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MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2016-2018 Administrative Review of the Antidumping Duty
Order on Certain Carbon and Alloy Steel Cut-To-Length Plate
from Belgium

I. SUMMARY

We analyzed the comments of interested parties in the 2016-2018 administrative review of the antidumping duty order on certain carbon and alloy steel cut-to-length plate (CTL plate) from Belgium. As a result of our analysis, we made changes to the margin calculations for the two mandatory respondents in this review, Industeel Belgium S.A. (Industeel) and NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louviere S.A. (collectively, NLMK Belgium), as well as the non-selected companies.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues in this administrative review for which we received comments from interested parties.

Comments Pertaining to Industeel

Comment 1: Accounting for Industeel’s Rebate Costs

Comment 2: Write-down of Industeel’s Inventory Reserves

Comments Pertaining to NLMK Belgium

Comment 3: Use of Adverse Facts Available

Comment 4: Use of Partial Adverse Facts Available

Comment 5: Difference-in-Merchandise Adjustment

Comment 6: Level of Trade

Comment 7: Alternative Calculation of Indirect Selling Expenses

Comment 8: Calculating Home Market Short-term Borrowing

¹ These companies are: (1) Henegelhoef Concrete Joints NV; (2) Sarens NV; (3) Thyssenkrupp Materials Belgium N.V.; (4) Universal Eisen und Stahl GmbH; (5) Valvan Baling Systems; and (6) Voestalpine Belgium NV.



Comment 9: Calculating U.S. Short-term Borrowing
Comment 10: Adjustments to International Freight Expense
Comment 11: U.S. Billing Adjustment
Comment 12: Adjustments to U.S. Freight Revenue
Comment 13: Home Market Inland Freight and Warehouse Expense Adjustments

II. BACKGROUND

On July 17, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review.² This review covers eight producers and exporters. The period of review (POR) is November 14, 2016 through April 30, 2018.

On August 6, 2019, we released the final verification report and invited parties to comment on the *Preliminary Results*.³ On August 23, 2019, we received case briefs from Nucor Corporation (the petitioner), Industeel, and NLMK Belgium.⁴ On August 28, 2019, we received rebuttal briefs from the petitioner and NLMK Belgium.⁵ After analyzing the comments received, we changed the weighted-average margins for Industeel, NLMK Belgium, and the companies involved in the review but not selected as mandatory respondents (*i.e.*, the “non-reviewed” companies) from those presented in the *Preliminary Results*.

On October 23, 2019, Commerce extended the deadline for the final results of this administrative review until January 10, 2020.⁶

III. SCOPE OF THE ORDER

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other nonmetallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates

² See *Certain Carbon and Alloy Steel Cut-To Length Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 34129 (July 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

³ See *Preliminary Results*, 84 FR at 34129; see also Memorandum, “2016-2018 Administrative Review of the antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Briefing Schedule for the Final Results,” dated August 6, 2019; and Memorandum, “Briefing Schedule in the 2016-2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium,” dated August 9, 2019.

⁴ See Industeel’s Case Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Case Brief of Industeel Belgium S.A.,” dated August 23, 2019 (Industeel Case Brief); NLMK Belgium’s Case Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Case Brief,” dated August 23, 2019 (NLMK Belgium Case Brief); and Petitioner’s Case Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Nucor’s Case Brief,” dated August 23, 2019 (Petitioner Case Brief).

⁵ See NLMK Belgium’s Rebuttal Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Rebuttal Brief,” dated August 28, 2019 (NLMK Belgium Rebuttal Brief); and Petitioner’s Rebuttal Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Nucor’s Rebuttal Brief,” dated August 28, 2019 (Petitioner Rebuttal Brief).

⁶ See Memorandum, “Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Extension of Deadline for Final Results of 2016-2018 Antidumping Duty Administrative Review,” dated October 23, 2019.

(*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or nonrectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate. All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,

- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,
- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

- (i) 270-300 HBW,
- (ii) 290-320 HBW, or
- (iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties: (i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or (ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS item numbers:

7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. MARGIN CALCULATIONS

For Industeel and NLMK Belgium, we calculated export price, constructed export price, and normal value (NV) using the same methodology stated in the *Preliminary Results*, except as follows:

For Industeel:

- We revised the margin program for Industeel to add the negative values for rebates in the home market (*i.e.*, REBATEH) in order to establish NV. *See* Comment 1.

For NLMK Belgium:

- We revised NLMK Belgium's U.S. warehouse expense to use monthly charges plus in and out fees based on documentation from verification. *See* Comment 4.
- We revised the preliminary adjustment for non-prime products to allocate the total cost difference as a percentage of prime product costs rather than based on CONNUM-specific prime and non-prime production quantities. *See* Comment 5.
- In the *Preliminary Results*, we revised the international freight expenses for made-to-stock sales based on a worksheet from verification. However, this worksheet should only have applied to one channel of made-to-stock sales (*i.e.*, channel 2 sales), for which the international freight expenses did match the worksheet. Therefore, we have reverted these freight expenses to the original reported values for the final results. *See* comment 10.
- We removed the billing adjustment for one transaction. *See* Comment 11.
- We revised the capping of freight revenue to correct an error. *See* Comment 12.

V. DISCUSSION OF THE ISSUES

Comments Pertaining to Industeel

Comment 1: Accounting for Industeel's Rebate Costs

Industeel Case Brief

- Commerce should add rebate costs (*i.e.*, REBATEH) instead of subtracting them in order to calculate normal value. Industeel reported the values in field REBATEH as negative numbers and, as such, Commerce should add them to calculate normal value.

Commerce's Position:

We agree with Industeel and have made this change for the final results.⁷ Industeel reported rebate costs as negative numbers in its home market sales listing which would require a minor alteration in the margin program, given that the calculation in the margin program subtracts rebate costs in order to establish normal value. Therefore, adding Industeel's rebate costs to its home market selling price will accurately adjust Industeel's normal value to properly account for Industeel's rebate costs.

Comment 2: Write-down of Industeel's Inventory Reserves

Industeel Case Brief

- In the preliminary results, Commerce included inventory valuation losses associated with raw materials, work-in process (WIP), consumables, and spare parts in the numerator of the general and administrative (G&A) expense ratio calculation.
- This amount represents the changes in inventory reserves (allowances) and goods consumed from the inventory that are withdrawn at historical costs and not a reduced, written down value.
- Because the inventory valuation losses do not affect the value of goods withdrawn from inventory and consumed in production during the POR, it would be unreasonable to include this item in the G&A expense calculation.⁸
- Further, Commerce's decision to include the inventory valuation losses in the G&A expense ratio calculation double counts costs. Thus, Commerce should not include it in the G&A expense ratio calculation.

Petitioner Rebuttal Brief

- Commerce properly included the inventory valuation losses associated with raw materials, WIP, consumables, and spare parts in the numerator of the G&A expense ratio calculation.
- Industeel claims that the inventory valuation losses should not be included in the G&A expense ratio calculation because the values of goods withdrawn from the inventory were consumed in the production at historical costs. Nevertheless, Commerce rejected this approach in other cases.⁹ As such, including the inventory valuation losses in the G&A expense ratio calculation is consistent with Commerce's practice.

⁷ See Memorandum, "2016-2018 Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Calculations for Industeel Belgium S.A. for the Final Results," dated concurrently with this memorandum.

⁸ See Industeel Case Brief at 3 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 2).

⁹ See Petitioner Rebuttal Brief at 20-21 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 8 (*OCTG from Korea 2016-2017*); and *Certain Hot-Rolled Steel Flat Products*

Commerce's Position:

We agree with the petitioner that the inventory valuation losses recorded on the company's audited income statement related to raw materials, WIP, consumables, and spare parts, and should be included in the G&A expenses ratio calculation.

Industeel's restatement of its inventories to the lower of cost or net realizable value is a periodic adjustment required for its audited financial statements that are based on Belgium Generally Accepted Accounting Principles (GAAP).¹⁰ The inventory valuation adjustment is recorded in separate contra-inventory reserve accounts on the balance sheet while the raw materials, WIP, consumables, and spare parts inventories continue to be recorded at historical cost.¹¹ When inventory is consumed, it is consumed at its historical costs.¹² At the end of each year, the prior year's reserve account is reversed, and the current year's reserve is calculated based on current inventory quantities and valuations. The current inventory valuation losses and the reversal of the previous year's losses are offset, and the net amount is recorded as a net income or expense on the income statement in the current year. The contra-inventory reserve accounts reflect the net losses in the value of inventories that the company is holding at the fiscal year-end date, while the inventory valuation losses recorded in the income statement reflect the incremental gains or losses for the fiscal year. Thus, in accordance with Belgium GAAP, Industeel is recognizing the gains and losses associated with the inventory it is currently holding on its balance sheet, which are unrelated to the inventory that was consumed in production. This provision is restated every year and depending on the quantity of inventory on hand and whether the historical cost is at or above the current market value, the company may record a net gain or loss associated with the inventory reserve adjustment.

In calculating a G&A expense ratio, Commerce normally includes period expenses, *i.e.*, those that are more related to an accounting period and not directly related to manufacturing merchandise, as they are related to the general operations of the company as a whole.¹³ The Court of International Trade (CIT) has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.¹⁴ In this case, the inventory valuation losses recorded in the income statement by the company reflect the loss in value of the inventory on hand at the end of the fiscal year and we find that these losses are associated with the general operations of the company as whole rather than to the production process. Consequently, we determined that it is

from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017, 84 FR 32720 (July 9, 2019) (*HRS from Korea 2016-2017*), and accompanying IDM at Comment 12).

¹⁰ See Industeel's October 3, 2018 section D Questionnaire Response at 11.

¹¹ *Id.* at 12-13; and Industeel's April 12, 2019 section D Supplemental Questionnaire Response at 1-2.

¹² *Id.*

¹³ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at Comment 33.

¹⁴ See *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (CIT 1988) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (1995)).

appropriate to include Industeel's inventory valuation losses associated with raw materials, WIP, consumables, and spare parts which were recorded in the company's GAAP-based income statement in the G&A expense ratio calculation.¹⁵ Furthermore, in the most recent cases, where Commerce faced similar sets of facts, we stated that the inventory valuation losses are periodic adjustments, which are related to the general operations of the company as a whole and should be included in a respondent's reported G&A expense ratio calculation.¹⁶ Accordingly, we continue to include the inventory valuation losses associated with raw materials, WIP, consumables, and spare parts in the G&A expense ratio calculation for the final results.

Comments Pertaining to NLMK Belgium

Comment 3: Use of Adverse Facts Available

Petitioner Case Brief

- Commerce should base NLMK Belgium's final dumping margin on total adverse facts available (AFA) because NLMK Belgium has repeatedly provided information riddled with errors and omissions. NLMK Belgium failed to act to the best of its ability by carelessly and inattentively reporting data that has required corrections at every stage of this review.
- First, in the supplemental questionnaire responses, NLMK Belgium not only corrected the errors Commerce identified, but also made changes to the reported data that Commerce did not request and for which NLMK Belgium provided little to no explanation and no supporting documentation. These included modifications to production quantities, depreciation costs, overhead costs, overrun sales, home market billing adjustments, home market warehousing expenses, home market freight expenses, home market CONNUMs, home market packing expenses, home market shipping dates, and U.S. freight.
- Second, at verification NLMK Belgium reported such a vast number of minor corrections that regardless of whether each is individually minor, the sheer number, when taken as a whole, is problematic and certainly not minor. Further, at least some of these errors, on an individual level, should not be considered minor. In particular, the misreported home market sales result in a significant adjustment, the omitted domestic inland freight fees encompass new factual information, and the revision to the universe of freight expenses is a modification in NLMK Belgium's reporting methodology. As such, the petitioner concludes that these items are not minor corrections.
- Finally, despite the numerous corrections NLMK Belgium presented at the start of the verifications, Commerce still discovered a multitude of additional problems with NLMK Belgium's reporting. Commerce's verification reports detail additional errors in NLMK Belgium's reporting: it failed to reconcile its international freight expenses, incorrectly calculated marine insurance expenses, misreported its home market interest rates,

¹⁵ See *Polyethylene Retain Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 2009), and accompanying IDM at Comment 3; *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004), and accompanying IDM at Comment 7; and *Stainless Steel Sheet And Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 76721 (December 13, 2002), and accompanying IDM at Comment 9.

¹⁶ See *OCTG from Korea 2016-2017* and *HRS from Korea 2016-2017*.

misreported data for five of the eight US sales examined, miscalculated warehouse expenses, misreported shipment dates for US sales with multiple shipments, misreported and failed to provide support for certain indirect selling expenses, misreported depreciation expenses, failed to account for inventory write-downs, and excluded certain G&A-related expenses.

- In summary, Commerce must base NLMK Belgium's final dumping margin on total AFA since the repeated modifications to significant portions of NLMK Belgium's reporting demonstrate that NLMK Belgium failed to act to the best of its ability and instead reported inaccurate and incomplete data that, as a whole, are unreliable.

NLMK Belgium Rebuttal Brief

- There is no scenario under which total AFA is warranted in this review – there is no evidence that NLMK Belgium withheld information or significantly impeded the proceeding. Moreover, NLMK Belgium has met all of Commerce's deadlines, and Commerce successfully verified all of NLMK Belgium's data.¹⁷ While corrections have been made to its data over the course of the proceeding, NLMK Belgium has essentially provided responses for three separate companies, each on separate accounting and data systems. The correction of data over the course of a proceeding is customary and is not grounds for total AFA. In fact, Commerce has acknowledged that "it is not uncommon for respondents to revise or correct information previously submitted to Commerce."¹⁸
- First, the vast majority of the corrections reported in the supplemental questionnaire responses were in direct response to Commerce's questions, and, contrary to the petitioner's claims, each submitted revision was accompanied by a timely and adequate explanation.
- Second, the sheer number of minor corrections presented at verification does not warrant total AFA; the petitioner failed to cite any standard or case precedent to support its position. Commerce recently entertained a similar argument and declined to apply total AFA where it had "examined the minor corrections at verification, accepted all of them and found no discrepancies with the information reported."¹⁹ Thus, Commerce accepted these corrections as minor at verification and, in accordance with precedent, Commerce should continue to rely on the corrected data in the final results.
- NLMK Belgium also refutes the petitioner's allegation that three of the first day corrections on an individual level are not minor.
 - The first correction does not require significant adjustment but merely identifies French sales that were mistakenly included in the home market database. Thus, NLMK Belgium erred by over-reporting, rather than omitting data.
 - The second correction is not new factual information, since these fees were previously described on the record. Further, this correction only impacts eight U.S.

¹⁷ See NLMK Belgium's Rebuttal Brief at 3 (citing section 776(a) of the Act).

¹⁸ See NLMK Belgium's Rebuttal Brief at 4 (citing *Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review*, 71 FR 42802 (July 28, 2006)).

¹⁹ See NLMK Belgium's Rebuttal Brief at 8 (citing *Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24743 (May 30, 2018) (*Fine Denier PSF from Korea*)).

- invoices that were shipped to the port via truck rather than rail, which is the normal mode of transport.
- The third correction is likewise minor since the change merely moved one vessel for each location from the 2017 average to the 2016 average.
 - Finally, based on past practice Commerce’s acceptance of these corrections at verification demonstrates that the changes are indeed minor.²⁰
 - Regarding the petitioner’s third argument for total AFA, the items listed are either minor errors or are methodological and factual findings, some of which NLMK Belgium is disputing for these final results.
 - The reported international freight expenses and home market interest rates are correct and should not be adjusted for the final results.
 - The shipment dates reported for U.S. sales with multiple shipments were revised at Commerce’s request to reflect weighted rather than simple averages and therefore constitute a methodological change rather than an error.
 - The indirect selling issue is also methodological, as it relates to the allocation of the expenses.
 - Sale-specific issues raised by the petitioner were actually presented as minor corrections on the first day of verification and were not discovered by Commerce.
 - Regarding the inventory write-downs and other G&A-related expenses, Commerce commonly makes cost adjustments for items that are discovered at verification.²¹ In fact, Commerce already incorporated these items in the revised G&A expense ratios that were applied to NLMK Belgium’s costs in the *Preliminary Results*.
 - Finally, the remaining verification findings raised by the petitioner, *i.e.*, marine insurance, warehouse expenses, and depreciation expenses, are clerical or calculation errors that have no meaningful impact on Commerce’s analysis, and, in fact, have already been corrected in the revised sales and cost databases requested by Commerce and used in the *Preliminary Results*.
 - In conclusion, the corrections raised by the petitioner are minor in nature, are the types of corrections typically accepted by Commerce, and, in the end, serve to provide Commerce with more accurate data by which to make its determination. Further, NLMK Belgium has fully cooperated with Commerce and acted to the best of its ability; therefore, Commerce should reject the petitioner’s call for total AFA.

Commerce’s Position:

According to section 776(a) of the Tariff Act of 1930, as amended (the Act), Commerce shall use the facts otherwise available in reaching a determination if:

- 1) necessary information is not available on the record, or
- 2) an interested party or any other person –

²⁰ See NLMK Belgium’s Rebuttal Brief at 9 (citing *Refrigerators from Korea*).

²¹ See NLMK Belgium’s Rebuttal Brief at 14 (citing *e.g.*, *Polyethylene Terephthalate Resin from Taiwan*, 83 FR 48287 (September 24, 2018)).

- A) withholds information that has been requested by the administering authority or the Commission under this title,
- B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,
- C) significantly impedes a proceeding under this title, or
- D) provides such information but the information cannot be verified as provided in section 782(i).

Further, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available.

In this case, we disagree with the petitioner that application of AFA under section 776(b) of the Act is warranted. In particular, we find that all necessary information is available on the record of this review, and NLMK Belgium has not withheld information, failed to provide information, significantly impeded this proceeding, or provided information that cannot be verified. Throughout the course of this review, NLMK Belgium has demonstrated its willingness to cooperate with Commerce's requests for information, and it has answered each request for information to the best of its ability. Therefore, we find no basis to apply AFA in this case.

With regard to the petitioner's specific arguments, we disagree with the first assertion that NLMK Belgium provided corrections in its supplemental questionnaire responses that were unsolicited and were accompanied with little to no explanation or supporting documentation. Instead, we find that for the cost corrections, *i.e.*, production quantities, depreciation expenses, and overhead costs, NLMK Belgium first identified the Commerce question that prompted a review of the original data and then explained or demonstrated why it was necessary to make a revision.²² For example, in direct response to Commerce's supplemental questions regarding production quantities, NLMK Belgium clarified that one of its three production facilities records actual rather than theoretical production quantities in its normal books and records.²³ Commerce unequivocally directed NLMK Belgium, if necessary, to revise the cost database to consistently report all quantities and per-unit costs on a theoretical basis.²⁴ NLMK Belgium complied with Commerce's request to revise the cost database and, in doing so, demonstrated how the actual quantities were converted to theoretical quantities.²⁵ Similarly, we find that the other two NLMK Belgium cost revisions referenced by the petitioner were the direct result of

²² See NLMK Belgium Letter "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Supplemental Section D Questionnaire Response," dated November 20, 2018 (NLMK Belgium SDQR), at 8, 9, and 18.

²³ See NLMK Belgium SDQR at 8.

²⁴ *Id.*

²⁵ See NLMK Belgium SDQR at 8-9.

Commerce's requests for a reconciliation of data to source documents and an additional cost calculation worksheet.²⁶ In both cases, NLMK Belgium discovered errors in the original calculations and therefore provided revised cost calculation worksheets along with the underlying documentation to support the revisions.²⁷ Thus, we find no merit to the petitioner's arguments with regard to the cost revisions that were submitted with NLMK Belgium's supplemental questionnaire response.

Regarding the sales corrections in NLMK Belgium's supplemental responses, we also find that the corrections made by NLMK Belgium were encompassed by the questions posed by Commerce in its supplemental questionnaires. Although NLMK Belgium made the choice to list these corrections at the end of its responses, rather than in its response to the question(s) pertaining to the issue, Commerce examined these corrections and found that they fell within the bounds of our questions and therefore we did not reject them when NLMK Belgium submitted its responses. For example, in its February 20, 2019 SBQR, NLMK Belgium notified Commerce that it made some corrections to the strength characteristic of the control number after being asked by Commerce to provide documentation supporting its reported product characteristics for certain sales.²⁸ In this same questionnaire response, NLMK Belgium stated that it revised packing costs when a previous question had instructed it to "revise any expense fields (*e.g.*, GRSURPH, INLFTWH, *etc.*) to state them on a per-theoretical-MT basis."²⁹ As with the revisions to NLMK Belgium's cost info, we find no merit to the petitioner's arguments that Commerce did not request these changes or that NLMK Belgium did not explain these changes.

We disagree with the petitioner's second argument that the first day verification corrections when taken as a whole are not minor and are grounds for total AFA. Further, we also disagree that certain corrections on an individual level are not minor in nature. To determine whether to accept the corrections of errors submitted by interested parties, Commerce considers several factors. In particular, we evaluate whether the correction is clerical or methodological, whether we are able to verify the error and are satisfied with the documentary support for the reported correction, whether the error calls into question the overall integrity of the respondent's submissions, and whether it amounts to a "substantial revision" of previously reported data.³⁰ On the first day of the cost verification, NLMK Belgium presented four corrections that, in total, resulted in only minor changes to the reported per-unit costs. Two of the corrections, adjustments to the overall cost reconciliation worksheet and to the affiliated slab purchase

²⁶ See NLMK Belgium SDQR at 10, 13, 18, exhibit SD-11 and exhibit SD-15.

²⁷ *Id.*

²⁸ See NLMK Belgium's February 20, 2019 Supplemental Section B Questionnaire Response (NLMK Belgium February 20, 2019 SBQR) at 8-11 and 43-44.

²⁹ *Id.*, at 23 and 44-45.

³⁰ See, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 31028 (June 28, 2019), and accompanying IDM at Comment 1; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010), and accompanying IDM at Comment 10.

comparison schedule, did not change the per-unit costs reported in the cost database.³¹ The final two corrections, which do impact the reported cost database, *i.e.*, changes to the G&A expense ratio and the removal of packing and transport out expenses mistakenly included in both the reported cost and sales databases, are the types of clerical errors typically accepted at verification.³² For each correction, we traced the revised figures to source documents confirming that the changes presented by NLMK Belgium were accurate.

Regarding corrections presented at the sales verifications, we examined the corrections and supporting documentation provided by NLMK Belgium and did not find them to be indicative of pervasive issues. Each of the corrections presented was minor and even when taken together as a whole, we do not find that they rise to the level of AFA. For example, some of the corrections presented were typos, technical errors with the sales files, and exclusion of small additional fees.³³ Regarding the correction of home market sales referenced by the petitioner, NLMK Belgium is correct that that correction was for an over-reporting of sales.³⁴ Had NLMK Belgium under-reported and missed a number of home market sales, there would be more significant concern. However, in this case, NLMK Belgium reported more data than was necessary, and although removal of these sales will affect the margin, we verified that these sales were not home market sales and it would be improper to include them in our calculation of the comparison market prices, and resulting margin calculation. Other sales verification corrections are simply a reallocation of the expenses already on the record, for which NLMK Belgium did not exclude any expenses but simply provided an alternate allocation of information already on the record.³⁵ For each correction, we examined supporting documentation and found them to be the types of errors typically accepted at verification.

Regarding the petitioner's final argument (*i.e.*, that Commerce's discovery of additional errors at the verifications in conjunction with the numerous minor corrections renders NLMK Belgium's reported data totally unreliable), we also disagree. The petitioner alleges that NLMK Belgium failed to reconcile its international freight expenses, incorrectly calculated marine insurance expenses, misreported its home market interest rates, misreported data for five of the eight U.S. sales examined, miscalculated warehouse expenses, misreported shipment dates for U.S. sales with multiple shipments, misreported and failed to provide support for certain indirect selling expenses, misreported depreciation expenses, failed to account for inventory

³¹ See Memorandum, "Verification of the Cost Response of NLMK Belgium in the Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium," dated June 21, 2019 (NLMK Belgium Cost Verification Report) at 4.

³² See, *e.g.*, *Fine Denier PSF from Korea* IDM at Comment 1a; *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 16296 (April 16, 2018) (*Mechanical Tubing India*), and accompanying IDM at Comment 5, where Commerce accepted minor corrections to the G&A and financial expense ratios.

³³ See Memorandum, "Verification of the Sales Response of NLMK Belgium in the Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium, dated June 26, 2019 (NLMK Belgium Sales Verification Report) at 3-4, and Memorandum, "Verification of the Sales Response of NLMK North America Plate in the Administrative Review of Cut-to-Length Plate from Belgium," dated August 5, 2019 (NAP Verification Report), at 2-3.

³⁴ See NLMK Belgium Sales Verification Report at 3.

³⁵ See NLMK Belgium Sales Verification Report at 3-4, and NAP Verification Report at 2-3.

write-downs, and excluded certain G&A-related expenses. We reexamined the record in light of each claim and find that these items either fail to represent misreported information or reflect the types of verification findings which warrant adjustment but not the application of AFA.

As noted below, several of the “errors” the petitioner identified relate to issues which are methodological in nature, and have been raised as issues for these final results. For example, while the petitioner claims that NLMK Belgium misreported its home market credit rate, our verification report stated that “it *may* not be appropriate to classify these loans as short-term.”³⁶ Therefore, for issues where there was a question of what was correct, we cannot reasonably find these to be “errors” NLMK Belgium made. Additionally, the petitioner also includes as “errors,” revisions that Commerce asked NLMK Belgium to make, such as for transactions made in multiple shipments.³⁷ While the petitioner notes the quantity of errors discovered in our review of the sales selected for examination, several of the errors noted in those sections of the report are errors that had previously been presented as first day corrects while the others were minor in nature and of the type generally accepted by Commerce during verification.³⁸ Therefore, we find no basis for the petitioner’s claim that these sales verification corrections support applying AFA to NLMK Belgium.

The final three concerns the petitioner raised were adjustments identified at the cost verification and were accounted for in the *Preliminary Results*.³⁹ First, at verification we found that NLMK Belgium mistakenly included packing and transport out costs in the denominator of its depreciation expense ratios.⁴⁰ At our request, NLMK Belgium submitted a corrected worksheet for the depreciation error observed at verification and a revised cost database that incorporated the correction.⁴¹ Next, at verification we also identified potential corrections to NLMK Belgium’s reported G&A expense ratios. Specifically, we found that certain inventory adjustments, non-recurring provisions, certain other income, and property, environmental, and electrical taxes should be included in the numerators to the G&A expense ratios submitted for the three collapsed producers.⁴² We find these items to be minor classification or methodological differences rather than substantial revisions that call into question the integrity of NLMK Belgium’s submissions. Further, these items represent the types of adjustments Commerce frequently makes in its preliminary and final cost calculations.⁴³

³⁶ See NLMK Belgium Sales Verification Report at 2 (emphasis added).

³⁷ See NAP Verification Report at 3.

³⁸ See NLMK Belgium Sales Verification Report at 3-4 and 14-17, and NAP Verification Report at 2-3 and 11.

³⁹ See NLMK Belgium Cost Verification Report at 2; *see also* Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – NLMK Belgium,” dated July 10, 2019 (NLMK Belgium Prelim Cost Memo).

⁴⁰ See NLMK Belgium Cost Verification Report at 2.

⁴¹ *Id.*; *see also* Memorandum, “Request for Revised Home Market Sales Listing and Cost Database for NLMK Belgium in the Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium,” dated June 26, 2019.

⁴² See NLMK Belgium Cost Verification Report at 2.

⁴³ *See, e.g., Fine Denier PSF from Korea* IDM at Comments 11-12; *Mechanical Tubing India* IDM at Comment 5.

In sum, we do not find any statutory basis under sections 776(a) or (b) of the Act for the use of AFA. NLMK Belgium responded to all our requests for information in a timely manner and participated fully in verification. NLMK Belgium did not withhold information that we requested or in any way impede this review. In light of NLMK Belgium's full cooperation, we do not find that AFA is warranted. Rather, because we have an obligation to calculate antidumping duty margins as accurately as possible,⁴⁴ we have used the complete, accurate, and verified data on the record to calculate an accurate margin for the final results.

Comment 4: Use of Partial Adverse Facts Available

Petitioner Case Brief

- If Commerce does not apply total AFA to NLMK Belgium, then it should apply partial AFA to international freight and U.S. warehouse expenses. Adverse facts available is warranted because, as the verification report explains, NLMK Belgium could not reconcile the discrepancies related to payments because it did not obtain full documentation relating to its international freight expenses.⁴⁵
- Because NLMK Belgium revealed that it did not have the source documentation in its entirety, NLMK Belgium's argument that Commerce was able to tie individual invoices is irrelevant.⁴⁶ If the source documentation does not contain the additional expenses, then it does not matter if NLMK Belgium can tie its reporting to the source documentation because it may still miss any additional expenses.
- Regarding U.S. warehouse expenses, NLMK Belgium underreported these expenses because they did not properly account for the associated in/out fees. These in/out fees appear on all the monthly invoices and therefore their exclusion is the result of inattentiveness or insufficient record review by NLMK Belgium. Because NLMK Belgium failed to report complete, accurate, and verifiable U.S. warehouse expense information, Commerce should apply the revised figure cited in the verification report to all sales with warehouse expenses.

NLMK Belgium Case Brief

- Commerce should not have increased the international freight expenses because it demonstrated that its freight expenses were accurate and tied to source documentation at verification.⁴⁷ Commerce only made the burdensome request for a reconciliation of its freight invoices and its accounting system in the afternoon of the last day of verification.
- Even so, NLMK Belgium was able to reconcile 97.5 percent of its freight expenses. Each of the invoices that Commerce examined from the selected month (January 2017) related to miscellaneous fees on shipments to third countries, which were properly excluded from the

⁴⁴ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

⁴⁵ See Petitioner Case Brief at 7-8.

⁴⁶ *Id.*

⁴⁷ See NLMK Belgium Case Brief at 25 (citing NLMK Belgium Sales Verification Report at 18 and Verification Exhibit 37 at 6-27).

expense calculation. Therefore, it is likely that the unreconciled expenses related to third country shipments given the evidence on the record.⁴⁸

- NLMK Belgium's reporting is further corroborated given that it reported the exact number of shipments to the United States as used in the worksheet to calculate international freight expenses.⁴⁹
- Additionally, Commerce should have determined, based on the sample freight invoices reviewed at verification, that NLMK Belgium's calculation of international freight expenses was accurate because smaller invoices related to document fees or unloading charges accounted for the discrepancies relating to shipping costs. Indeed, Commerce routinely verifies information by examining samples.⁵⁰ Further, the CIT and Court of Appeals for the Federal Circuit (Federal Circuit) support Commerce's selective examination process and find that it is sufficient to test the accuracy of responses without being exhaustive.⁵¹ Commerce should rely on facts available on the record to ensure the fees are properly recorded rather than relying on a punitive and arbitrary percentage adjustment.
- Finally, although the percentage adjustment that Commerce made in the preliminary results to international freight was not applied as facts available with an adverse inference, its effect

⁴⁸ *Id.* at 26 (citing NLMK Belgium Sales Verification Report at Verification Exhibit 37 at 28-53).

⁴⁹ See NLMK Belgium's December 28, 2018, Supplemental Section A Questionnaire Response (NLMK Belgium December 28, 2018 SAQR) at Exhibit 11; and NLMK Belgium Sales Verification Report at Verification Exhibit 37 at 1-3.

⁵⁰ See NLMK Belgium Case Brief at 27 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Preliminary Rescission of New Shipper Review*; 2015-2016, 82 FR 31301 (July 6, 2017) (*TRBs from China 2015-16*), and accompanying PDM at 14 ("Verification, by its nature, is an exercise in sampling."); *Rubber Bands from Thailand: Final Negative Countervailing Duty Determination*, 34 FR 8302 (March 7, 2019), and accompanying IDM at Comment 5 ("For a sample of products, we found that the actual yield loss experience was within a reasonable range of the yield that was included in the in the reported costs. Therefore, we do not find the reported yield losses included in the reported costs to be unreasonable."); *Large Residential Washers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 90776 (December 15, 2016), and accompanying IDM at Comment 9 ("at verification, we tested the respondents' reported FOP data for a large sample of the numerous parts involved in this case, and found that each respondent reported FOP weights as accurately as possible. Thus we do not agree with the petitioner that the minor weight differences...require an adjustment to the respondent's reported FOPs"); *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016), and accompanying IDM at Comment 7 ("At verification, we collected sample contracts, orders and invoice summaries detailing price or quantity tolerance changes..."); and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016), and accompanying IDM at Comment 5 ("At verification, as a reasonableness test of POSCO's standard yield losses, we compared, for a sample product, the product-specific standard yield losses at several stages of production to the POI average actual yield losses for these stages...")).

⁵¹ *Id.* at 27-28 (citing *Monsanto Co. v. United States*, 698 F. Supp. 275, 281 (CIT 1988) ("Verification is a spot check and is not intended to be an exhaustive examination of the respondent's business."); *Bomont Indus. v. United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ("...verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally, an audit entails selective examination rather than testing of an entire universe."); and *Micron Tech., Inc. v. United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997) ("...we decline to impose a requirement on Commerce to trace every figure it chooses to verify back to financial statements prepared in the ordinary course of business. Instead, we conclude that Commerce's ability to make such a trace is relevant to, but not dispositive of, a finding that substantial evidence supports the verification results.")).

was the same as facts available with an adverse inference. NLMK Belgium has cooperated fully to the extent possible and, given that Commerce did not apply facts available with an adverse inference, NLMK Belgium believes that only neutral facts available is warranted in this situation according to Commerce's practice.⁵²

Petitioner Rebuttal Brief

- NLMK Belgium's argument that Commerce need only rely on sample information is unpersuasive given that, at verification, Commerce discovered additional evidence demonstrating flaws in NLMK Belgium's reporting. Commerce cannot simply disregard its findings based on past precedent of using samples of data to verify information on the record.
- Commerce should reject NLMK Belgium's proposed neutral facts available adjustment that is based on the values examined at verification for international freight expenses because Commerce did not impose adverse inferences in the preliminary results. NLMK Belgium's proposed adjustment of using specific additional fees based on the port is drawn from a handful of invoices that Commerce examined at verification, whereas Commerce's adjustment from the *Preliminary Results* is based on all data for the month of January and thus is more representative.⁵³
- Should Commerce find that an adjustment is warranted, Commerce should apply the highest reported international freight expense to all sales because NLMK Belgium could not demonstrate the accuracy or completeness of the record. At verification, NLMK Belgium was unable to completely reconcile its accounting system to source documents for the international freight charges. Further, this inability to reconcile was due to NLMK Belgium's failure to request all information from its shipping broker which resulted in additional charges being excluded.

⁵² See, e.g., *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019), and accompanying IDM at Comment 8 ("As necessary information is not on the record, we must resort to facts available in accordance with section 776(a)(1) of the Act. There is no basis under 776(b) of the Act to find that Hyundai failed to cooperate to the best of its ability... there is no basis to apply adverse facts available..."); *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019), and accompanying IDM at Comment 38 ("We will thus apply neutral facts available and use the most specific data available on the record in the alternative as a plug..."); *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 35599 (July 24, 2019), and accompanying IDM at Comment 2 ("Rather than apply the highest home market sales price to unaffiliated customers as partial AFA for the second affiliate's downstream home market sales prices, we have, as neutral facts available under section 776(a) of the Act, disregarded the home market sales to the second affiliate in calculating Deacero's margin."); *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 14 ("For this reason, and because the unreported sales represents and insignificant quantity, for the final determination, we are relying on neutral facts otherwise available under section 716(a)(1) of the Act..."); *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004), and accompanying IDM at Comment 2 ("because we find that Funai Malaysia did not fail to cooperate to the best of its ability, we based the amount of these adjustments on neutral facts available, pursuant to section 776(a) of the Act.").

⁵³ See Petitioner Rebuttal Brief at 17 (citing NLMK Belgium Case Brief at 29 and NLMK Belgium Sales Verification Report at 18).

NLMK Belgium Rebuttal Brief

- The petitioner mischaracterizes the situation by implying that NLMK Belgium only disclosed its use of international freight data from its broker at verification; NLMK Belgium notified Commerce that it obtained this data from its broker in a supplemental questionnaire response prior to verification.
- Commerce should reject the petitioner's request for partial AFA and reverse its adjustment for the final results because NLMK Belgium's sample invoices tied to the international freight expenses calculation worksheet. If Commerce adjusts NLMK Belgium's international freight expenses, it should do so by relying on neutral facts available already on the record.

Commerce's Position:

We disagree with the petitioner that partial AFA is warranted for either NLMK Belgium's international freight or U.S. warehouse expenses. Rather, we have applied neutral facts available in accordance with section 776(a) of the Act to both expenses. We also disagree with NLMK Belgium that the application of the percentage adjustment to its international freight expenses done in the *Preliminary Results* for certain sales is not a neutral facts available adjustment.

In the instant administrative review, Commerce conducted verification of NLMK Belgium's questionnaire responses, pursuant to section 782(i) of the Act. It has been long-recognized by the courts that verification is a spot-check and is not intended to be an exhaustive examination of the respondent's business.⁵⁴ If Commerce is unable to verify every transaction due to limited time at verification or a voluminous record, it is Commerce's practice to verify samples of data from which to extrapolate information given that "it is incumbent upon respondents to disclose unreported or misreported data to {Commerce} at the start of verification, so that {Commerce} may assess whether the missing or erroneous data is significant."⁵⁵ However, if necessary information is not available on the record, then, pursuant to section 776(a) of the Act, facts otherwise available may be warranted.

At verification, in the process of verifying NLMK Belgium's reported international freight expenses, NLMK was unable to provide a complete reconciliation of its freight expenses from the international freight data obtained from its shipping broker to its financial accounting system. Thus, we were unable to confirm the accuracy of NLMK Belgium's reported international freight expenses.⁵⁶ For the single month of January 2017 where NLMK Belgium did provide a reconciliation, we were only able to confirm that NLMK Belgium had accurately reported 97.5 percent of the expenses for that month but that 2.5 percent of the expenses were missing (*i.e.*, for smaller invoices covering expenses such as document handling fees and

⁵⁴ See *Monsanto Co. v. United States*, 12 CIT 937, 944, 698 F. Supp. 275, 281 (1988), cited in *Micron Technology, Inc. v. United States*, 117 F.3d 1386 (Fed. Cir. 1997).

⁵⁵ See *TRBs from China 2015-16 PDM* at 14.

⁵⁶ See NLMK Belgium Sales Verification Report at 18.

loading/unloading charges). This was due to the fact that NLMK Belgium had only requested invoices which included ocean freight and not other associated freight expenses which, in certain instances, were invoiced separately.⁵⁷ Due to our inability to verify the completeness of NLMK Belgium's international freight expenses, for the *Preliminary Results*, we applied an upward adjustment, as neutral facts available, to all of NLMK Belgium's channel "2" and "3" sales freight expenses to account for the difference which we were unable to account for at verification.

While NLMK Belgium proposes some piecemeal adjustments to its reported international freight expenses, those require making assumptions about which charges are missing from certain invoices for certain ports. This method is unnecessarily contrived and elaborate and requires assumptions and guesswork about what the missing expenses could be, where they could be missing from, and what expenses would provide an expense value that could be used to fill a potential gap. Further, NLMK Belgium has not shown that its proposed adjustment is any more accurate than the adjustment made in the *Preliminary Results*. While NLMK Belgium's proposed adjustments are based on values obtained from other invoices, assigning placeholder values to instances where NLMK Belgium theorizes that expenses could be missing is inaccurate, imprecise, and relies on guesswork. Instead, we have a verified percentage of expenses which NLMK Belgium was unable to reconcile. Because NLMK Belgium was unable to produce documentation showing what charges or which ports these expenses pertained to, a general adjustment to all freight expenses is more appropriate than guessing for which transactions to apply a hypothetical adjustment. Because the general freight adjustment percentage applied in the *Preliminary Results* is the value we observed from NLMK Belgium's accounting system during verification, it is a neutral adjustment based on the facts available in accordance with 776(a) of the Act. Therefore, we continue to revise NLMK Belgium's international freight expenses as we did in the *Preliminary Results*, with the exception of the change/correction discussed in Comment 10.

With regard to NLMK Belgium's U.S. warehouse expenses, NLMK Belgium reported these expenses based on the actual payments made during the POR. At verification we found that NLMK Belgium's reporting did not accurately reflect certain fees associated with receiving and shipping merchandise in and out of the warehouses, in addition to storage fees. For the *Preliminary Results* we made deductions, where appropriate, to starting price for movement expenses, including inland freight and warehousing, under section 773(a)(6)(B)(ii) of the Act.⁵⁸ In this particular case, an alternate calculation of NLMK Belgium's U.S. warehouses expenses is warranted. Every shipment incurs a fee when it enters the warehouse and another when it leaves. However, the warehouse expense NLMK Belgium reported is less than the sum of the "in" fee, "out" fee, and one month of storage (the minimum time that merchandise could be at the warehouse).⁵⁹ While we confirmed the amounts that NLMK Belgium used to report is U.S. warehouse expenses, we also obtained the invoices which showed fixed "in" and "out" fees, plus monthly storage charges. Because these "in" and "out" warehouse fees are fixed, they

⁵⁷ *Id.*

⁵⁸ See *Preliminary Results* PDM at 20.

⁵⁹ See NAP Verification Report at 12-13 and Verification Exhibit 18.

must be fully accounted for in the U.S. warehouse expense. Therefore, for U.S. sales made from the warehouse in question, we have added a field for the “in” and “out” fees and, using the monthly invoices, we have calculated a storage fee based on the invoiced charges⁶⁰ (excluding the “in” and “out” fees) divided by the quantity stored at this warehouse during the POR.⁶¹

Pursuant to section 776(a) of the Act, Commerce may use facts available when necessary information is missing from the record. While we agree that adjustments to NLMK Belgium’s international freight and U.S. warehouse expenses are warranted, we disagree with the petitioner that these issues merit application of partial AFA. Specifically, we agree with NLMK Belgium that its error in misreporting freight does not equate to a failure to cooperate to the best of its ability under section 776(b) of the Act. NLMK Belgium responded to all our requests for information in a timely manner and participated fully in verification. NLMK Belgium did not withhold information that we requested or in any way impede this review. In light of NLMK Belgium’s full cooperation, we do not find that partial AFA is warranted against NLMK Belgium. Thus, as discussed above, Commerce is adjusting the international freight expense using verified information from the record for all sales where we believe it is reasonable to do so.

Regarding the U.S. warehouse expenses, the question is one of the methodology used to report the expenses, not of withholding or failing to provide information or providing information which cannot be verified. NLMK Belgium reported its U.S. warehouse expenses based on the actual payments made to the warehouse provider during the POR; as such, we find no basis for applying AFA to NLMK Belgium’s U.S. warehouse expenses.

While NLMK Belgium argues that the adjustment that Commerce applied to international freight in the *Preliminary Results* is an adverse rate, we disagree. As discussed above, at verification, we requested that NLMK Belgium reconcile its freight invoices to the associated account in its system. NLMK Belgium was only able to reconcile 97.5 percent of the value in its accounting system to invoices for the selected month of January 2017. Since we do not know what invoices are missing, where those shipments went, or what charges were on those invoices, we adjusted NLMK Belgium’s international freight expenses by the unreconciled percentage as a neutral facts available adjustment. Because this percentage is based on verified evidence, it constitutes a neutral adjustment rather than an adverse adjustment as NLMK Belgium claims. Contrary to NLMK Belgium’s claims, an adverse adjustment would, for example, be the application of the highest potential freight rate and not a neutral percent adjustment to all freight expenses based upon the 2.5 percent discrepancy found at verification.⁶² Further, as addressed above, NLMK Belgium’s proposed adjustment that it claims is a neutral adjustment relies on guesswork rather than data directly from a reconciliation performed at verification and thus is less reliable than the verified adjustment we made in the *Preliminary Results*.

NLMK Belgium cites a number of cases stating that Commerce routinely relies on sampling, and because the sample month examined at verification had no unreported U.S. freight invoices,

⁶⁰ *Id.* at Verification Exhibit 18.

⁶¹ See NLMK Belgium October 3, 2019 CQR, at Exhibit C-10.

⁶² See NLMK Belgium Sales Verification Report at 18.

Commerce should rely on this sample month to conclude that there are no unreported U.S. international freight expenses. However, because NLMK Belgium was only able to provide invoices accounting for 97.5 percent of the international freight expenses in its accounting system for the month of January 2017 – despite the fact that Commerce had requested a reconciliation for the entirety of 2017 at verification – we cannot definitively say that the missing invoices are unrepresentative of NLMK Belgium’s reporting of freight for its U.S. shipments.⁶³ Therefore, we are relying on sampling; in this case our sample reconciliation of one month which showed that NLMK Belgium based its reporting on only 97.5 percent of the recorded expenses. We have applied this rate from the selected sample months to all months as a neutral facts available adjustment.

Comment 5: Difference-in-Merchandise Adjustment

In the *Preliminary Results*, we revised NLMK Belgium’s reported costs to write down second choice products to their average market value. The difference between the reported and the average market values for second choice products was then allocated to the first choice (or prime) products on a CONNUM-specific basis.

NLMK Belgium Case Brief

- Commerce’s adjustment had the unintended consequence of causing certain U.S. sales to match to less similar home market products due to its effect on the DIFMER calculation.
- Commerce requires a respondent’s reported cost data to reflect meaningful cost differences attributable to the products’ physical characteristics and Commerce has, in fact, frequently reallocated costs “where a respondent’s reported costs reflect cost differences due to factors other than the physical characteristics.”⁶⁴ In this case, Commerce’s adjustment had the opposite effect and instead inappropriately created cost differences unrelated to the products’ physical characteristics.
- NLMK Belgium’s cost to produce first and second choice plate is the same since the designation as second choice or overrun only occurs after production is complete. Moreover, Commerce has stated that costs should be on a CONNUM-specific basis “without regard to whether the merchandise was classified as prime or non-prime.”⁶⁵ Therefore, Commerce should not introduce cost differentials for post-production reclassifications.
- NLMK Belgium points out that Commerce specifically instructs respondents to exclude the prime or non-prime designation from the CONNUM, thereby limiting the CONNUM to physical characteristics only. Therefore, according to NLMK Belgium, any cost differences

⁶³ *Id.*

⁶⁴ See NLMK Belgium Case Brief, at 5 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comment 8).

⁶⁵ See NLMK Belgium Case Brief, at 7 (citing *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 73729 (December 13, 2005) (*SSSS from Germany*)).

related solely to first or second choice classifications, which are not physical characteristics, should likewise not be included as factors in the DIFMER calculation since Commerce's regulations dictate that the DIFMER adjustment reflect "only differences in variable costs associated with the physical differences."⁶⁶

- Where the DIFMER calculations have resulted in illogical matches, Commerce has adjusted a respondent's cost methodology or has even calculated costs specifically for DIFMER purposes.⁶⁷ Because Commerce's *Preliminary Results* adjustment for second choice plate created cost differences unrelated to the physical characteristics of the products, Commerce should use NLMK Belgium's unadjusted costs as submitted on July 1, 2019, for the purpose of the DIFMER calculations.

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- NLMK Belgium normally values second choice production at average market prices. Therefore, Commerce's *Preliminary Results* revaluation of the costs reported for NLMK Belgium's second choice products, *i.e.*, from full production costs to their average market value, is consistent with the statute which requires a respondent's costs to be calculated based on their normal books and records.⁶⁸
- Contrary to NLMK Belgium's claims, Commerce's adjustment is related to cost differences associated with the physical characteristics of product, since NLMK Belgium describes a second choice product as one that "cannot be levelled, is too narrow or short, fails to meet required mechanical properties, *etc.* . . ."
- The cases relied upon by NLMK Belgium fail to demonstrate error in Commerce's adjustment. For example, in *Circular Pipe from Korea*, Commerce adjusted the respondent's costs to eliminate differences that were not associated with the physical characteristics of nearly identical finished products with similar uses and with market prices that did not vary based on the raw material input.⁶⁹ In contrast, Commerce adjusted NLMK Belgium's second choice products specifically because the products were not identical, were not being used for the same end uses, and were not being sold at the same prices.
- *SSSS from Germany* is likewise unpersuasive since the question was whether to distinguish between prime and non-prime merchandise when conducting the cost test, which is not the issue here. Furthermore, reporting costs "without regard to whether the merchandise was classified as prime or non-prime" does not reflect Commerce's current practice. Rather, Commerce's current practice, which has been affirmed by the court, is to adjust the costs

⁶⁶ See NLMK Belgium Case Brief, at 6 (citing 19 CFR 351.411(b)).

⁶⁷ See NLMK Belgium Case Brief, at 6 (citing *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007)) and at 8 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 34128 (June 18, 2004)).

⁶⁸ See Petitioner's Rebuttal Brief at 3 (citing section 773(f)(1)(A) of the Act).

⁶⁹ See Petitioner's Rebuttal Brief at 5 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015) (*Circular Welded Pipe from Korea*)).

reported for prime and non-prime merchandise to reflect the respondent's normal books and records.⁷⁰

- The petitioner concludes that Commerce should not adjust the costs used for the DIFMER calculation since Commerce's *Preliminary Results* adjustment for second choice products is both consistent with current practice and reflects the differences in the physical characteristics between prime and non-prime products.

Commerce's Position:

For the final results, we have continued to adjust NLMK Belgium's reported costs to value the second choice products at their POR average market value. However, we agree with NLMK Belgium that the application of this adjustment created cost differences that are not associated with the physical characteristics of the underlying products. Therefore, for the final results, we have amended the manner in which we have applied the adjustment to more equitably allocate to first choice (prime) products the difference between the full production cost and the market value of the second choice products.⁷¹

After a review of the interested party comments, we find that the essential issue here is not the merit of the second choice product adjustment, but rather the effect of the methodology employed in applying the adjustment. In the *Preliminary Results*, we applied our adjustment on a CONNUM-specific basis using the respective first and second choice production quantities. As a result, CONNUMs that consisted of larger quantities of second choice products were more heavily impacted by the *Preliminary Results* adjustment. For example, assume that a respondent produced two products, CONNUMs A and B, that prior to adjustment are very similar in their physical characteristics and in their associated production costs. However, after production was complete, half of the CONNUM A quantities failed testing and were downgraded to second choice, while only one tenth of the CONNUM B quantities were downgraded. Under the method followed in the *Preliminary Results*, CONNUM A would receive five times the adjustment that CONNUM B would receive. Consequently, two products that are similar in physical characteristics, now reflect very different costs.

After examining the record data, we find there are significant fluctuations in the percentage that second choice production quantities represent of total production quantities on a CONNUM-specific basis. These disparities do not appear to be a reflection of differences in yield losses that occur between products of varying characteristics, but instead appear to be production failures that randomly occur and are not necessarily linked to the complexity of producing the physical characteristics of the underlying products.⁷² Commerce has previously acknowledged that the production of non-prime material is not planned and is an unintended and undesirable

⁷⁰ See Petitioner's Rebuttal Brief at 6 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate from France*) and *Dillinger France S.A.* 350 F Supp. 3d at 1373-77).

⁷¹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – NLMK Belgium," dated concurrently with this memorandum (Final Cost Calculation Memo).

⁷² See letter from NLMK Belgium "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium; Revised NLMK Databases," dated July 1, 2019, at Attachment Cost of Production – NLMK.

consequence in a company's pursuit of prime merchandise.⁷³ As such, we find it is appropriate to allocate the cost implications of these unintended downgrades to all prime products rather than unreasonably burden only certain prime products.

The petitioner proffers the physical conditions that compelled NLMK Belgium to downgrade the products to second choice, *e.g.*, unable to level, shortness of length, *etc.*, as rationale for the CONNUM-specific adjustments. However, these physical deficiencies do not correspond with the physical characteristics used in the construction of the CONNUMs for this case – quality; minimum carbon, chromium, nickel, tungsten, cobalt, molybdenum and vanadium content; minimum yield strength; nominal thickness; heat treatment; nominal width; form; painted; patterns in relief; and, descaled. These are the physical characteristics that Commerce has identified as the most significant in differentiating between products.⁷⁴ Under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, constructed value, and DIFMER adjustment accurately reflect the distinct physical characteristics of the products whose sale prices are used in the dumping calculations. Hence, the physical deficiencies in NLMK Belgium's second choice products do not support the cost differences that are a result of the adjustment applied in the *Preliminary Results*. Rather, the cost differences created in the *Preliminary Results* are related to the relative quantities of first and second choice products within each CONNUM.

Commerce has a preference for smoothing out cost fluctuations that are driven by similarly sporadic events such as fluctuating raw material costs, erratic production levels, inefficient production runs, *etc.*, that are unrelated to a product's physical characteristics.⁷⁵ Commerce's explicit goal is to derive a cost that reasonably reflects a normalized COP for sales made throughout the year.⁷⁶ Because our *Preliminary Results* adjustment unintentionally resulted in cost variations that do not reflect the physical characteristics of the underlying products, we agree with NLMK Belgium that illogical DIFMER comparisons occurred. However, we disagree that it is appropriate to only correct the cost distortions for the DIFMER calculations. If we determine a component of a respondent's cost is distortive for one aspect of our analysis, it would be illogical and unreasonable not to make the same determination with respect to those

⁷³ See, *e.g.*, *Non-Oriented Electrical Steel from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 61612 (October 14, 2014), and accompanying IDM at Comment 2.

⁷⁴ See, *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments: 2015-2016*, 82 FR 46961 (October 10, 2017) (*Circular Welded Pipe from Thailand*), and accompanying IDM at Comment 2; and *Circular Welded Pipe from Korea* IDM at Comment 8.

⁷⁵ See, *e.g.*, *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results Antidumping Duty Administrative Review; 2011-2012*, 79 FR 17503 (March 28, 2014) (*CORE from Korea*), and accompanying IDM at Comment 1, where Commerce states that its long-standing practice is to use annual average costs to smooth out fluctuations in production volumes and costs; *Circular Welded Pipe from Thailand* IDM at Comment 2; and, *Circular Welded Pipe from Korea* IDM at Comment 8.

⁷⁶ See *CORE from Korea* IDM at Comment 1.

other aspects of our margin calculations where we relied on the identical cost data.⁷⁷ To do so would not only produce distortive results but would be contrary to our mandate to administer the dumping laws as accurately as possible.

Therefore, we have revised our application of the adjustment for all purposes, *e.g.*, COP, CV and DIFMER. To implement this change, we revised the adjustment from the *Preliminary Results*, which was based on CONNUM-specific first and second choice production quantities, to instead apply the adjustment as a flat percentage across prime products.⁷⁸ This revised methodology more equitably allocates the excess costs that NLMK Belgium reported for second choice products to prime products. Furthermore, we find that this revised application methodology is consistent with the calculations used in prior cases where we revalued non-prime production.⁷⁹

Comment 6: Level of Trade

NLMK Belgium Case Brief

- NLMK Belgium disagrees with Commerce’s determination in the preliminary results that all sales were made at the same level of trade and, therefore, no CEP offset was warranted. Information on the record demonstrates that NLMK Belgium performed more selling activities and selling activities at a higher level for its home market sales. Further, NLMK Belgium’s higher level of indirect selling expenses for home market sales corroborate these differences in intensity, which Commerce must take into account. Although at in the preliminary results Commerce stated that the differences in the selling activities NLMK Belgium reported were not significant, Commerce either misinterpreted or ignored evidence on the record.
- NLMK Belgium reported 17 discrete selling functions, 13 of which it performed at a higher level of intensity for home market sales and three of which it did not perform at all for U.S. sales. Additionally, Commerce improperly excluded “Procurement Services” because it assumed that it related to production-related procurement when it in fact relates to helping customers obtain additional services.

⁷⁷ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Reviews*, 66 FR 15078 (March 15, 2001), and accompanying IDM at Comment 4.

⁷⁸ See Final Cost Calculation Memo.

⁷⁹ See *Certain Cut-to-Length Carbon Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42075 (September 6, 2017), and accompanying IDM; *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79437 (November 14, 2016), and accompanying PDM, unchanged in *CTL Plate from France; Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 26951 (June 11, 2018), and accompanying PDM, unchanged in *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63155 (December 7, 2018).

- Commerce requested and reviewed a revised indirect selling expense calculation allocated by market. NLMK Belgium's selling expenses for sales and back office staff are higher for sales to the home market.
- Commerce's focus is on the selling functions, and not the expenses related to those functions. However, NLMK Belgium cites *Alloy Piping Products* which states that expenses can be used to corroborate the reported selling functions.⁸⁰
- Commerce should accept the allocation of personnel expenses by headcount which indicate that a CEP offset is warranted. However, if Commerce does not accept the revised indirect selling expense calculation, the indirect selling documents examined at verification can still be used to corroborate NLMK Belgium's claim that it performs more selling functions and at a higher intensity for sales to the home market.
- The record shows that NLMK Belgium performed the selling activities at a significantly greater degree of intensity for home market sales making sales to the home market at a different and more advanced level of trade than sales to the United States.
 - NLMK Belgium cites *PET Resin from India* in which Commerce found inconsistencies between the respondent's selling functions chart and other information on the record. In this case, Commerce ignored these inconsistencies and granted the respondent a CEP offset due to its performance of the selling functions at a higher level in the home market.
 - NLMK Belgium also cites *CTL Plate from Austria* stating in that case Commerce found two levels of trade in the home market, one for further processed merchandise and one for non-further processed merchandise. Commerce found that both home market levels of trade were at a more advanced stage than sales to the United States, and therefore, Commerce granted a CEP offset.
 - In *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, *MSG from Indonesia*, and *Wire Rod from Mexico*, Commerce granted CEP offsets because of differences in selling function intensity. Particularly, in *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, Commerce stated that the respondents' CEP sales involved no or lower levels of certain selling functions.
- NLMK Belgium disagrees with Commerce's statements in the preliminary results that none of its selling functions were performed at a truly high level nor were they markedly different from the selling functions NLMK Belgium performed for sales to the United States. NLMK Belgium disagrees in particular with the characterization of two of its selling functions. First, NLMK Belgium disagrees with Commerce that it collected payments on all sales stating that while it collected payments and analyzed the credit risk for numerous customers in the home market, it only collected payments from one affiliated company in the United States. Second, NLMK Belgium disagrees with Commerce's assessment that its market research "merely consisted of talking to its home market customers." Commerce attempts to minimize this function, although it is a selling function that it performed at a higher degree in the home market than in the United States. Additionally, NLMK Belgium's U.S. affiliate provides this service for the U.S. market, and NLMK Belgium provided emails and a market research report to support its claim in the home market. NLMK Belgium also provided narrative explanation and evidence in support of its other reported selling functions.

⁸⁰ See *Alloy Piping Prod., Inc. v. United States*, 33 CIT 349, 357 (2009) (*Alloy Piping Products*).

- The record shows that NLMK Belgium performed the selling functions at a higher level for home market sales than for U.S. sales, and that, therefore, the home market sales are at a higher level of trade than the U.S. sales. The distribution agreement with NLMK Belgium's U.S. affiliate establishes that the U.S. affiliate is closer to the customer and performs a number of selling functions that NLMK Belgium otherwise performs for home market customers. In sum, information does not exist to make a level of trade adjustment, and therefore, a CEP offset is warranted.

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- While Commerce found differences in selling functions in the home and U.S. markets, it concluded that these differences were not significant enough to warrant finding different levels of trade; therefore, Commerce determined that no level of trade or CEP offset was warranted. Commerce should continue to reject NLMK Belgium's arguments and continue to deny a CEP offset.
- The petitioner disagrees with NLMK Belgium's statement that Commerce's decision "has no basis in fact" and NLMK Belgium's contention that Commerce improperly examined or weighed the evidence on the record. The record does not support the conclusion that the home market activities were at a higher level or significantly different level than what NLMK Belgium performed for U.S. sales. The petitioner cites examples on the record that it claims do not support the level of intensity NLMK Belgium reported for its selling functions.
- NLMK Belgium failed to demonstrate that the differences in selling activities between home market and U.S. sales are significant and that the home market and U.S. sales are at a different stage of marketing. Regarding the cases to which NLMK Belgium cites, the petitioner states that in this review Commerce did not find a single level of trade due only to overlapping activities but to the fact that the differences were not significant enough to warrant finding different levels of trade. The petitioner cites Commerce's regulations that "{s}ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing." Therefore, the cases NLMK Belgium cites are inapposite.
- Regarding the alternate indirect selling expense calculation, NLMK Belgium was unable to tie its allocation methodology to source documentation. Commerce properly disregarded this indirect selling expense calculation and it therefore does not support NLMK Belgium's CEP offset argument.

Commerce's Position:

We continue to find that a CEP offset is not warranted for NLMK Belgium for the final determination. Section 773(a)(7)(B) of the Act requires an adjustment to NV in the form of a CEP offset if the NV level of trade (LOT) is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Commerce's regulations at 19 CFR 351.412(c)(2) outline Commerce's policy regarding differences in the LOTs as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing (emphasis added).⁸¹

In the *Preliminary Results*, we analyzed NLMK Belgium's U.S. and home market selling functions, and we organized them into the following four categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. For NLMK Belgium's U.S. sales we found that:

NLMK Belgium reported that it made sales to its affiliated U.S. reseller, North America Plate (NAP), in three channels of distribution: (1) made-to-order sales; (2) consignment sales made from NAP's warehouses; and (3) consignment sales made from NAP's customers' warehouses.⁸² NLMK Belgium reported that it performed the same selling functions in Belgium for U.S. sales as it did for home market sales, except that it did not perform distributor/dealer training and it did not perform inventory management for made-to-order U.S. sales.⁸³ Accordingly, based on the selling function categories noted above, we find that NLMK Belgium performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its reported U.S. sales. Because we find that there were only minimal differences in selling activities performed by NLMK Belgium to sell to NAP, we determine that all U.S. sales are at the same LOT.⁸⁴

In addition, in the home market we found that:

According to NLMK Belgium, it performed the following selling functions at similar intensities for sales to all home market customers: sales forecasting, market research, strategic/economic planning, engineering services/technical assistance, sales promotion/marketing support, price negotiation/customer communication, making sales calls and visits, inputting and processing orders, extending credit and collecting payments, invoicing, arranging for freight, packing, and providing claims services.⁸⁵ Additionally, NLMK Belgium reported that it performed distributor/dealer training only for sales made by NPS.⁸⁶ NLMK Belgium also reported that it performed inventory management

⁸¹ See 19 CFR 351.412(c)(2) (emphasis added).

⁸² See NLMK Belgium September 7, 2018 AQR at 28-30.

⁸³ See NLMK Belgium December 28, 2018 SAQR at Exhibit SA-12.

⁸⁴ See *Preliminary Results* PDM at 16.

⁸⁵ See NLMK Belgium December 28, 2018 SAQR at Exhibit SA-12.

⁸⁶ *Id.* NLMK Belgium also reported that it performed raw material procurement services during the POR. However, because procuring raw materials relates to production, rather than sales, we have not considered this function further in our analysis.

activities for sales made by NSE and for consignment sales made by NPS, but not for direct sales made by NPS.⁸⁷

Based on the selling function categories noted above, we find that NLMK Belgium performs sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for its home market sales. Because we find that there were only minimal differences in selling activities performed by NLMK Belgium to sell to its home market customers, we determine that there is one LOT in the home market for NLMK Belgium.⁸⁸

In this administrative review, NLMK Belgium claims that it performed additional selling activities and selling functions at a higher level for home market sales than for U.S. sales, and that these additional selling activities constitute a higher LOT. While we acknowledge that the selling functions performed for home market customers may have entailed additional activities, we disagree that these activities were so significant that they constituted a different marketing stage.

We addressed NLMK Belgium's claim in our *Preliminary Results* as follows:

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions NLMK Belgium performed for its U.S. and home market customers do not differ significantly. Although NLMK Belgium reported that it performed certain selling activities (*i.e.*, sales forecasting, market research, price negotiation/customer communication, sales calls and visits, order input/processing, and credit and collections) at a lower intensity for U.S. sales than it did for home market sales,⁸⁹ we find that NLMK Belgium performed none of the selling activities in the home market at a truly high level, nor was this level markedly different than the level at which it performed the activities for sales to NAP.⁹⁰ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Although there were minor differences in the home market and U.S. selling functions as noted above, we do not find that these differences are significant enough to warrant finding that U.S. and home market sales constitute different LOTs. Therefore, we preliminarily determine that sales to the United States and home market during the POI^{sic} were made at the same LOT and, as a result, no LOT adjustment or CEP offset is warranted.⁹¹

⁸⁷ *Id.*

⁸⁸ See *Preliminary Results* PDM at 16.

⁸⁹ See NLMK Belgium December 28, 2018 SAQR at 6-9 and Exhibits SA-4, SA-8, SA-9, SA-10 and SA-12.

⁹⁰ For example, NLMK Belgium extended credit and collected payment, albeit occasionally in different forms, from home market customers and from NAP on all sales. Similarly, NLMK Belgium's "market research" activities merely consisted of talking to home market customers during its routine sales process. See NLMK Belgium December 28, 2018 SAQR at 5-6 and 9.

⁹¹ See *Preliminary Results* PDM at 16-17.

NLMK Belgium’s renewed argument is that (1) indirect selling expenses can corroborate claims for LOT adjustments by showing that the domestic sales team performs more selling functions and at a greater intensity than for sales to the United States; and (2) Commerce’s characterization and analysis of NLMK Belgium’s selling functions in the *Preliminary Results* was incorrect.

The respondent bears the burden of demonstrating its entitlement to a CEP offset,⁹² and we agree with the petitioner that NLMK Belgium failed to demonstrate so here. We analyzed NLMK Belgium’s claim for a CEP offset in the initial stages of this review and requested additional information from NLMK Belgium to support the claim.⁹³ However, as discussed above, NLMK Belgium was unable to provide adequate support for its claim. We disagree with NLMK Belgium that its revised indirect selling expense allocation from verification can corroborate claims for differing levels of trade, because, as Commerce noted in its verification report, “...we were unable to tie the revised figures to source documents because they were based on estimates. Therefore, it may be appropriate to disregard the proposed revisions.”⁹⁴ *Alloy Piping Products* does not apply to this case because the indirect cost estimates are not sufficiently reliable to determine actual degrees of intensity with regard to either market.⁹⁵ Further, in *Alloy Piping Products*, the court stated that “the weighing of both the narrative descriptions of the foreign producer or exporter’s sales processes with certain quantifiable information on the reported selling activities in each market is precisely the kind of thorough and diligent analysis” that is necessary.⁹⁶ In this review, we have analyzed the record evidence and found the quantifiable expenses to be based on unsupported estimates and the narrative descriptions and the associated supporting documentation to be insufficient proof of significantly different selling functions or activity levels.

With respect to the specific activities NLMK Belgium highlights, we disagree that the record contains evidence of significant differences between markets. For example, while NLMK Belgium claims that Commerce improperly disregarded Procurement Services because it wrongly assumed it only related to production-related raw material procurement, we in fact based our analysis on NLMK Belgium’s own response. In its initial response, NLMK Belgium stated that this selling function related to purchasing inputs based on production needs⁹⁷;

⁹² See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354 (2009) (“it is the responsibility of the respondent requesting the CEP offset to procure and present the relevant evidence to Commerce.”); see also *Corus Eng’g Steels, Ltd. v. United States*, 27 CIT 1286, 1290 (2003) (“Burden of proof is upon the claimant to prove entitlement to a CEP offset.”); *Pakfood Pub. Co. v. United States*, 724 F. Supp. 2d 1327 (CIT 2010) (“to show entitlement to a CEP offset, “{a} respondent must first demonstrate that substantial differences in selling functions exists...””).

⁹³ See Commerce Letters re: “Antidumping Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Sections A through C Supplemental Questionnaire,” dated November 30, 2018, at 2-4 and “Antidumping Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Sections A through C Second Supplemental Questionnaire,” dated April 24, 2019, at 1.

⁹⁴ See NAP Verification Report at 22.

⁹⁵ See *Alloy Piping Products*, 33 CIT 357.

⁹⁶ See *Alloy Piping Products*, 33 CIT 357.

⁹⁷ See NLMK Belgium September 7, 2018 AQR at 34.

because of this, we asked a supplemental question about procurement services where NLMK Belgium stated that it reported it because: (1) this function appears in Commerce’s sample selling functions chart; (2) its production entity NSE procures coils to produce steel plate; and (3) its other production entity NPS occasionally assists customers with obtaining additional services, such as cutting or wrapping.⁹⁸ NLMK Belgium stated that while NSE performs input procurement at a high level, NPS performs procurement of additional services at a low level.⁹⁹ Only the provision of additional services would qualify as a selling, rather than production, function and given that only one of NLMK Belgium’s entities performs it occasionally and at a low level, we do not agree with NLMK Belgium that this demonstrates a significant selling function that differentiates the home and U.S. markets.

Another selling function NLMK Belgium highlights is credit and collections, for which NLMK Belgium initially only stated that it “tracks payment on its invoices” and “checks balances due and credits upon receiving new customer orders and payments,” with no discussion of frequency or no inclusion of supporting documentation.¹⁰⁰ We issued a supplemental questionnaire asking NLMK Belgium to explain why it reported a high level of activity for credit and collections in the home market, but a low level of activity for sales to the United States. NLMK Belgium responded that because its U.S. sales are made to an affiliate, there is no credit risk and it does not have to systematically check for payment; for home market sales it stated that it “actively monitor{s} payments from customers and assess{es} the credit risk involved with selling to any particular customer.”¹⁰¹ In support of this assertion, NLMK Belgium provided a single-page sample report detailing customer payments. This document does not establish NLMK Belgium’s claim about actively monitoring payments or assessing the credit risk of customers. NLMK Belgium did not clearly articulate or provide documentation supporting the magnitude or frequency of activity in collecting home market payment or assessing credit risk such that we can definitely say that it is significantly different from its credit and collections function for its U.S. sales.

The final selling function NLMK Belgium highlights in its brief is market research; NLMK Belgium objects to Commerce’s statement that this selling function merely consists of talking to customers during the routine sales process and states that performing this activity as part of the sales process confirms that it is a selling function. Additionally, NLMK Belgium claims that this is performed at a high degree of intensity in the home market because it is done on a day-to-day basis and it submitted a sample global budget, emails, and a market research report in support of this.¹⁰² However, the example documentation that NLMK Belgium cites is from a single exhibit for three selling functions, sales forecasting, market research, and strategic/economic planning activities. Additionally, the sample emails relate to this function in the U.S. market and therefore do not provide support for NLMK Belgium performing this function in the home market. Finally, the market research report that NLMK Belgium

⁹⁸ See NLMK Belgium December 28, 2018 SAQR at 4.

⁹⁹ *Id.*

¹⁰⁰ See NLMK Belgium September 7, 2018 AQR at 34 and 36.

¹⁰¹ See NLMK Belgium December 28, 2018 SAQR at 7-9.

¹⁰² See NLMK Belgium Brief at 12 (citing NLMK Belgium December 28, 2018 SAQR at Exhibit SA-3).

submitted in support of its market research activity is a report the NLMK Belgium “obtained,” not that it created itself.¹⁰³ Simply obtaining pre-made reports does not justify the high level of intensity NLMK Belgium reported, nor does discussing trends or customer requirements with customers during the routine sales process.

As for the remaining selling functions, we discussed NLMK Belgium’s sales process with company officials at verification and, although these officials provided a description of NLMK Belgium’s selling functions, which was consistent with that set forth in its questionnaire responses, they provided no new descriptions or more compelling evidence to support NLMK Belgium’s CEP offset claim.¹⁰⁴ The narrative explanations and supporting documentation for these functions that are cited in NLMK Belgium’s brief is the same information that was on the record prior to our preliminary results. Therefore, we find that NLMK Belgium has not pointed to any previously unconsidered information on the record that would cause us to change our preliminary decision.

Consequently, when NLMK Belgium’s selling activities are viewed as a whole, we find that the differences between those activities performed for home and U.S. market sales do not rise to the level of a “substantial difference in selling activities,” or that NLMK Belgium’s U.S. and home market sales were at different stages of marketing (or their equivalent). NLMK Belgium argues, in essence, that, because it performs more activities in an absolute sense and activities at a higher intensity in the home market, it is entitled to a CEP offset. However, we disagree with NLMK Belgium that Commerce’s CEP offset analysis is a formulaic exercise that can be resolved simply by comparing the relative number of selling activities performed in the home and U.S. markets. As noted above, Commerce examines the extent of the activities performed and their significance to the company’s selling operations. In our analysis, we found that NLMK Belgium did not sufficiently support its claims that certain activities were performed at a high level for home market sales or show that a higher level of activity would constitute a markedly different function from that which NLMK Belgium performs for its U.S. sales. The record shows that NLMK Belgium’s additional home market selling functions did not result in sales at a different marketing stage, as required by Commerce’s regulations. Therefore, we do not find that NLMK Belgium’s home market was at a more advanced LOT, a precondition for the granting of a CEP offset.

Accordingly, based on the foregoing, we continue to deny NLMK Belgium’s claim for a CEP offset for purposes of the final results.

Comment 7: Alternative Calculation of Indirect Selling Expenses

NLMK Belgium Case Brief

- NLMK Belgium originally reported its indirect selling based on cost centers for commercial and quenched and tempered plate; however, at Commerce’s request during verification, it provided a revised indirect selling expense calculation by market, which it notes it does not do in the normal course of business. NLMK Belgium allocated personnel expenses by the

¹⁰³ See NLMK Belgium December 28, 2018 SAQR at 5-6 and Exhibit SA-3.

¹⁰⁴ See NLMK Belgium Sales Verification Report.

amount of time spent on sales to each market and the estimates were done by employees estimating their time based on work experience and supported by organization charts. However, Commerce disregarded the alternate allocation in the *Preliminary Results* because it was unable to tie the estimated figures to source documentation; NLMK Belgium notes that Commerce was only unable to tie the allocation of personnel expenses, not the amount of the expenses incurred. NLMK Belgium made its best effort to provide an accurate calculation, even though it does not record this information by market in the normal course of business.

- Commerce has accepted allocations of indirect selling expenses based on estimates made using employee headcounts or salaries, citing *PET Film from Korea*, *PC Strand from Mexico*, *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, and *Stainless Steel Sheet and Strip from Korea*.¹⁰⁵ Additionally, Commerce has accepted other types of allocations based on estimates (citing *OJ from Brazil* and *Steel Beams from Italy*¹⁰⁶) and the CIT has affirmed the use of a “payroll methodology” in *U.S. Steel Corp. v. United States*. Given this past precedent, Commerce should not have dismissed its revised allocation in its verification report.
- Given the above, Commerce should accept NLMK Belgium’s allocation as it is based on organization structure and experience, and that this allocation is more accurate with respect to expenses for each market than the overall allocation based on cost centers.

Petitioner Rebuttal Brief

- Commerce reviewed and verified NLMK Belgium’s initial indirect selling expense allocation; conversely, Commerce was unable to tie NLMK Belgium’s revised allocation to source documents because it was based on estimates. The petitioner disagrees that Commerce should accept NLMK Belgium’s revised calculation because it has accepted allocations based on estimates in other cases.
- Verification is not the proper forum for NLMK Belgium to present revised calculations and methodology. If NLMK Belgium believed this to be the most appropriate methodology, it should have proposed this methodology in response to questionnaires and provided interested parties an opportunity to review and comment on it.
- Commerce properly disregarded the alternate allocation because it was unable to verify it, and instead used the initial methodology which it was able to verify without discrepancy. It would be unreasonable for Commerce to rely on the unverified methodology regardless of

¹⁰⁵ See *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 70901 (November 19, 2010) (*PET Film from Korea*); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 (December 8, 2003) (*PC Strand from Mexico*); *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) (*Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*); and *Stainless Steel Sheet and Strip from the Republic of Korea: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 64950 (December 17, 2001) (*Stainless Steel Sheet and Strip from Korea*).

¹⁰⁶ See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012) (*OJ from Brazil*) and *Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy*, 67 FR 35481 (May 20, 2002) (*Steel Beams from Italy*).

whether NLMK Belgium put forth its best efforts or whether Commerce has accepted allocations in other cases. If the estimated allocation were the only option, it may be reasonable to use an estimate, but when Commerce has an alternate method that has been reviewed and verified, there is no need to rely on estimates. Therefore, Commerce's reliance on estimates in other cases is moot and that Commerce should reject NLMK Belgium's argument and decline to rely on the revised indirect selling expense calculation presented at verification.

Commerce's Position:

We disagree with NLMK Belgium and have continued to use its original indirect selling expense calculation, as was done in the *Preliminary Results*. The law does not prescribe a specific methodology for calculating the indirect selling expenses ratio. Where the statute is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to the discretion of Commerce.

Indirect selling expenses are usually the sum of all a company's sales overhead expenses over its total sales. In this case, NLMK Belgium calculated indirect selling expenses on the basis of cost centers for commercial plate and quenched and tempered plate.¹⁰⁷ Because NLMK Belgium requested a CEP offset, at verification we asked NLMK Belgium if it would be able to provide indirect selling expenses based on market, rather than cost center. During verification, NLMK Belgium attempted to create such an allocation by interviewing sales staff who estimated their time spent on each market. NLMK Belgium then reallocated its indirect selling expenses based on these estimates.

However, as NLMK Belgium itself has stated, it does not record selling expenses by market in the normal course of business.¹⁰⁸ Further, as noted in the verification report, we were unable to tie NLMK Belgium's revised allocation "to source documents because they were based on estimates."¹⁰⁹

In short, for the calculation of NLMK Belgium's indirect selling expense ratio, Commerce would only depart from the original allocation if a respondent "provides case-specific facts that clearly support a departure" from this practice.¹¹⁰ In this review, NLMK Belgium did not provide sufficient documentation or support to justify changing from its original indirect selling expense allocation. NLMK Belgium's alternate allocation was done at verification and based on unverifiable estimates, while its original allocation was performed based on records kept in the normal course of business, which Commerce reviewed and confirmed during verification. Additionally, since the original indirect selling expense allocation was provided in response to

¹⁰⁷ See NLMK Belgium Case Brief at 18 (citing NLMK Belgium's October 3, 2019 Section B Response at 50 and Exhibit NPS-B-17).

¹⁰⁸ See NLMK Belgium Case Brief at 18.

¹⁰⁹ See NLMK Belgium Sales Verification Report at 22.

¹¹⁰ See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying IDM at Comment 3.

the initial questionnaire, Commerce and other parties had ample opportunity to examine the calculation and ask supplemental questions regarding the allocation.

While NLMK Belgium cites a number of cases where Commerce accepted estimates, the estimated allocation is not the only option on the record of this proceeding. As quoted by NLMK Belgium, Commerce has accepted estimates as a “reasonable methodology” if “we are satisfied that the allocation methodology used does not cause inaccuracies or distortions.”¹¹¹ In this case, both allocations of the indirect selling expenses may be reasonable, but because we were able to tie the allocation based on cost centers to NLMK Belgium’s accounting records we find it to be better supported than NLMK Belgium’s alternative allocation. The record of this segment provides documents from NLMK Belgium’s normal course of business supporting the cost center-based allocation. Additionally, we were able to issue questions to NLMK Belgium regarding this methodology to confirm its accuracy and we verified this methodology.¹¹² While Commerce may rely on estimates when there is no better option, in this case, we do have an option that is supported by documentation and has been fully examined during the course of this review.

Therefore, for purposes of the final results, we continue to use the indirect selling expense allocation that was used for the *Preliminary Results*.

Comment 8: Calculating Home Market Short-term Borrowing

NLMK Belgium Case Brief

- While Commerce removed revolving credit lines from the short-term interest rate for the preliminary results, record evidence and prior precedent indicate that borrowings under these credit lines are short-term in nature and should be used as part of the short-term borrowing rate. Although the total term of the loan exceeds 12 months, the interest rate represents short-term borrowing because: (1) the amount borrowed can vary throughout the life of the loan; (2) the interest rate is variable; and (3) the individual borrowings within the credit lines are short term, as demonstrated by the interest periods.
- Additionally, Commerce removed the revolving credit lines from the short-term interest rate because NPS recorded the principal as both current and long-term liabilities. This statement is incorrect as NLMK Belgium records these borrowings under “Credit Institutions” on the balance sheet under “Amounts payable within one year.” The only long-term financial debt was in 2016 and was listed under “Other loans.”
- Commerce has previously found that revolving lines of credit under a multi-year contract can constitute short-term borrowings. Specifically, NLMK Belgium cites *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan* where the respondent had a revolving line-of-credit loan which includes several short-term loans and revolving loan repayments for letters

¹¹¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the Republic of Korea*, 66 FR 33526 (June 22, 2001), and accompanying IDM at Comment 2.

¹¹² See Commerce’s Letter re: Antidumping Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Sections A through C Supplemental Questionnaire, dated November 30, 2018 at 11-12; and NLMK Belgium Sales Verification Report at 21-22.

of credit with terms of less than a year within the contract agreement of the revolving credit line.

Commerce's Position:

We disagree with NLMK Belgium that its home market revolving credit line constitutes a short-term borrowing. As stated in *Roller Chain from Japan*, “we do not consider loans with revolving balances that are outstanding for periods longer than one year, but which have variable rates, to be short-term loans. The rate used to calculate interest expense on U.S. sales should be taken from short-term loans, not from loans with short-term rates.”¹¹³ While NLMK Belgium cites *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, the loans in question in that case were “revolving lines of credit that mature in less than one year.”¹¹⁴ Although NLMK Belgium argues that these loans appear on their financial statements as “Amounts payable within one year,” we observed at verification that these revolving loans did not mature during the POR.¹¹⁵ Therefore, NLMK Belgium’s loans are distinct from the loans in *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan* because they did not mature in less than one year. Additionally, the revolving lines of credit in *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan* also encompassed letters of credit; Commerce found that the “actual terms of the letters of credit are short-term loans, notwithstanding the term length of the revolving line-of-credit contract.”¹¹⁶ However, NLMK Belgium had no such letters of credit or other short-term loans within its revolving line of credit. Accordingly, for the final results of this review, Commerce continues to find that NLMK Belgium’s revolving line of credit is not a short-term loan.

Comment 9: Calculating U.S. Short-term Borrowing

NLMK Belgium Case Brief

- As Commerce noted in its verification report, Commerce found a revolving credit line which began in February 2017. However, because NAP’s parent company took out this loan, NAP personnel preparing the response were unaware of the revolving credit line and therefore did not originally report it for its U.S. borrowing rate.
- Commerce should use the weighted-average interest rate it calculated for this revolving credit line because it is more accurate than the Federal Reserve interest rate for NLMK Belgium’s imputed credit expenses and because NLMK Belgium inadvertently omitted it from the questionnaire response.

¹¹³ See *Roller Chain, Other Than Bicycle, from Japan; Final Results of Antidumping Duty Administrative Review*, 52 FR 17425 (May 8, 1987) (*Roller Chain from Japan*) at Comment 3.

¹¹⁴ See *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 70 FR 1870 (January 11, 2005), and accompanying IDM at Comment 8.

¹¹⁵ See NLMK Belgium Sales Verification Report at 20.

¹¹⁶ *Id.*

Petitioner Rebuttal Brief

- Commerce properly rejected the credit rate from the revolving loan found at verification because, per Commerce’s practice, the purpose of verification is to verify the information that has already been submitted, not review new factual information.
- While Commerce may accept “minor corrections,” NLMK Belgium did not present this credit line as a minor correction. Further, Commerce specifically requested this information which NLMK Belgium did not provide in its questionnaire response. NLMK Belgium’s omission of the credit line from the record and NAP’s unawareness of the loan do not excuse NLMK Belgium’s failure to provide the information.
- The Federal Circuit has held that the respondents are expected to do the maximum they are able to do in responding to Commerce’s questions, which includes knowing the record and conducting, “prompt, careful, and comprehensive investigations of all relevant records.”¹¹⁷ Further, this expectation, “does not condone inattentiveness, carelessness, or inadequate record keeping.”¹¹⁸
- NLMK Belgium admitted that it did not provide its short-term borrowing interest rates.¹¹⁹ Therefore, Commerce correctly rejected this new factual information and that NLMK Belgium’s negligence warrants adverse facts available.¹²⁰ In sum, Commerce should continue to rely on the Federal Reserve’s interest rates to account for NLMK Belgium’s short-term borrowing interest rates.

Commerce’s Position:

We disagree with NLMK Belgium that we should use the weighted-average interest rate we calculated for this revolving credit line because NLMK Belgium’s U.S. revolving credit line does not constitute a short-term borrowing. As stated in *Roller Chain from Japan*, “we do not consider loans with revolving balances that are outstanding for periods longer than one year, but which have variable rates, to be short-term loans. The rate used to calculate interest expense on U.S. sales should be taken from short-term loans, not from loans with short-term rates.”¹²¹ Therefore, for these final results, we have continued to rely on the Federal Reserve’s interest rate as the short-term U.S. borrowing rate for NLMK Belgium as the best neutral facts available.

Further, we disagree with the petitioner that NLMK Belgium’s omission of this loan in its responses warrants AFA. Although we viewed information for this loan at verification, the information provided indicates that loan is not a short-term loan within the meaning of 19 CFR 351.102(b)(48). Therefore, neither the omission of this loan from NLMK Belgium’s responses, nor the discovery of the loan at verification, are grounds for AFA, as we find the Federal Reserve interest rate to be the appropriate short-term U.S. borrowing rate for NLMK Belgium as neutral facts available pursuant to section 776(a) of the Act.

¹¹⁷ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003) (*Nippon Steel*) at 1382.

¹¹⁸ *Id.* at 1382-1383.

¹¹⁹ See NLMK Belgium Case Brief at 31.

¹²⁰ See Petitioner Rebuttal Brief at 19 (citing section 776 of the Act and *Nippon Steel*, 337 F.3d at 1382-83).

¹²¹ See *Roller Chain from Japan* at Comment 3.

Comment 10: Adjustments to International Freight Expense

NLMK Belgium Case Brief

- Commerce incorrectly applied its revised worksheet of international freight expenses for made-to-stock (MTS) sales to U.S. channel “3” MTS sales.
- Commerce stated that it valued sales without an international freight expense with the POR average freight expense for channel “2” and “3” transactions, but Commerce’s methodology is incorrect because channel “3” sales originally entered the U.S. as made-to-order sales with transaction-specific international freight expenses.¹²² Therefore, Commerce should only apply the corrected average international freight expenses to channel “2” sales and there should not be any adjustment to channel “3” sales.

Commerce’s Position:

We agree that, in the *Preliminary Results*, we inadvertently adjusted the international freight expense for channel 3 sales. As stated in NLMK Belgium’s supplemental response, these channel 3 sales had transaction-specific freight charges¹²³ and, therefore, we should not have adjusted them using the average freight values from verification. As a result, we have removed the revised international freight programming from NLMK Belgium’s margin program.¹²⁴

Comment 11: U.S. Billing Adjustment

NLMK Belgium Case Brief

- Commerce should set the billing adjustment for one transaction in the U.S. sales listing to zero because NAP issued a credit note on this sale, but the customer never accepted it.

Petitioner Rebuttal Brief

- Commerce should reject NLMK Belgium’s argument because NLMK Belgium was unable to support its claim the credit was never accepted, nor did it indicate at any time prior to verification that the customer did not accept the credit.¹²⁵

¹²² See NLMK Belgium Case Brief at 24-25 (citing NLMK Belgium’s May 6, 2019, Second Supplemental Sections A through C Questionnaire Response (NLMK Belgium May 6, 2019 2SABCQR) at 8-9).

¹²³ See NLMK Belgium May 6, 2019 2SABCQR, at 8-9.

¹²⁴ See Memorandum, “2016-2018 Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Final Results Sales Calculations for NLMK Belgium,” dated concurrently with this memorandum (NLMK Belgium Final Sales Calculation Memorandum).

¹²⁵ See Petitioner Rebuttal Brief at 20 (citing NAP Verification Report at 11, “NAP was unable to provide any documentation to demonstrate that the customer ultimately claimed the credit.”).

Commerce's Position:

We agree with NLMK Belgium and have removed the billing adjustment for the transaction where a credit note was issued but the customer never accepted the credit. According to section 772(d)(1)(B) of the Act, Commerce shall reduce the price used to establish constructed export price by expenses that result from, and bear a direct relationship to the sale, such as credit expenses, guarantees, and warranties. In the *Preliminary Results*, we stated that “{w}e made deductions, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c).”¹²⁶ However, in examining this transaction at verification, we found no documentation in NAP's records showing that it ever paid this billing adjustment to the customer.¹²⁷ Further, we evaluate each sale based on the value of the actual expenses incurred to establish constructed export price. Therefore, because we find that NAP did not actually pay a credit on the transaction, it is not appropriate to deduct a credit from the price of this transaction for these final results.

Comment 12: Adjustments to U.S. Freight Revenue

NLMK Belgium Case Brief

- Commerce inadvertently set freight revenue to zero in the margin program in instances where the reported freight revenue is greater than inland freight to the customer. Therefore, Commerce should correct this error by capping freight revenue, if it exceeds inland freight to the customer, by the inland freight to the customer amount.

Commerce's Position:

We agree that, in the *Preliminary Results*, we inadvertently failed to offset certain of NLMK Belgium's reported U.S. freight expenses by the amount of freight revenue received from U.S. customers. As a result, we have revised NLMK Belgium's margin program to offset certain U.S. freight expenses by the revenues received.¹²⁸

Comment 13: Home Market Inland Freight and Warehouse Expense Adjustments

Petitioner Case Brief

- For certain sales that have “ex-works” sales terms but contain freight or warehousing expenses, Commerce should remove the freight and warehousing expense, given that

¹²⁶ See *Preliminary Results* PDM at 20.

¹²⁷ NAP Verification Report at 9, 11, and Verification Exhibit 12. Specifically, we noted that, “...for one sale, the customer disregarded the billing adjustment, and instead paid its invoices in full at the original price. Therefore, it may be appropriate to remove the billing adjustment on this sale from the sales listing.” Further, we stated, “For sequence number 553, NAP issued a credit note to correct a freight charge shown on the invoice to the customer. However, NAP was unable to provide any documentation to demonstrate that the customer ultimately claimed the credit. We noted no further discrepancies.”

¹²⁸ See NLMK Belgium Final Sales Calculation Memorandum.

NLMK Belgium had previously reported that this discrepancy was due to a formula error and had itself corrected several transactions.¹²⁹ NLMK Belgium did not correct all of these inconsistent transactions in its revised home market sales listing and Commerce should therefore make these corrections for the final results.

- Also, for certain sales with a delivered sales term for which NLMK Belgium did not report freight or warehousing expenses, Commerce should add freight and warehousing expenses to these sales, given that NLMK Belgium had previously reported that it corrected this discrepancy.¹³⁰ Commerce should rely on facts available for delivery and warehouse expenses.

NLMK Belgium Rebuttal Brief

- The petitioner's argument that sales with "ex-works" sales terms should not contain freight or warehousing expenses is misguided. Certain sales with "ex-works" terms are properly reported with no freight to the customer, because they were sold with sale terms "ex-works" from a warehouse (and therefore do include reported freight to the warehouse and warehouse expenses).¹³¹ Commerce verified a sale with these conditions and found nothing of note;¹³² given these facts, Commerce should not make any changes for sales with "ex-works" terms for the final results.
- In regard to certain sales with delivered sales terms, the petitioner failed to understand that there are two different delivered, "DA – DAP" and "DAP-NON FRANCO." For the former, NLMK Belgium pays for freight; the buyer pays the freight in the latter.¹³³ Commerce not only issued a supplemental question to review these delivered sales with no freight expenses, but it also verified this information.¹³⁴
- There is no evidence indicating these sales were misreported and, therefore, Commerce should make no adjustments. Alternatively, if Commerce disagrees, Commerce should only rely on neutral facts available by using the customer-specific average freight expenses for the two customers where available and the overall average freight expense for the single customer that did not have a reported freight expense.¹³⁵

Commerce's Position:

We disagree with the petitioner that certain sales with "ex-works" or delivered sales terms warrant any changes or that NLMK Belgium misreported movement expenses associated with these sales. According to section 773(a)(6)(B)(ii) of the Act, Commerce should reduce the price of normal value by any charges associated with shipping the foreign like product from the original place of shipment to the place of delivery to the customer. In the *Preliminary Results*,

¹²⁹ See NLMK Belgium February 20, 2019, SBQR at 26-27.

¹³⁰ *Id.*

¹³¹ See NLMK Belgium's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Revised NLMK Databases," dated July 1, 2019 at Excel file NLMKHM04.

¹³² See NLMK Belgium Sales Verification Report at Verification Exhibit 17 at 6.

¹³³ See NLMK Belgium Rebuttal Brief at 18.

¹³⁴ *Id.* at 18-19 and NLMK Belgium February 20, 2019, SBQR at 28.

¹³⁵ See NLMK Belgium Rebuttal Brief at 19 and Exhibit 4.

we stated that “we calculated normal value based on delivered or ex-factory prices to unaffiliated customers... We also made a deduction from the starting price for movement expenses, including inland freight and warehousing, under section 773(a)(6)(B)(ii) of the Act.”¹³⁶ After carefully examining NLMK Belgium’s information on the record as well as at verification,¹³⁷ we have determined that NLMK’s reporting does not warrant facts available as it contains the relevant expense information necessary to establish normal value. Further, while the terms of sale are an important indicator for determining normal value, we evaluate each sale based on the value of the actual expenses incurred to determine normal value. Therefore, because we find that NLMK Belgium has properly reported its home market freight and warehousing expenses, we will not make any adjustments to certain home market sales with “ex-works” or delivered sales terms for the final results.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.



Agree



Disagree

1/10/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance

¹³⁶ See *Preliminary Results* PDM at 20.

¹³⁷ See NLMK Belgium Sales Verification Report at 14-15 and 17.