



A-423-812
Administrative Review
POR: 05/01/2018-04/30/2019
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March 18, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of the 2018-2019
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 2018-2019 administrative review of the antidumping duty order covering 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 from the *Preliminary Results*¹ for Industeel Belgium S.A. (Industeel) and the non-selected companies.² We have not made any changes to the margin calculation for 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). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties.

Comments Pertaining to Industeel

Comment 1: Offset for Section 232 Liabilities

Comment 2: Payments Related to Section 232 Liabilities

Comment 3: Application of Adverse Facts Available to U.S. Inland Freight

Comments Pertaining to NLMK Belgium

Comment 4: Constructed Export Price Offset

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019*, 85 FR 44854 (July 24, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² These companies are Stahlo Stahl Service GmbH & Co. KG and Tranter Service Centers.



II. BACKGROUND

On July 24, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review.³ This review covers four producers and exporters. The period of review (POR) is May 1, 2018, through April 30, 2019.

We invited parties to comment on the *Preliminary Results*.⁴ On September 8, 2020, we received case briefs from the petitioner,⁵ Industeel, and NLMK Belgium.⁶ On September 15, 2020, we received rebuttal briefs from the petitioner, Industeel, and NLMK Belgium.⁷ On November 5, 2020, we held an *ex-parte* meeting with the petitioner.⁸

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁹ On December 30, 2020, we extended the due date for issuing the final results of this review by 60 days, until March 18, 2021.¹⁰ The deadline for the final results of this review is now March 18, 2021.

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 (*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

³ See *Preliminary Results* PDM.

⁴ See *Preliminary Results*, 85 FR at 44855.

⁵ The petitioner is Nucor Corporation.

⁶ See Petitioner's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Nucor's Case Brief," dated September 8, 2020 (Petitioner Case Brief); Industeel's Letter, "Antidumping Duty Administrative Review of Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Industeel's Case Brief," dated September 8, 2020 (Industeel Case Brief); and NLMK Belgium's Letter, "Certain Carbon and Alloy Cut-to-Length Plate from Belgium: Case Brief," dated September 8, 2020 (NLMK Belgium Case Brief).

⁷ See Petitioner's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Nucor's Rebuttal Brief," dated September 15, 2020 (Petitioner Rebuttal Brief); Industeel's Letter, "Antidumping Duty Administrative Review of Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Industeel Rebuttal Brief," dated September 15, 2020 (Industeel Rebuttal Brief); and NLMK Belgium's Letter, "Certain Carbon and Alloy Cut-to-Length Plate from Belgium: Rebuttal Brief," dated September 15, 2020 (NLMK Belgium Rebuttal Brief).

⁸ See Memorandum, "2018-2019 Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Meeting with Nucor Corporation's Counsel," dated November 5, 2020.

⁹ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020. Because the *Preliminary Results* published on July 24, 2020, three days after this tolling memorandum, the deadline for these final results was tolled by 57 days.

¹⁰ See Memorandum, "Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium; 2018-2019 Administrative Review: Extension of Deadline for Final Results," dated December 20, 2020.

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 (CEP), 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 account for a sale that incurred U.S. inland freight expenses, but for which Industeel did not report the expense; and
- We included payments Industeel received from its customers related to section 232 duties on subject merchandise.

V. DISCUSSION OF ISSUES

Comments Pertaining to Industeel

Comment 1: Offset for Section 232 Liabilities

Industeel's Case Brief

- In the initial questionnaire, Commerce requested that Industeel provide “the total Section 232 duties paid on ... U.S. sales for the POR” and “{r}econcile this value to {the} general ledger” and U.S. Customs and Border Protection (CBP) 7501 Entry Forms. In addition, Commerce instructed Industeel to disclose any exclusions from section 232 duties granted to the company and whether such payments were refunded. Finally, Commerce instructed Industeel to create new fields in the U.S. sales listing for reporting information on section 232 duties and reconcile the total amount of duties paid to the sale-specific amounts reported.
- Commerce requested additional information and asked Industeel to explain and rectify certain deficiencies through various supplemental questionnaires.¹¹
- Industeel submitted all documentation requested by Commerce throughout this administrative review, which is sufficient for Commerce to calculate an offset regarding section 232 duties imposed on its U.S. imports of subject merchandise.¹² Industeel also proposed a revised formula to account for section 232 duties applicable to its U.S. sales.
- Industeel has disclosed and addressed the discrepancies that arose from its reporting or those that Commerce identified. Therefore, Commerce has all of the information necessary to calculate an offset regarding section 232 duty liabilities in the margin calculation.¹³

¹¹ See Industeel Case Brief at 3-5.

¹² *Id.* at 1-5.

¹³ *Id.*

Petitioner's Rebuttal Brief

- Industeel's argument is inaccurate because it has not provided sufficient information to justify an offset regarding section 232 duty liabilities.¹⁴
- Commerce preliminarily found that Industeel had not substantiated its methodology regarding its charges to its U.S. customers for section 232 duties, which is why Commerce did not include a section 232 offset in its calculations for the preliminary determination.¹⁵
- Industeel failed to provide any documentation in its original and first supplemental responses regarding invoices sent to customers for section 232 duties. Further, Industeel did not fully explain its methodology for reporting section 232 duties and made modifications to its reporting without notifying Commerce of the changes.¹⁶
- In its questionnaire response submitted after the preliminary results, Industeel did not provide an explanation as to why it did not previously disclose that it credited its customers for section 232 duties or why it did not issue these credit notes until after March 2020.¹⁷
- Industeel reported that for certain transactions it included section 232 duties in the gross unit price while in others it would invoice its customers separately for the section 232 duties.¹⁸ This practice, along with Industeel's inconsistent reporting, demonstrates that Industeel has failed to provide clear and complete information regarding its section 232 liabilities.¹⁹

Commerce's Position: In the *Preliminary Results*, we explained that, due to presidential *Proclamation 9705*, section 232 duties are to be imposed in addition to other duties unless expressly provided for in proclamations 9705 and 9740.²⁰ For the reasons noted in the *Preliminary Results*, and consistent with our treatment of 232 duties in *CWP Turkey 17-18*,²¹ we determined that section 232 duties should be treated as "United States import duties" for purposes of section 772(c)(2)(A) of the Tariff Act of 1930, as amended (the Act) and thereby as "U.S. Customs duties," which are deducted from U.S. price.²² In the preliminary calculation memorandum for Industeel, we stated that Industeel had not substantiated its methodology regarding its charges to its U.S. customers for section 232 duties as it had not provided evidence

¹⁴ See Petitioner Rebuttal Brief at 7.

¹⁵ *Id.* at 6 (citing Memorandum, "2018-2019 Administrative Review of Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Calculations for Industeel Belgium S.A. (Industeel) for the Preliminary Results," dated July 17, 2020 (Industeel Preliminary Calculations at 4)).

¹⁶ *Id.* at 7-8.

¹⁷ *Id.* at 8.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *Preliminary Results* PDM at 12 (citing *Proclamation 9705*, 83 FR at 11627; see also *Proclamation 9711*, 83 FR at 13363; *Proclamation 9740*, 83 FR at 20685-87 ("All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."); *Proclamation 9759*, 83 FR at 25857; *Proclamation 9772*, 83 FR at 40430-31; and *Proclamation 9777*, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.).

²¹ See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying PDM at 11-13, unchanged in *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP Turkey 17-18*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

²² See *Preliminary Results* PDM at 12-14.

of payments received from its customers.²³ At the time, the only evidence Industeel provided of charging its customers for section 232 duties and issuing credit notes were for extraordinary circumstances that were limited in scope and only applied to three observations where the amounts reportedly charged to customers did not match those reported for section 232 duties.²⁴ Thus, the record evidence was not sufficiently detailed with respect to Industeel's selling practice regarding section 232 duties. However, we informed Industeel of the deficiency through a supplemental questionnaire, which was due after the *Preliminary Results*.²⁵ Following Industeel's response to our supplemental questionnaire on July 31, 2020,²⁶ we now find that there is sufficient evidence to grant Industeel an offset regarding section 232 duties paid and credits issued to its customers.

In the initial questionnaire, we requested that Industeel respond to each question in Appendix V relating to section 232 duties. Industeel reported that its unaffiliated U.S. broker initially paid the section 232 duties, for which it was reimbursed by Industeel, and, where applicable, Industeel issued a separate invoice to its customer for the amount of section 232 duties.²⁷ In the first supplemental questionnaire, we identified certain discrepancies in Industeel's reporting and provided an opportunity for Industeel to clarify this information. Industeel explained that it revised the U.S. sales database to more accurately reflect the circumstances surrounding U.S. sales affected by section 232 duties and to rectify certain errors we identified.²⁸ Industeel provided evidence related to charging its customers for section 232 duties or issuing credits notes only for certain sales with "extraordinary circumstances."²⁹ Otherwise, Industeel's supporting documentation only included 7501 entry summary forms from CBP, section 232 exclusion documents from the Bureau of Industry and Security, and documentation for refunds issued from the U.S. Treasury.³⁰ Therefore, for the *Preliminary Results*, we declined to rely on Industeel's reported payments received from its customers for all reported sales for which section 232 duties and credits were claimed because substantiating evidence of such payments was not on the record that reflected Industeel's practice of charging its customers for section 232 duties.

Prior to the *Preliminary Results*, we informed Industeel that its section 232 response contained certain deficiencies by issuing a final supplemental questionnaire.³¹ In the final supplemental questionnaire, we requested that Industeel clarify its methodology for reporting payments and credits related to section 232 duties.³² Industeel responded by providing substantial documentation to support its methodology, as well as a revised calculation based on the updated

²³ See Industeel Preliminary Calculations at 4.

²⁴ See Industeel's Letter, "Industeel's Supplemental Sections A-D Questionnaire Response," dated March 18, 2020 (Industeel March 18, 2020 SCQR) at 35-36 and Exhibits SC-40 and SC-41; and Industeel Case Brief at 4.

²⁵ See Commerce's Letter, "Second Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Third Supplemental Questionnaire," dated July 15, 2020.

²⁶ See Industeel's Letter, "Industeel's Third Supplemental Questionnaire Response," dated July 31, 2020 (Industeel July 31, 2020 SQR).

²⁷ See Industeel's Letter, "Industeel's Response to Sections B-D of the Department's Questionnaire," dated October 2, 2019 (Industeel October 2, 2019 CQR) at Appendix V.

²⁸ See Industeel March 18, 2020 SCQR at 33-36.

²⁹ *Id.* at Exhibit SC-41.

³⁰ *Id.* at Exhibits SC-34 – SC-40.

³¹ See Industeel July 31, 2020 SQR.

³² *Id.* at 3-10.

information surrounding its sales that were subject to section 232 duties.³³ Further, Industeel submitted information supporting the various forms in which it accounted for section 232 duties in its sales.³⁴ Indeed, Industeel's language in its responses indicates that its methodology was updated due to external factors, such as the addition of "refunds received from CBP as of the date of filing of this response" and where Industeel updated its methodology to account for refunds from CBP and credit notes issued to customers.³⁵

We disagree with the petitioner that: (1) Industeel failed to provide any documentation in its initial and first supplemental response; (2) Industeel failed to fully explain its reporting methodology; or (3) that Industeel's reporting was inconsistent. As stated above, the evidence Industeel provided to substantiate its reporting methodology for section 232 duties prior to July 31, 2020 warranted further scrutiny; therefore, we issued a final supplemental questionnaire to inform Industeel of certain deficiencies in its submission and provide an opportunity for Industeel to substantiate its reporting. As is apparent in the documentation that Industeel provided in its final supplemental response to explain its reporting methodology, the exclusions granted and credits issued were continually updated throughout this administrative review.³⁶ These external changes were not under Industeel's control and affected sales that occurred during the POR, which would reasonably require a change in the reporting methodology. Further, where we requested Industeel modify or correct its reporting, Industeel complied, and, where Industeel identified an error, it notified Commerce of the change, and we have accepted the information.³⁷ Regarding the petitioner's argument that Industeel's reporting is inconsistent and warrants scrutiny, we disagree and find that Industeel's reporting is consistent with its narrative explanations for charging customers for section 232 duties and issuing credit notes. We note that the only change throughout this administrative review involved the refunds issued by Industeel, which Industeel explained in its July 31, 2020 response.³⁸

We also disagree with Industeel's argument that it submitted sufficient information regarding its charges to customers for section 232 duties prior to the *Preliminary Results*, which is one of the reasons why Commerce issued a final supplemental questionnaire. However, we now find that Industeel provided examples of the various ways in which it charged its customers and substantiated its charges to customers for section 232 duties.³⁹ Therefore, we are relying on the information Industeel submitted regarding section 232 duties for these final results and including an offset for section 232 duties in our calculations.

³³ *Id.* at Exhibits SC-46 through SC-50.

³⁴ *Id.*

³⁵ See Industeel March 18, 2020 SCQR at 33; and Industeel July 31, 2020 SQR at 3-7.

³⁶ See Industeel July 31, 2020 SQR at Exhibits SC-46 and SC-48.

³⁷ See Industeel March 18, 2020 SCQR at 33-36 and Exhibits SC-31-SC-41; and Industeel July 31, 2020 SQR at 3-10 and Exhibits SC-46 – SC-50.

³⁸ See Industeel July 31, 2020 SQR at 4.

³⁹ See Industeel July 31, 2020 SQR at 3-10 and Exhibits SC-46 – SC-50.

Comment 2: Payments Related to Section 232 Liabilities

Industeel's Case Brief

- In the preliminary results, Commerce's exclusion of the amounts that Industeel reported in fields SEC232 and SEC232EU constituted as an unwarranted application of adverse facts available (AFA).⁴⁰
- Commerce's explanation that "Industeel has not provided documentation to substantiate payments received under SEC232U and SEC232EU" is incorrect as there was ample evidence on the record to support the inclusion of the reported amounts for these variables.
- Commerce did not demonstrate that the necessary information to substantiate Industeel's reporting was missing from the record as required by section 776(a) of the Act, and it did not inform Industeel of such a deficiency or afford it an opportunity to remedy the response as required by section 782(d) of the Act.⁴¹ Further Industeel did not: (a) withhold requested information; (b) fail to provide information by establishing deadlines in the form or matter requested; (c) significantly impede the proceeding; or (d) provide unverified information.
- There is no legal basis for Commerce to exclude the information Industeel reported under variables SEC232U and SEC232EU because Industeel cooperated to the best of its ability with the questions asked of it by submitting the requested information before each applicable deadline.⁴²
- The additional information Industeel submitted after the *Preliminary Results* provides further proof that Industeel received payments from its customers, which were properly recorded under SEC232U and SEC232EU.⁴³ Therefore, if Commerce continues to exclude these payments related to section 232 duties in these final results, this decision will violate Commerce's obligation to calculate an accurate dumping margin and will constitute an unwarranted application of AFA.

Petitioner's Rebuttal Brief

- Industeel's argument that Commerce inadvertently applied AFA to Industeel's section 232 adjustment is misleading. Commerce did not apply AFA; rather, it found that Industeel had not substantiated its claims for an adjustment and, consequently, did not rely on this information to calculate a dumping margin.⁴⁴
- Commerce's decision is consistent with its regulations in that the burden of establishing the amount and nature of an adjustment lies with the interested party. Therefore, Commerce's decision to exclude the amounts reported under SEC232U and SEC232EU was not an inadvertent application of AFA.⁴⁵

⁴⁰ See Industeel Case Brief at 5-6.

⁴¹ *Id.* at 6 (citing *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1315, 1320 (CIT 2019); *Marvin Furniture (Shanghai) Co. v. United States*, 744 F.3d 1319, 1322 (Fed. Cir. 2014); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1338 (Fed. Cir. 2002); and *Papierfabrik Aug Koehler SE v. United States*, 843 F.3d 1373, 1378 (Fed. Cir. 2016)).

⁴² *Id.* at 6-7 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).

⁴³ *Id.* at 7.

⁴⁴ See Petitioner Rebuttal Brief at 9.

⁴⁵ *Id.* at 9-10 (citing 19 CFR 351.401(b)(1)).

- However, should Commerce determine that AFA is warranted because Industeel failed to file complete information along with supporting documentation, the record would support such a determination. Commerce identified deficiencies in Industeel’s reporting and offered Industeel opportunities to remedy its submissions, but the record remains incomplete regarding section 232 duties, which would warrant an application of AFA.

Commerce’s Position: As discussed in Comment 1, we find that Industeel substantiated its reporting methodology for section 232 duties and provided sufficient evidence for Commerce to rely on the amounts reported in fields SEC232 and SEC232EU of its U.S. sales database. Therefore, we find that Industeel and the petitioner’s arguments are moot.

Comment 3: Application of Adverse Facts Available to U.S. Inland Freight

Petitioner’s Case Brief

- Commerce should apply AFA to Industeel’s reported amounts for U.S. inland freight (*i.e.*, INLFWCU) because Industeel did not act to the “best of its ability” in providing full and complete information regarding this expense, despite multiple opportunities to do so.⁴⁶
- The U.S. Court of Appeals for the Federal Circuit stated in *Nippon Steel* that failure to meet the “best of its ability” standard includes not only “intentional conduct, such as deliberate concealment or inaccurate reporting,” but also “inattentiveness, carelessness, or inadequate record keeping.”⁴⁷
- Industeel initially claimed that it omitted the U.S. inland freight field because, “{f}or some sales, Industeel’s terms of delivery required it to deliver to a customer’s location in the United States” and that “Industeel’s broker arranges for this transport and includes the cost of any transportation expense on its invoice.”⁴⁸ Therefore, Industeel stated the reported U.S. inland freight would be captured under the U.S. brokerage and handling field (*i.e.*, USBROKU).
- Commerce requested that Industeel remove the inland freight expense from the field USBROKU and report it in INLFWCU. However, in doing so, Industeel reported that it “found that certain inland freight expenses were inadvertently missing from the original U.S. sales.”⁴⁹
- Despite multiple opportunities to correct and explain its reported U.S. inland freight expense, Industeel’s U.S. sales listing demonstrates that its reporting is not complete and accurate. In fact, each time Commerce requested clarification regarding U.S. inland freight expenses, Industeel reported errors it discovered and revised, without disclosing how it discovered the errors.
- A comparison of Industeel’s first and third U.S. sales listings demonstrates the difference between Industeel’s U.S. movement expenses. In the final U.S. sales listing, the sum of U.S. brokerage and handling (*i.e.*, USBROKU), U.S. Customs duty and other fees (*i.e.*,

⁴⁶ See Petitioner Case Brief at 17-19.

⁴⁷ *Id.* at 17 ((citing *Nippon Steel*, 337 F.3d at 1382; and *Peer Bearing Co.-Changshan v. United States*, 766 F.3d 1396, 1399-1400 (Fed. Cir. 2014)).

⁴⁸ *Id.* at 18 (citing Industeel October 2, 2019 CQR at 44).

⁴⁹ *Id.* at 19 (citing Industeel March 18, 2020 SCQR at 29).

USDUTYU), and INFLWCU should be equal to the amounts reported for USBROKU in the initial U.S. sales listing, but the total amounts differ in Industeel's favor.

- Industeel, whether by carelessness, inadvertence, or a failure to review its records and reporting fully and thoroughly, demonstrated that it has not cooperated to the best of its ability to provide information regarding its U.S. inland freight expenses.
- Commerce should apply AFA with respect to Industeel's U.S. inland freight expenses. As AFA, Commerce should rely on the highest, non-aberrational U.S. inland freight expense that Industeel reported.
- If Commerce determines that the application of AFA is not appropriate, Commerce should apply facts available (FA) with respect to Industeel's U.S. inland freight expenses to account for the inability to determine whether Industeel's U.S. inland freight expenses have been fully reported. Therefore, as FA, Commerce should assign the average reported U.S. inland freight expense to all transactions for which Industeel has reported no U.S. inland freight and has not provided documentation demonstrating that no such expenses were incurred.

Industeel's Rebuttal Brief

- The record is complete regarding Industeel's U.S. inland freight expenses, and the petitioner has not demonstrated that Industeel failed to act to the best of its ability in placing information on the record. Therefore, there is no justification to apply AFA to Industeel's U.S. inland freight expenses.
- Industeel repeatedly provided various worksheets and supporting documentation to demonstrate the calculation of its U.S. brokerage expense per metric ton, and Industeel disclosed and rectified errors that Commerce identified as well as errors that Industeel found.⁵⁰
- The petitioner's argument is misguided in that it has not demonstrated that Industeel failed to act "to the best of its ability," and Industeel's disclosure and correction of errors is insufficient to suggest that the completeness and accuracy of Industeel's information is questionable.
- Industeel initially reported that it uses an unaffiliated customs broker to handle the entry of the merchandise into the United States and that the shipment-specific invoices issued by the broker include brokerage and handling expenses, harbor maintenance and merchandise processing fees, and, where Industeel's terms of delivery require shipment to a U.S. destination, U.S. inland freight expenses.⁵¹ Industeel also noted that the cost of this inland freight is being reported in field USBROKU and provided a worksheet demonstrating the calculation of its per-metric ton U.S. brokerage expense (*i.e.*, field USBROKU_S), as well as a sample U.S. brokerage invoice.⁵²
- At Commerce's request, Industeel revised its reporting of U.S. brokerage, customs duties, and inland freight to break out the reported fees in the following manner:
 - U.S. brokerage at field USBROKU_S (and USBROKU based on theoretical weight);

⁵⁰ See Industeel Rebuttal Brief at 2-5 (citing Industeel October 2, 2019 CQR at 40, 44, and Exhibit C-5; and Industeel March 18, 2020 SCQR at 28-29 and Exhibits SC-22, SC-23, and SC-24).

⁵¹ *Id.* at 2-3 (citing Industeel October 2, 2019 CQR at 40).

⁵² *Id.* at 3 (citing Industeel October 2, 2019 CQR at 44 and Exhibit C-5).

- handling, delivery, harbor maintenance, and merchandise processing fees at field USDUTYU_S (and USDUTYU based on theoretical weight); and
 - U.S. inland freight expenses at field INLFWCU_S (and INLFWCU based on theoretical weight).⁵³
- While revising its reporting of the three fields listed above, Industeel reported that certain inland freight expenses were inadvertently missing from the original U.S. sales listing. Industeel noted that it added the missing expenses to the revised U.S. sales listing.⁵⁴
- Industeel also provided a worksheet and documentation in support of its calculations for fields USBROKU_S / USBROKU, USDUTYU_S / USDUTYU, and INLFWCU_S / INLFWCU.⁵⁵
- In its post-preliminary supplemental submission, Industeel responded to all of Commerce's supplemental questions and provided significant additional information and documentation regarding its reporting of inland U.S. freight.⁵⁶
- Industeel disclosed and corrected certain errors related to the erroneous omission of U.S. inland freight expenses for 22 observations in the original U.S. sales listing and a rounding error for reported U.S. inland freight expenses for 23 observations in the second U.S. sales listing. Given that Industeel identified and rectified these errors, the petitioner's arguments should be rejected.
- The petitioner's argument that the differences between the totals reported for U.S. brokerage, customs duties, and inland freight in the first and third U.S. sales listings call into question the completeness and accuracy of Industeel's information should also be rejected.
- Other than citing differences between the first and third U.S. sales listings, the petitioner fails to provide any arguments how the data reported in the third U.S. sales listing are incomplete, inaccurate, or unusable.
- The changes observed in the third U.S. sales listing were the result of a thorough review of invoices from Industeel's U.S. customs broker during the process of responding to Commerce's supplemental questionnaire and reflect corrections to errors present in the first U.S. sales listing.
- Industeel was transparent throughout this administrative review by providing the exact process for the related calculations and reporting that there were instances in which it had underreported its freight expenses in the first U.S. sales listing.⁵⁷
- Accordingly, there is no basis for Commerce to apply AFA based on the differences in the databases alone, since the data ultimately reported are complete, accurate, and enable Commerce to calculate the most accurate dumping margin possible.
- Commerce also probed the accuracy of the data reported in the second U.S. sales listing with its final supplemental questionnaire, and Industeel provided an explanation and support for the U.S. inland freight expenses reported for nearly all of the observations Commerce selected.⁵⁸ This evidence further demonstrates that the corrections Industeel made in its second U.S. sales listing, which were also carried forward into the third U.S. sales listing, were complete and accurate.

⁵³ *Id.* (citing Industeel March 18, 2020 SCQR at 28-29).

⁵⁴ *Id.* (citing Industeel March 18, 2020 SCQR at 29).

⁵⁵ *Id.* (citing Industeel March 18, 2020 SCQR at Exhibit SC-24).

⁵⁶ *Id.* at 4 (citing Industeel July 31, 2020 SQR at 1-2).

⁵⁷ *Id.* at 6 (citing Industeel March 18, 2020 SCQR at 29).

⁵⁸ *Id.* at 7 (citing Industeel July 31, 2020 SQR at 1-2).

- The petitioner is correct that Industeel inadvertently omitted an amount for U.S. inland freight due to human error, but this isolated mistake does not justify the application of AFA to all of Industeel's reported U.S. inland freight expenses.⁵⁹
- Given that Industeel reported an amount for U.S. inland freight for another transaction on the same invoice, as the petitioner acknowledged, Commerce should use the U.S. inland freight expense for that observation as the U.S. inland freight expense for the transaction in question.
- Commerce should also keep in mind the significance of these corrections. Specifically, the vast majority of the corrections made by Industeel, when compared to the value of the merchandise, have no material impact.

Commerce's Position: We disagree with the petitioner that an application of AFA is warranted for the final determination with respect to Industeel's reported U.S. inland freight expenses. However, we find that the use of FA is warranted, as discussed below.

Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination if necessary information is not on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act. 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, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

We determine that necessary information is not missing from the record, with the exception of one transaction that we discuss further below, and that Industeel did not withhold requested information, fail to provide information in a timely manner and in the form requested, significantly impede the proceeding, or provide unverifiable information, within the meaning of section 776(a) of the Act. Further, we find that Industeel has not failed to cooperate by not acting to the best of its ability in complying with our requests for information within the meaning of section 776(b) of the Act. Industeel responded in full to all requests for U.S. inland freight expenses throughout this administrative review and has, as required, reported its expenses consistent with Commerce's requests.

In the initial questionnaire, we requested that Industeel report if it had any U.S. inland freight expenses, to which Industeel responded that, "for some sales, Industeel's terms of delivery required it to deliver to a customer's location in the United States. Where required, Industeel's broker arranges for this transport and includes the cost of any transportation expense on its invoice ... {T}he cost of this inland freight is being reported in field USBROKU (*i.e.*, U.S. brokerage and handling expenses)."⁶⁰ We then requested that Industeel separate the various

⁵⁹ *Id.*

⁶⁰ See Industeel October 2, 2019 CQR at 44.

fees reported in U.S. brokerage and handling expenses, to which it complied.⁶¹ Industeel informed Commerce in its supplemental response that it “found that certain inland freight expenses were inadvertently missing from the original U.S. sales file. Those expenses have been added to the revised U.S. sales file provided with this submission.”⁶² The petitioner argues that Industeel was not forthright in its reporting by not disclosing how it discovered such errors. First, we note that Industeel, by providing an explanation in the narrative, disclosed that certain errors were discovered and rectified. This does not exempt Industeel from the burden of proof to build the record and fully disclose its reporting; however, we note that the petitioner did not comment on this particular issue until its case brief, and any increase in the reported U.S. inland freight expense would be considered conservative. A comparison of the three U.S. sales databases that Industeel submitted demonstrates that Industeel’s reporting was increasingly conservative, which supports Industeel’s narrative explanation that it added expenses to U.S. inland freight. The petitioner did not comment on Industeel’s reporting of U.S. inland freight until July 1, 2020, when it submitted pre-preliminary comments on a separate issue related to U.S. inland freight expenses, which Industeel rectified in its final supplemental questionnaire response.⁶³

The petitioner argues that a comparison of Industeel’s first and third U.S. sales databases reveals discrepancies that would be favorable to Industeel and that such negligence should warrant AFA. Because of Industeel’s disclosure of additional expenses in the first supplemental response, as well as its corrections in the final supplemental response, we find that these changes would naturally create differences between the databases. However, we find that, while the petitioner has identified certain sales which appear to benefit Industeel because of changes to the U.S. sales database, the opposite is also true, as the petitioner identified in its case brief.⁶⁴ Indeed, any changes that we have requested regarding U.S. inland freight expenses and that Industeel has added to its U.S. sales database demonstrate that Industeel’s reporting is conservative when comparing the first and final U.S. sales databases.

We also disagree that Industeel’s reporting warrants FA for all U.S. sales where Industeel reported no U.S. inland freight expenses. We specifically requested that Industeel substantiate its reporting in the final supplemental questionnaire regarding the subset of sales that the petitioner identifies, and Industeel provided this information.⁶⁵ The only evidence for an omission of U.S. inland freight expenses was for one sale that both the petitioner and Industeel identified as requiring a correction using FA. Industeel provided the relevant U.S. freight invoice to Commerce, albeit regard to a different sale. Thus, in accordance with *Nippon Steel*, we find that we have the information on the record to apply FA for this sale given that the omission is limited in scope and because Industeel has provided substantial evidence for its

⁶¹ See Industeel March 18, 2020 SCQR at 28-29.

⁶² *Id.* at 29.

⁶³ See Petitioner’s Letter, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Pre-Preliminary Determination Comments,” dated July 1, 2020; and Industeel July 31, 2020 SQR at 1-2.

⁶⁴ See Petitioner Case Brief at 21; *see also* Memorandum, “2018-2019 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 March 18, 2021 (Industeel’s Final Calc Memorandum) at 2-3.

⁶⁵ See Commerce’s Letter, “Second Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Third Supplemental Questionnaire,” dated July 15, 2020 at 1; and Industeel July 31, 2020 SQR at 1-2 and Exhibits SC-43, SC-44, and SC-45.

other sales that did not incur U.S. inland freight expenses.⁶⁶ Therefore, because Industeel has substantiated its reporting of U.S. inland freight, we are only applying FA to Industeel's transaction where it omitted U.S. inland freight expenses, and we have continued to rely on Industeel's reported U.S. inland freight expenses for the rest of its U.S. sales.

Comments Pertaining to NLMK Belgium

Comment 4: Constructed Export Price Offset

Petitioner's Case Brief

- Commerce should reverse its preliminary determination to grant NLMK Belgium a CEP offset. The respondent bears the burden of demonstrating both quantitatively and qualitatively that a CEP offset is warranted, which NLMK Belgium has not done. This includes providing quantitative and qualitative evidence in support of its reported levels of trade and the intensity with which selling activities are undertaken. NLMK Belgium has not demonstrated a substantial difference in selling activities between its home market (HM) and U.S. sales, and, therefore, Commerce should deny NLMK Belgium a CEP offset.
- In the *Preliminary Results*, Commerce found that NLMK Belgium's HM sales were made at a level of trade (LOT) that was more advanced than the LOT of NLMK Belgium's U.S. sales. Because Commerce found only one LOT in the HM, Commerce could not make an LOT adjustment and determined that a CEP offset was warranted. Commerce stated that NLMK Belgium performed only seven out of fifteen selling functions reported for HM sales for its sales to the United States; further, all of these functions were performed at a lower level for sales to the United States than for sales to Belgium. However, the record does not support these claimed differences in selling functions and intensities.⁶⁷
- Commerce may make an adjustment to NV in certain circumstances to account for differences between the HM LOT and the CEP LOT, *i.e.*, a CEP offset.⁶⁸ However, Commerce only makes the CEP offset when respondents have demonstrated that such an adjustment is warranted; such adjustments are not always required.⁶⁹ The Act stipulates that a CEP offset can only be granted where the NV LOT is at a more advanced stage of

⁶⁶ See Industeel's Final Calc Memorandum at 1; *Nippon Steel*, 337 F.3d at 1381 ("The statute has two distinct parts respectively addressing two distinct circumstances under which Commerce has received less than the full and complete facts needed to make a determination. Under subsection (a), if a respondent 'fails to provide requested information by the deadlines for submission,' Commerce shall fill in the gaps with 'facts otherwise available.' The focus of subsection (a) is respondent's failure to provide information. The reason for the failure is of no moment. The mere failure of a respondent to furnish requested information—for any reason—requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination."); see also *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995) ("We also do not agree that draconian penalties are appropriate for the making of clerical errors in order to insure submission of proper data. Clerical errors are by their nature not errors in judgment but merely inadvertencies. While the parties must exercise care in their submissions, it is unreasonable to require perfection.").

⁶⁷ See Petitioner Case Brief at 5.

⁶⁸ *Id.* at 2 (citing section 773(a)(7)(B) of the Act).

⁶⁹ *Id.* at 2-3 (citing *Polyethylene Terephthalate Sheet from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020) (*PET from Korea*), and accompanying IDM at 18).

distribution that the LOT of the CEP sales; in considering the different LOTs, substantial differences in selling activities are a necessary, but not sufficient, condition for determining a different stage of marketing. As such, simply showing that differences exist in selling activities is insufficient to demonstrate different LOTs⁷⁰

- When considering whether to grant a CEP offset, Commerce carefully reviews the whole record, rather than using a simple formulaic exercise, because LOT adjustments may be susceptible to manipulation.⁷¹ The burden of demonstrating eligibility for a CEP offset lies with the respondent which requires the respondent to provide both quantitative and qualitative evidence regarding its selling functions and LOT.⁷²
- NLMK Belgium has not demonstrated that its HM sales are made at a more advanced LOT than its U.S. sales; thus, NLMK Belgium has failed to demonstrate that it is eligible for a CEP offset. Each of NLMK Belgium's selling functions is discussed below.
 - Although NLMK Belgium reported that it performed sales forecasting at a high level for HM sales and did not perform sales forecasting for U.S. sales, its supporting documentation does not support the reported intensity level in the HM.⁷³
 - In the previous administrative review, Commerce stated that obtaining pre-made reports or discussions with customers does not justify a high level of intensity of market research. NLMK Belgium has given the same evidence of discussions with customers and third party reports and failed to justify that it performed market research at the level of intensity described in the HM.⁷⁴
 - NLMK Belgium reported performing price negotiation/customer communication at a high level in the HM but at a low, limited level for U.S. sales because NLMK Belgium simply transmits the stock replenishment order from its U.S. affiliate. However, the documentation provided does not support the reported high level of intensity of price negotiation and customer communication that NLMK Belgium reported for its HM sales.⁷⁵
 - NLMK Belgium reported that it performed sales promotion/marketing support at a medium level for HM sales and not at all for U.S. sales. In support of this,

⁷⁰ *Id.* at 3 (citing section 773(a)(7)(B) of the Act; 19 CFR 351.412(c)(2); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) (*Shrimp from Thailand*), and accompanying IDM at 20-21).

⁷¹ *Id.* at 3-4 (citing *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020) (*Emulsion Styrene from Brazil*), and accompanying IDM at 7; *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 85 FR 3028 (January 17, 2020) (*CTL Plate from Belgium ARI*), and accompanying IDM at 34; and Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA) at 828).

⁷² *Id.* at 4 (citing *Shrimp from Thailand* IDM at 22; *Emulsion Styrene from Brazil* IDM at 9 and 11-12; *CTL Plate from Belgium ARI* IDM at 34; SAA at 828; and 19 CFR 351.410(b)(1)).

⁷³ *Id.* at 5-6 (citing NLMK Belgium's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Section A Questionnaire Response," dated September 6, 2019 (NLMK Belgium September 6, 2019 AQR) at 30 and Exhibits A-16a and A-16b); *see also* *CTL Plate from Belgium ARI* IDM at 31.

⁷⁴ *See* Petitioner Case Brief at 6-7 (citing NLMK Belgium September 6, 2019 AQR at 30, 32 and Exhibit A-16a); *see also* *CTL Plate from Belgium ARI* IDM at 33.

⁷⁵ *See* Petitioner Case Brief at 7 (citing NLMK Belgium September 6, 2019 AQR at 30 and Exhibits A-16a and A-16g).

NLMK Belgium claimed it published advertisements for trade journals and brochures for fairs, which it participated in several times a year; these activities do not support the intensity level reported by NLMK Belgium.⁷⁶

- NLMK Belgium reported that it made sales calls and visits at a high level of intensity in the HM, but did not perform this function for U.S. sales. NLMK Belgium states that this is part of the normal course of business and calls are made daily while visits are done periodically; however, the documentation provided by NLMK Belgium does not support the reported level of intensity.⁷⁷
- NLMK Belgium reported that it provided customer service on a daily basis, and therefore at a high level of intensity, for HM sales and did not provide customer service for U.S. sales. Yet the documentation provided does not support the reported frequency or intensity of NLMK Belgium's customer service.⁷⁸
- NLMK Belgium reported that it performed distributor/dealer training at a low level for HM sales and not at all for U.S. sales. Although NLMK Belgium stated that it provided one seminar and provided supporting materials, these facts do not demonstrate any meaningful difference between HM and U.S. sales.⁷⁹
- NLMK Belgium's reported intensity level for distributor/dealer training does not coincide with the evidence presented. NLMK Belgium stated that it provides seminars to distributors for its home market sales, it also explained that, during the POR, it "gave one seminar."⁸⁰ Given the limited activity performed for training, this selling activity does not demonstrate any meaningful difference between HM and U.S. sales.
- Although NLMK Belgium stated that it only performed engineering services/technical assistance periodically on an as-needed basis, it reported a low level of intensity in the HM. NLMK Belgium did not perform this function for U.S. sales, but the information provided shows that it did not perform this function at a high level in the HM.⁸¹
- NLMK Belgium reported arranging individual truck deliveries for each HM shipment and, therefore, reported a high level of intensity for arranging for freight. For U.S. sales, NLMK Belgium reported a low level of intensity as it uses a freight forwarder to arrange delivery to U.S. destinations once a month. Accordingly, NLMK Belgium performed the same freight activities for both HM and U.S. sales, and it appears that NLMK Belgium's high level of intensity in the HM is based on the number of sales and/or customers. However, NLMK Belgium has not demonstrated a significant difference between its freight arrangements for HM and U.S. sales because Commerce has found no meaningful difference in instances where a company performs similar tasks albeit at a greater frequency.⁸²

⁷⁶ *Id.* at 7-8 (citing NLMK Belgium September 6, 2019 AQR at 30 and Exhibit A-16a).

⁷⁷ *Id.* at 8 (citing NLMK Belgium September 6, 2019 AQR at 30 and Exhibits A-16a and A-16h).

⁷⁸ *Id.* at 8-9 (citing NLMK Belgium September 6, 2019 AQR at 31 and Exhibits A-16a and A-16j).

⁷⁹ *Id.* at 9 (citing NLMK Belgium September 6, 2019 AQR at 31 and Exhibits A-16a and A-16f).

⁸⁰ *Id.* at 9 (citing NLMK Belgium September 6, 2019 AQR at 31 and Exhibit A-16f).

⁸¹ *Id.* (citing NLMK Belgium September 6, 2019 AQR at 31 and Exhibit A-16a).

⁸² *Id.* at 10 (citing NLMK Belgium September 6, 2019 AQR at 31); *see also* *Emulsion Styrene-Butadiene Rubber from Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 42352 (July 14, 2020), and accompanying IDM at 9.

- NLMK Belgium reported a medium level of intensity for packing to both the HM and the United States; accordingly, there is no difference in this selling function.⁸³
- For sales made from stock, NLMK Belgium reported that it performed high levels of inventory management for HM sales and low levels for U.S. sales. Although sales are made from stock in both markets, NLMK Belgium said that it maintains inventory at a warehouse for HM sales but does not manage inventory in the United States. NLMK Belgium did not provide any evidence showing why inventory management activities are different when both HM and U.S. sales are made from stock.⁸⁴
- For HM sales, NLMK Belgium stated that order input/processing (inventory management) requires communication between departments, and, therefore, NLMK Belgium reported a high level of intensity. For U.S. sales, NLMK Belgium stated that sales order are put into the production system monthly, and, therefore, NLMK Belgium reported a low level of intensity. However, the number of customer orders is not a basis for differences in LOT, and accordingly, NLMK Belgium has not demonstrated a difference in this selling function.⁸⁵
- NLMK Belgium reported that it performed credit and collections at a high level of intensity in the HM and not at all for U.S. sales. For HM sales, NLMK Belgium said it has monthly meeting to discuss credit and collections, and NLMK Belgium provided an accounts receivable aging report in support of this. For U.S. sales, NLMK Belgium said that it does not perform credit or collections functions because payment is regularly sent from its affiliate, so no credit risk exist. NLMK Belgium did not demonstrate a high level of credit and collections activity in the previous review, and the documentation provided in this review similarly does not support the magnitude or frequency that NLMK Belgium reported.⁸⁶
- NLMK Belgium reported a high level of invoicing activity for the HM as it invoices customers on a daily basis; NLMK Belgium reported a low level of invoicing activity for the United States as it only invoices its U.S. affiliate once a month. NLMK Belgium did not provide any documentation to support these claims and as previously noted, frequency is not sufficient to find different LOTs.⁸⁷

⁸³ See Petitioner Case Brief at 10 (citing NLMK Belgium September 6, 2019 AQR at 31 and Exhibit A-16a).

⁸⁴ *Id.* at 10-11 (citing NLMK Belgium September 6, 2019 AQR at 31, 33, and Exhibit A-16a); *see also* NLMK Belgium's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Section B Questionnaire Response," dated October 2, 2019 (NLMK Belgium October 2, 2019 BQR) at 51-52 and NLMK Belgium's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Section C Questionnaire Response," dated October 4, 2019 (NLMK Belgium October 4, 2019 CQR) at 33-34.

⁸⁵ See Petitioner Case Brief at 11-12 (citing NLMK Belgium September 6, 2019 AQR at 32, 33, and Exhibit A-16a); *see also* *Emulsion Styrene from Korea* IDM at 9 and IDM at 9 and *Hyundai Steel Co. v. United States*, 279 F. Supp. 3d 1349, 1370 (CIT 2017) (*Hyundai Steel Co.*).

⁸⁶ See Petitioner Case Brief at 12-13 (citing NLMK Belgium September 6, 2019 AQR at 32 Exhibits A-16a and A-16k); *see also* *CTL Plate from Belgium* ARI IDM at 33.

⁸⁷ See Petitioner Case Brief at 13 (citing NLMK Belgium September 6, 2019 AQR at 32-33 and Exhibits A-16a and A-16i); *see also* *Hyundai Steel Co.*, 79 F. Supp. 3d at 1370; and *Emulsion Styrene from Korea* IDM at 9.

- NLMK Belgium reported performing low levels of claims services for sales to both the HM and the United States. While NLMK Belgium provided documentation showing the handling of claims, it failed to provide documentation demonstration frequency in support of its reported HM intensity level. Therefore, there is no meaningful difference in the selling function between the home and U.S. markets.⁸⁸
- To determine if sales were made at different LOTs, Commerce requires respondents to provide a quantitative analysis to support its claimed differences in selling activities.⁸⁹ NLMK Belgium provided only a limited quantitative analysis using its indirect selling expense calculation in support of its reported selling activities.⁹⁰ While it may be true that NLMK Belgium performs some additional selling activities for its HM sales, the revised indirect selling expense ratio shows no substantial difference between its HM sales and its U.S. sales, and, therefore, no different marketing stages.⁹¹
- In summary, NLMK Belgium has not provided information demonstrating the substantial differences in selling activities that it claims, and it has failed to show that there was any meaningful difference in the activity undertaken for U.S. sales (i.e. that HM sales were conducted at high levels). Consistent with Commerce’s finding in the previous administrative review, NLMK Belgium has not met its burden of demonstrating substantial differences in selling activities required to receive a CEP offset.⁹² Therefore, Commerce should deny NLMK Belgium a CEP offset for these final results.

NLMK Belgium’s Rebuttal Brief

- In the *Preliminary Results*, Commerce found that NLMK Belgium’s HM sales were made at a different LOT than its U.S. sales, that the HM and U.S. LOTs were substantially dissimilar, and that the selling functions performed by NLMK Belgium for sales in the HM were at a higher intensity than those it performed for sales to the United States.⁹³ Therefore, because the selling functions performed in the HM were at a more advanced stage of distribution than those performed for U.S. sales, Commerce granted NLMK Belgium a CEP offset, which it should continue to grant for these final results.⁹⁴
- To grant a CEP offset, the NV LOT must be at a more advanced LOT, or marketing stage, than the CEP LOT; these differences in LOTs must be characterized by additional and substantially different selling activities.⁹⁵ In the HM, NLMK Belgium sells CTL plate directly to unaffiliated customers, but, in the United States, NLMK Belgium sells CTL plate to its U.S. affiliate who resells the product to unaffiliated U.S. customers. Accordingly, NLMK Belgium’s U.S. affiliate performs many of the selling functions in

⁸⁸ See Petitioner Case Brief at 14 (citing NLMK Belgium September 6, 2019 AQR at 33-34 and Exhibit A-16a).

⁸⁹ *Id.* (citing *PET from Korea* IDM at 19; and *Emulsion Styrene from Brazil* IDM at 9-10).

⁹⁰ *Id.* at 15 (citing NLMK Belgium September 6, 2019 AQR at 34-35).

⁹¹ *Id.* (citing NLMK Belgium’s Letter, “Certain Carbon and Alloy Cut-To-Length Plate from Belgium: NLMK Belgium 2nd Sections A-C Supplemental Questionnaire Response,” dated April 10, 2020 at Exhibit 1).

⁹² *Id.* at 16 (citing *CTL Plate from Belgium* ARI IDM at 29-34).

⁹³ See NLMK Belgium Rebuttal Brief at 1 (citing *Preliminary Results* PDM at 18-19).

⁹⁴ *Id.*

⁹⁵ *Id.* at 2 (citing 19 CFR 351.412(c)(1)(ii), 351.412(c)(2), and 351.412(f)(1)); see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997)).

the United States that NLMK Belgium performs for its HM sales. Few selling functions associated with the sale between NLMK Belgium and its U.S. affiliate exist, and, thus, Commerce correctly found that NLMK Belgium's HM LOT and U.S. LOT were substantially dissimilar in the *Preliminary Results*.⁹⁶

- Commerce found that NLMK Belgium performed only seven out of 15 of its HM selling functions for U.S. sales and further performed those seven functions at a lower level of intensity than in the HM.⁹⁷ Commerce has previously granted a CEP offset where the level of activity for HM sales is much higher than it is for CEP sales.⁹⁸ While the petitioner argues that the evidence provided by NLMK Belgium is limited, NLMK Belgium provided comprehensive explanations, including narrative descriptions, frequencies, and sample documentation.⁹⁹
 - For sales forecasting, NLMK Belgium reported that it performed this selling function at a high level in the HM, yet the petitioner claims NLMK Belgium did not perform this activity at a high level because it provided only two emails as evidence. However, the documentation provided is merely a sample, and not all of the documentation for this activity, which was done on a daily basis, during the POR. Additionally, the two emails that are less than a month apart do demonstrate differences in price lists and contain samples as exhibits. Further, NLMK Belgium's descriptions states that the activity is conducted on a daily basis. Finally, since NLMK Belgium did not perform this activity for U.S. sales, there is no question that it performs this activity at a higher degree of intensity for the HM.¹⁰⁰
 - For price negotiation/customer communication, the petitioner disagrees with NLMK Belgium's reporting of this activity at a high level in the HM. However, NLMK Belgium provided documentation showing communication with a customer regarding price conducted over a three week period. Conversely, NLMK Belgium's involvement with this function for the U.S. market is minimal as its U.S. affiliate negotiates and communicates with the U.S. customers.¹⁰¹
 - While the petitioner claims that NLMK Belgium provided no information for inventory management, NLMK Belgium cites to its narrative response and to its U.S. sales database in support of its reported low level of activity for this function.¹⁰²
 - For credit and collections, the petitioner attempts to minimize the sample documentation. While NLMK Belgium provided an account receivable aging report, the report does not indicate how many people were responsible for this activity, including the sales staff who follow-up with the accounts; although only a sample report was provided, this activity is performed on a weekly basis.

⁹⁶ See NLMK Belgium Rebuttal Brief at 2-3 (citing NLMK Belgium September 6, 2019 AQR at 11-14 and 29-30, and *Preliminary Results* PDM at 18).

⁹⁷ *Id.* at 3 (citing *Preliminary Results* PDM at 18-19).

⁹⁸ *Id.* (citing *Polytetrafluoroethylene Resin from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 48594 (September 26, 2018), and accompanying IDM at Comment 3).

⁹⁹ *Id.* at 4 (citing NLMK Belgium September 6, 2019 AQR at 29-36 and Exhibits A-16a – A-160).

¹⁰⁰ *Id.* at 4-5 (citing NLMK Belgium September 6, 2019 AQR at 30 and Exhibit A-16b).

¹⁰¹ *Id.* at 5 (citing NLMK Belgium September 6, 2019 AQR at 30 and Exhibit A-16g).

¹⁰² *Id.* at 6 (citing NLMK Belgium October 4, 2019 CQR at C-33 and NLMK Belgium's February 24, 2020 Supplemental Sections A through C Response at NLMKUS02 Database).

NLMK Belgium also holds monthly meetings to discuss credit and collections. NLMK Belgium does not perform credit and collections at all for U.S. sales to North America Plate LLC (NAP), its U.S. affiliate, because there is no credit risk between the affiliated parties.¹⁰³

- For the selling functions of order input/processing, invoicing, and arranging for freight, the petitioner argues that no differences exist between these functions for HM and U.S. sales because NLMK Belgium's claimed difference is the frequency of the activity in the HM. While the intensity level is, in fact, a function of frequency, other differences exist between these activities in each LOT that the petitioner fails to recognize. For example, for HM order input/processing, sales personnel communicate with various departments, including technical specialists and production, while back office personnel input the order and track production and delivery status; however, for U.S. sales, NLMK Belgium simply inputs the information provided by NAP directly into the production system. For freight, NLMK Belgium only has to coordinate one or two vessel shipments to the United States per month, while, in the HM, NLMK Belgium arranges numerous deliveries with various trucking companies to a variety of destinations from multiple factories and warehouses. The facts on this record differ from those in *Hyundai Steel Co. v. U.S.* as, in that case, Hyundai provided most selling functions at the same level of intensity in both markets, whereas NLMK Belgium reported higher levels of intensity in the HM and lower levels for sales to the United States. *Hyundai Steel Co. v. U.S.* does not prevent Commerce from considering frequency in its overall LOT analysis as it did in *Corrosion-Resistant Steel from Korea*, where 30 percent of selling activities were performed at a higher frequency and intensity for HM sales, and Commerce granted a CEP offset.¹⁰⁴
- For four selling functions (*i.e.*, distributor/dealer training, sales promotion/marketing support, engineering services/technical assistance, and claims service), the petitioner claims that NLMK Belgium's reporting of low to medium intensity levels in the HM means there is no meaningful difference between the selling functions performed for sales in the HM and for sales to the United States. However, because these activities are not performed by NLMK Belgium at all for sales to the United States, or in the case of claims service, at a very low level, the differences between the HM and the United States are significant even if the HM was at a low intensity level.
- For market research, NLMK Belgium reported that it performed this selling function daily in the HM, while it did not perform this function for sales to the United States. The petitioner points to the 2016-2018 review of this case, where Commerce found that market research was not performed at a high level of intensity in the HM; however, each segment of a proceeding is a separate record

¹⁰³ *Id.* at 6-7 (citing NLMK Belgium September 6, 2019 AQR at 31-32 and Exhibit A-16a).

¹⁰⁴ *Id.* at 7-8 (citing NLMK Belgium September 6, 2019 AQR at 31-32 and Exhibit A-16a; *Hyundai Steel Co. v. U.S.*; and *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*Corrosion-Resistant Steel from Korea*), and accompanying IDM at Comment 4).

and Commerce is not bound by its determinations in a prior segment.¹⁰⁵ The circumstances of this review are different than the last and NLMK Belgium has fulfilled both the qualitative and quantitative requirements for a CEP offset in this review.

- For sales calls and visits and customer service, the record supports NLMK Belgium's claim of a higher level of intensity for sales in the HM and no activity for sales to the U.S. market, as this function was performed by NAP in the United States.¹⁰⁶
- Overall, the petitioner attempts to minimize the documentation provided by NLMK Belgium and its claim of substantial differences in selling functions between markets. However, NLMK Belgium provided evidence to show that it regularly performs each of the activities at the reported intensity level during the POR for the HM LOT. These sample documents provide evidence of these facts, and it would be excessive and unreasonable to expect documentation of each instance of every activity during the POR. Commerce's determination is based upon the totality of the record, including the narrative, quantitative analysis, and documentary evidence, which demonstrates that NLMK Belgium's HM sales are at a more advanced LOT than its U.S. sales.¹⁰⁷
- Although the petitioner claims that the quantitative analysis confirms that no substantial differences in selling functions between markets exist, NLMK Belgium provided several allocations for its indirect selling expenses, including number of orders by market as requested by Commerce.¹⁰⁸ Any allocation supports the conclusion that selling functions were performed at a significantly higher level for HM sales than for U.S. sales.
- Finally, the petitioner makes numerous references to Commerce's refusal to grant NLMK Belgium a CEP offset in the 2016-2018 administrative review. However, Commerce's practice has evolved since then to place more emphasis on the quantitative analysis, which is one of the pieces cited by Commerce of its denial of the CEP offset in the prior review. In this review, NLMK Belgium strictly followed Commerce's instructions to revise its quantitative analysis, which supports NLMK Belgium's claim that the HM LOT is more advanced than the U.S. LOT. Therefore, a CEP offset has been properly applied in this review.¹⁰⁹

Commerce's Position: We continue to find that a CEP offset is warranted for NLMK Belgium for the final results. Section 773(a)(7)(B) of the Act requires an adjustment to NV in the form of a CEP offset if the NV 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

¹⁰⁵ See NLMK Belgium Rebuttal Brief at 9 (citing NLMK Belgium September 6, 2019 AQR at 30 and *Corrosion-Resistant Steel from Korea* IDM at Comment 4).

¹⁰⁶ *Id.* at 5-6 (citing NLMK Belgium September 6, 2019 AQR at 30-31).

¹⁰⁷ *Id.* at 9-10 (citing NLMK Belgium September 6, 2019 AQR at 32 and Exhibits A-16a – A-16o; and *Corrosion-Resistant Steel from Korea* IDM at Comment 4).

¹⁰⁸ *Id.* at 10 (citing Commerce's Letter, "Antidumping Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Second Sections A through C Supplemental Questionnaire," dated March 31, 2020).

¹⁰⁹ *Id.* at 11 (citing NLMK Belgium Second Supplemental Sections A through C Response; and *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 85 FR 3028 (January 17, 2020), and accompanying IDM at Comment 6).

affects price comparability. Under 19 CFR 351.412(c)(2), Commerce's policy regarding differences in the LOTs is as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at a 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.

In the *Preliminary Results*, we analyzed NLMK Belgium's HM and U.S. selling functions, and we organized them into the following five categories for analysis: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) sales-related administrative activities. For NLMK Belgium's U.S. sales, we found that:

With respect to the U.S. market, NLMK Belgium reported that it made sales through one channel of distribution (*i.e.*, to/through its U.S. affiliate, North America Plate LLC (NAP)). NLMK Belgium reported that it performed the following selling functions in Belgium for its CEP sales: price negotiation/customer communication; arranging for freight; packing; inventory management; order input/processing; invoicing; and providing claims service. Based on the selling function categories noted above we find that NLMK Belgium performed sales support, logistical services, and sales-related administrative activities. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.¹¹⁰

In addition, in the HM we found that:

In the HM, NLMK Belgium reported that it made two types of sales: (1) direct sales of CTL plate to unaffiliated customers; and (2) consignment sales to unaffiliated customers. NLMK Belgium reported that sales made in these channels were made at the same LOT. According to NLMK Belgium, it performed the following selling functions to sell to all HM customers: sales forecasting; sales meetings; market research; price negotiation/customer communication; sales promotion/marketing support; sales calls and visits; customer service; distributor/dealer training; engineering services/technical assistance; arranging for freight; packing; order input/processing; credit and collections; invoicing; and providing claims service. NLMK Belgium also claimed that it performs inventory management for consignment sales.

As noted above, selling activities can be generally grouped into five selling function categories. Based on these selling function categories, we find that NLMK Belgium performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its HM sales made through both sales channels. Notwithstanding that NLMK Belgium reported two channels of distribution in the HM, we find that the differences were

¹¹⁰ See *Preliminary Results* PDM at 18.

not quantitatively sufficient to warrant finding different LOTs in the HM. Thus, we preliminarily find that NLMK Belgium's HM sales were made at one LOT.¹¹¹

In each HM channel of distribution, the sale was made directly by NLMK Belgium.¹¹² The selling activities performed were the same for channels 1 and 2 in the HM, other than inventory management, which NLMK Belgium only performed for channel 2 sales.¹¹³ Because the level of selling activity was almost the same in each channel of distribution in the HM, we preliminarily determined that the HM channels of distribution constituted one LOT.¹¹⁴

With respect to the U.S. market, NLMK Belgium sold CTL plate to its U.S. affiliate, NAP. NLMK Belgium reported very limited selling activities for sales to NAP and stated that most of the selling activities for U.S. sales were performed by NAP personnel. NLMK Belgium provided documentation in support of its claimed selling functions for both the home and U.S. markets. Accordingly, based on the information discussed above, we find that NLMK Belgium qualifies for a CEP offset because its sales made in the HM are to unaffiliated customers and are at a more advanced LOT than the CEP sales made by NLMK Belgium to NAP to the United States.

As we explained in the *Preliminary Results*:

We compared the selling activities at the U.S. LOT with the selling activities at the HM LOT and found that the levels of trade in the U.S. and HMs were substantially dissimilar. Information on the record indicates that NLMK Belgium performed only seven out of fifteen of the same selling functions for its U.S. sales as it provides for its HM sales.¹¹⁵ Moreover, of the selling functions NLMK Belgium performs in both the HM and the United States, all are performed at a lower level of intensity in the U.S. The difference in intensity is significant enough to determine that the selling functions performed by NLMK Belgium in the HM are at a more advanced stage of distribution than those performed for its U.S. customers in that channel of trade.

Because there is only one LOT in the HM, we were unable to calculate a LOT adjustment based on NLMK Belgium's HM sales of the foreign like product, and we have no other information that provides an appropriate basis for determining a LOT adjustment. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that a CEP offset is warranted for NLMK Belgium, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).¹¹⁶

¹¹¹ *Id.*

¹¹² See NLMK Belgium October 2, 2019 BQR at 35.

¹¹³ See NLMK Belgium September 6, 2019 AQR at Exhibit A-16a.

¹¹⁴ See *Preliminary Results* PDM at 18.

¹¹⁵ The eight selling functions that NLMK Belgium performs in the HM only are sales forecasting, market research, sales promotion/marketing support, sales calls and visits, customer service, distributor/dealer training, engineering services/technical assistance, and credit and collections.

¹¹⁶ See *Preliminary Results* PDM at 19.

The petitioner disagrees with the preliminary decision to grant NLMK Belgium a CEP offset. The petitioner argues that NLMK Belgium's narrative explanations and supporting documentation do not support the intensity levels of the selling activities reported for by NLMK Belgium. However, the narrative and accompanying documentation is the same that was on the record in advance of the *Preliminary Results*. We reviewed that documentation and narrative response prior to making our preliminary decision, and we disagree now, as we did then, with the petitioner's arguments. We found that for each reported selling function, NLMK Belgium provided a written description, an indication of frequency, and sample documentation showing that it performed the function. Additionally, under our revised selling functions analysis, NLMK Belgium also provided a quantitative measure showing its spending by market on these selling functions.¹¹⁷

The respondent bears the burden of demonstrating its entitlement to a CEP offset,¹¹⁸ and we agree with NLMK Belgium that it provided sufficient information on the record to support granting it a CEP offset. 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 its claim.¹¹⁹ NLMK Belgium provided information both in response to the initial questionnaire and to the supplemental questionnaire. We disagree with the petitioner that the information provided is insufficient to demonstrate NLMK Belgium's entitlement to a CEP offset during this review.

While the petitioner makes several claims regarding the frequency, intensity, or activities reported under certain selling functions, we disagree with their analysis. The decision whether to grant a CEP offset encompasses a comprehensive review of the entirety of the record—no single aspect can either deny or allow a CEP offset on its own. Instead, it is a holistic analysis that examines the extent of the selling activities performed and their significance to the company's selling operations. As no new evidence has been placed on the record since the *Preliminary Results*, we have no new information to consider in our analysis of NLMK Belgium's selling functions. Similarly, we disagree with the arguments presented by the petitioner regarding the information on the record.

In this review, NLMK Belgium's description of its selling functions, combined with the channels of sale, customer base, product mix, frequency of shipments, and destinations of merchandise in each market, formed a cohesive picture of different levels of trade between the home and U.S. markets. For U.S. sales, NLMK Belgium made all sales to its U.S. affiliate NAP, which means that NLMK Belgium only invoiced, communicated with, and collected

¹¹⁷ See NLMK Belgium Second Supplemental Sections A through C Response at 1 and Exhibit 1.

¹¹⁸ See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1374 (CIT 2009) (“{I}t 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 (CIT August 27, 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”).

¹¹⁹ See Commerce Letters, “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.

payment from a single affiliated U.S. customer during the POR.¹²⁰ Additionally, all U.S. sales were made-to-stock, meaning that NLMK Belgium supplied only standard products to the United States.¹²¹ U.S. orders from NAP are limited to once a month stock replenishments; consequently, NLMK Belgium only issues invoices to NAP once a month, and NLMK Belgium only makes shipments to a limited number of preset U.S. destinations once a month.¹²² NLMK Belgium's reported selling functions and intensity levels, as well as its quantitative analysis, reflect a lower degree of activity for U.S. sales.

Conversely, NLMK Belgium's HM sales practices and selling functions are manifestly different from its U.S. sales practices. Unlike the single monthly invoice and shipment to NAP in the United States, NLMK Belgium invoices multiple customers on a daily basis in the HM.¹²³ In addition, NLMK Belgium's HM sales include both made-to-stock and made-to-order products.¹²⁴ Made-to-order products require regular communication with HM customers regarding price and technical specifications, as well as internal communication regarding production.¹²⁵ For delivering HM sales, NLMK Belgium must make freight arrangements to various customer destinations from either NLMK Belgium's factories or warehouses, and it must utilize various transportation providers to do so.¹²⁶ As we found in the *Preliminary Results*, the differences between the home and U.S. markets are both of: (1) degree and frequency, as NLMK Belgium's U.S. selling activities are limited to its interactions with its U.S. affiliate, NAP; and (2) function, as NLMK Belgium performs several additional selling functions for its HM sales, such as technical assistance, claims service, and price negotiation. While the quantitative analysis provided by NLMK Belgium may not show a large difference between expenses attributable to selling functions in the HM and those in the United States, the analysis nevertheless demonstrates a difference in expenses and provides additional support for the narrative and documentation provided by NLMK Belgium.¹²⁷

Consequently, when NLMK Belgium's selling activities are viewed as a whole, we find that the differences between those activities performed for HM and U.S. market sales do rise to the level of a "substantial difference in selling activities."¹²⁸ The petitioner argues about what they would classify as small differences in individual selling functions or in the quantitative expense allocation. As noted above, Commerce examined the extent of the selling activities performed and their significance to the company's selling operations.¹²⁹ In our analysis, we found that

¹²⁰ See NLMK Belgium September 6, 2019 AQR at 29-32 and NLMK Belgium Section C Response at C-21.

¹²¹ See NLMK Belgium September 6, 2019 AQR at 29.

¹²² See NLMK Belgium September 6, 2019 AQR at 31-32 and 41.

¹²³ See NLMK Belgium September 6, 2019 AQR at 32 and NLMK Belgium October 2, 2019 BQR at Exhibits NPS-B-6 and NSE-B-7.

¹²⁴ See NLMK Belgium October 2, 2019 BQR at 35-36.

¹²⁵ See NLMK Belgium September 6, 2019 AQR at 30-32.

¹²⁶ See NLMK Belgium September 6, 2019 AQR at 31 and NLMK Belgium October 2, 2019 BQR at 50-54 and Exhibits NPS-B-6 and NSE-B-12.

¹²⁷ See NLMK Belgium September 6, 2019 AQR at Exhibit A-16o.

¹²⁸ See *Pasta Zara SpA v. United States*, 703 F. Supp. 2d 1317, 1325 (CIT 2010) ("According to the *Preamble*, the substantial differences in selling activities must amount in the aggregate to a substantially different selling function at the more remote level; hence, demonstrating adequately a different selling function, as opposed to demonstrating merely a difference in selling activities, would be 'sufficient.'") (citing *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27371 (May 19, 1997) (*Preamble*)).

¹²⁹ See *Preamble*, 62 FR at 27371.

NLMK Belgium has sufficiently supported its claims that certain activities NLMK Belgium only performed certain selling functions for HM sales and performed others at a higher level of activity in the HM. These differences constitute a markedly different function from that which NLMK Belgium performs for its U.S. sales. The record shows that NLMK Belgium's additional HM selling functions resulted in sales at a different marketing stage, as required by Commerce's regulations. Therefore, we find that NLMK Belgium's HM was at a more advanced LOT, a precondition for the granting of a CEP offset.

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

Comment 5: Affiliated Party Major Input Adjustment

NLMK Belgium's Case Brief

- In the *Preliminary Results*, Commerce applied the major input rule and adjusted the costs of slab NLMK Sales Europe SA (NSE) and NLMK La Louviere SA (LL) purchased from affiliated suppliers by using the value of an insignificant quantity of slab that NSE and LL purchased from an unaffiliated supplier because NSE and LL's purchases from affiliated suppliers were lower than the price paid to unaffiliated suppliers.¹³⁰ However, Commerce's analysis did not account for the fluctuations in slab prices during the POR and relied on unaffiliated purchases that are not in commercial quantities. Therefore, for these final results Commerce should not make a major input adjustment.
- As Exhibit D-3-2 of NLMK Belgium's October 4, 2019 section D response shows, slab prices fluctuated significantly during the POR.¹³¹ Consequently, the price for a small quantity purchased from unaffiliated supplier does not represent a reliable market price for the entire POR. In fact, based on the average unit price of slab purchases in June 2018, the slab NLMK Belgium purchased from affiliated parties was actually at a higher price than the price charged by unaffiliated suppliers.¹³²
- NLMK Belgium also notes that the fluctuations in slab prices experienced by NSE and LL during the POR are identical to the fluctuations experienced by NLMK Plate Sales SA (NPS) and NLMK Clabecq SA (NCLA) during the POR for purchases from unaffiliated slab producers.¹³³ Although NPS and NCLA purchased slabs with higher alloy content and/or thickness, which accordingly had higher prices, these slabs

¹³⁰ See NLMK Belgium Case Brief at 1 (citing Memorandum, "2018-2019 Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Preliminary Determination Sales Calculations for NLMK Belgium," dated July 17, 2020 (NLMK Belgium Preliminary Calculation Memorandum) at 3).

¹³¹ *Id.* (citing NLMK Belgium's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Section D Questionnaire Response," dated October 4, 2019 (NLMK Belgium Section D Response) at Exhibit D-3-2).

¹³² *Id.* at 1-2 (citing NLMK Belgium Section D Response at Exhibit D-3-2 and NLMK Belgium's Letter, "Certain Carbon and Alloy Cut-To-Length Plate from Belgium: NLMK Belgium Section D Supplemental Questionnaire Response," dated April 10, 2020 (NLMK Belgium April 10, 2020 SDQR) at Exhibit SD1-7).

¹³³ *Id.* at 2-3 (citing NLMK Belgium Section D Response at Exhibits D-3-1 and D-3-2).

exhibited the same volatility in prices as the slabs purchased by NSE and LL during the same time period.¹³⁴

- Additionally, the quantities of slab that NSE and LL purchased from unaffiliated suppliers are very small, and the purchases were not made in commercial quantities. In *Uncoated Paper from Portugal*, Commerce stated that the quantity of unaffiliated purchases can be considered for purposes of the major input rule so long as these transactions occurred in commercial quantities.¹³⁵ Since NSE and LL's slab purchases from unaffiliated suppliers were not made in commercial quantities, Commerce should not have used them in the application of the major input rule. Accordingly, for these final results Commerce should not apply the major input rule and should instead accept NSE and LL's slab costs as reported.

Petitioner's Rebuttal Brief

- Commerce should continue to adjust NLMK Belgium's purchases of slab from affiliated parties under the major input rule. This adjustment is consistent with Commerce's practice, and NLMK Belgium has not provided any basis for Commerce to change from its preliminary calculations.
- Commerce adjusted the price of NLMK Belgium's slab purchases from affiliated parties to reflect the higher market value of slab.¹³⁶ NLMK Belgium argues that Commerce should not have made this adjustment because of fluctuations in the slab price over the POR and the quantity of slab purchased from unaffiliated suppliers. However, both these arguments should be rejected because neither demonstrates any error in Commerce's application of the major input rule.
- Regarding NLMK Belgium's claim that slab prices fluctuated over the POR, Commerce has previously rejected arguments that major input adjustments should be based on a monthly analysis.¹³⁷ If input prices have changed significantly, Commerce may apply costs using a quarterly methodology, but NLMK Belgium made no argument that significant cost changes occurred during the POR necessitating shorter averaging periods.¹³⁸
- NLMK Belgium argues that its purchases from unaffiliated suppliers were not made in commercial quantities and therefore cannot be relied upon to determine market prices; however, Commerce does not consider the aggregate volume of the transactions to be the determining factor. The Court of International Trade has affirmed that it is not the

¹³⁴ *Id.* at 3 (citing NLMK Belgium April 10, 2020 SDQR at 6).

¹³⁵ *Id.* (citing *Certain Uncoated Paper from Portugal: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 3105 (January 20, 2016) (*Uncoated Paper from Portugal*), and accompanying IDM at Comment 2).

¹³⁶ See Petitioner Rebuttal Brief at 2 (citing Section 773(f)(3) of the Act; *Preliminary Results* PDM at 20; and NLMK Belgium Preliminary Calculation Memorandum at 3).

¹³⁷ *Id.* at 3 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 54264 (September 11, 2014) (*CTL Plate from Korea*), and accompanying IDM at 21 and 25).

¹³⁸ *Id.* at 4 (citing NLMK Belgium Section D Response; *Phosphor Copper from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 69720 (December 19, 2019), and accompanying IDM at 19; *Preliminary Results* PDM at 19; and NLMK Belgium Preliminary Calculation Memorandum at Attachment III).

size of the transaction that matters, but the commerciality; therefore, Commerce has rejected arguments that purchases from unaffiliated parties cannot be relied on due to the relative quantity of such purchases.¹³⁹ NLMK Belgium claims that its purchases from unaffiliated suppliers were not in commercial quantities, yet it did not provide any basis for this argument other than the relative volume of purchases. Because NLMK provides no other basis for finding that these purchases were not commercial quantities, Commerce should reject NLMK Belgium's argument.

Commerce's Position: In applying the major input rule under section 773(f)(3) of the Act, Commerce normally will determine the value of a major input purchased from an affiliated person based on the higher of: (i) the price paid by the exporter or producer to the affiliated person for the major input; (ii) the amount usually reflected in sales of the major input in the market under consideration (*i.e.*, the market price); or (iii) the cost to the affiliated person of producing the major input.¹⁴⁰ Section 773(f)(3) of the Act does not explicitly direct Commerce to apply a particular methodology in determining market price. Thus, because the statute is silent and Congress has not directly spoken to the issue, Commerce is permitted to determine a reasonable methodology for establishing market price.¹⁴¹ In determining a market price for use in this comparison, Commerce prefers to use the prices paid by the respondent to an unaffiliated supplier for the input. If such prices are not available, Commerce will then look to sales by the affiliated supplier to other unaffiliated customers in the market under consideration. In the absence of either of these options, Commerce may consider other market values that are available on the record.¹⁴²

Our preferred source for a market price is available because we have the price paid by NLMK Belgium to purchase slab from unaffiliated suppliers on the record.¹⁴³ NLMK Belgium argues that the comparatively low quantities of slab purchased from unaffiliated suppliers means that the prices do not reflect commercial quantities. Commerce has previously explained, however, that the relative quantity of unaffiliated purchases should not necessarily be a disqualifying factor in considering such purchases for the purpose of the major input rule and that, as long as these transactions occurred in commercial quantities, we may rely on them to determine market price.¹⁴⁴ In this case, the transactions with unaffiliated customers occurred in commercial

¹³⁹ *Id.* at 5-6 (citing *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008), and accompanying IDM at 24-25; *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004) (*Softwood Lumber from Canada*), and accompanying IDM at 44-45; *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 54359 (September 14, 2005) (*Uranium from France*), and accompanying IDM at 7; and *Uncoated Paper from Portugal* IDM at 8-9).

¹⁴⁰ See 19 CFR 351.407(b).

¹⁴¹ See *CTL Plate from Korea* IDM at Comment 6.

¹⁴² See *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 7.

¹⁴³ See NLMK Belgium April 10, 2020 SDQR at Exhibit SD1-7.

¹⁴⁴ See *Uranium from France* IDM at Comment 3 ("We also disagree with the petitioner that the quantity of unaffiliated purchases in relation to total purchases of the same input should be a disqualifying factor in considering such purchases for the purpose of the major input rule. As long as such purchases occurred in

quantities. Accordingly, we find that these transactions are therefore an appropriate measure for market value.

Regarding NLMK Belgium's argument about the fluctuations of slab prices during the POR, we note that Commerce examined whether the quarterly cost methodology was warranted during this POR. We found that the price fluctuations for the three largest material inputs, which include slab, do not warrant the quarterly cost methodology, and, accordingly, we applied our standard annual average cost methodology.¹⁴⁵ Therefore, consistent with our practice, we likewise analyzed NLMK Belgium's affiliated and unaffiliated transactions on an annual average basis.¹⁴⁶ Although NLMK Belgium argues that, during June 2018, the slab purchased from affiliated parties was purchased at a higher price than the price charged by unaffiliated suppliers, the record does not support this argument. NLMK Belgium's comparison assumes that all POR unaffiliated purchases were transacted in June 2018; however, the POR slab inventory movement schedules submitted by NLMK Belgium show only total monthly slab purchases, which are not broken down by their affiliated and unaffiliated components. While there were fluctuations in slab prices during the POR, we determined that the cost fluctuations were not significant enough to warrant analysis on a quarterly or monthly basis, nor has NLMK Belgium argued that the quarterly cost methodology is appropriate in this case. Accordingly, our analysis did consider cost fluctuations, and we applied the appropriate cost analysis methodology based on the results of that analysis. Therefore, we continue to consider the prices for affiliated and unaffiliated slab purchases on an overall POR basis and continue to find that an adjustment under the major input rule is appropriate.

For the final results, for the foregoing reasons, we have based market price on transactions between NLMK Belgium and all unaffiliated suppliers. These transactions represent the amount "usually reflected in sales of the major input in the market under consideration" (*i.e.*, slab in Belgium). Further, the sales were made in commercial quantities and reflect what unaffiliated customers actually paid for this input in Belgium during the POR. As such, we find that they provide an appropriate benchmark and are the best available source for determining market value for purposes of our major input analysis.

We have conducted our major input analysis as described above (*i.e.*, using a market price based on NLMK Belgium's purchases from unaffiliated suppliers in Belgium). Based on that

commercial quantities, we may rely on such transactions as a benchmark for market value."); *Softwood Lumber from Canada* ("In determining whether transaction prices between affiliates reflect market values, we do not consider the substantiality of those transactions in terms of volume to be the determining factor."); and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017), and accompanying IDM at 94-95 ("regarding Dillinger's argument that Rogesa's reported unaffiliated purchases of coke should be rejected because they were at volumes too small to be considered a fair reflection of market value, we disagree. Rogesa purchased a substantial amount of coke from unaffiliated sources (approximately 10 percent of its total purchases). In addition, the purchase transactions were at volumes that represent commercial quantities. As such, we consider the consumption values associated with these unaffiliated purchases to be a reasonable reflection of market prices in applying the major input rule.")

¹⁴⁵ See *Preliminary Results PDM* at 19.

¹⁴⁶ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 41962 (July 13, 2020), and accompanying IDM at Comment 4.

analysis, we found that the market price exceeded both the transfer price and the affiliated suppliers' cost of production.¹⁴⁷ Therefore, for this final determination, we continued to apply the major input adjustment to NLMK Belgium's reported costs to reflect the market price.

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 administrative review in the *Federal Register*.

☒

Agree

☐

Disagree

3/18/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

¹⁴⁷ See NLMK Belgium Preliminary Calculation Memorandum at 3 and Attachment III.