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

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

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

I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of certain carbon and alloy steel wire rod (wire rod) from Italy. As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Ferriere Nord S.p.A., a mandatory respondent in this investigation. We are continuing to base the margin assigned to the second, non-participating mandatory respondent, Ferriera Valsider S.p.A. (Ferriera Valsider), on adverse facts available (AFA). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Comment 1: Revised General & Administrative Expenses
Comment 2: Revised Selling Expenses
Comment 3: Ferriere Nord’s Correction Letter
Comment 4: Correction of Errors Discovered at Verification



II. Background

On October 31, 2017, the Department of Commerce (Commerce) published the *Preliminary Determination* of sales of wire rod from Italy at LTFV.¹ On November 7, 2017, Commerce published the postponement of the final determinations of LTFV investigations and extension of provisional measures.² On December 21, 2017, Commerce published the *Amended Preliminary Determination* of sales at LTFV of wire rod from Italy.³

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

In November and December 2017, we conducted verification of the sales and cost of production (COP) data reported by Ferriere Nord, in accordance with section 782(i) the Tariff Act of 1930, as amended (the Act).

We invited parties to comment on the *Amended Preliminary Determination*. Between January 23, 2018 and January 25, 2018, Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc. and Charter Steel⁶ (collectively, the petitioners) and Ferriere Nord⁷ submitted case briefs. On January 30, 2018, the petitioners⁸ and Ferriere Nord⁹ submitted rebuttal briefs.

¹ See *Carbon and Alloy Steel Wire Rod from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50381 (October 31, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

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

³ See *Carbon and Alloy Steel Wire Rod from Italy: Amended Preliminary Determination of Sales at Less Than Fair Value*, 82 FR 60586 (December 21, 2017) (*Amended Preliminary Determination*); see also Commerce's December 15, 2017, Memorandum entitled, "Antidumping Duty Investigation on Carbon and Alloy Steel Wire Rod from Italy: Ministerial Error Memorandum" (Ministerial Error Memo).

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

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

⁶ See Petitioner's January 23, 2018, Case Brief entitled, "Petitioner's Case Brief for Ferriere Nord," (Petitioner's Case Brief).

⁷ See Ferriere Nord's January 25, 2018, Case Brief entitled, "Re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: *Ferriere Nord's Case Brief*," (Ferriere Nord's Case Brief).

⁸ See Petitioner's January 30, 2018, Rebuttal Brief entitled, "Petitioner's Rebuttal Brief for Ferriere Nord," (Petitioner's Rebuttal Brief) at 1.

⁹ See Ferriere Nord's January 30, 2018, Rebuttal Brief entitled, "Re: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: *Ferriere Nord's Rebuttal Brief*," (Ferriere Nord's Rebuttal Brief) at 2-4.

Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now March 19, 2018.¹⁰

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

III. Scope of the Investigation

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (i.e., products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

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

III. Scope Comments

During the course of this investigation, Commerce received numerous scope comments from interested parties. In September 2017, we received scope case and rebuttal briefs. On November 20, 2017, we issued a final scope memorandum in response to these comments in which we did not change the scope of this investigation.¹¹

¹⁰ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

¹¹ See Final Scope Memorandum.

IV. Use of Adverse Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.¹²

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

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the *TPEA*, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹³ Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination

¹² Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (*TPEA*). *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*TPEA Application Dates*).

¹³ *See* section 776(b)(1)(B) of the Act; *TPEA*, section 502(1)(B).

from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹⁵

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁶ Further, and under the *TPEA*, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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

As noted above, sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act provide that if an interested party fails to provide or withholds necessary information within the established deadlines, significantly impedes a proceeding, or provides information but the information cannot be verified, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁷

¹⁴ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

¹⁶ See SAA, at 870.

¹⁷ *Id.*; see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”¹⁸ Thus, according to the CAFC precedent, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹⁹ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.²⁰

Application of AFA for Ferriera Valsider

In the *Preliminary Determination*, we preliminarily applied AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308, to mandatory respondent Ferriera Valsider, due to its failure to respond to Commerce’s questionnaire.²¹ In the *Amended Preliminary Determination*, we continued to apply AFA to Ferriera Valsider, but changed the rate that we applied as AFA. Specifically, in the *Amended Preliminary Determination*, we applied the corroborated petition dumping margin of 18.89 percent, which is the sole rate identified in the petition.²² No party commented on the application of AFA to Ferriera Valsider. Accordingly, for the final determination, we continue to find it appropriate to apply AFA to Ferriera Valsider for the same reasons described in the *Preliminary Determination* and *Amended Preliminary Determination*.

Selection and Corroboration of the AFA Rate

In an investigation, Commerce’s practice is to select, as an AFA rate, the higher of: 1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.²³ In the *Preliminary Determination*, we assigned to Ferriera Valsider the same rate as we calculated for Ferriere Nord, as this calculated rate was higher than the petition margin.²⁴ However, after correcting certain errors in the calculation of Ferriere Nord’s margin in the *Amended Preliminary Determination*, the rate calculated for Ferriere Nord

¹⁸ See *Nippon Steel*, 337 F. 3d at 1382-83.

¹⁹ *Id.* at 1382.

²⁰ *Id.*

²¹ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 23-25.

²² See the Memorandum to the File entitled, “RE: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Corroboration,” dated December 15, 2017 (Amended Preliminary Corroboration Memorandum).

²³ See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum, at Comment 1; *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum, at Comment 20; *Certain Stilbenic Brightening Agents from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012).

²⁴ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 12-15.

dropped below the petition margin of 18.89 percent, and, thus, we assigned this petition rate to Ferriera Valsider as AFA.²⁵ We corroborated this rate using the highest calculated dumping margin of any respondent in the investigation.²⁶

In this case, the only dumping margin in the petition is 18.89 percent, which continues to be higher than the final calculated dumping margin of 12.41 percent for Ferriere Nord, the only participating mandatory respondent. Moreover, we continue to find that this rate can be corroborated within the meaning of section 776(c) of the Act.²⁷ Therefore, we continue to apply the petition rate to Ferriera Valsider as AFA.

V. Margin Calculations

We made the following revisions from the *Preliminary Determination* and *Amended Preliminary Determination*:

1. As discussed in Comment 1, we revised Ferriere Nord's and Acciaierie di Verona S.p.A. (AdV's)²⁸ general and administrative ratios to reflect minor corrections from the cost verification.²⁹
2. As discussed in Comment 2, we revised Ferriere Nord's and AdV's indirect selling expenses to reflect minor corrections from the sales verification.³⁰
3. As discussed in Comment 4, we included an inadvertently omitted home market sale from Ferriere Nord's affiliate, SIAT, to its customer in Italy.³¹

VI. Discussion of Issues

Comment 1: Revised General & Administrative Expenses

*Ferriere Nord's Comments:*³²

- Commerce should use the revised general and administrative (G&A) expense ratios submitted with its first day corrections at verification for the final determination, rather than the G&A expense rates used in the *Preliminary Determination*.

²⁵ See *Amended Preliminary Determination*, and Ministerial Error Memo at 5.

²⁶ See *Amended Preliminary Corroboration Memorandum*.

²⁷ See the Memorandum to the File entitled, "RE: Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Corroboration for the Final Determination," dated March 19, 2018 (Final Corroboration Memorandum).

²⁸ In the *Preliminary Determination*, we treated Ferriere Nord, AdV, and SIAT S.p.A. (SIAT) as a single entity. No party commented on this issue. For the final determination, we will continue to treat them as a single entity.

²⁹ See Memorandum, "Verification of the Cost Response of Ferriere Nord in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy," dated January 5, 2018 (Cost Verification Report) at exhibit 1.

³⁰ See Memorandum, "Verification of the Sales Responses of Ferriere Nord in the Antidumping Investigation of Carbon and Alloy Wire Rod from Italy," dated January 10, 2018 (Sales Verification Report).

³¹ See the Sales Verification Memo at 2.

³² See Ferriere Nord's Case Brief at 2-4.

- The G&A expense rates used in the *Preliminary Determination* incorrectly included certain expenses from 2015 (*i.e.*, prior to the POI), as well as some misclassified selling expenses.

*The Petitioners' Rebuttal Comments:*³³

- The totality of circumstances surrounding these minor corrections as well as the errors that were discovered at verification (*see* Comment 4 below) indicate that Commerce should not alter its preliminary adjustments to the G&A expense rate calculations for Ferriere Nord and AdV.

Commerce's Position:

Pursuant to the instructions in the verification agenda, at the beginning of verification, Ferriere Nord presented corrections to its reported G&A expenses as first day minor corrections, claiming it had discovered the errors when preparing for verification. We verified how Ferriere Nord made the reporting errors and agree that the errors were the result of manual misclassifications of expenses between G&A expenses and selling expenses. We also verified that the revised data submitted as minor corrections were accurate and supported by source documents.³⁴ Accordingly, we find it appropriate to accept, and to rely upon, these minor corrections.

With regard to the 2015 costs that we preliminarily included in Ferriere Nord's G&A expense ratio calculation in our *Preliminary Determination*, Ferriere Nord clarified that the costs were related to the production costs of products produced in the prior year. Specifically, Ferriere Nord acquired one of its collapsed entities, AdV, within the last month of its fiscal year (*i.e.*, December 2015), and elected to include the December 2015 production costs in the 2016 audited financial statements of the acquired company. The information we examined at verification supports what Ferriere Nord stated in its questionnaire responses with regard to these costs, and Ferriere Nord's reporting of its G&A expense ratio calculation excluded these costs.³⁵ In light of the clarification of the record offered at verification, we agree that these costs are associated with production of products produced prior to the POI, and thus they should be excluded from the reported costs in the calculation of Ferriere Nord's G&A expense ratio.

In conclusion, we note that the minor corrections presented at the cost verification were insignificant and clearly inadvertent misclassifications of expenses for reporting purposes. Further, the production costs and quantities at issue in its G&A expense ratio calculation related to products produced prior to the POI and, thus, should not be included in the reported costs. As such, for this final determination, we have reversed the preliminary adjustment to the G&A expenses to exclude the production costs related to products produced prior to the POI, and included Ferriere Nord's minor corrections presented at the cost verification.

³³ See Petitioner's Rebuttal Brief at 1.

³⁴ See Cost Verification Report at pages 3-4 and Exhibit CVE-1.

³⁵ See Sales Verification Report at 2.

Comment 2: Revised Selling Expenses

*Ferriere Nord's Comments:*³⁶

- Commerce should use the revised indirect selling expense calculations, consistent with its sales verification findings for indirect selling expense fields (*i.e.*, INDIRSH/DINDIRSU).

*The Petitioners' Rebuttal Comments:*³⁷

- Commerce should not accept any G&A expense or indirect selling expenses revisions provided at verification. Commerce should continue to rely on the *Preliminary Determination* calculations, as verification is not a time to provide new factual information or one-sided corrections to data.

Commerce's Position:

We agree with Ferriere Nord. At the cost verification, we accepted changes to Ferriere Nord's G&A expense ratio calculation, as discussed in Comment 1, above. Due to changes in Ferriere Nord's G&A calculations, Ferriere Nord's INDIRSH and DINDIRSU selling expenses were updated.³⁸ For the final determination, we will revise Ferriere Nord's indirect selling expense calculations to account for the minor corrections found at verification.

Comment 3: Ferriere Nord's Correction Letter

*Ferriere Nord's Comments:*³⁹

- On September 25, 2017, Ferriere Nord submitted a letter to Commerce providing new factual information containing, *inter alia*, a revised cost database and other revisions to previously submitted information.
- Commerce improperly rejected this information as unsolicited and untimely new factual information. It was filed within 30 days prior to the *Preliminary Determination* and was, therefore, timely submitted. Commerce should accept this submission for purposes of the final determination and make the corrections requested in that submission.

*The Petitioners' Rebuttal Comments:*⁴⁰

- Commerce correctly rejected Ferriere Nord's letter. The letter contained a revised cost dataset containing unsolicited data revisions that comprised untimely filed new factual information.

³⁶ See Ferriere Nord's Case Brief at 4.

³⁷ See Petitioner's Rebuttal Brief at 1-2.

³⁸ See Sales Verification Report at 2.

³⁹ See Ferriere Nord's Case Brief at 5-6.

⁴⁰ See Petitioner's Rebuttal Brief at 2-4.

Commerce's Position:

We disagree with Ferriere Nord and find that we correctly rejected from the record the new factual information it submitted on September 25, 2017. On that date, Ferriere Nord submitted a letter to Commerce providing a revised cost database and other revisions to previously submitted information.⁴¹ Ferriere Nord contends that its submission was timely pursuant to 19 CFR 351.301(c)(5), because it was filed within 30 days prior to the scheduled date of the *Preliminary Determination* (i.e., October 24, 2017). However, subsection (c)(5) of that regulation applies only “to factual information other than that described in § 351.102(b)(21)(i)-(iv).” That regulation, in turn, describes factual information “submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party.”⁴²

Commerce found that the revised cost database and other revisions were responsive to Commerce's supplemental questionnaire dated August 2, 2017 and, thus, consisted of information that should have been submitted with the remainder of Ferriere Nord's response to that supplemental questionnaire.⁴³ Indeed, Ferriere Nord's case brief acknowledges that the September 25 submission consisted of “a revised cost database and revisions to previously-submitted information,” indicating that the submitted information was responsive to Commerce's prior questions to Ferriere Nord.⁴⁴ As a result, the factual information in Ferriere Nord's September 25 submission was described by section 351.102(b)(21)(i), and section 351.301(c)(5) explicitly does not govern the timeliness of submission of factual information described by section 351.102(b)(21)(i). Instead, Ferriere Nord's September 25 submission was governed by section 351.301(c)(1)(ii), which governs supplemental questionnaire responses, and states that such responses are “due on the date specified by the Secretary.” Commerce's supplemental questionnaire dated August 2, 2017, was due on or before August 18, 2017,⁴⁵ and thus the revisions submitted on September 25, 2017, were untimely pursuant to 19 CFR 351.301(c)(1)(ii).

Ferriere Nord contends that its submission was “new factual information that was placed on the record as such for the first time” on September 25, 2017, and was thus not “responsive” to Commerce's prior questionnaires. We understand Ferriere Nord to suggest that only information

⁴¹ See Commerce's August 14, 2017, letter to Ferriere Nord.

⁴² 19 CFR 351.102(b)(21)(i).

⁴³ See Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord Section D Supplemental Questionnaire, dated August 2, 2017); see also Antidumping Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord Supplemental Section D Questionnaire, dated August 21, 2017. Commerce stated in its letter that the information submitted by Ferriere Nord on September 25, 2017, “was responsive to the Department's supplemental questionnaire dated August 21, 2017.” See Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Extension of Supplemental Section D of the Department's Antidumping Questionnaire, dated August 14, 2017. This date included an inadvertent typographical error. Commerce's supplemental section D questionnaire was dated August 2, 2017, and the final bracketing version of Ferriere Nord's response was submitted on August 21, 2017.

⁴⁴ See Ferriere Nord's Case Brief at 5.

⁴⁵ See Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Extension of Supplemental Section D of the Department's Antidumping Questionnaire, dated August 14, 2017.

⁴⁵ See *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246, 21247 (April 10, 2013).

formally submitted in response to a questionnaire would be “responsive” to a questionnaire. However, if section 351.301(c)(5) were intended to apply to any information that was placed on the record for the first time, regardless of whether that information had been requested by Commerce earlier in the proceeding, it would render Commerce’s other deadlines, set forth in section 351.301(c)(1)-(4), completely superfluous. For example, under Ferriere Nord’s interpretation, a respondent could first file its response to a Commerce questionnaire exactly 30 days prior to the scheduled date for the preliminary determination, well after the deadline for submission of the questionnaire response set by Commerce, and yet that submission would be deemed timely since it had not previously been submitted on the record. Such an interpretation would negate subsections (1)-(4) of 19 CFR 351.301(c), and run contrary to Commerce’s express intention, when modifying 19 CFR 351.301, to require the submission of certain types of information earlier in the proceeding.⁴⁶

Accordingly, we continue to find that the information contained in Ferriere Nord’s September 25 submission should have been submitted in response to Commerce’s August 2 supplemental questionnaire, and, thus, the information it contained was “responsive” to that questionnaire and satisfied the definition of 19 CFR 351.102(b)(21)(i). As a result, Ferriere Nord’s September 25 submission was governed by the deadline set by Commerce under 19 CFR 351.301(c)(1)(ii), rather than the deadline set under section 351.301(c)(5), and, consistent with 19 CFR 351.301(c)(5), we rejected that submission from the record. Because we continue to find that that information was untimely and properly rejected, we will not consider it for the purpose of this final determination. However, we note that, notwithstanding Ferriere Nord’s untimely revisions to its cost database, we are continuing to rely on other cost information provided to Commerce by Ferriere Nord, as discussed in the *Preliminary Determination, Amended Preliminary Determination*, and this final determination. This other information was timely submitted and verified, and so we have no reason to doubt its reliability for purposes of this final determination.

Comment 4: Correction of Errors Discovered at Verification

*The Petitioners’ Comments:*⁴⁷

- Commerce, during its cost verification, examined the calculation of the reported variable and fixed overhead costs in the cost build-ups of the products produced at the Ferriere Nord facility. It found errors in the calculation of production hours used to allocate the variable (VOH) and fixed overhead (FOH) costs to specific products, and also that the allocation percentages used for calculating VOH and FOH costs for the melt-shop costs were transposed.
- As AFA, Commerce should multiply all costs as relied upon in the *Preliminary Determination* by a factor to account for the multiple failures to report complete and accurate overhead costs across products.

⁴⁶ See *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246, 21247 (April 10, 2013).

⁴⁷ See Petitioner’s Case Brief at 3.

- Commerce should maintain its adjustments to Ferriere Nord's and AdV's G&A costs from the *Preliminary Determination*. Commerce should use INDIRSH/DINDIRSU calculated in the *Preliminary Determination* for the final determination.
- Commerce should multiply all home-market sales by a factor to account for the price effect of missing metric tons of sales made by SIAT in the home market to a customer.

*Ferriere Nord's Rebuttal Comments:*⁴⁸

- Commerce should accept all Ferriere Nord's verification corrections which were presented to Commerce and fully verified as accurate and complete. There were no systematic errors and any errors were minor and were easily corrected. Hence, the errors were immaterial and is not grounds for facts available.

Commerce's Position:

We disagree with the petitioners that the errors reported and/or discovered at verification were significant or pervasive enough to call into question Ferriere Nord's cooperation in this proceeding, such that the application of facts available with an adverse inference would be warranted. Thus, as discussed above in Comment 1, we have incorporated the minor corrections presented on the first day of verification regarding the G&A and selling expenses in the final determination. In addition, as discussed in Comment 1, we have reversed the adjustment to the G&A expenses to exclude the production costs related to products produced prior to the POI. Further, we find that the two minor discoveries found at the cost verification, related to the variable and fixed overhead costs, do not warrant the application of partial AFA. Contrary to the petitioners' contention, the application of facts available with an adverse inference is not warranted in this case because there is no basis to conclude that Ferriere Nord failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information, pursuant to section 776(b) of the Act.

The errors found at verification in the reported VOH and FOH costs included small differences between the production hours shown in the production system and the production hours shown in the worksheet used to allocate conversion costs to specific products for reporting purposes. In addition, Commerce found a transposition error, in the same allocation worksheet, between the VOH and FOH percentages used to allocate conversion costs at the melt shop to specific products.⁴⁹ Neither of these errors affected the integrity of the responses; these inaccuracies occurred due to an inadvertent mistake in the manual entry of data from the production system to the allocation worksheet. Ferriere Nord was able to demonstrate and provide corrected information that we verified. Therefore, Commerce has used the corrected, verified information for this final determination.⁵⁰ We disagree that these minor issues indicate that Ferriere Nord has failed to cooperate or to act to the best of its ability to comply with Commerce's requests for information, such that AFA would be warranted under section 776(b) of the Act.

⁴⁸ See Ferriere Nord's Rebuttal Brief at 2-4.

⁴⁹ See Cost Verification Report at page 2.

⁵⁰ See Memorandum entitled, "Re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination," dated concurrent with this memorandum (Cost Calculation Memorandum).

In addition to the above minor errors found at verification, Ferriere Nord's officials reported at the start of the sales verification that their sales database inadvertently omitted a single sale made by SIAT, an entity affiliated with Ferriere Nord, out of numerous sales in the home market.⁵¹ This sale comprised an insignificant amount of Ferriere Nord's total sales of wire rod in the home market. Furthermore, Ferriere Nord officials explained that in preparation for verification, it discovered that Ferriere Nord inadvertently omitted SIAT's single sale from its home market sales reporting. Thus, although we agree with the petitioners that this sale should be taken into account for Ferriere Nord's final margin calculation, we disagree that the omission of this small sale, individually or in conjunction with the other minor errors found at verification, indicates that Ferriere Nord has failed to cooperate in this proceeding. At verification, after discovering this omitted sale, we examined and verified the information related to this sale necessary to incorporate the sale into our calculations. Accordingly, we are relying on the verified information regarding this sale as part of this final determination.

Thus, as discussed in Comments 1 and 2, above, we accepted Ferriere Nord's corrections the first day of the sales and costs verifications as minor corrections. We verified the accuracy of the information presented in the minor corrections at verification. We are also accounting for all other minor discrepancies discovered at verification, including the VOH and FOH percentages, and the omitted sale.⁵²

⁵¹ See Sales Verification Report at 2.

⁵² See Memorandum entitled, "Final Determination Analysis of Data Submitted by Ferriere Nord S.p.A. in Carbon and Alloy Steel Wire Rod from Italy," dated concurrent with this memorandum (Sales Calculation Memorandum).

VII. Recommendation

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



Agree

Disagree

3/19/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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