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Investigation
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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 Certain
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from
Italy

I. SUMMARY

The Department of Commerce (Commerce) determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). Commerce also determines that critical circumstances exist, in part, for certain Italian exporters and producers of cold-drawn mechanical tubing.

The petitioners in this investigation are ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co. USA, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. The two mandatory respondents in this investigation are: Dalmine, S.p.A. (Dalmine) and Metalfer, S.p.A. (Metalfer). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

We analyzed the comments submitted by the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the preliminary margin calculations for the respondents in this investigation. 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 investigation for which we received comments from interested parties.

- Comment 1: Whether Applying Partial AFA to Dalmine for the *Preliminary Determination* was Appropriate
- Comment 2: Whether Commerce Used Aberrational Values in the Application of Partial AFA to Dalmine for the *Preliminary Determination*
- Comment 3: Whether Commerce Had a Ministerial Error in the Program Calculating Dalmine's Margin for the *Preliminary Determination*
- Comment 4: Whether Commerce Properly Applied its Differential Pricing Methodology in Selecting Dalmine's Cash Deposit Rate
- Comment 5: Whether Commerce Can Rely on Dalmine's U.S. and Home Market Sales Responses
- Comment 6: Whether Commerce Can Rely on Dalmine's Cost Response for the Final Determination
- Comment 7: Whether Commerce Should Apply Total Adverse Facts Available to Dalmine for the Final Determination
- Comment 8: Commerce's Selection of the Total Adverse Facts Available Rate for Metalfer

II. BACKGROUND

On November 22, 2017, Commerce published the *Preliminary Determination* in the LTFV investigation of cold-drawn mechanical tubing from Italy.¹ On December 8, 2017, Metalfer withdrew its participation in the investigation as a mandatory respondent and informed Commerce of its intent not to participate in verification.² Commerce conducted the cost and sales verifications of Dalmine and its affiliated U.S. importer in Dalmine, Italy, and Houston, Texas, between December 12, 2017 and February 13, 2018.³ On March 2, 2018, Metalfer filed its case brief.⁴ On March 5, 2018, the petitioners and Dalmine filed case briefs.⁵ The petitioners and Dalmine filed rebuttal briefs on March 8, 2018.⁶

¹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Preliminary Affirmative Determination of Sales at Less than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination and Extension of Provisional Measures*, 82 FR 55561 (November 22, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Metalfer's Letter, "Metalfer's Withdrawal of Participation as Mandatory Respondent," dated December 8, 2017 (Metalfer's Withdrawal).

³ Commerce Letter, re: Verification Schedule, dated December 21, 2017; see also Memorandum, "Verification of Dalmine S.p.A., in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy," dated February 22, 2018 (Dalmine Verification Report); Memorandum, "Verification of Tenaris Global Services U.S.A. in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy," dated February 22, 2018 (Tenaris USA Verification Report); Memorandum, "Verification of the Cost Response of Dalmine S.p.A. in the Antidumping Duty Investigation of Cold-Drawn Mechanical Tubing from Italy," dated February 21, 2018.

⁴ Metalfer's Letter, "Metalfer's Case Brief," dated March 2, 2018 (Metalfer's Case Brief).

⁵ Petitioners' Letter, "Case Brief of Petitioners," dated March 5, 2018 (Petitioners' Case Brief); Dalmine's Letter, "Case Brief of Dalmine S.p.A. and Tenaris Global Services U.S.A. Corporation," dated March 5, 2018 (Dalmine's Case Brief).

⁶ Petitioners' Letter, "Petitioners' Rebuttal Brief for Dalmine S.p.A.," dated March 8, 2018 (Petitioners' Dalmine Rebuttal); Petitioners' Letter, "Petitioners' Rebuttal Brief for Metalfer S.p.A.," dated March 8, 2018 (Petitioners'

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cold-drawn mechanical tubing from Italy. In the *Preliminary Determination*,⁷ we set a separate briefing schedule on scope issues for interested parties.⁸ Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum.⁹ On December 4, 2017, the petitioners withdrew a portion of their comments regarding the scope language.¹⁰ Commerce addressed all scope comments received in the Final Scope Decision Memorandum.¹¹ For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

IV. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

Commerce preliminarily determined that critical circumstances existed for Dalmine and Metalfer, but not for all other producers or exporters based on trade data submitted between December 2016 and September 2017.¹² No interested party filed arguments regarding our preliminary critical circumstances final determination. However, because critical circumstances were alleged in this case and because we have made changes to the *Preliminary Determination*, for this final determination we have re-evaluated whether critical circumstances exist, in accordance with section 735(a)(3) of the Act.

In determining whether a history of dumping and material injury exists, Commerce generally considers current and previous antidumping orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.¹³

Metalfer Rebuttal); Dalmine's Letter, "Rebuttal Brief of Dalmine S.p.A. and Tenaris Global Services U.S.A. Corporation," dated March 8, 2018.

⁷ See *Preliminary Determination*.

⁸ *Id.*, 82 FR at 55562. The scope case briefs were due five days after the publication of the preliminary LTFV determinations for China, Germany, India, Italy, Korea, and Switzerland in the *Federal Register*, and the rebuttal briefs were due three days after the due date for the scope case briefs, *i.e.*, Monday, November 27, 2017 and Thursday, November 30, 2017.

⁹ See Memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determinations," dated November 15, 2017 (Preliminary Scope Decision Memorandum).

¹⁰ See the petitioners' letter, "Certain Cold-Drawn Mechanical Tubing from Germany et al. – EN-10305-3," dated December 4, 2017.

¹¹ See Memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Decision Memorandum for the Final Determinations: Final Scope Decision Memorandum," dated December 4, 2017 (Final Scope Decision Memorandum).

¹² See *Preliminary Determination*, 82 FR at 55561; see also PDM at 18-21.

¹³ See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*Carbon Steel Pipe Final Determination*); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite*

Pursuant to section 735(a)(3)(A)(ii), Commerce examines whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for export price (EP) sales or 15 percent or more for constructed export price (CEP) sales sufficient to meet the quantitative threshold to impute knowledge of dumping.¹⁴

We must next determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and that there was likely to be material injury by reason of such sales. For Dalmine and Metalfer, we have assigned an AFA rate of 68.95 percent, the highest margin in the petition, which we have corroborated to the extent practicable, as noted below. For all-other producers or exporters of subject merchandise, we are assigning a rate of 47.87 percent. Because these dumping margins exceed the threshold sufficient to impute knowledge of dumping, these rates provide a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to importers. Accordingly, for Dalmine, Metalfer, and “all-other” producers or exports of cold-drawn mechanical tubing, we continue to find that the statutory criteria of section 735(a)(3)(A) of the Act have been satisfied.

On October 23, 2017, Commerce requested that Dalmine and Metalfer report their respective monthly quantity and value data for subject merchandise shipped to the United States, beginning with October 2016, through November 2017.¹⁵ Dalmine reported all relevant shipment data available at the time, and necessarily updated their reported data with more recent monthly totals, as they became available during the proceeding.¹⁶ Metalfer reported all relevant shipment data available at the time, but failed to update their reported data with more recent monthly totals after withdrawing from the investigation.¹⁷

It is Commerce’s practice to conduct its massive imports analysis for mandatory respondents based on the experience of the investigated companies, using the reported monthly shipment data for the base and comparison periods.¹⁸ However, as noted herein, Commerce has determined

Electrodes from the People’s Republic of China, 74 FR 2049, 2052-53 (January 14, 2009) (*SDGE Final Determination*).

¹⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

¹⁵ See Commerce Letter, re: Request for Monthly Quantity and Value Shipment Data, dated October 23, 2017.

¹⁶ See Dalmine’s Letter, “Response to Request for Quantity and Value Data,” dated October 30, 2017; Dalmine’s Letter, “Response to Request for Quantity and Value Data,” dated November 15, 2017; Dalmine’s Letter, “Response to Request for Quantity and Value Data,” dated December 15, 2017.

¹⁷ See Metalfer’s Letter, “Metalfer’s Monthly Quantity and Value Data for Shipment to the United States for October 2016 through September 2017,” dated October 30, 2017; Metalfer’s Letter, “Metalfer’s October 2017 Quantity and Value Data for Shipment to the United States,” dated November 15, 2017.

¹⁸ See, e.g., *Carbon Steel Pipe Final Determination*, 73 FR at 31972-73; *SDGE Final Determination*, 74 FR at 2052-53.

that Dalmine and Metalfer provided information that cannot be verified and failed to cooperate to the best of their ability in responding to Commerce's requests for information, and so have determined that total adverse facts available is warranted.¹⁹ Accordingly, we find that there were massive imports of subject merchandise from Dalmine and Metalfer and determine that the statutory criterion of section 735(a)(3)(B) is met. With respect to "all-other" producers and exporters, we have not changed our analysis from the *Preliminary Determination*, and continue to find that the Global Trade Atlas shipment data do not demonstrate a massive surge in imports for "all other" producers/exporters, as defined by 19 CFR 351.206(h).

As a result, in accordance with section 733(e)(1) of the Act, for this final determination we find that critical circumstances exist for Dalmine, Metalfer, but not for "all other" producers/exporters of cold-drawn mechanical tubing in Italy.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments reviewed from parties and discoveries at verification, we are no longer calculating a weighted-average dumping margin for either respondent and are instead applying total adverse facts available (AFA) in determining each respondent's margin.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.²⁰

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among 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. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to

¹⁹ See the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum.

²⁰ Under the Trade Preferences Extension Act of 2015, numerous amendments to the Antidumping Duty (AD) and Countervailing Duty (CVD) law were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated 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).

effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”²¹ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²²

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 or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.²³ Secondary information is “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 concerning the subject merchandise.”²⁴ It is Commerce’s practice to consider information to be corroborated if it has probative value.²⁵ In analyzing whether information have probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.²⁶ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²⁷ 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.

For the reasons explained below, Commerce determines that the application of facts otherwise available, with an adverse inference, is appropriate, pursuant to sections 776(a) and (b) of the Act, in determining Dalmine’s and Metalfer’s final dumping margins.

A. Application of Facts Otherwise Available to Dalmine

As discussed in Commerce’s *Preliminary Determination*, Dalmine’s U.S. sales database and COP database lacked data in the form and manner requested by Commerce for certain of Dalmine’s movement and warehousing expenses incurred on its U.S. sales and for certain COP data (e.g., the variance amount).²⁸ Accordingly, Commerce preliminarily determined that necessary information was not on the record and Dalmine failed to provide requested information by the deadlines for the submission in the form and manner requested by Commerce.²⁹

²¹ See, e.g., *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792, 55796 (August 30, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA), at 870.

²³ See 19 CFR 351.308(d).

²⁴ See, e.g., SAA at 870.

²⁵ *Id.*

²⁶ See, e.g., SAA at 869.

²⁷ See SAA at 869-70.

²⁸ See PDM at 16-17.

²⁹ *Id.*; see also Memorandum, “Analysis for the Preliminary Determination of the Less Than Fair Value

Therefore, we preliminarily determined, pursuant to sections 776(a)(1) and (2)(B) of the Act, that the use of partial facts available with an adverse inference was warranted in determining certain of Dalmine's movement and warehousing expenses incurred on U.S. sales.³⁰

On January 23, 2018 and January 29, 2018, Commerce issued outlines to Dalmine, identifying all areas it intended to review and verify during its verification of the sales questionnaire responses of Dalmine and Tenaris Global Services U.S.A. Corporation (Tenaris USA), which is Dalmine's affiliated U.S. importer.³¹ Commerce's letter outlined clear instructions as to the extent and depth of this exercise, and its expectations regarding the process and preparedness of the respondent.³² Specifically, the letter indicated that Commerce would "not accept as minor corrections, verify, or review in any manner information presented during verification" regarding the movement and warehousing expenses for Dalmine's U.S. sales for which we had applied partial AFA.³³ Because Commerce did not verify any information regarding Dalmine's U.S. movement and warehousing expenses, no verified information exists on the record regarding these expenses. Thus, in accordance with sections 776(a)(1) and (2)(B) and 776(a)(2)(D) of the Act, we continue to find that the use of facts available is warranted for Dalmine's U.S. movement and warehousing expenses.

During verification, Dalmine also presented as minor corrections information regarding its movement and warehousing expenses for its home market sales, rather than for its U.S. sales. Commerce determined that this information represented a significant departure from Dalmine's questionnaire responses and was not minor in nature.³⁴ As such, Commerce did not accept this information and also did not accept any information related to Dalmine's home market movement and warehousing expenses in the verification exhibits.³⁵ Accordingly, Commerce did not verify the home market movement and warehousing expenses provided in Dalmine's questionnaire responses.³⁶

Additionally, despite Commerce's detailed and specific instructions in the verification outline, including documentation required to complete the verification process successfully and an opportunity to submit minor corrections at the outset of verification (other than corrections related to certain U.S. movement and warehousing expenses), Commerce discovered other information at verification that was materially different from Dalmine's questionnaire responses.³⁷ Specifically, Commerce discovered: (1) Dalmine inconsistently reported payment

Investigation of Certain Cold-drawn Mechanical Tubing from Italy: Dalmine S.p.A.," dated November 15, 2017.

³⁰ *Id.*

³¹ See Commerce Letter, "Verification Agenda," dated January 23, 2018 (Dalmine Verification Agenda); Commerce Letter, "Verification Agenda," dated January 29, 2018 (Tenaris USA).

³² *Id.*

³³ *Id.* at 6; see also *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1334 (CIT 2002) (holding Commerce has the discretion to reject information that constitutes "substantial revisions" to the record (*Reiner Brach GmbH*); *Am. Alloys, Inc. v. United States*, 30 F.3d 1469, 1475 (Fed. Cir. 1994) ("the statute gives Commerce wide latitude in its verification procedures.") (*Am. Alloys, Inc.*).

³⁴ See Dalmine Verification Report at 2.

³⁵ *Id.*; see also *Reiner Brach GmbH*, 206 F. Supp. 2d at 1334; *Am Alloys, Inc.*, 30 F.3d at 1475.

³⁶ See Dalmine Verification Report at 2.

³⁷ See Tenaris USA Verification Agenda; see also Tenaris USA Verification Report at 2.

dates for its CEP sales, at times in contradiction of its questionnaire responses affecting its credit expense reporting; (2) Dalmine reported the payment date and sales process for its EP sales in contradiction of its questionnaire responses affecting its credit expense reporting; and (3) documentation related to certain additional U.S. warehousing expenses (unrelated to those to which Commerce previously applied partial AFA at the *Preliminary Determination*) did not conform to information on the record. Accordingly, we find that information reviewed at verification was explicitly contrary to Dalmine's questionnaire responses, and as such Commerce was unable to verify the information in Dalmine's questionnaire responses.

Thus, because Dalmine provided information that could not be verified, we find, in accordance with section 776(a)(2)(D) of the Act, that the use of facts otherwise available is warranted. Because Commerce could not verify Dalmine's U.S. and home market movement and warehousing expenses, the payment dates for Dalmine's CEP sales, the payment date and sales process for Dalmine's EP sales, and certain additional warehousing expenses, – information which is required in order for Commerce to make the appropriate adjustments in calculating normal value, EP, and CEP – there are pervasive deficiencies in Dalmine's reported data. Because these deficiencies cut across significant portions of Dalmine's data, Commerce would not be able to use partial facts available without undue difficulty. Consequently, we find that the use of total facts available is warranted.

B. Application of Facts Otherwise Available to Metalfer

Pursuant to section 776(a)(2)(D) of the Act, application of facts otherwise available is appropriate when a respondent's information cannot be verified. Here, Metalfer withdrew from the investigation and did not participate in a verification of its questionnaire responses.³⁸ As such, none of the information provided by Metalfer was verified, and the application of total facts available is appropriate.

C. Application of Facts Otherwise Available, with Adverse Inferences, to Dalmine

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) clarified that the “best of its ability” standard of section 776(b) of the Act means to put forth maximum effort to provide “full and complete answers to all inquiries.”³⁹ Further, the court in *Nippon Steel*, noted that “while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.”⁴⁰

In the *Preliminary Determination*, we determined that the application of adverse facts available was warranted with respect to certain of Dalmine's U.S. movement and certain warehousing expenses.⁴¹ We continue to find Dalmine failed to cooperate by not acting to the best of its ability to comply with requests for information in the investigation, within the meaning of section 776(b) of the Act because it failed to provide necessary expense data in the form and manner

³⁸ See Metalfer's Withdrawal.

³⁹ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁴⁰ *Id.*

⁴¹ See PDM at 18.

required by Commerce. Therefore, we continue to find that the use of adverse facts available is warranted with respect to these U.S. movement and certain warehousing expenses.

However, the record also demonstrates that Dalmine failed to cooperate to the best of its ability in other respects. For instance, Dalmine failed to timely provide home market movement and warehousing expenses in the form and manner requested, as evidenced by its attempt to provide significant alterations to the previously reported data at verification. We find that Dalmine would have been able to provide this information if it had made the appropriate effort in preparing its questionnaire responses.⁴² Commerce issued Dalmine an extension to provide information in response to Commerce's initial questionnaire with respect to its home market sales.⁴³ Commerce additionally issued multiple supplemental questionnaires with respect to Dalmine's home market sales information,⁴⁴ and further, granted multiple extensions with respect to those supplemental questionnaires.⁴⁵ At no time did Dalmine indicate that it had difficulties complying with Commerce's requests for information related to its home market movement and warehousing expenses, in accordance with section 782(c) of the Act. In fact, as mentioned in Dalmine's Verification Report, Dalmine did initially provide information regarding these expenses to Commerce, but the information presented at verification as minor corrections constituted a significant departure from Dalmine's questionnaire responses.⁴⁶

Similarly, Commerce discovered significant inconsistencies between the reported payment date for Dalmine's CEP sales, reported payment date and sales process for its EP sales, and certain reported U.S. warehousing expenses and the information examined at verification; the extent of these inconsistencies demonstrates that Dalmine failed to cooperate by not acting to the best of its ability to comply with requests for information in the investigation. Dalmine's inconsistent reporting reflects the inattentiveness, carelessness, and/or inadequate record keeping that *Nippon Steel* does not condone.⁴⁷ Commerce's verification agenda clearly detailed how to prepare for this process and what the verifiers expected to review.⁴⁸ Moreover, as noted above, Commerce afforded Dalmine opportunities to correct any minor errors at the outset of each respective verification. We find that Dalmine would have been able to provide this information if it had made the appropriate effort when it received Commerce's questionnaires.

Because Dalmine failed to provide accurate information related to all home market movement expenses, all payment dates, and certain sales process information, we find that Dalmine failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act, and thus find that the application of adverse inferences is appropriate in selecting from among the facts available for determining Dalmine's final dumping margin.

⁴² See Dalmine Verification Report at 2.

⁴³ See, Memorandum, "Dalmine S.p.A. Sections B, C, and D Extension Request," dated August 4, 2017.

⁴⁴ See, e.g., Commerce Letter, "Supplemental Section BC Questionnaire," dated September 25, 2017.

⁴⁵ See, e.g., Memorandum, "Dalmine S.p.A. 2nd Supplemental Section B Extension Request," dated October 4, 2017.

⁴⁶ See Dalmine Verification Report at 2.

⁴⁷ See generally Dalmine Verification Report.

⁴⁸ See Dalmine Verification Agenda; see also Tenaris USA Verification Agenda.

For a more detailed discussion on Commerce's application of total AFA to Dalmine, *see* Comments 5 and 7 below.

D. Application of Facts Otherwise Available, with Adverse Inferences to Metalfer

Commerce finds that Metalfer has not acted to the best of its ability to comply with the investigation by withdrawing from the investigation and refusing to allow Commerce to verify its information. This failure has precluded Commerce from performing the verification of the reported information, which in investigations is required by section 782(i) of the Act, and thus we are not able to complete the analysis necessary to calculate weighted-average dumping margins for Metalfer based on their own verified data. Therefore, in accordance with section 776(b) of the Act, we find that the application of adverse inferences is appropriate in selecting from among the facts available for determining Metalfer's final dumping margin.

E. Selection and Corroboration of AFA Rates

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 rate of any respondent in the investigation.⁴⁹ Because Commerce is not calculating a rate for any respondent in this investigation, consistent with our practice, we are selecting the highest dumping margin alleged in the petition, 68.95 percent, as the AFA rate applicable to Dalmine and Metalfer.⁵⁰

Thus, because the AFA rates applied to Dalmine and Metalfer are derived from the petition and, consequently, are based upon secondary information, Commerce must corroborate the rates to the extent practicable. We determined that the petition margins are reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of these preliminary determinations.⁵¹

Specifically, we examined evidence supporting the calculations in the petition to determine the probative value of the dumping margins alleged in the petition for use as AFA for purposes of this final determination. During our pre-initiation analysis, we also examined the key elements of the alleged dumping margin calculations, *i.e.*, EP, constructed value (CV), and normal value (NV).⁵² Further, we also examined information from various independent sources provided either in the petition or, on our request, in the supplement to the petition that corroborates key elements of the EP, NV, and CV calculations used in the petition to derive the dumping margins alleged in the petition.⁵³

⁴⁹ *See Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁰ *See* Petitioner's Letter, "Petitioners' Response to Supplemental Questions Concerning Antidumping Duty Petition," dated April 28, 2017 at Exhibit AD-IT-SUPP-6.A (Petition Supplement).

⁵¹ *See* Memorandum, "Antidumping Duty Investigation Initiation Checklist: Certain Cold-drawn Mechanical Tubing of Carbon and Alloy Steel from Italy," dated May 9, 2017 (Initiation Checklist).

⁵² *Id.*

⁵³ *Id.*

Based on our examination of the information, as discussed in detail in Initiation Checklist, we consider the petitioners' EP, NV and CV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the U.S. price, NV, and CV calculations provided in the petition, based on our examination of the aforementioned information, we preliminarily consider the EP, NV, and CV calculations from the petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margins alleged in the petition are reliable for the purposes of these investigations.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with new section 776(d)(3) of the Act, 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. Because there are no other participating cooperative respondents in this investigation, we relied upon the dumping margins alleged in the petition, which is the only information regarding the cold-drawn mechanical tubing industry in Italy reasonably at Commerce's disposal. Furthermore, as noted in *GOES from China*, in which the only mandatory respondent also received AFA, "there was no need to review any additional documentation outside of what was submitted in the petition considering such sources of information fulfill our requirements for corroboration of secondary information."⁵⁴

Accordingly, Commerce determines that the dumping margins alleged in the petition have probative value, and Commerce has corroborated the AFA rate of 68.95 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative mandatory respondents.

F. ALL-OTHERS RATE

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

⁵⁴ See *Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES from China*), and accompanying Issues and Decision Memorandum at 20; see also *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with Commerce that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that "[t]he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition").

the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As indicated above, Dalmine and Metalfer are the only mandatory respondents in this investigation, and their estimated dumping margins are determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's practice under these circumstances has been to assign, as the "all-others" rate, a simple average of the petition rates.⁵⁵ Consistent with its practice, Commerce is using the simple average of the three dumping margins provided in the petition (37.08 percent, 37.59 percent, and 68.95 percent),⁵⁶ which is 47.87 percent, as the "all-others" rate for entities not individually examined in the investigation.⁵⁷

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether Applying Partial AFA to Dalmine for the *Preliminary Determination* was Appropriate

Commerce's Position:

Commerce finds that this issue is moot. As discussed above, we have determined that the application of total adverse facts available to Dalmine is appropriate for this final determination. Accordingly, Commerce has not addressed the interested parties' comments.

Comment 2: Whether Commerce Used Aberrational Values in the Application of Partial AFA to Dalmine for the *Preliminary Determination*

Commerce's Position:

Commerce finds that this issue is moot. As discussed throughout, we have determined that the application of total adverse facts available to Dalmine is appropriate for this final determination. Accordingly, Commerce has not addressed the interested parties' comments.

⁵⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁶ See Petition Supplement at Exhibit AD-IT-SUPP-6.A and Exhibit AD-IT-SUPP-6.B.

⁵⁷ See *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014).

Comment 3: Whether Commerce Had a Ministerial Error in the Program Calculating Dalmine's Margin for the *Preliminary Determination*

Commerce's Position:

Commerce finds that this issue is moot. As discussed throughout, we have determined that the application of total adverse facts available to Dalmine is appropriate for this final determination. Accordingly, Commerce has not addressed Dalmine's comments.

Comment 4: Whether Commerce Properly Applied its Differential Pricing Methodology in Selecting Dalmine's Cash Deposit Rate

Commerce's Position:

Commerce finds that this issue is moot. As discussed throughout, we have determined that the application of total adverse facts available to Dalmine is appropriate for this final determination. Accordingly, Commerce has not addressed Dalmine's comments.

Comment 5: Whether Commerce Can Rely on Dalmine's U.S. and Home Market Sales Responses

Petitioners' Case Brief

- During verification, Commerce discovered information regarding the payment process for certain EP sales that indicates Dalmine inaccurately reported the sales and payment process for those sales, and as such, the record information is unreliable and unusable because the sales should have been classified as CEP sales.⁵⁸
- During verification, Commerce discovered Dalmine inconsistently reported payment date in its U.S. sales database, and as a result, cannot rely on payment date in the U.S. sales database for its margin calculation.⁵⁹
- Commerce's should continue to find, as it did in the *Preliminary Determination*, that Dalmine's U.S. movement expenses and certain warehousing expenses are not reported accurately on the record.⁶⁰
- Commerce was correct in not verifying Dalmine's inaccurate U.S. movement expenses and certain warehousing expenses, and as such, the record continues to be devoid of accurate data for these expenses.⁶¹
- At verification, Commerce learned that Dalmine failed to accurately report four additional types of sales expenses related to U.S. and home market sales, and subsequently, did not verify these expenses. As such, the record does not contain verified information for these four expenses and Commerce cannot rely on Dalmine's reported values for its final determination.⁶²

⁵⁸ See Petitioners' Case Brief at 4-11.

⁵⁹ *Id.* at 11-13.

⁶⁰ *Id.* at 14-16.

⁶¹ *Id.*

⁶² *Id.* at 17.

- Dalmine informed Commerce at verification that it failed to report certain sales expenses for certain observations, and Commerce declined to verify this new information. Therefore, Commerce cannot rely on Dalmine's reported values for its final information.⁶³
- During verification, Commerce discovered that Dalmine's documentation related to warehousing expenses, discrete from those mentioned above, was inconsistent with Dalmine's questionnaire responses, and as such, those expenses are unverified and unreliable for the final determination.⁶⁴

Dalmine's Rebuttal Brief

- The information on the record that was verified by Commerce, regarding certain of Dalmine's EP sales, demonstrates that the sales were properly classified as CEP sales and can be relied upon.⁶⁵
- The involvement of Dalmine's U.S. affiliate, Tenaris USA, in certain of Dalmine's EP sales does not alone indicate these sales should have been reported as CEP sales.⁶⁶
- Dalmine properly reported the payment process for its EP sales and the source documentation provided at verification does not indicate any previously undisclosed parties, nor does it show the payment process was materially different from Dalmine's responses.⁶⁷
- Commerce should rely on Dalmine's reported payment dates for its EP and CEP sales.⁶⁸
- Commerce's decision to reject Dalmine's explanation for certain of its warehousing expenses at the *Preliminary Determination*, and apply partial AFA is not supported by the record, and Commerce should rely on this information for the Final Determination.⁶⁹
- Commerce's discovery at verification regarding warehousing expenses supports the information on the record and in fact shows that the warehousing expenses in the Section C database were conservatively overstated.⁷⁰

Commerce's Position:

Commerce finds, because Dalmine's home market and U.S. sales responses are incomplete and contain information that could not be verified, that this information is unreliable and unusable for the final determination. As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences," Dalmine failed to cooperate to the best of its ability by not providing complete and accurate responses to Commerce's requests for information by the deadlines for

⁶³ *Id.* at 17-18.

⁶⁴ *Id.* at 18-19.

⁶⁵ See Dalmine's Rebuttal Brief at 3-4 (citing *AK Steel v. United States*, 226 F.3d 1361, 1370 (Fed. Cir. 2000) ("The critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate.")).

⁶⁶ *Id.* at 4-5.

⁶⁷ *Id.* at 5-7.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.* at 11-12.

⁷⁰ *Id.* at 13-14.

submission in the form and manner requested by Commerce and Dalmine and by providing information that could not be verified. In *Fresh Garlic Producers*, the Court of International Trade (CIT) provides that “{w}here there are ‘pervasive and persistent deficiencies that cut across all aspects of the data,’ all of the reported information may be unreliable.”⁷¹

The deficiencies on the record that resulted from Dalmine’s failure to cooperate to the best of its ability affect every home market and U.S. sale.⁷² For instance, the record does not contain a single verified movement expense in either the home or U.S. market.⁷³ Commerce was also unable to verify all of Dalmine’s warehousing expenses in the home market and certain warehousing expenses in the U.S. market, as required by section 782(i) of the Act.⁷⁴ Additionally, while Dalmine argues that the payment and sales process for certain of its EP sales was consistent with and merely clarifies the record,⁷⁵ this claim is contradicted by Commerce’s findings in the verification report, which notes that information discovered at verification regarding the remittance of payment was inconsistent with the record.⁷⁶ Further, Commerce was unable to verify Dalmine’s U.S. payment date, which is used in the calculation of credit expenses.⁷⁷ Dalmine argues that Commerce should rely on its reported U.S. payment date, but it provides no justification for doing so given Commerce’s inability to verify payment date.⁷⁸

Therefore, every sale is affected by multiple deficiencies. As such, Commerce finds that the deficiencies on the record are “pervasive and persistent” and “cut across all aspects of the data.”⁷⁹ Accordingly, we find, in accordance with sections 776(a)(1), (2)(D) and 776(b) of the Act that all of Dalmine’s reported information is unreliable and that the use of total adverse facts available is warranted.

Comment 6: Whether Commerce Can Rely on Dalmine’s Cost Response for the Final Determination

Commerce’s Position:

Commerce finds that this issue is moot. As discussed throughout, we have determined that the application of total adverse facts available to Dalmine is appropriate for this final determination. Accordingly, Commerce has not addressed the interested parties’ comments.

⁷¹ See *Fresh Garlic Prod. Assoc. v. United States*, 121 F. Supp. 3d 1313, 1325 (CIT 2015) (*Fresh Garlic Producers*) (citing *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F. 3d 1333, 1348 (Fed. Cir. 2011)).

⁷² See Dalmine Verification Report at 2; Tenaris Verification Report at 2; see also PDM at 18-21.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Dalmine’s Rebuttal Brief at 11-12.

⁷⁶ See Tenaris Verification Report at 2; Commerce considers the issue of whether to treat these sales as CEP moot in consideration of our application of total AFA, and instead, merely notes that, pursuant to the Tenaris Verification Report, the information regarding the sales and payment process for these transactions discovered at verification is inconsistent with the record, and therefore deficient, as discussed above.

⁷⁷ *Id.*

⁷⁸ See Dalmine’s Rebuttal Brief at 8.

⁷⁹ See *Fresh Garlic Producers*, 121 F. Supp. 3d at 1325.

Comment 7: Whether Commerce Should Apply Total Adverse Facts Available to Dalmine for the Final Determination

Petitioners' Case Brief

- The totality of the circumstances demonstrate that Dalmine's home market and U.S. sales responses are inaccurate and misreported, and should be rejected by Commerce in its application of total AFA.⁸⁰
- The CAFC's standard in *Nippon* for the application of facts available has been met by Dalmine's failure to report necessary information to the Department both fully and accurately.⁸¹
- Commerce has satisfied the requirement of section 782(d) of the Act and provided Dalmine with multiple opportunities to cure the defects in its responses and Dalmine failed to do so.⁸²
- Commerce properly exercised its discretion by declining to accept new information at verification to cure the inconsistencies on the record.⁸³
- Commerce need only consider information on the record where the information is "(1) submitted by the established deadlines, (2) 'can be verified,' (3) 'is not so incomplete that it cannot' be used, (4) 'can be used without undue difficulties,' and (5) 'if the interested party has demonstrated that it acted to the best of its ability' in submitting {the} information," and here, Dalmine has not met all of these requirements.⁸⁴
- Commerce has previously found in its administrative review of *Large Power Transformers from Korea* that a pattern of behavior causing Commerce to repeatedly seek information a respondent should have supplied it initially is grounds for the application of AFA, and the same grounds exist here.⁸⁵
- It is the respondent's responsibility to build the record, and Commerce should not reconstruct the record when the respondent has failed to respond fully and accurately as here.⁸⁶
- Dalmine's combined misreporting and failure to report entirely demonstrates that Dalmine has not provided a good faith effort to respond to the Department's questions in this investigation.⁸⁷
- Commerce should apply as AFA the higher of the highest rate alleged in the petition or the highest calculated rate in the investigation.⁸⁸

⁸⁰ See Petitioners' Case Brief at 33.

⁸¹ *Id.* at 34 (citing *Nippon*, 337F.3d at 1381).

⁸² *Id.*

⁸³ *Id.* at 35.

⁸⁴ *Id.* (citing Section 782(e) of the Act; *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 789 (CIT 2001).

⁸⁵ *Id.* at 36-37 (citing *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017), and accompanying Issues and Decision Memorandum (*Large Power Transformers from Korea*)).

⁸⁶ *Id.* at 37 (citing *Shandong Huarong Ge. Group Corp. v. United States*, 27 CIT 1568, 1590-91 (CIT 2003).

⁸⁷ *Id.* at 38.

⁸⁸ *Id.*

Dalmine's Rebuttal Brief

- Application of total AFA to Dalmine, the same treatment as Metalfer who did not participate in verification, unlike Dalmine, is unfair on its face.⁸⁹
- Because Dalmine has committed substantial resources to the investigation and cooperated fully, the application of total AFA would be “illogical, results-oriented, and unsupported by the record,” as well as contrary to Commerce’s obligation not to reject timely, complete, and verified information in favor of total AFA.⁹⁰
- To the extent that Dalmine failed to provide certain information related to its expenses and payment dates and AFA is appropriate, partial AFA, not total AFA is appropriate.⁹¹
- Dalmine’s efforts to participate in this investigation differentiate it from respondents who refuse to participate in verification or refuse to respond to Commerce’s requests for information, and as such total AFA is not appropriate.⁹²

Commerce’s Position:

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences,” Dalmine failed to cooperate to the best of its ability by not providing complete and accurate responses to Commerce’s requests for information by the deadlines for submission in the form and manner requested by Commerce and Dalmine, additionally, provided information that could not be verified. Based on the facts of each proceeding involving a respondent’s failure to cooperate to the best of its ability, Commerce may apply either partial or total AFA.⁹³ The CAFC in *Mukand* provides that the “use of partial facts available is not appropriate when the missing information is core to the {AD} analysis and leaves little room for substitution of partial facts without undue difficulty.”⁹⁴ Additionally, where all of a respondent’s reported information is unreliable due to pervasive and persistent deficiencies, total AFA is appropriate.⁹⁵

In accordance with sections 772(c)(2)(A) and 772(f) of the Act, we normally adjust EP and CEP for movement expenses and direct selling expenses, including credit expenses as part of our AD analysis. We also make deductions from the home market starting price for movement expenses under section 773(a)(6)(B)(ii) of the Act as part of our AD analysis. Commerce’s ability to calculate an accurate EP, CEP, and NV is core to our analysis because the comparison of EP and CEP to the NV directly informs our decision whether sales were made at LTFV, and is the basis for our margin calculation.

Here, Dalmine’s failure to cooperate to the best of its ability has prevented Commerce from calculating an accurate EP, CEP, or NV for any reported transaction because Dalmine’s actions resulted in the lack of reliable, verified information on the record to make appropriate deductions in accordance with sections 772(c)(2)(A), 772(f), and 773(a)(6)(B)(ii) of the Act.

⁸⁹ See Dalmine’s Rebuttal Brief at 1.

⁹⁰ *Id.* at 27-28.

⁹¹ *Id.* at 28-29.

⁹² *Id.* at 30.

⁹³ See *Fresh Garlic Producers*, 1212 F. Supp. 3d at 1324.

⁹⁴ See *Mukand, Ltd. v. United States*, 767 F.3d 1300, 1307,1308 (Fed. Cir. 2014) (*Mukand*).

⁹⁵ See *Fresh Garlic Producers*, 1212 F. Supp. 3d at 1325.

As discussed above at “Comment 5,” the information necessary to make these deductions is missing for every reported home market and U.S. sale, making the substitution of partial facts available unduly difficult. Information related to home market and U.S. sales was furthermore properly not accepted by Commerce, and Commerce’s decision not to accept this information did not conflict with Commerce’s obligation to accept timely, complete, and verified information.

When a party submits substantially deficient responses, Commerce is under no obligation to use this information.⁹⁶ Additionally, where the request for information was clear and relates to some of the central issues in an antidumping case, such as an accurate U.S. sales database and supporting documentation, the CIT has found that the respondent has “a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.”⁹⁷ Further, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for Commerce to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).⁹⁸ Here, the requests for information were not unclear. Commerce states in its instructions that if the respondent has any questions concerning the completion and submission of the U.S. sales spreadsheet, to please contact the official in charge by no later than fourteen calendar days after the issuance of the questionnaire.⁹⁹

Accordingly, as discussed above in “Comment 5,” Commerce finds that because of the extent of the deficiencies and the information that could not be verified, that all of Dalmine’s reported information is unreliable for purposes of calculating a weighted-average dumping margin. As such, Commerce agrees with the petitioners, and has applied total adverse facts available to Dalmine because the deficiencies in the record amount to more than mere “gaps” and application of partial facts available would be unduly difficult.¹⁰⁰

Dalmine argues that its efforts to participate in this investigation differentiate it from respondents who refuse to participate in verification, *i.e.* Metalfer, or who refuse to respond to Commerce’s requests for information, and therefore, Commerce should not apply total AFA. However, participation at verification, alone, is not a basis for determining whether partial or total AFA is appropriate. As discussed above, Commerce may apply AFA based on the extent of a respondent failure to cooperate to the best of its ability. A respondent’s failure to cooperate to the best of its ability is not only evidenced by refusal to participate in verification

⁹⁶ See, *e.g.*, section 782(e) of the Act which provides that the Department should use information submitted by interested parties even if the information does not meet all applicable requirements but only when, *inter alia*, “the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination...”

⁹⁷ See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) (*Tung Mung*); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent's obligation to create an accurate record and provide Commerce with the information requested).

⁹⁸ See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

⁹⁹ See the Department’s Initial Questionnaire, dated March 7, 2017, at G-10 and C-1.

¹⁰⁰ See *Mukand*, 767 F.3d at 1308.

or to respond to the Commerce's questionnaire, but rather, as defined by *Nippon Steel*, it is a failure to put forth maximum effort to provide full and complete answers to all inquiries.¹⁰¹

Therefore, Commerce has applied total AFA to Dalmine due to the pervasive and persistent nature of the deficiencies on the record which cut across all aspects of the responses. The use of partial AFA is not appropriate because the missing information, *i.e.*, data needed to make the appropriate adjustments for the calculation of an accurate EP, CEP, or NV for all transactions, is core to our analysis and it would be unduly difficult to apply partial AFA by selecting from the facts available to remedy each of the deficiencies that impact each sale.

Comment 8: Commerce's Selection of the Total Adverse Facts Available Rate for Metalfer

Metalfer's Case Brief

- Commerce should apply a total AFA rate based on the actual calculated margins in this proceeding, *i.e.* the highest individual transaction margin or Metalfer's calculated rate from the *Preliminary Determination*, not the petition rate because it is unsubstantiated.¹⁰²

Petitioners' Rebuttal Brief

- Metalfer's argument to assign its calculated rate from the *Preliminary Determination* is contrary to the statute and would not deter future uncooperative behavior.¹⁰³
- Commerce should apply as total AFA, the higher of the petition rate or the highest calculated rate on the record.¹⁰⁴

Commerce's position:

Given that Commerce has not calculated a margin for any mandatory respondent in this final determination, Commerce considers the issue of whether to apply the highest calculated rate as total AFA to Metalfer moot.

As explained above in the "Use of Facts Otherwise Available and Adverse Inferences," Commerce agrees with the petitioners that the appropriate AFA rate is the highest petition rate and has corroborated and applied the petition rate as total AFA to Metalfer. Commerce's practice in selecting an AFA rate is to ensure "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁰⁵ As such, relying on Metalfer's calculated rate from the *Preliminary Determination* as total AFA for the final determination

¹⁰¹ See *Nippon Steel*, 337 F. 3d at 1382; see also *Universal Polybag Co. v. United States*, 577 F. Supp. 2d 1284, 1295 (August 28, 2008) (upholding Commerce's decision to apply total AFA despite the respondent's participation in verification because information submitted could not be verified, and because several of the respondent's supposedly minor corrections were "hardly trivial.").

¹⁰² See Metalfer's Case Brief at 1-3.

¹⁰³ See Petitioners' Metalfer Rebuttal Brief at 2-4.

¹⁰⁴ *Id.* at 6-7.

¹⁰⁵ See SAA at 870.

would contravene the purpose of the SAA, because it is reasonable to conclude that Metalfer would have continued to cooperate in this investigation if doing so would have resulted in a rate lower than the possible AFA rates. However, Metalfer did not continue to cooperate, but rather withdrew from the investigation,¹⁰⁶ and therefore, should not be granted the same rate as if it had cooperated fully.¹⁰⁷ Therefore, the selection of the petition rate, not Metalfer's calculated rate from the *Preliminary Determination*, is appropriate for this final determination, and is in accordance with our normal practice.

XIV. CONCLUSION

We recommend applying the above methodology for this final determination.

☒

☐

Agree

Disagree

4/9/2018

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

¹⁰⁶ See Metalfer's Withdrawal.

¹⁰⁷ See SAA at 870.