally, after receiving multiple extensions to respond to the original questionnaire and an extension to respond to Commerce’s supplemental questionnaire, Yenakiiie and Metinvest informed Commerce that they could not file any further questionnaire responses in the proceeding.²³⁷

Accordingly, as noted above section 776(b) of the Act states that if a party does not cooperate to the best of ability Commerce may use an adverse inference in applying facts available. There is

²²⁸ See Memorandum to the File, “Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Ukraine: *Ex Parte* Meeting,” dated June 15, 2017; *see also* Yenakiiie June 19, 2017 Supplemental Questionnaire.

²²⁹ See Yenakiiie June 19, 2017, Supplemental Questionnaire.

²³⁰ *Id.* at 3 (question 1).

²³¹ *Id.*

²³² Metinvest comprises a group of international, vertically integrated metal, steel, and mining companies with locations in Ukraine, Switzerland, Italy, United Kingdom, Serbia, Lithuania, Turkey, Sudan, Latin America, and United States. See Memorandum, “Placing Information on Record for Metinvest and Yenakiiie,” dated October 18, 2017. Additionally, Commerce notes that Metinvest did admit that the group of Metinvest companies has an integrated SAP system which allows it to pull archived data from its group of companies. See Yenakiiie’s June 6, 2017, Letter at 4.

and one of the lowest cost producers of steel in the world

²³³ *Id.* at 3 (question 2).

²³⁴ *Id.* at 4 (question 3).

²³⁵ On June 15, 2017, the petitioners argued and provided supporting documentation that Yenakiiie 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.

²³⁶ See Yenakiiie June 19, 2017, Supplemental Questionnaire., at 4-5 (question 4).

²³⁷ See Yenakiiie June 30, 2017, Letter at 1.

no question that the record is devoid of any information pertaining to Yenakiieve because Yenakiieve did not respond to any of Commerce's requests.²³⁸

Yenakiieve argues that there is no basis for applying an adverse inference because it could not respond to Commerce's original questionnaire and provide transaction-specific data. However, in accordance with section 782(c) of the Act, Yenakiieve made no attempt to provide alternative solutions for providing sales/cost data, as requested by Commerce in its supplemental questionnaire.²³⁹

Although we understand and acknowledge that Yenakiieve may have not been able to respond to all of Commerce's requests for information at the level of detail normally required given its unique and unfortunate situation, the information on the record suggests that there was at least some information requested by Commerce, 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. Commerce requested, for each question in the original questionnaire, including those pertaining to corporate structure, affiliation, and accounting, that Yenakiieve and Metinvest provide the information to which they had access to or, if necessary, that they suggest an alternative form in which they could supply the data.²⁴⁰ However, neither Yenakiieve nor Metinvest provided any of the requested information or suggested any alternative forms in which they could have provided the information. Yenakiieve argues that supplying Commerce with corporate and affiliated information would have been futile because Commerce requires transaction-specific sales and cost data to perform its margin calculation.²⁴¹ However, the CIT has held that “{i}t is Commerce, not the respondent, that determines what information is to be provided”²⁴² and “to ensure the agency's full consideration of their position and rights under the antidumping law, respondents must comply with procedural guidelines and thereby afford themselves the opportunity to respond and participate in the review in a meaningful manner.”²⁴³ By not making even a minimal effort to provide such information, Yenakiieve precluded Commerce from completely evaluating the alternative forms in which it could have provided requested information.²⁴⁴

Thus, Yenakiieve withheld necessary information requested by Commerce, failed to provide information by the deadlines established by Commerce, and significantly impeded the proceeding within the meaning of sections 776(a)(2)(A), (2)(B), and (2)(C) of the Act. In addition, Commerce continues to find that Yenakiieve did not act to the best of its ability to comply with Commerce's request for information pursuant to section 776(b) of the Act. The best-of-its-ability standard asks whether the respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a proceeding. We agree with Yenakiieve that the standard requires that Commerce examine the respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. However, the record evidence demonstrates that Yenakiieve failed to cooperate by not acting to the best of its

²³⁸ See Yenakiieve AD Questionnaire at Sections A, B, C, and D.

²³⁹ See Yenakiieve June 19, 2017, Supplemental Questionnaire; see also Yenakiieve June 30, 2017, Letter at 1.

²⁴⁰ See Yenakiieve June 19, 2017, Supplemental Questionnaire.

²⁴¹ See Yenakiieve's Case Brief at 8.

²⁴² See *Ansaldo Components, S.p.A., v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*).

²⁴³ *Id.* at 206.

²⁴⁴ See Yenakiieve June 30, 2017, Letter at 1.

ability to comply with Commerce's requests for information. In analyzing whether Yenakiiève failed to cooperate to the best of its ability, Commerce is cognizant that unusual circumstances beyond its control inhibited its ability to fully respond to the questionnaire. Yet, Yenakiiève failed to respond to any of Commerce's questions, such as information regarding its corporate structure and affiliations, to which it likely had access, based on the record evidence. Additionally, Commerce continues to find the fact that Yenakiiève and Metinvest responded to the ITC's foreign producer questionnaire, and submitted a post-conference brief in the ITC investigation, demonstrates that Yenakiiève had the ability to respond to at least some sections of Commerce's questionnaire, but elected to provide no information.²⁴⁵

Yenakiiève also argues that Commerce is wrong that the facts of this case are distinguishable from Commerce's decision in *Steel Nails from UAE*.²⁴⁶ 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 Commerce.²⁴⁷ Contrary to Yenakiiève's assertion that Commerce could not differentiate the facts of this case from those of *Steel Nails from UAE*, Commerce continues to find that this case is distinguishable from *Steel Nails from UAE* because in that case Commerce found that the respondent did not have employees capable of providing company certifications for its questionnaire responses.²⁴⁸ However, in this case, Yenakiiève provided company certifications with its submissions containing factual information, responded to the foreign producer questionnaire in the ITC investigation, and submitted a post conference brief in the ITC investigation.²⁴⁹ Additionally, as explained above, Yenakiiève did not avail itself of the opportunity to submit information in alternative forms, as requested by Commerce, and instead chose to not respond to any of Commerce's questionnaires.²⁵⁰ Accordingly, for the foregoing reasons, pursuant to section 776(b) of the Act, Commerce continues to find that Yenakiiève failed to cooperate to the best of its ability to comply with Commerce's requests for information and that the use of an adverse inference in selecting among facts available is warranted with respect to Yenakiiève.

Thus, the record shows that Yenakiiève withheld information within its control that Commerce requested (e.g., corporate structure, affiliation, and accounting information) and failed to cooperate by not acting to the best of its ability in providing that information. Accordingly, the use of AFA, pursuant to sections 776(a)(1) and 776(a)(2)(A), (2)(B), (2)(C), and 776(b) of the Act is appropriate.

²⁴⁵ See Yenakiiève's ITC Submissions Memorandum at Attachments 1, 2, and 3.

²⁴⁶ See Yenakiiève'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 at Comment 1.

²⁴⁷ See *Steel Nails from UAE* at Comment 1.

²⁴⁸ *Id.*

²⁴⁹ See, e.g., Yenakiiève Respondent Selection Rebuttal Comments at "Company Certification."

²⁵⁰ See Yenakiiève June 19, 2017, Supplemental Questionnaire; see also Yenakiiève June 30, 2017, Letter at 1.

As AFA, Commerce has assigned to Yenakiieve a dumping margin of 44.03 percent, which is the highest dumping margin calculated in the Petition.²⁵¹

VII. RECOMMENDATION

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

☒

Agree

☐

Disagree

1/8/2018

X 

Signed by: GARY TAVERMAN

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

²⁵¹ See *Initiation Notice*; Ukraine AD Initiation Checklist.

Appendix I

List of Granted Extensions for AMKR's Responses

<i>Type</i>	<i>Length Given</i>
<i>CBP Comments</i>	<i>One week originally given to comment. AMKR requested an additional week to comment and we granted a two-day extension for CBP comments and rebuttal comments.</i>
<i>Section A Response</i>	<i>21-days originally given to submit response. AMKR requested a 10-day extension in its first request, and we granted a seven-day extension. Then, AMKR requested a second extension request of 10 days to provide translations, and we granted a second extension of three-days. Next, AMKR requested a third extension request of seven days to provide translations, and we granted a third extension of four-days. In total, AMKR was granted 35-days to submit the Section A response.</i>
<i>Sections B and C Responses</i>	<i>37-days originally given to submit response. AMKR requested a 14-day extension in its first request, and we granted a seven-day extension. Then, AMKR requested a second extension request of 30 days and we granted a second extension of 14-days. Next, AMKR requested a third extension of 14 days and we granted a third extension of four-days. In total, AMKR was granted 62-days to submit the Sections B and C responses.</i>
<i>Section D Response</i>	<i>37-days originally given to submit response. AMKR requested a 14-day extension in its first request, and we granted a seven-day extension. Then, AMKR requested a second extension request of 30 days and we granted a second extension of 14 days. Next, AMKR requested a third extension of 14 days, which we granted due to the issuance of the high-inflation section. Finally, AMKR requested a fourth extension of two days, which we granted. In total, AMKR was granted 74-days to submit the Section D response.</i>
<i>Supplemental Section A Response</i>	<i>10-days originally given to submit response. AMKR requested a 14-day extension, and we granted a seven-day extension. Then, AMKR requested a second extension request of seven days and we granted a second extension of three days. In total, AMKR was granted 20-days to submit the Section A supplemental response.</i>
<i>Second Supplemental Section A Response</i>	<i>Seven days originally given to submit response. AMKR requested a 14-day extension, and we granted a seven day extension. Then, AMKR requested a second extension request of seven days and we granted a second extension of four days. In total, AMKR was granted 18-days to submit the Section A supplemental response.</i>
<i>Supplemental Section B Response</i>	<i>Seven days originally given to submit response. AMKR requested a 14-day extension, and we granted a seven-day extension. Then, AMKR requested a second extension request of four days and we granted a second extension of a day and a half. In total, AMKR was granted 15.5 days to submit the Section B supplemental response.</i>
<i>Second Supplemental</i>	<i>Six days originally given to submit response. AMKR requested a 14-day extension, and we granted a seven-day extension. Then, AMKR requested a</i>

<i>Section B Response</i>	<i>second extension request of four days and we granted a second extension of a day and a half. In total, AMKR was granted 14.5 days to submit the Second Section B supplemental response.</i>
<i>Supplemental Section C Response</i>	<i>Seven days originally given to submit response. AMKR requested a three day extension, and we granted a three day extension. In total, AMKR was granted 10-days to submit the Section C supplemental response.</i>
<i>Supplemental Section D Response</i>	<i>14-days originally given to submit response. AMKR requested a nine-day extension, and we granted a day and a half extension. Then, AMKR requested a two-day extension in its second request which we granted in full. In total, AMKR was granted 17.5 days to submit the Section D supplemental response.</i>