



A-475-842
Investigation
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DATE: March 1, 2021

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

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Common Alloy Aluminum Sheet from Italy

I. SUMMARY

The Department of Commerce (Commerce) finds that common alloy aluminum sheet (aluminum sheet) 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). The period of investigation (POI) is January 1, 2019, through December 31, 2019.

After analyzing the comments submitted by interested parties, we made no changes to the *Preliminary Determination*¹ with respect to mandatory respondent Profilglass S.p.A. (Profilglass). We made some adjustments to the conversion costs of Laminazione Sottile S.p.A.'s (Laminazione), the other mandatory respondent 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 the issues for which we have received comments from the interested parties:

Comment 1: Whether Commerce's Application of Adverse Facts Available to Profilglass is Supported by Substantial Evidence and in Accordance with the Law.

¹ See *Common Alloy Aluminum Sheet from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65342 (October 15, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



- Comment 2: Whether Commerce Should Use the Earlier of Invoice Date or Shipment Date to Calculate a Margin for Profilglass.
- Comment 3: Whether Commerce Should Assign the Petition AD Rate as AFA to Profilglass.
- Comment 4: Whether Total AFA is Appropriate with Respect to Laminazione's Reported Costs.
- Comment 5: Whether a Duty Drawback Adjustment for Laminazione is Warranted
- Comment 6: Whether Commerce' Partial Reliance on an AFA Rate to Determine the All Others Rate is Supported by the Record.
- Comment 7: Whether the Geographical Scope of this Investigation Conflicts with the WTO AD Agreement and Application of Adverse Facts Available is Justified.

II. BACKGROUND

On October 15, 2020, Commerce published in the *Federal Register* its preliminary affirmative determination in the LTFV investigation of aluminum sheet from Italy.² On November 13, 2020, pursuant to 19 CFR 351.310(c), the petitioners³ and Profilglass requested that Commerce hold a public hearing.⁴

On December 10, 2020, Commerce issued a supplemental questionnaire to Laminazione in lieu of performing an on-site verification required under section 782(i) of the Act, to which Laminazione timely responded.⁵ On January 7, 2021, we invited parties to comment on the *Preliminary Determination*.⁶ On January 14, 2021, we received case briefs from the petitioners, Profilglass, Alupro S.r.l. and Alupro USA LLC (collectively Alupro), and the Delegation of the European Union to the United States of America (EU Delegation).⁷ On January 21, 2021, we received rebuttal briefs from the petitioners and from Laminazione.⁸ Commerce held a public hearing via Microsoft Teams on February 12, 2021.

² See *Preliminary Determination*.

³ The petitioners are the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc., domestic producers of aluminum sheet.

⁴ See Petitioners' Letters, "Common Alloy Aluminum Sheet from Italy – Petitioners' Request For A Hearing," dated November 13, 2020; and "Case A-475-842: Antidumping duty Investigation of Common Alloy Aluminum Sheet from Italy: Profilglass S.p.A. Hearing Request," dated November 13, 2020.

⁵ See Commerce's Letter, "In Lieu of Verification Supplemental," dated December 10, 2020; see also Laminazione's Letter, "Common Alloy aluminum Sheet from Italy: Response to the Verification Questionnaire," dated December 18, 2020.

⁶ See Memorandum, "Briefing Schedule for Common Alloy Aluminum Sheet (CAAS) from Italy," dated January 7, 2021.

⁷ See Petitioners' Letter, "Common Alloy Aluminum Sheet from Italy: Petitioners' Case Brief for Laminazione Sottile S.p.A.," dated January 14, 2021 (Petitioners' Case Brief); see also Profilglass' Letter, "Case A-475-842: Antidumping duty Investigation of Common Alloy Aluminum sheet from Italy: Profilglass S.p.A Case Brief," dated January 14, 2021 (Profilglass' Case Brief); Alupro's Case Brief, "Common Alloy aluminum Sheet from Italy – Case Brief," dated January 14, 2021 (Alupro's Case Brief); and EU Delegation's Letter, "Antidumping Investigation of Common Alloy Aluminum Sheet from Italy – Case brief," dated January 14, 2021 (EU Delegation's Case Brief).

⁸ See Petitioners' Letter, "Common Alloy aluminum sheet from Italy," dated January 21, 2021 (Petitioners Rebuttal Brief); see also Laminazione's Letter, "common Alloy Aluminum Sheet from Italy: Rebuttal Brief," dated January 21, 2021 (Laminazione's Rebuttal Brief).

III. CHANGES FROM THE PRELIMINARY DETERMINATION

- We re-allocated Laminazione's conversion costs among products with common NMSURF, COIL, GAUGE, MSURF and TEMPER, to mitigate the conversion cost differences among products with identical physical characteristics.

IV. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

In the *Preliminary Determination*, we assigned a dumping margin based entirely on adverse facts available (AFA) to Profilglass. Parties commented on our AFA determination. As discussed in Comment 1 below, we continue to find that application of facts available and use of an adverse inference in determining a weighted-average margin for Profilglass is warranted for the final determination. Therefore, we have made no changes to the 29.13 percent dumping margin assigned to Profilglass.

1. Statutory Framework

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD 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.

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

Section 776(b) of the Act 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.⁹ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹⁰ Section 776(b)(2) of the Act 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

⁹ See 19 CFR 351.308(a).

¹⁰ 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); see also *Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon Steel*).

practice is to ensure that the rate is sufficiently adverse “as to 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.”¹¹ In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.

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.¹² Further, under section 776(d)(3) of the Act, 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.

2. Use of Facts Available

For the final determination, we continue to find that Profilglass failed to report certain home market and U.S. sales, failed to report sales involving home market affiliated parties, and had numerous inconsistencies or inaccurate information in its questionnaire and database responses.¹³ Due to Profilglass’ incomplete questionnaire and database reporting, we find that necessary information is missing from the record. Additionally, we find that Profilglass withheld requested information, failed to provide information by the established deadlines, and significantly impeded the proceeding. Therefore, for the final determination, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, we continue to find that the use of facts available is warranted with regard to Profilglass.

3. Use of Adverse Inferences

For the final determination, Commerce continues to find that Profilglass’ questionnaire responses on both the home market and U.S. sales and cost were incomplete and unreliable, containing numerous and significant inconsistencies. Necessary and fundamental sales and cost information is missing from the record and Commerce could not carry out its price analysis dumping calculation. For example, Profilglass did not report: (1) a significant number of home market sales in its home market sales database;¹⁴ (2) gross unit price, quantity sold, and other associated sales expenses like inland freight, credit expenses, indirect selling expenses, etc. for certain home

¹¹ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); and *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).

¹² See SAA at 870.

¹³ See Memorandum, “Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Common Alloy Sheet from Italy: Preliminary Margin Analysis for Profilglass S.p.A.,” dated October 6, 2020.

¹⁴ See Profilglass September 14, 2020 Database SQR, File PROFHM01, PROFHM02, PROUS01, PROUS02.

market and U.S. sales;¹⁵ (3) all of the required product characteristics for the home market and U.S. sales, and incorrectly reported the matching control numbers (CONNUMs) for certain U.S. sales;¹⁶ and (4) CONNUM-specific costs that should reflect the POI weighted average cost of identical materials, labor, variable and fixed overheads.¹⁷ Furthermore, we provided multiple opportunities to Profilglass to submit complete and accurate sales and cost information with reliable data to correct the deficiencies we identified in its questionnaire responses.¹⁸ Profilglass failed to do so. We continue to find that Profilglass has not acted to the best of its ability to comply with Commerce's requests for information, within the meaning of section 776(b) of the Act, because Profilglass did not report complete, reliable, and consistent sales and cost information in its initial and supplemental questionnaire responses.¹⁹ Therefore, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce continues to use an adverse inference when selecting from among the facts otherwise available.²⁰

4. Selection and Corroboration of the AFA Rate

As noted above, relying on an adverse inference in selecting from the facts available may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, 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. The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information used has probative value. To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Profilglass September 14, 2020 Database SQR, Exhibit Suppl D_11_COP Data File.

¹⁸ See Commerce's Letters, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental Questionnaire for Profilglass S.p.A.," dated July 15, 2020 (Commerce July 15 Letter); "Antidumping Duty Less Than Fair Value Investigation of Common Alloy Aluminum Sheet from Italy," dated August 11, 2020 (Commerce August 11 Letter); "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental Questionnaire for Profilglass S.p.A.," dated August 14, 2020 (Commerce August 14 Letter); and "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy – Supplemental Questionnaire for Profilglass S.p.A.," dated September 11, 2020 (Commerce September 11 Letter).

¹⁹ See Profilglass' July 29, 2020 Section A Supplemental Questionnaire Response (Profilglass July 29, 2020 ASQR); Profilglass' August 28, 2020 Section D Supplemental Questionnaire Response (Profilglass August 28, 2020 DSQR); Profilglass' September 9, 2020 Sections A, B and C Supplemental Questionnaire Response (Profilglass September 9, 2020 ABCSQR); and Profilglass' September 14, 2020 Database Questionnaire Response (Profilglass September 14, 2020 Database SQR).

²⁰ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying PDM at 7-11, unchanged in *Non Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party. Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins; Commerce may use the component approach.²¹

In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. In an investigation, Commerce’s practice with respect to assignment of an AFA rate is to select 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. In this investigation, the highest dumping margin alleged in the Petition is 29.13 percent.²² In order to determine the probative value of the dumping margin alleged in the Petition in assigning an AFA rate, we examined the information on the record. When we compared the highest dumping margin alleged in the Petition to the transaction-specific dumping margins for the only cooperating mandatory respondent, Laminazione, we found the Petition rate of 29.13 percent to be higher than Laminazione’s highest calculated transaction-specific dumping margin.

Because we were unable to corroborate the highest Petition margin with individual transaction-specific margins from Laminazione, we next applied a component approach and compared the NV and net U.S. price underlying the highest dumping margin alleged in the Petition to the range of NVs and net U.S. prices calculated for Laminazione. We found that we were able to corroborate the highest Petition margin of 29.13 percent through this component approach. Specifically, Commerce finds that NVs and net U.S. prices calculated for Laminazione are within the range of the NVs and net U.S. prices underlying the highest margin alleged in the Petition. Accordingly, because we corroborated the Petition rate to the extent practicable within the meaning of section 776(c) of the Act, we find the 29.13 percent rate to be both reliable and relevant and, therefore, that it has probative value. Thus, we continue to assign this AFA rate to Profilglass.

V. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce’s Application of Adverse Facts Available to Profilglass is Supported by Substantial Evidence and in Accordance with the Law

Profilglass’ Case Brief:

- Commerce’s application of AFA to Profilglass in the *Preliminary Determination* is not warranted. Profilglass cooperated in the investigation to the best of its ability and provided information in a timely and complete fashion. The data submitted by Profilglass in its

²¹ See, e.g., *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

²² See *Initiation Notice*.

several submissions and responses to Commerce’s queries are far from being so incomplete as to be deemed unusable and can form the basis of a margin calculation without undue difficulties.²³

- Profilglass correctly reported all of its sales and acted to the best of its abilities in attempting to obtain cooperation from affiliates. The few deficiencies identified in Profilglass submitted databases are either immaterial or clerical in nature and could easily be corrected by Commerce in the final determination.²⁴
- In accordance with 782(d) of the Act, if Commerce determines that a response to 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 with an opportunity to remedy or explain the deficiency.” In addition, Commerce “shall not decline to consider information that is submitted by an interested party and is necessary to the determination”, pursuant to 782(e) of the Act. Commerce failed to meet all of these statutory requirements and it was therefore not warranted in using facts available at all, much less adverse facts available.²⁵
- Many of Commerce’s underlying statements and assertions used to support its findings are based on old or incomplete data (from earlier submissions) that were subsequently superseded by updated or revised data. It appears that Commerce did not consider or review all of the updated sales and other data that Profilglass placed on the record in its multiple submissions.²⁶
- Commerce’s findings that Profilglass failed to report certain re-sales by purported home market affiliates is unsupported by substantial evidence. Profilglass was not required to report these sales as these companies are not Profilglass’ affiliates within the meaning of section 771(33)(A) of the Act. Commerce’s finding that Profilglass failed to report U.S. sales by certain foreign affiliates is also erroneous.²⁷
- Some of Profilglass’ minor clerical deficiencies identified by Commerce in the *Preliminary Determination*, with regard to the lastly submitted databases (PROFHM01, PROFHM02, PROFUS01 and PROFUS02) do not render the record so incomplete to be unusable and can be corrected without undue difficulties, for the purpose of calculating a dumping margin for Profilglass.²⁸
 - a) The missing fields of ALLOYOVRPH/U and ALLOYCUSSPECH/U were due to inadvertent omission in the process of finalizing the databases. These should not prevent Commerce from calculating an approximate dumping margin. In addition, the two fields ALLOYOVRPH/U and ALLOYCUSSPECH/U are not part of the CONNUM and, therefore, bear no impact on the calculation.²⁹
 - b) For certain home and U.S. market sales where Profilglass did not report gross unit price, quantity sold, or other associated expenses like inland freight, credit expenses, and indirect selling expenses, Commerce could address these missing values by deleting these

²³ See Profilglass’ Case Brief at 8.

²⁴ *Id.*

²⁵ *Id.* at 12.

²⁶ *Id.* at 13.

²⁷ *Id.* at 17.

²⁸ *Id.* at 21.

²⁹ *Id.* at 22.

- home and U.S. market sales, by applying the standard calculation, or using surrogate values in the SAS programming.³⁰
- c) The incorrectly reported CONNUMs were due to a clerical error and the mistake could be accepted as a minor correction at verification, which can be fixed by Commerce in the SAS programming.³¹
 - d) For certain U.S. sales with CIF shipping terms, the unreported insurance and freight expenses cannot be invoked as a legitimate ground for an AFA determination. Commerce could populate the missing fields by using surrogate freight expenses from other U.S. sales.³²
 - e) For the minuscule quantity of home market sales to affiliates that are reported erroneously as unaffiliated party sales, this error is clerical in nature. As the CONNUM was not sold in the U.S. it is not relevant to the dumping analysis.³³
- The CONNUMs identified by Commerce as not being reported on its cost database, were in fact reported in a separate exhibit that Commerce could have easily added to the respondent's cost database making it whole.³⁴
 - The reason the CONNUM costs were omitted from its cost database is because the CONNUMs were added to the sales database and accidentally not added to its revised cost database when filed.³⁵
 - Record evidence demonstrates that it reported accurate and reliable costs for its raw materials and cites to three areas which were raised by the petitioners in their Pre-Prelim comments and which Commerce used to base its AFA determination.³⁶
 - (i) Several instances of "zero costs" pointed out by the petitioners have to do with their inability to perform basic Excel ® functions such as sorting decimal numbers.³⁷
 - (ii) Several instances of alleged "zero costs" pointed out by the petitioners have to do with subcontracting operations rather than misreported costs.³⁸
 - (iii) The alleged (low) nature of some reported material costs can be fully explained by the nature of the operations during production (*i.e.*, differences in production paths for similar products).³⁹
 - CONNUM-specific costs that reflect the weighted-average cost of identical materials, labor, and variable and fixed overhead were on the record, contrary to Commerce's finding in the *Preliminary Determination* which was based on selective reading on behalf of Commerce and the petitioners.⁴⁰
 - Specifically, the differences in the weighted-average direct materials (DIRMAT) and other direct materials (OTHDIRMAT) costs for CONNUMs having the same thickness and/or aluminum alloy can be explained by other physical differences present in certain CONNUMs

³⁰ *Id.*

³¹ *See* Profilglass' Case Brief at 24.

³² *Id.* at 25.

³³ *Id.* at 26.

³⁴ *Id.* at 29 - 31.

³⁵ *Id.* at 29.

³⁶ *Id.* at 31, *also see* Petitioners' Pre-Prelim Comments at 27-35.

³⁷ *See* Profilglass Brief at 31.

³⁸ *Id.*

³⁹ *Id.* at 31 and 32

⁴⁰ *Id.* at 32.

due to additional treatment carried out by the company. Moreover, Commerce's claims in relation to labor, variable and fixed overheads are also based on a selective reading of the information on the record.⁴¹

- With respect to the three aforementioned cost related issues, Commerce cannot apply AFA because Profilglass has: (i) participated in reporting its costs to the best of its ability; (ii) was not told by Commerce of the three cost deficiencies hence not provided an opportunity to correct them; and (iii) was not provided the opportunity for verification at which Profilglass could have resolved any cost issues identified by Commerce.⁴²
- At a minimum, Commerce must use some of the data provided by the respondent.⁴³

EU Delegation Case Brief:

- The company concerned appears to have fully cooperated in the investigation and acted in all transparency. Resorting to AFA and seeking the most adverse facts rather than representative facts available, violates article 7 of Annex II of the ADA.⁴⁴
- Moreover, Commerce's findings are inconsistent with the findings of the WTO Panel in *WT/DS295/R Mexico - Definitive Anti-Dumping Measures on Beef and Rice*, with regard to the evaluation of best information available.⁴⁵

Petitioners' Rebuttal Brief:

- The record of this investigation shows that Profilglass' home market sales, U.S. sales, and cost responses are all missing critical and necessary information. All three primary components of Profilglass' questionnaire responses are fundamentally flawed. Given the extent of the deficiencies in Profilglass' responses, Commerce's application of total AFA was appropriate and warranted.⁴⁶
- Commerce's analysis of Profilglass' sales during the POI was based on the precise databases and responses that Profilglass claims were not considered in the *Preliminary Determination*.⁴⁷
- Profilglass' arguments that certain resales by affiliated companies need not be reported because these companies are not affiliates of Profilglass is contrary to the applicable provisions of U.S. law addressing affiliation. These companies are clearly affiliated with Profilglass and are obligated to submit the requested quantity and value of their sales. Profilglass' failure to report sales by these affiliates renders its home market sales and U.S. sales databases incomplete.⁴⁸
- By excluding these affiliated companies from the resales information in the home market, Profilglass withheld these requested affiliates' sales data that would adversely affect the accuracy of Profilglass' AD margin.⁴⁹

⁴¹ *Id.*

⁴² *Id.* at 32 and 33.

⁴³ *Id.*

⁴⁴ See EU Delegation's Case Brief at 4.

⁴⁵ *Id.*

⁴⁶ See Petitioners' Rebuttal Brief at 2.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.*

⁴⁹ *Id.* at 10.

- Profilglass’ sales databases are fundamentally flawed and contain extensive errors in reporting information requested by Commerce.⁵⁰
- With regard to failing to report all required product characteristics, including ALLOYOVRPH/U and ALLOYCUSSPECH/U, in the U.S. and home market sales files, the courts had held that it is Commerce’s prerogative to seek information from a respondent and it is the respondent’s obligation to provide that information. Whether Profilglass believes the requested information was necessary is immaterial. In the instant proceeding, Commerce instructed Profilglass to incorporate all up-to-date product characteristics into its sales files, and Profilglass failed to follow Commerce’s instructions.⁵¹
- With regard to the reporting errors/issues including missing prices and adjustments, credit notes/terms, payment dates, and inland freight expenses, it was not Commerce’s responsibility to correct Profilglass’ database errors, and Profilglass’ responsibility to submit complete and accurate sales files, as Commerce provided Profilglass at least two opportunities to do that. These errors, collectively, affect dozens of fields in the home market and U.S. sales databases and numerous SEQHs/SEQUs. They are not isolated reporting problems but extensive and affect numerous facets of Profilglass’ databases.⁵²
- With regard to the U.S. sales CONNUMs that are incorrectly reported, the burden of building an accurate and complete record falls squarely on Profilglass, and it is not Commerce’s responsibility to make corrections for Profilglass’ reporting errors.⁵³
- Profilglass also admits that it failed to report insurance and freight expenses for various U.S. sales, and certain home market sales to affiliates are reported as unaffiliated party sales, therefore yielding inaccurate results in Commerce’s arm’s length test results. Commerce should decline to assume the burden of correcting these numerous errors and omissions in Profilglass’ responses.⁵⁴
- Profilglass is also wrong that the percentage of sales affected by its misreporting is small and isolated. Profilglass’ erroneous reporting of sales to its affiliates as sales to unaffiliated parties undermines the integrity of the arm’s length test and renders the result inaccurate.⁵⁵
- Profilglass admits its cost database is incomplete and it is not the responsibility of Commerce to correct or reconstruct the respondent’s data to make them usable for calculating a margin.⁵⁶
- Profilglass’ explanation is insufficient. Profilglass identifies *no* record evidence in its brief to support its claims.⁵⁷
- Profilglass does not support its contention that “*Commerce’s finding for unexplained conversion costs is based on selective reading*” by specifying what selective reading to which it refers.⁵⁸
- Regarding reported weighted-average costs for CONNUMs having the same thickness and/or aluminum alloy, Profilglass’ explanation is flawed because reported costs should “*reflect meaningful cost differences attributable to the physical characteristics*” for purposes of

⁵⁰ *Id.* at 12.

⁵¹ *Id.*

⁵² *Id.* at 13.

⁵³ *Id.* at 14.

⁵⁴ *Id.* at 15.

⁵⁵ *Id.*

⁵⁶ *Id.* at 21.

⁵⁷ *Id.* at 22.

⁵⁸ *Id.* at 23.

calculating an accurate margin, and Profilglass' reported costs are not CONNUM-specific and therefore unusable.⁵⁹

- Commerce provided Profilglass an opportunity to correct the deficiencies in its initial cost response when it issued the Cost Supplemental Questionnaire on August 11, 2020.⁶⁰
- Commerce is under no obligation to use any part of Profilglass' responses under 19 U.S.C. 1677m(e).⁶¹

Commerce's Position:

We determine that the application of total facts available to Profilglass with an adverse inference is warranted for the final determination. As noted in the "Use of AFA" section above, section 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 section 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.

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) of the Act,⁶² disregard all or part of the original and subsequent responses, as appropriate.

In this case, Profilglass failed to establish the accuracy and completeness of its reported sales information, and the errors, inconsistencies, and omissions in its databases were substantial. In particular, Profilglass failed to report all of its sales during the POI, failed to submit the sales and/or resales from its home market affiliated parties, and had numerous inconsistencies or inaccurate information in its questionnaire and database responses, including: (a) Profilglass

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 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.

failed to report all required product characteristics, including, ALLOYOVRPH/U and ALLOYCUSSPECH/U, in the U.S. and home market sales files, as instructed by Commerce's June 4 and June 16, 2020 guidelines; (b) For certain home market and U.S. sales, Profilglass did not report gross unit price, quantity sold, and other associated sales expenses like inland freight expenses, credit expenses, and indirect selling expenses; (c) Certain U.S. sales CONNUMs are incorrectly reported (*i.e.*, the U.S. CONNUM code has a different number of characters than the home market CONNUM code for the identical product) so that it is not possible to match these sales to any of the home market CONNUMs; (d) For certain U.S. sales with CIF shipping terms, Profilglass did not report the necessary insurance and freight expenses; (e) Certain of Profilglass' home market sales to affiliates are reported as unaffiliated party sales, therefore yielding inaccurate results in our arm's-length test to determine whether such sales should be used for sales matching to the U.S. sales and margin calculation.

We disagree with Profilglass that Commerce made its preliminary findings with regard to unreported sales based on incomplete data from Profilglass' earlier submissions. Upon receiving the initial questionnaire response, Commerce issued four separate supplemental questionnaires to Profilglass.⁶³ Commerce considered and reviewed the most updated sales data and submissions from Profilglass at the time of the *Preliminary Determination* and concluded that a significant amount of home market sales was not reported in the latest sales database. In addition, pursuant to section 771(33)(A) and (F) of the Act addressing affiliation, Commerce disagrees with Profilglass that certain home market resellers are not affiliated with Profilglass. These resellers are obligated to submit their quantity and value of their resales as requested by Commerce. As much of the discussion on the missing sales and company affiliation involves business proprietary information, we discuss the details in the underlying *Final AFA and Selection of AFA Rate* memorandum.⁶⁴ Contrary to Profilglass' arguments, Commerce could not calculate a final dumping margin with these unreported POI sales and affiliated resales that are part of Profilglass' home market normal value calculation. If Commerce were to calculate a margin without using an accurate universe of POI sales and affiliates' resales, we would have no confidence that the margin computed would be an accurate representation of Profilglass' pricing practices during the POI. Therefore, we find that Profilglass' incomplete reporting regarding the POI sales significantly undermines Commerce's confidence in the reliability of Profilglass' sales data (which must be based on complete and accurate POI sales data) to calculate a dumping margin in the final determination.

In addition, we disagree with Profilglass that many of the major problems identified above can be corrected by Commerce without undue difficulties, because much of the necessary information is missing from the record. Profilglass had adequate opportunity to submit the correct information (in the case of the unreported sales and sales related expenses) or to request guidance from Commerce (in the case of certain product characteristics and CONNUMs errors). We discuss these errors below.

⁶³ See Commerce July 15 Letter; *see also* Commerce August 11 Letter; Commerce August 14 Letter; and Commerce September 11 Letter.

⁶⁴ See Memorandum, "Final Determination of the Less-Than-Fair Value Investigation of Common Alloy Sheet from Italy: Final AFA and Selection of AFA Rate for Profilglass S.p.A.," dated concurrently with this memorandum (Final AFA and Selection of AFA Rate Memorandum).

With respect to Profilglass' product characteristics and CONNUMs errors, we disagree that the data are acceptable as reported and Commerce could fix the errors through hard coding of its SAS programming. The ability to make appropriate product comparisons goes to the heart of Commerce's dumping methodology. Comparing two products/models with different product characteristics rather than identical or similar model matches is likely to distort dumping calculations. Because Profilglass misreported certain product characteristics and CONNUMs for both the home market and U.S. sales, we are unable to compare sales to the most similar product, as required by section 773(1)(B) of the Act. Further, these errors affected how individual products are grouped into CONNUMs for cost reporting purposes and, thus, we do not have correct cost of production, constructed value, and difference-in-merchandise adjustment information for affected sales.

With respect to Profilglass' other database omissions, including U.S. sales that were missing gross unit price, quantity sold, sales expenses like inland freight, credit expenses, indirect selling expenses, CIF sales without insurance and freight expenses, and in the home market, sales to affiliates that are misidentified as unaffiliated sales, we found that Commerce could not use these incomplete databases to carry out the dumping calculation without undue difficulty. As discussed above, Commerce provided Profilglass three opportunities through supplemental questionnaires to submit complete and accurate databases, yet the latest databases are still missing these sales and sales related expenses, making the databases unusable. Therefore, Commerce is unable to calculate a dumping margin using the reported information.

With respect to the petitioners' allegations with respect to Profilglass' cost database (missing CONNUMs, raw material costs, etc.) we agree that the information as submitted would require manipulation of Profilglass' data. We are concerned with the form and manner that Profilglass reported its costs, as it does not conform with our requests and it places a burden on the agency to make the adjustments.

In sum, we find that necessary information is not on the record, and that Profilglass withheld information requested by Commerce, failed to provide information in a timely manner or in the form or manner requested, and, as a result, significantly impeded the proceeding, in accordance with sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act. To the extent that certain information was provided, it was so incomplete that it could not serve as a reliable basis for calculating a dumping margin for Profilglass in this investigation.⁶⁵ Given the above facts, we find that Profilglass failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information, as provided in section 776(b) of the Act, despite being afforded multiple opportunities to do so.⁶⁶

Moreover, while Profilglass provided timely responses to most of these questionnaires, we disagree with Profilglass' claim that doing so demonstrated its full cooperation in this proceeding. Rather, as noted above, Commerce was compelled to issue Profilglass multiple questionnaires because prior submissions contained flawed, missing, and incomplete data.

⁶⁵ See section 782(e)(2)-(3) of the Act.

⁶⁶ See *Mannesmannröhren*, 77 F. Supp. 2d at 1313; see also *Ferro Union*, 44 F. Supp. 2d at 1329.

Accordingly, we find that merely submitting timely responses, irrespective of whether they contained incomplete and inaccurate information, does not result in a conclusion that Profilglass acted to the best of its ability to cooperate in this proceeding.

As explained by the U.S. Court of Appeals of the Federal Circuit (CAFC):

{b}efore making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. Compliance with the "best of ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁶⁷

We find that the scope of the errors and omissions identified above are consistent with both inattentiveness and carelessness. Even though Commerce does not require perfection in questionnaire responses and recognizes that mistakes sometimes occur, Commerce does not condone submission of incomplete responses, which are replete with errors and discrepancies. Although Profilglass argues that Commerce may not decline to consider its reported information, pursuant to 782(e) of the Act, it ignores that this provision expressly provides Commerce may do so if, *inter alia*, the information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, if the interested party does not cooperate to the best of its ability, or if the information cannot be used without undue difficulty.⁶⁸ Each of these conditions applies here, and so Commerce may reasonably decline to rely on Profilglass' reported information.

Therefore, for the reasons noted, Commerce concludes that Profilglass failed to cooperate to the best of its ability to comply with Commerce's requests for information in accordance with section 776(b) of the Act and 19 CFR 351.308(a), and determines that it is appropriate to use an adverse inference when selecting from among the facts otherwise available. As AFA, we have assigned a rate of 29.13 percent, which is the petition margin corroborated from Laminazione's rate by using the component methodology. For a discussion of the selection of this rate, *see* the "Selection and Corroboration of the AFA Rate" section, above.

Comment 2: Whether Commerce Should Use the Earlier of Invoice Date or Shipment Date to Calculate a Margin for Profilglass

Profilglass' Case Brief:

- Commerce should calculate a margin for Profilglass by using the earlier of the "invoice date" or "shipment date" as the date of sale.⁶⁹
- Profilglass requests that the calculation of the margin be based on the sales databases PROFHM02 and PROFUS02, which use the earlier of shipment date and invoice date as the

⁶⁷ See *Nippon Steel*, 337 F. 3d at 1382-83.

⁶⁸ See section 782(e)(3)-(5).

⁶⁹ See Profilglass' Case Brief at 35.

date of sale.⁷⁰

Petitioners' Rebuttal Brief:

- Profilglass' argument of using the earlier of shipment date or invoice date as the date of sale is not supported by sales documents Profilglass submitted to Commerce.⁷¹
- Profilglass' reporting of date of sale has been confusing and contradictory. It is yet another reason for Commerce to continue to rely on total AFA when assigning an AD margin to Profilglass in the final determination. The record does not support the use of the earlier of shipment date or invoice as date of sale; in fact, due to Profilglass' deficient reporting, it is unclear what is the appropriate date of sale.⁷²

Commerce's Position:

Because of Commerce's decision to base Profilglass' final dumping margin on AFA, any issues relating to Profilglass' date of sale are moot. Therefore, we have not addressed these issues for purposes of the final determination.

Comment 3: Whether Commerce Should Assign the Petition AD Rate as AFA to Profilglass

Profilglass' Case Brief:

- Should Commerce continue to apply the AFA methodology to Profilglass in the *Final Determination*, Commerce should not assign the petition AD rate as AFA to Profilglass.⁷³
- Consistent with *Steel Concrete Reinforcing Bar from Taiwan* and *Cut-to-Length Plate from Italy*, Commerce should assign as the AFA rate the highest transaction-specific margin calculated from the other mandatory respondents in the same proceeding, rather than the overly punitive petition margin.⁷⁴
- The Petition margin has not been corroborated by the information on the record. Commerce's methodology of comparing the petition U.S. net price to the low end of Laminazione's U.S. prices, cannot be a valid ground of the corroboration analysis. The AD rates calculated for Laminazione are significantly lower than the Petition margin, and Commerce should assign Profilglass a final AD rate based on actual calculated AD margins.⁷⁵
- Consistent with *F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1033 (Fed. Cir. 2000); *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012); *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319, 1324 (Fed. Cir. 2010); *Viet I-Mei Frozen Foods Co. v. United States*, 839 F.3d 1099, 1109-10 (Fed. Cir. 2016); *Baoding Mantong Fine Chemistry Co. v. United States*, 113 F. Supp. 3d 1332, 1337 (Ct. Int'l Trade 2015) (citing *Koyo Seiko Co., Ltd. v. United States*, 36 F.3d 1565, 1573 (Fed. Cir. 1994)), Commerce should not impose an "unjustifiably high, punitive rate." Rather, the

⁷⁰ *Id.*

⁷¹ See Petitioners' Rebuttal Brief at 28.

⁷² *Id.*

⁷³ See Profilglass' Case Brief at 36.

⁷⁴ *Id.* at 37.

⁷⁵ *Id.*

purpose of AFA is to ensure that a party does not benefit from its own lack of cooperation, and that Commerce has a duty to calculate AD duties fairly and equitably.⁷⁶

Petitioners' Rebuttal Brief:

- Commerce's preliminary AFA rate was neither punitive nor aberrational. Commerce's application of the highest rate alleged in the petition as the AFA rate is supported by substantial evidence.⁷⁷
- Commerce engaged in a detailed and multi-step analysis to corroborate the rate alleged in the petition. After comparing the normal values and net U.S. prices used in the petition to the normal values and U.S. prices contained in the data of Laminazione, Commerce correctly determined that the petition rate could be corroborated by record evidence.⁷⁸
- Commerce's corroboration exercise is fact-specific and unique to the case. The margin alleged in the petition, as corroborated, achieves the statutory purpose to ensure that Profilglass does not benefit from its lack of cooperation.⁷⁹

Commerce's Position:

We disagree with Profilglass. Section 776(b)(2) of the Act states that Commerce, when employing AFA, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁸⁰ Further, section 776(b)(1)(B) of the Act states that Commerce "is not required to determine, or make any adjustments ... based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information." Section 776(c) of the Act provides that, in general, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.⁸¹ 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."⁸² The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.⁸³ The SAA and Commerce's regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information derived from interested parties during the particular investigation.⁸⁴ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to

⁷⁶ *Id.* at 38.

⁷⁷ *See* Petitioners' Rebuttal Brief at 27.

⁷⁸ *Id.* at 3.

⁷⁹ *Id.* at 27.

⁸⁰ *See* 19 CFR 351.308(c).

⁸¹ *See* 19 CFR 351.308(d).

⁸² *See* SAA at 870.

⁸³ *Id.*; *see also* 19 CFR 351.308(d).

⁸⁴ *Id.*

cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁸⁵ When selecting an AFA rate in an LTFV investigation, Commerce’s practice is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin for any respondent in the investigation.⁸⁶

In this investigation, the highest dumping margin alleged in the petition is 29.13 percent.⁸⁷ In attempting to corroborate the highest dumping margin alleged in the petition, we found the petition rate of 29.13 percent to be significantly higher than Laminazione’s highest calculated transaction-specific dumping margin.⁸⁸ Because we were unable to corroborate the 29.13 percent rate alleged in the petition with individual transaction-specific margins from Laminazione, we next applied a component approach and compared the NV and net U.S. price underlying the 29.13 percent rate alleged in the petition to the range of NVs and net U.S. prices calculated for Laminazione. We found that we were able to corroborate the highest petition margin of 29.13 percent through this component approach. Specifically, Commerce finds that NVs and net U.S. prices underlying the highest margin alleged in the petition are within the range of the NVs and net U.S. prices calculated for Laminazione.⁸⁹ We disagree with Profilglass’ argument that Commerce’s corroboration methodology is not valid. Both the low-end and high-end NVs and U.S. prices are from Laminazione’s dumping calculation based on Laminazione’s reported HM and U.S. sales, after making necessary additions and deductions for billing adjustments, credit expenses, movement expenses, and other adjustments, to reach the transaction-specific NVs and U.S. prices. Further, neither Profilglass nor Laminazione argues or demonstrates that any of Laminazione’s reported HM or U.S. sales are outside the ordinary course of trade, aberrational, or otherwise inappropriate for use in our corroboration analysis.

Moreover, to the extent that Profilglass claims that Commerce should assign an AFA rate based on actual calculated margins (*i.e.*, Laminazione’s final weighted-average margin or individual transaction-specific margins), we disagree. Our practice for selecting AFA rates in investigations is well established, and so it is reasonable to conclude that Profilglass was aware that Commerce may rely on the petition rate as a basis for determining an AFA rate, if AFA was warranted. Nevertheless, despite knowing that the 29.13 percent rate was a potential AFA rate, Profilglass did not cooperate to the best of its ability in this investigation. As such, it is reasonable to conclude that the use of Laminazione’s calculated margins is not appropriate because they are not sufficiently adverse to induce Profilglass’ cooperation.

Accordingly, because we corroborated the petition rate to the extent practicable within the

⁸⁵ See section 776(d)(3) of the Act.

⁸⁶ See, *e.g.*, *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

⁸⁷ See Antidumping Duty Investigation Initiation Checklist: Common Alloy Aluminum Sheet from Italy at 9 (Initiation Checklist); see also Petitioner’s Letter, “Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey – Petitioners’ Supplement to Volume X Relating to Italy Antidumping Duties,” dated March 17, 2020 (Italy AD Supplement) at Exhibit AD-IT-3.

⁸⁸ See *Final AFA and Selection of AFA Rate Memorandum*.

⁸⁹ *Id.*

meaning of section 776(c) of the Act, we find the 29.13 percent rate to be both reliable and relevant and, therefore, that it has probative value. Thus, consistent with the *Preliminary Determination*, we have assigned this AFA rate to Profilglass for this final determination.

Comment 4: Whether Total AFA is Appropriate with Respect to Laminazione's Reported Costs

Background:

The petitioners included six issues under the discussion of this overarching comment. Specifically, the petitioners focus on various specific aspects of Laminazione's reporting to make a case that Laminazione's reported costs are inaccurate, unreliable, and unusable for the final determination. In the discussion that follows, we have identified these issues as: (A) Raw Material Quantities for Trolled Products; (B) Shifting of Customer-Specific Costs; (C) Yield Loss and Scrap Reporting; (D) Material Costs for a Specific Tolling Customer; (E) CONNUM-Specific Costs; (F) and, Application of Total AFA and Smoothing Methodology.⁹⁰ As much of the information relating to these issues is business proprietary in nature, please refer to the petitioners' case brief and Laminazione's rebuttal brief.⁹¹

(A) Raw Material Quantities for Trolled Products

Petitioners' Case Brief

- Laminazione's reported quantities of ingots, slabs, and scrap received from its tolling customers do not reconcile to Laminazione's cost worksheets for the rolling stage. This results in a certain quantity of materials provided by customers that are missing in Laminazione's cost database.⁹²

Laminazione's Rebuttal Brief

- Contrary to the petitioners' assertion, Laminazione accurately reported the quantities of ingots, slabs and scrap provided by its tolling customers.⁹³
- With respect to the foundry, Laminazione reported the total quantity of ingots and scrap received from its tolling customers, used to cast slabs. With respect to the rolling mill, Laminazione reported the total quantity of slabs received for tolling services because slabs are used to manufacture both merchandise under consideration (MUC) and non-MUC.⁹⁴
- There is no evidence that materials provided by Laminazione's tolling customers are missing. In its cost database, Laminazione properly reported only the quantities of tolling materials provided by its tolling customers and used to manufacture MUC.⁹⁵

⁹⁰ See Petitioners' Case Brief at 4-5.

⁹¹ *Id.* at 4-32 and Laminazione's Rebuttal Brief at 2-22.

⁹² *Id.* at 13-14 (citing Laminazione's September 25, 2020 Section D Second Supplemental Questionnaire Response (Laminazione's September 25, 2020 DSQR) at 8-9 and "lam_cop03" cost database; and Laminazione's September 3, 2020 Section D Supplemental Questionnaire Response (Laminazione's September 3, 2020 DSQR) at Exhibit Supp. D-20).

⁹³ See Laminazione's Rebuttal Brief at 11.

⁹⁴ *Id.* at 11 (citing Laminazione's September 3, 2020 DSQR at 41-42 and Exhibit Supp. D-20).

⁹⁵ *Id.* at 11-12 (citing Laminazione's September 25, 2020 DSQR at Exhibit Supp2. D-1).

Commerce's Position:

We disagree with the petitioners that Laminazione's reported quantities of ingots, slabs and scrap provided by its tolling customers do not reconcile. The comparison the petitioners show in their case brief is flawed because it compares the total quantity of ingots, slabs and scrap provided by Laminazione's tolling customers for the production of both aluminum sheet and non-aluminum sheet products⁹⁶ to the quantity of ingots, slabs and scrap provided by Laminazione's tolling customers for the production of aluminum sheet.⁹⁷

In Laminazione's September 3, 2020 DSQR, Laminazione provided its POI MUC and non-MUC production by the type of input used which demonstrates that in addition to aluminum sheet, Laminazione produced non-aluminum sheet products for its tolling customers.⁹⁸ Further, the non-MUC cost build-ups provided by Laminazione also demonstrate the use of raw materials provided by its tolling customers for the production of non-MUC products.⁹⁹ After reviewing the evidence on the record, we do not find that Laminazione's cost database is missing any quantities related to the raw materials received from its tolling customers. Therefore, for the final determination, we have continued to rely on the quantities of ingots, slabs, and scrap reported for Laminazione's tolling customers in Laminazione's "lam_cop03" cost database.

(B) Shifting of Customer-Specific Costs

Petitioners' Case Brief

- Laminazione made significant unidentified and unrequested changes to its second cost database and continued to include these changes in its third cost database, relied upon in the *Preliminary Determination*.
- The tables provided in the petitioners' case brief demonstrate that Laminazione shifted, and in certain cases completely changed, production quantities between CONNUMs and between the tolling customer and itself.¹⁰⁰
- Also, the tables demonstrate that Laminazione's shifting of the production quantities resulted in altered extended costs.¹⁰¹ Laminazione did not substantiate these changes.¹⁰²
- Laminazione's changes should have only affected CONNUMs for which it had originally reported "CUSTOMER" in the manufacturer (MFR) field. As explained in *Steel Wire Rod from Mexico*, a respondent may not make unrequested and unsubstantiated changes

⁹⁶ See Petitioners' Case Brief at 14 and the total raw materials provided by the tolling customers reported in Laminazione's September 3, 2020 DSQR at Exhibit Supp. D-20.

⁹⁷ *Id.* at 14 and the total raw materials provided by the tolling customers reported in Laminazione's September 25, 2020 DSQR "lam_cop03" cost database.

⁹⁸ See Laminazione's September 3, 2020 DSQR at Exhibit Supp. D-20.

⁹⁹ *Id.* at 55-56 and Exhibit Supp. D-25; see also Laminazione's Letter, "Common Alloy Aluminum Sheet from Italy: Response to the Verification Questionnaire," dated December 18, 2020 (Laminazione's Verification Response) at 12-13 and Exhibit VQ-10.

¹⁰⁰ See Petitioners' Case Brief at 14-16 (citing Laminazione's June 25, 2020 Sections BCD questionnaire response (Laminazione's June 25, 2020 BCDQR) "lam_cop01" cost database; and Laminazione's September 3, 2020 DSQR "lam_cop02" cost database and Laminazione's September 25, 2020 DSQR "lam_cop03" cost database).

¹⁰¹ *Id.* at 15.

¹⁰² *Id.* at 17.

to its reporting.¹⁰³

- It is likely that the purpose of Laminazione's shifting of costs was to target the highest U.S. CONNUM to lower its dumping margin.¹⁰⁴

Laminazione's Rebuttal Brief

- Laminazione's changes to its cost database were in response to Commerce's instructions to identify the names of its tolling customers in the MFR field, instead of using "CUSTOMER" to identify the tolled products.¹⁰⁵ Laminazione did not mislabel the manufacturer but complied with Commerce's instructions. Laminazione notes that the initial questionnaire did not provide any relevant instructions regarding level of specificity at which a tolling customer should be identified.¹⁰⁶
- Laminazione identified all revisions and minor corrections that it made to the revised cost database with respect to the MFR field. Contrary to the petitioners' claim, Laminazione did not shift production quantities. Laminazione made minor revisions and explained them in detail.¹⁰⁷
- The petitioners' reliance on *Steel Wire Rod from Mexico* is misplaced. In that case, Commerce determined that the application of facts available was appropriate because the respondent made a significant change with regard to the CONNUM that comprised the majority of its U.S. sales of subject merchandise, mischaracterized the change as minor, misrepresented the magnitudes of the changes made to its database, and failed to adequately explain the nature of the significant changes it made.¹⁰⁸
- In contrast, Laminazione corrected the manufacturer of only four coils, its revisions were truly minor (*i.e.*, 0.03 percent of the total production quantity reported in the cost database) and a detailed explanation of each revision was provided.¹⁰⁹ Further, as demonstrated in Laminazione's rebuttal brief, the change in the extended total cost of manufacturing (TOTCOM) for the CONNUMs affected was miniscule (*i.e.*, corresponding to only -0.02 percent of the total extended TOTCOM reported in the cost database).¹¹⁰
- The petitioners speculate regarding Laminazione's purpose for shifting costs. However, as demonstrated above, Laminazione did not shift costs and none of the minor revisions made to the cost database involved the largest CONNUM sold to the U.S.¹¹¹ Further, the CONNUMs affected by the minor revisions were not sold in the United States, represent a very small portion of Laminazione's home market sales, and did not match to any U.S.

¹⁰³ *Id.* at 16 (citing *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 23190 (May 22, 2017) (*Steel Wire Rod from Mexico*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1).

¹⁰⁴ *Id.* at 22.

¹⁰⁵ See Laminazione's Rebuttal Brief at 12-13 (citing Laminazione's September 4, 2020 Sections B and C Second Supplemental Questionnaire Response (Laminazione's September 4, 2020 BCSQR) at 8-9).

¹⁰⁶ *Id.* at 13.

¹⁰⁷ *Id.* at 14 (citing Laminazione's September 3, 2020 DSQR at 64; and Laminazione's September 4, 2020 BCSQR at 8-9).

¹⁰⁸ *Id.* at 14-15 (citing *Steel Wire Rod from Mexico* IDM at 6-7).

¹⁰⁹ *Id.* at 15 (citing Laminazione's September 3, 2020 DSQR at 64 and Exhibit Supp. D-16; Laminazione's September 4, 2020 BCSQR at 8-9; and Laminazione's Rebuttal Brief at Exhibit 2).

¹¹⁰ *Id.* at 15 (citing Laminazione's September 3, 2020 DSQR at 64 and Exhibit Supp. D-16; Laminazione's September 4, 2020 BCSQR at 8-9; and Laminazione's Rebuttal Brief at Exhibit 2).

¹¹¹ *Id.* at 15 (citing Petitioners' Case Brief at 22).

CONNUMs.¹¹²

Commerce's Position:

We disagree with the petitioners that Laminazione made significant unidentified and unrequested changes in its second cost database. In its June 25, 2020 BCDQR, Laminazione explained that during the POI it processed raw materials into aluminum sheet under various tolling agreements.¹¹³ Because Laminazione at the time understood that Commerce considered the tolling customer to be the manufacturer, Laminazione included an MFR field in the cost and sales databases, where it classified as “CUSTOMER” the products produced under the tolling agreements and as “LAMINAZIONE” the products produced for itself.¹¹⁴ At Commerce’s request, in its September 4, 2020 BCSQR, Laminazione submitted revised home market and U.S. sales databases identifying the names of its tolling customers in the MFR field, instead of using “CUSTOMER” to identify the tolled products.¹¹⁵ Accordingly, in its September 3, 2020 DSQR, Laminazione also submitted a revised cost database to reflect the changes it made to the MFR field in its home market and U.S. sales databases.¹¹⁶

In its September 3, 2020 DSQR, in addition to informing Commerce that it revised the MFR field in the cost database to reflect Commerce’s requested changes to the sales database, Laminazione also identified minor corrections that it made to the cost database as a result of Commerce’s request.¹¹⁷ Specifically, in addition to including the tolling customers’ names under the MFR field as requested by Commerce, Laminazione informed Commerce that for four coils, it corrected the originally reported manufacturer.¹¹⁸ The petitioners also state that Laminazione continued to include these changes in its third cost database. While Commerce issued Laminazione a second supplemental section D, we did not ask Laminazione to reverse the corrections made in its September 3, 2020 DSQR, nor did we ask them to provide additional information regarding these changes. Consequently, Laminazione appropriately continued to include these changes in the “lam_cop03” cost database submitted in its September 25, 2020 DSQR.

We do not agree with the petitioners that Laminazione’s changes to the cost database were significant, nor do we agree that Laminazione shifted production quantities between CONNUMs. As explained by Laminazione in its September 3, 2020 DSQR, out of the total aluminum sheet manufactured during the POI, Laminazione identified and corrected the originally reported manufacturer for four coils of MUC.¹¹⁹ Further, as demonstrated in the Laminazione Final Cost Memorandum, the production quantity corrections made to the “lam_cop02” cost database CONNUMs affected the manufacturers within the CONNUMs, not between CONNUMs as

¹¹² *Id.* at 16 (citing Laminazione’s September 4, 2020 BCSQR at Exhibits Supp2. C-1 and B-1).

¹¹³ *See* Laminazione’s June 25, 2020 BCDQR at D-4.

¹¹⁴ *Id.* at D-4.

¹¹⁵ *See* Laminazione’s September 4, 2020 BCSQR at 8-9.

¹¹⁶ *See* Laminazione’s September 3, 2020 DSQR at 1, 64 and “lam_cop02” cost database.

¹¹⁷ *Id.* at 64.

¹¹⁸ *Id.*

¹¹⁹ *See* Laminazione’s Rebuttal Brief at 15; *see also* Laminazione’s September 3, 2020 DSQR at 64 and Exhibit Supp. D-16.

claimed by the petitioners.¹²⁰ Furthermore, the changes to two additional CONNUMs involved splitting the original “CUSTOMER” designation into two tolling customers, and for the one that also affected Laminazione, the change was miniscule.¹²¹ To put it in perspective, the total quantities involved in these corrections correspond to 0.09 percent of the total production quantity reported in the cost database.¹²²

We agree with the petitioners that Laminazione’s reclassification of the production quantities changed the TOTCOMs of the affected CONNUMs, however, that was to be expected in response to Commerce’s requests. Notwithstanding the fact that any reclassification of production quantities will undoubtedly change the cost of the affected CONNUMs, the petitioners’ analysis of the change in the cost of these CONNUMs failed to take into consideration that in its September 3, 2020 DSQR Laminazione also made a revision to the cost of the raw materials used in the casting process of self-produced slabs.¹²³ Specifically, Laminazione re-calculated the reported costs of the raw materials used in the casting process of self-produced slabs, to account for the revenues related to the sales of a small quantity of ingots.¹²⁴ Adjusting the change in the cost of the affected CONNUMs to incorporate the change in the cost of the self-produced slabs, makes an already minor change even smaller.¹²⁵

We agree with Laminazione that the petitioners’ reliance on *Steel Wire Rod from Mexico* is misplaced. In *Steel Wire Rod from Mexico*, Commerce stated:

Deacero made a significant change to its section D database with regard to the CONNUM that comprised the majority of its U.S. sales of subject merchandise and mischaracterized the change as “minor.” We find that the substantive nature of the changes contained in Deacero’s revised section D database are so significant that it constitutes an entirely new section D dataset that was, according to Deacero, based on “actual” and not “planned” costs... Therefore, by not disclosing the magnitude of the changes and characterizing the revision to the allocation of its billet costs as a “minor correction,” in its first supplemental questionnaire response, we find that Deacero mischaracterized the nature of its submission and withheld critical information from Commerce in this submission.¹²⁶

In the instant case, we find that Laminazione’s changes constitute minor corrections, made as a result of Commerce’s request, and disclosed in its September 3, 2020 DSQR.

As demonstrated above, the petitioners’ allegations mischaracterized the changes made by Laminazione in its second cost database and misrepresent the magnitude of these changes. Further, the petitioners’ allegation that Laminazione shifted costs to target the highest U.S.

¹²⁰ See Memorandum, “Antidumping Duty Investigation of Common Alloy Aluminum Sheet (CAAS) from Italy: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Laminazione Sottile S.p.A.,” dated March 1, 2021 (Laminazione Final Cost Memorandum) at 1-2 and Attachment 1.

¹²¹ See Laminazione Final Cost Memorandum at Attachment 1.

¹²² *Id.* at Attachment 1.

¹²³ See Laminazione’s September 3, 2020 DSQR at 32 and 64.

¹²⁴ *Id.* at 32 and 64.

¹²⁵ See Laminazione Final Cost Memorandum at Attachment 1.

¹²⁶ See *Steel Wire Rod from Mexico* IDM at 6-7.

CONNUM to lower its dumping margin, is not based on record evidence and is purely speculative. After reviewing the evidence on the record, we do not find that the changes included in the “lam_cop03” cost database were significant, unsubstantiated, unidentified, or unrequested. Therefore, for the final determination, we have continued to accept these changes.

(C) Yield Loss and Scrap Reporting

Petitioners’ Case Brief

- Laminazione did not substantiate its yield loss calculation in its original response or its DSQR.¹²⁷
- The screenshots provided by Laminazione did not corroborate the reported scrap quantities.¹²⁸

Laminazione’s Rebuttal Brief

- Laminazione properly substantiated the reported yield loss and scrap quantities. Specifically, Laminazione provided production input/output calculations showing the production yields at the foundry level and for finished goods, including both MUC and non-MUC.¹²⁹ In addition, Laminazione reconciled the quantities used to calculate the production yields for each production stage to its books and records and provided production records and supporting schedules.¹³⁰
- Regarding scrap quantities, Laminazione submitted several complete CONNUM cost build-ups, which demonstrate how Laminazione calculated the scrap quantities generated during the rolling stages, and that the reported scrap accurately reflects the actual data recorded in Laminazione’s accounting system. Contrary to the petitioners claim, the screenshots provided with these cost build-ups demonstrate the link between the input slab to the output coil.¹³¹

Commerce’s Position:

We disagree with the petitioners that Laminazione did not substantiate the reported yield loss and scrap quantities. The petitioners’ arguments are based on the review of an exhibit that was not intended to substantiate Laminazione’s yield loss calculation but, instead, was provided by Laminazione to demonstrate to Commerce how it determined the quantity of slabs purchased and used during the POI and the quantity of scrap generated from these purchased slabs.¹³²

Regarding the reported yield loss, in Laminazione’s September 3, 2020 DSQR, Laminazione

¹²⁷ See Petitioners’ Case Brief at 17.

¹²⁸ *Id.* at 17 (citing Laminazione’s September 3, 2020 DSQR at 38 and Exhibit Supp. D-18).

¹²⁹ See Laminazione’s Rebuttal Brief at 16-17 (citing Laminazione’s September 3, 2020 DSQR at 41-42 and Exhibit Supp. D-20).

¹³⁰ *Id.* at 16-17 (citing Laminazione’s September 3, 2020 DSQR at 8, 41-42 and Exhibits Supp. D-5, D-6, D-13, D-14, D-15, D-17, D-20; and Laminazione’s Verification Response at 11 and Exhibit VQ-7).

¹³¹ *Id.* at 18 (citing Laminazione’s September 3, 2020 DSQR at 60-63 and Exhibits Supp. D-26, D-27, D-29-A to C, D-30-A to B, D-31-A to B, D-32-A to C, D-33; and Laminazione’s Verification Response at 11-12 and Exhibits VQ-8, VQ-9).

¹³² See Petitioners’ Case Brief at 17; *see also* Laminazione’s September 3, 2020 DSQR at 36-37 and Exhibit Supp. D-18.

completed the input and output worksheet provided by Commerce for Laminazione to substantiate the yield loss reported in its June 25, 2020 BCDQR.¹³³ As explained by Laminazione in its case brief, Laminazione also reconciled the quantities reported in the input and output worksheet to the applicable inventory movement schedules, screenshots from its production control system, etc.¹³⁴

Regarding scrap quantities, in Laminazione's September 3, 2020 DSQR, Laminazione provided detailed explanations and supporting documentation on how it accounted for scrap (*i.e.*, generation, consumption, tracking, recording, etc.) in the reported costs and in its normal books and records.¹³⁵ Further, as explained by Laminazione, the numerous CONNUM cost build-ups it provided in its responses to Commerce include screenshots that demonstrate the link between the input slab to the output coil, how Laminazione calculated the scrap quantities generated during the rolling stages, and that the reported scrap accurately reflects the actual data recorded in Laminazione's accounting system.¹³⁶ After reviewing the evidence on the record, we do not find that Laminazione failed to substantiate its reported yield loss and scrap quantities. Therefore, for the final determination, we have continued to accept Laminazione's yield loss and scrap reporting.

(D) Material Costs for a Specific Tolling Customer

Petitioners' Case Brief

- Laminazione's cost database does not include certain material costs related to one of its tolling customers.¹³⁷

Laminazione's Rebuttal Brief

- Contrary to the petitioners' unsupported assertion, Laminazione properly reported all direct materials costs for the tolled products processed for the tolling customer referenced by the petitioners.¹³⁸
- Laminazione did not incur master alloys costs to roll the slabs provided by this tolling customer, because master alloys are only used during the casting process, not during the rolling stages.¹³⁹
- Laminazione did not report other materials costs for these tolled products because it did not incur any costs for other production materials (such as nitrogen, degreasing agents, and lubricating oils).¹⁴⁰

¹³³ See Laminazione's September 3, 2020 DSQR at 41-42 and Exhibit Supp. D-20; *see also* Laminazione's June 25, 2020 BCDQR at D-13).

¹³⁴ See Laminazione's Rebuttal Brief at 16-17; *see also* Laminazione's September 3, 2020 DSQR at 41-42 and Exhibits Supp. D-5, D-6, D-13, D-14, D-15, D-17, D-20, D-23.

¹³⁵ See Laminazione's September 3, 2020 DSQR at 25-31 and Exhibits Supp. D-13, D-14, D-15.

¹³⁶ *Id.* at Exhibits Supp. D-26, D-27, D-29-A to C, D-30-A to B, D-31-A to B, D-32-A to C, D-33.

¹³⁷ See Petitioners' Case Brief at 18.

¹³⁸ See Laminazione's Rebuttal Brief at 19.

¹³⁹ *Id.* at 19 (citing Laminazione's June 25, 2020 BCDQR at D-6 and Exhibit D-2; and Laminazione's September 25, 2020 DSQR at 8).

¹⁴⁰ *Id.* at 19 (citing Laminazione's September 25, 2020 DSQR at Exhibit Supp2. D-1).

Commerce's Position:

We disagree with the petitioners that Laminazione did not report certain material costs for the tolled products processed for one of its tolling customers. Laminazione's cost database includes three material related fields (*i.e.*, DIRMAT for self-produced/purchased slabs); DIRMAT3 for master alloy costs and OTHDIRMAT for other production materials like nitrogen, degreasing agents, etc.).¹⁴¹ As explained in Laminazione's June 25, 2020 BCDQR, the production process for aluminum sheet starts at the foundry where Laminazione melts the raw materials (ingots, scrap, and master alloys) and casts the slabs ("self-produced slabs") that will be transformed into aluminum sheet.¹⁴²

During the POI, the tolling customer referenced by the petitioners provided slabs to Laminazione.¹⁴³ Therefore, because there was no "casting" of slabs involved, Laminazione did not incur master alloy costs in producing the aluminum sheet for this tolling customer. The CONNUM cost build-ups provided by Laminazione demonstrate that, likewise, Laminazione also did not incur master alloy costs in the instances where Laminazione produced aluminum sheet for themselves with purchased slabs.¹⁴⁴ Further, the CONNUM cost build-ups provided by Laminazione demonstrate that, as explained by Laminazione, it also did not incur any costs for other production materials (such as nitrogen, degreasing agents, and lubricating oils) for the products produced for this tolling customer.¹⁴⁵ Two of these CONNUM cost build-ups demonstrate that this was also true for the products Laminazione produced for themselves which fell under these CONNUMs.¹⁴⁶ After reviewing the evidence on the record, we do not find Laminazione's reported costs for this tolling customer to be deficient. Therefore, we have continued to rely on the costs reported for this tolling customer in Laminazione's "lam_cop03" cost database for the final determination.

(E) CONNUM-Specific Costs

Petitioners' Case Brief

- Laminazione claims that it established cost for each CONNUM by determining the production costs on a coil by coil basis. However, Laminazione's reported costs do not reflect CONNUM-specific costs or the cost differences related to the CONNUM's product characteristics.¹⁴⁷
- Laminazione's direct material costs do not reflect the CONNUM-specific product trends associated with producing aluminum sheet. The CONNUM comparisons provided in the petitioners' case brief demonstrate that Laminazione's cost database includes unexplained and inexplicable discrepancies in the reported direct material costs of

¹⁴¹ See Laminazione's June 25, 2020 BCDQR at D-47, D-48; *see also* Laminazione's September 3, 2020 DSQR at 59-60.

¹⁴² *Id.* at D-6.

¹⁴³ See Laminazione's September 25, 2020 DSQR at 8, Exhibit Supp2. D-4 and "lam_cop03" cost database.

¹⁴⁴ See Laminazione's September 3, 2020 DSQR at Exhibits Supp. D-29-A and D-29-B (for purchased slabs) and Exhibits D-32-A, D-32-B, D-32-C (for slabs received from the tolling customer referenced by the petitioners).

¹⁴⁵ *Id.* at Exhibits Supp. D-32-A, D-32-B, D-32-C.

¹⁴⁶ *Id.* at Exhibits Supp. D-32-A, D-32-C.

¹⁴⁷ See Petitioners' Case Brief at 5-6.

products that only differ in width and/or gauge, or products that undergo non-mechanical surface treatment.¹⁴⁸

- Laminazione also failed to report accurate conversion costs. The additional CONNUM comparisons provided in the petitioners' case brief demonstrate that Laminazione's reported conversion costs do not conform with expected cost trends for products that only differ in width and gauge, or products that undergo non-mechanical surface treatment.¹⁴⁹
- Laminazione did not explain why its reported costs deviate from these expected and logical cost trends.¹⁵⁰

Laminazione's Rebuttal Brief

- Contrary to the petitioners' arguments, Laminazione reported CONNUM-specific costs that reflect the cost differences related to the CONNUMs' product characteristics.¹⁵¹
- In its section D response, Laminazione explained the methodology used to report its cost of production (COP).¹⁵² Specifically, Laminazione extracted the reported cost data from its production control system on a coil-by-coil basis; calculated the actual production costs for each coil and allotted these costs over the weight of each coil. This resulted in CONNUM-specific costs that accurately reflect the costs incurred during the POI, as recorded in Laminazione's production control system used in the normal course of business.¹⁵³
- Further, Laminazione explained that it identified the physical characteristics using the product codes assigned by its system in the normal course of business. The information in its production control system includes details regarding the product characteristics needed to assign CONNUMs to each production order. Laminazione's product codes are specific to each customer and each product; reflect the physical characteristics of the product (surface treatment, alloy, width, coil, temper, and gauge); and, reflect the sequence of production phases and machinery used to manufacture the specific coil.¹⁵⁴
- The petitioners' claim that certain production processes should have increased or decreased Laminazione's production costs, but do not provide factual evidence to support their assertions.¹⁵⁵ Although the petitioners allege inconsistencies related to Laminazione's reporting of material and conversion costs, it did not make these claims while the record was still open and Laminazione could respond with appropriate evidence.¹⁵⁶
- In response to Commerce's inquiries, Laminazione submitted complete cost build-ups (with supporting screenshots from its production control system) explaining the small differences in the per-unit costs reported for certain CONNUMs. These build-ups

¹⁴⁸ *Id.* at 6-10 (citing Laminazione's September 25, 2020 DSQR "lam_cop03" cost database).

¹⁴⁹ *Id.* at 10-13 (citing Laminazione's September 25, 2020 DSQR "lam_cop03" cost database).

¹⁵⁰ *Id.* at 6.

¹⁵¹ See Laminazione's Rebuttal Brief at 3.

¹⁵² *Id.* at 4 (citing Laminazione's June 25, 2020 BCDQR at D- 29 to D-37).

¹⁵³ *Id.* at 4 (citing Laminazione's June 25, 2020 BCDQR at D-29).

¹⁵⁴ *Id.* at 4-5 (citing Laminazione's June 25, 2020 BCDQR at D-20, D-29; and Laminazione's September 3, 2020 DSQR at 7, 57 and Exhibit Supp. D-4).

¹⁵⁵ *Id.* at 5.

¹⁵⁶ *Id.* at 5 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Korea: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 27362 (May 8, 2020) (*CTL Plate from Korea 18-19*) IDM at 16 (Comment 4)).

demonstrate that the small cost differences between similar CONNUMs were caused by the fact that Laminazione reported the actual costs incurred and recorded in its cost accounting system in the normal course of business.¹⁵⁷ Laminazione explained that certain differences in the per-unit DIRMAT costs related to the use of self-produced or purchased slabs, and differences in the per-unit OTHDIRMAT costs related to the use of specific materials in the production of specific coils or according to the type of finished product.¹⁵⁸ The small differences in the per-unit DIRLAB, VOH, and FOH costs related to various factors, such as differences in rolling time, production quantities, etc.¹⁵⁹

- Although, the CONNUM cost build-ups referenced above were submitted several weeks prior to the *Preliminary Determination*, the petitioners did not submit any factual information to rebut Laminazione's reported costs.¹⁶⁰
- The cost data in the CONNUM comparisons provided by the petitioners show very small cost differences between similar CONNUMs which do not support the petitioners' conclusion that Laminazione's reported costs are not CONNUM-specific.¹⁶¹
- The largest difference in total direct materials (TTL DIRMAT) cost accounts for -0.10 percent of the TTL DIRMAT costs. The largest difference in total conversion costs (TTL CC) is an outlier, caused by an exceptionally large difference in production quantities between the two CONNUMs considered.¹⁶² Moreover, the production quantities of the two similar CONNUMs are not significant, when compared to the total production quantity reported in the cost database.¹⁶³

Commerce's Position:

See section F below for Commerce's position.

(F) Application of Total AFA and Smoothing Methodology

Petitioners' Case Brief

- The issues discussed in A through E above, both individually and collectively, demonstrate that Laminazione's reported cost data is flawed and deficient.¹⁶⁴ The absence of reliable cost data makes Commerce's reliance on total AFA necessary in assigning a margin to Laminazione for the final determination.¹⁶⁵

¹⁵⁷ *Id.* at 5-6 (citing Laminazione's September 3, 2020 DSQR at Exhibits Supp. D-29-A to C, D-30-A to B, D-31-A to B, D-32-A to C, D-33).

¹⁵⁸ *Id.* at 6 (citing Laminazione's September 3, 2020 DSQR at 60-63 and Exhibits Supp. D-29-A to C, D-30-A to B; and Laminazione's September 25, 2020 DSQR at 16-17).

¹⁵⁹ *Id.* at 6-7 (citing Laminazione's September 3, 2020 DSQR at 60-63 and Exhibits Supp. D-4, D-29-A to C, D-32-A to C).

¹⁶⁰ *Id.* at 6, footnote 21.

¹⁶¹ *Id.* at 7 and Exhibit 1.

¹⁶² *Id.* at 7 and Exhibit 1.

¹⁶³ *Id.* at 8 and Exhibit 1.

¹⁶⁴ See Petitioners' Case Brief at 18-19.

¹⁶⁵ *Id.* at 19-21 (citing *Steel Authority of India v. United States*, 149 F. Supp. 2d 921, 927-928 (Ct. Int'l Trade 2001)).

- Laminazione relied on unknown factors that resulted in the reporting of aberrational costs that are not CONNUM-specific, reflect contradictory differences, and do not relate to the reported physical characteristic of the CONNUMs.¹⁶⁶
- Laminazione failed to provide reliable cost data and, thus, failed to cooperate by acting to the best of its ability to respond to Commerce’s requests for information.¹⁶⁷
- Laminazione’s unsubstantiated and unreasonable shifting of costs only served to distort the reported costs, and those costs cannot be relied upon, as there is no way to know how to correctly assign the shifted costs.¹⁶⁸
- Commerce’s adjustments to Laminazione’s cost database made in the *Preliminary Determination* do not remedy the issues discussed above.¹⁶⁹
- Moreover, Commerce’s use of market prices to adjust the raw material cost of Laminazione’s tolled products in the *Preliminary Determination* benefitted Laminazione. Commerce should not rely on these market prices for the final determination, if it determines that some form of AFA is warranted for Laminazione.¹⁷⁰
- Commerce’s smoothing methodology will not alleviate the deficiencies (*i.e.*, contorted cost trends, the shifting of costs, missing costs, etc.) in Laminazione’s reported costs. The smoothing methodology is only intended to correct timing differences embedded in a cost file.¹⁷¹
- The differences in Laminazione’s reported material and conversion costs are the result of non-timing related distortions, not associated with the CONNUMs’ physical characteristic. Therefore, Commerce should find that it cannot rely on its smoothing methodology to develop reasonable actual costs.¹⁷²

Laminazione’s Rebuttal Brief

- The record demonstrates that Laminazione accurately reported its costs and fully cooperated in this investigation. Laminazione provided complete and accurate responses to Commerce’s questionnaires. The petitioners have repeatedly asserted that Laminazione failed or refused to provide requested information and made misleading characterizations of the submitted information. However, no information is missing from the record and, thus, there is no basis to apply any form of AFA.¹⁷³
- The petitioners suggested Commerce make certain cost and price adjustments to the reported cost of Laminazione’s tolled products, for the *Preliminary Determination*.¹⁷⁴

¹⁶⁶ *Id.* at 20-21 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014) (CWP from Korea) IDM at Comment 1).

¹⁶⁷ *Id.* at 22 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003)).

¹⁶⁸ *Id.* at 22 (citing *Steel Wire Rod from Mexico* IDM at Comment 1).

¹⁶⁹ *Id.* at 25 (citing Memorandum, “Antidumping Duty Investigation of Common Alloy Aluminum Sheet (CAAS) from Italy: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Laminazione Sottile S.p.A.,” dated October 6, 2020 (Laminazione Preliminary Cost Memorandum) at 3).

¹⁷⁰ *Id.* at 25-26 (citing Laminazione Preliminary Cost Memorandum at 3; comparing Laminazione’s June 25, 2020 BCDQR at Exhibit D-32; and Laminazione’s September 3, 2020 DSQR at PDF page 296, with Laminazione’s September 25, 2020 DSQR at PDF page 84 and “lam_cop03” cost database).

¹⁷¹ *Id.* at 27-29.

¹⁷² *Id.* at 30.

¹⁷³ See Laminazione’s Rebuttal Brief at 2-3.

¹⁷⁴ *Id.* at 20 (citing Petitioners’ Letter, “Common Alloy Aluminum Sheet from Italy – Petitioners’ Pre-Preliminary

However, because these adjustments did not achieve the results the petitioners wanted, they now suggest Commerce should disregard the costs of the raw materials provided by Laminazione's tolling customers.¹⁷⁵

- The average purchase price Laminazione paid for slabs during the POI is practically identical to the market price for slabs reported for the tolled products in the cost database.¹⁷⁶ For the final determination, Commerce should continue to use the slab value currently reported for the tolled products. However, if Commerce decides to use the average cost of third-party produced slabs, Commerce should only adjust the CONNUMs for which the tolling customers provided slabs to Laminazione.¹⁷⁷
- Here, there is no basis to consider using a smoothing methodology because, as discussed in issue 'A' above, the differences in costs between similar CONNUMs are miniscule and the total production quantities of these CONNUMs are not significant.¹⁷⁸
- Before making any cost smoothing adjustment, Commerce considers (1) whether there are CONNUMs with outlier costs and (2) if such outlier costs exist, whether the "differences in costs between CONNUMs are {...} significant relative to the totality of the reported production."¹⁷⁹
- Commerce has previously acknowledged that there can be swings in costs during the investigation or review period, but these are not a concern because they normally even out over the annual average period.¹⁸⁰
- Here, the TTL DIRMAT and TTL CC costs differences alleged by the petitioners are "not significant relative to the totality of the reported production."¹⁸¹ Of course, the petitioners did not quantify the purported "significant deviations" relative to the totality of Laminazione's total production.¹⁸²
- The petitioners' arguments regarding the alleged inaccuracies in Laminazione's reported costs are hugely exaggerated. The petitioners assert that Commerce should apply total AFA because of deviations in TTL DIRMAT and TTL CC costs, yet those deviations are not even significant enough to trigger the application of Commerce's smoothing methodology.¹⁸³

Commerce's Position:

The petitioners argue that Laminazione's reported costs are not CONNUM-specific and do not reflect the cost differences related to the CONNUMs' product characteristics. Section

Determination Comments Regarding Laminazione Sottile S.p.A.," dated September 17, 2020 (Petitioners' Pre-Prelim Comments) at 19).

¹⁷⁵ *Id.* at 20 (citing Petitioners' Case Brief at 25).

¹⁷⁶ *Id.* at 20 (citing Laminazione's September 3, 2020 DSQR at Exhibit Supp. D-17; and Laminazione's September 25, 2020 DSQR at 9 and Exhibits Supp2. D-1 and D-4).

¹⁷⁷ *Id.* at 20 (citing Laminazione's September 25, 2020 DSQR at 2 and Exhibit Supp2. D-1).

¹⁷⁸ *Id.* at 8.

¹⁷⁹ *Id.* at 8 (citing *CTL Plate from Korea 18-19 IDM* at 16 (Comment 4)).

¹⁸⁰ *Id.* at 9-10 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) *IDM* at 53 (Comment 8)).

¹⁸¹ *Id.* at 10 (citing *CTL Plate from Korea 18-19 IDM* at 15 (Comment 4)).

¹⁸² *Id.* at 10 (citing Petitioners' Case Brief at 6-13).

¹⁸³ *Id.* at 10 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016), and accompanying *IDM* at 9 (Comment 2)).

773(f)(1)(A) of the Act states that “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.” Commerce uses such costs for purposes of the sales below cost test on home market sales and for determining constructed value (CV) when normal value (NV) prices are not available. Additionally, Commerce relies on the reported CONNUM costs to calculate the difference-in-merchandise (DIFMER) adjustment when comparing prices of similar merchandise.

Accordingly, pursuant to section 773(f)(1)(A) of the Act, Special Rules for Calculation of Cost of Production and for Calculation of Constructed Value, we are instructed to rely on a company’s normal books and records if two conditions are met: (1) the books are kept in accordance with the home country’s GAAP; and (2) the books reasonably reflect the costs associated with the production of the product. In the instant case, Laminazione’s reported per-unit costs are derived from Laminazione’s normal books and records, which are kept in accordance with Italian GAAP.¹⁸⁴ Therefore, the question we are facing is whether the per-unit costs from Laminazione’s normal books reasonably reflect the costs associated with the production of the product.

At the outset of a case, Commerce identifies the physical characteristics that are the most significant in differentiating products for price comparison purposes. The selected physical characteristics then define identical or similar products (*i.e.*, the CONNUMs) for sales comparison purposes. Physical characteristics are often defined in terms of ranges or groupings of individual products. The level of detail within each physical characteristic (*e.g.*, the multiple different grades or sizes of a product) reflects the importance placed on that characteristic for price-to-price comparisons, thereby establishing NV based on comparison market sales of the identical, or the most similar, foreign like product.¹⁸⁵ Thus, under section 773(a)(6)(C)(ii) and (iii) of the Act, an adjustment is made to NV to account for the fact that similar products, as defined by the CONNUMs, are being matched instead of identical products as defined by the CONNUMs.

Consistent with the statute, Commerce’s section D questionnaire directs the respondent to report weighted-average costs for each CONNUM relying on the per-unit costs from their normal books and records, and to assign them to CONNUMs based upon the physical characteristics.¹⁸⁶ While either the respondent or Commerce may later assert that such costs do not reasonably

¹⁸⁴ See Laminazione’s June 25, 2020 BCDQR at D- 29 to D-37; *see also* Laminazione’s September 3, 2020 DSQR at Exhibits Supp. D-23, D-26, D-27, D-29-A to C, D-30-A to B, D-31-A to B, D-32-A to C, D-33.

¹⁸⁵ See *CTL Plate from Korea 18-19* IDM at Comment 4.

¹⁸⁶ See Laminazione’s June 25, 2020 BCDQR at D-3 (Question I.C, “Calculate reported COP and CV figures based on the actual costs incurred by your company during the period of investigation (POI), as recorded under your company’s normal accounting system.”), D-2 (Question I.A, footnote 2, “There should be a single weighted-average cost for each CONNUM regardless of market destination as defined by Commerce’s product characteristics.”), and D-29 (Question III, “The CONNUM specific per-unit COP and CV figures that you provide in response to this section of the questionnaire must reconcile to the actual costs reported in your company’s normal cost accounting system and to the accounting records used by your company to prepare its financial statements... Therefore, the starting point for your response must be the costs as recorded in your normal books and records, see section 773(f) of the statute.”)

reflect the cost of production, the starting point for reporting costs and any analysis of whether to adjust is the per-unit figure from the normal books and records. Further, if the respondent's costs do not normally account for certain costs differences, Commerce directs the respondent to further refine the costs from their system using available information.¹⁸⁷ However, Commerce does not direct the respondent to completely abandon its normal accounting system costs and develop a completely new cost reporting system in order for its reported costs to reflect differences related only to the identified physical characteristics, as the petitioners assert (*i.e.*, to eliminate all other differences). If Commerce instructed respondents to do so, the per-unit costs would not reflect the actual costs of producing the products, as they would ignore other physical characteristics not included by Commerce for purposes of the proceeding. Further, the reported costs would no longer tie to records normally kept by the respondent making verification of such costs significantly more difficult and open to manipulation.

We disagree that DIFMER is the sole concern for Commerce. As noted, section 773(a)(6)(C)(ii) of the Act directs Commerce to adjust NV to account for the fact that, in the absence of an identical product being available for comparison to U.S price, Commerce is relying on a similar product (*i.e.*, DIFMER adjustment) for price comparison purposes.¹⁸⁸ Section 773(a)(6)(C)(ii) of the Act does not specify how such an adjustment is to be quantified and DIFMER is not included in section 773(f)(1)(A) of the Act, Special Rules for Calculation of Cost of Production and for Calculation of Constructed Value. While Commerce typically relies on the reported per-unit costs as a surrogate for calculating the DIFMER adjustment, Commerce does so as the most practical means available, however, it does not assume that a DIFMER based on cost differences captures precisely all pricing differences between the products making up two similar CONNUMs. Commerce also recognizes that there may be cost differences among the products within each CONNUM associated with physical differences that were not selected for use in the proceeding. Commerce uses the reported CONNUM-specific cost differences to calculate DIFMER because it is available and is the most practical surrogate to use for adjusting for price differences between products that fall within two different CONNUMs. Accordingly, we disagree with the petitioners that the statute directs Commerce to rely only on COPs, CVs, and DIFMERs that eliminate all factors other than the chosen physical characteristics.

Nevertheless, Commerce has recognized that modern computer based accounting systems, which track costs in detail over short periods, will capture differences that do not reflect any physical differences of the individual end products, for example timing differences in raw material purchases, choices between substitutable inputs, or production processing differences that are not smoothed out on small production quantities. In such cases Commerce has reasonably resorted to averaging across CONNUMs to eliminate such distortions (a.k.a. "smoothing") but does so

¹⁸⁷ *Id.* at D-3 (Question III.A.3, "If a physical characteristic identified by Commerce is not tracked by the company's normal cost accounting system, calculate the appropriate cost differences for that physical characteristic using a reasonable method based on available company records (*e.g.*, production records, engineering statistics). The starting point for any such calculation must be the product specific costs as recorded in your normal cost accounting system.")

¹⁸⁸ See Section 773(a)(6)(C)(ii) of the Act states, "the fact that merchandise described in subparagraph (B) or (C) of section 771(16) is used in determining normal value..." The statute does indicate that Commerce should ignore price differences attributable to factors other than the designated physical characteristics.

only when such differences can be shown to be significant.¹⁸⁹ Therefore, the mere presence of some unusual cost differences within the reported data in and of itself does not provide a sufficient basis for Commerce to reject costs that were based on the respondent's normal books.¹⁹⁰ Rather, in deciding whether to reject a respondent's costs, Commerce would look to whether those costs were unsupported by underlying records and whether the respondent failed to act to the best of its ability in providing information that would allow Commerce to determine if the costs reasonably reflect the costs associated with production.

As explained by Laminazione in its June 25, 2020 BCDQR, to determine the reported CONNUM-specific costs, Laminazione extracted cost data from its production control system on a coil-by-coil basis; calculated the actual production costs for each coil and allotted these costs over the weight of each coil.¹⁹¹ Further, Laminazione explained that the information in its production control system includes details regarding the product characteristics needed to assign CONNUMs to each production order. Laminazione explained that its product codes are specific to each customer and each product; reflect the physical characteristics of the product (surface treatment, alloy, width, coil, temper, and gauge); and, reflect the sequence of production phases and machinery used to manufacture the specific coil.¹⁹² Thus, the methodology followed by Laminazione to determine the reported costs resulted in CONNUM-specific costs that accurately reflect the costs associated with the production of those products during the POI, as recorded in Laminazione's production control system used in the normal course of business.

After analyzing Laminazione's reported per-unit costs, Commerce asked Laminazione to explain certain per-unit cost differences in the cost database, including why certain pairs of similar CONNUMs with virtually identical physical characteristics had raw material and conversion cost differences. In its September 3, 2020 SDQR Laminazione provided complete cost build-ups (with supporting screenshots from its production control system) demonstrating the small differences in the per-unit costs reported for certain CONNUMs.¹⁹³ Laminazione explained that for the groupings of CONNUMs selected by Commerce, differences in the per-unit DIRMAT and DTYDRAWADJ costs related to the use of substitutable self-produced slabs or purchased slabs, and differences in the per-unit OTHDIRMAT costs related to the use of specific materials (business proprietary in nature) in the production of specific coils or according to the type of finished product.¹⁹⁴ Laminazione also explained that the small differences in the per-unit DIRLAB, VOH, and FOH costs related to various factors, such as differences in rolling time, production quantities, etc.¹⁹⁵ Here, the record shows that Laminazione's reported per-unit costs are derived from Laminazione's normal books and records, which are kept in accordance with

¹⁸⁹ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019), and accompanying IDM at Comment 1.

¹⁹⁰ See *CTL Plate from Korea 18-19* IDM at Comment 4.

¹⁹¹ See Laminazione's June 25, 2020 BCDQR at D-29-D-30.

¹⁹² *Id.* at D-20, D-29; see also Laminazione's September 3, 2020 DSQR at 7, 57 and Exhibit Supp. D-4).

¹⁹³ See Laminazione's September 3, 2020 DSQR at Exhibits Supp. D-29-A to C, D-30-A to B, D-31-A to B, D-32-A to C, D-33.

¹⁹⁴ See Laminazione's Rebuttal Brief at 6; see also Laminazione's September 3, 2020 DSQR at 60-63 and Exhibits Supp. D-29-A to C, D-30-A to B; and Laminazione's September 25, 2020 DSQR at 16-17.

¹⁹⁵ *Id.* at 6-7; see also Laminazione's September 3, 2020 DSQR at 60-63 and Exhibits Supp. D-4, D-29-A to C, D-32-A to C.

Italian GAAP.¹⁹⁶

In their case brief, the petitioners' argue that Laminazione's direct material costs do not reflect the CONNUM-specific product trends associated with producing aluminum sheet and its conversion costs do not conform with expected cost trends for products that only differ in width and gauge, or products that undergo non-mechanical surface treatment.¹⁹⁷ We note that, as discussed by Laminazione, the CONNUM cost build-ups referenced above were submitted several weeks prior to the *Preliminary Determination*, however, the petitioners did not submit any factual information to rebut Laminazione's reported costs.¹⁹⁸ In addition, the CONNUM-specific costs issue was not included in the Petitioners' Pre-Prelim Comments.¹⁹⁹

In instances where Commerce is faced with the decision of whether to adjust a respondent's reported costs for unusual cost differences between products with similar physical characteristics, Commerce considers "the magnitude of the cost differences and the number of CONNUMs affected."²⁰⁰ Here, we performed an analysis of the per-unit cost differences to determine the extent of the cost fluctuations alleged by the petitioners.

In analyzing Laminazione's cost database, we found that within groups of similar CONNUMs, the reported slab costs (*i.e.*, DIRMAT field) and master alloy costs (*i.e.*, DIRMAT3 field) are reasonably consistent with the group average costs.²⁰¹ While there were some fluctuations in the slab and master alloy costs between similar products (*i.e.*, products with same ALLOY product characteristic that differed only in the WIDTH and GAUGE product characteristics), the differences were for the most part not significant.²⁰² Moreover, the production quantity of the CONNUMs where the differences were larger is minimal in comparison to the total production quantity of all CONNUMs reported.²⁰³ Although the petitioners' analysis included all material related costs, we did not include the duty drawback adjustment and OTHDIRMAT costs because these costs constitute a miniscule part of the reported TOTCOMs. Our analysis focused on the slab and master alloy costs because they are the largest components in the reported material costs, and slab cost is by far the largest component in the reported TOTCOMs.²⁰⁴ Because the noted differences resulting from our analysis are insignificant, we find that Laminazione's reported material costs based on its normal books and records reasonably reflect the cost to produce aluminum sheet. Therefore, for the final determination, we did not adjust the reported material costs of Laminazione's own products. In addition, consistent with the *Preliminary Determination*, we have continued to use market prices to adjust the raw material cost of Laminazione's tolled products.²⁰⁵ We note that Commerce directed Laminazione to rely on these

¹⁹⁶ See Laminazione's June 25, 2020 BCDQR at D- 29 to D-37; *see also* Laminazione's September 3, 2020 DSQR at Exhibits Supp. D-23, D-26, D-27, D-29-A to C, D-30-A to B, D-31-A to B, D-32-A to C, D-33.

¹⁹⁷ See Petitioners' Case Brief at 6-13.

¹⁹⁸ See Laminazione's Rebuttal Brief at 6, footnote 21.

¹⁹⁹ See Petitioners' Pre-Prelim Comments.

²⁰⁰ See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 5.

²⁰¹ See Laminazione Final Cost Memorandum at Attachment 2.

²⁰² *Id.* at Attachment 2.

²⁰³ *Id.* at Attachment 2A.

²⁰⁴ See Laminazione's September 25, 2020 DSQR "lam_cop03" cost database.

²⁰⁵ See Laminazione Final Cost Memorandum; *see also* Laminazione Preliminary Cost Memorandum at 3.

market prices in providing the raw material costs for its tolled sales.²⁰⁶ Other than claiming that the use of these market prices benefitted Laminazione, the petitioners have not provided evidence to support they are not reliable for use in the final determination.²⁰⁷ Further, the comparison that the petitioners provided in their case brief inappropriately does not account for differences due to yield loss.²⁰⁸

Regarding conversion costs, our analysis does reveal some relatively significant differences among CONNUMs with the same reported NMSURF, COIL, GAUGE, MSURF and TEMPER characteristics. The petitioners argue that Laminazione's conversion costs do not conform with expected cost trends for products that only differ in width and gauge, or that undergo non-mechanical surface treatment.²⁰⁹ Yet, the petitioners do not point to record evidence that supports their assertion that these "expected" cost trends are applicable in the instant case.²¹⁰ Further, the petitioners argue that Commerce's smoothing methodology will not alleviate these deficiencies in Laminazione's reported costs.²¹¹ First, we note that this issue was raised for the first time in their case brief wherein the petitioners flagged the fact that Laminazione's CONNUM-specific costs allegedly do not reflect these "expected" cost trends.²¹² Consequently, we were not able to further explore this alleged issue. Second, we note that the conversion costs represent a relatively small portion of total cost of manufacturing wherein variations between the conversion costs of specific products, which may appear large relative to total conversion costs, are minor with regard to total cost of manufacturing.²¹³ As explained by Laminazione, the differences in the per-unit DIRLAB, VOH, and FOH costs relate to various factors, such as differences in rolling time, production quantities, etc.²¹⁴ Thus, these cost differences do not appear to be related to deficiencies that call for the use of AFA. However, as some of the underlying differences seem to relate to production timing differences and differences related to the material inputs (*i.e.*, ingots, scrap, and slab), to mitigate the conversion cost differences among products with identical physical characteristics, we re-allocated Laminazione's conversion costs among products with common NMSURF, COIL, GAUGE, MSURF and TEMPER for the final determination.²¹⁵

We disagree with the petitioners that, for the final determination, the application of total AFA with respect to assigning a margin to Laminazione is warranted. Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in

²⁰⁶ See Laminazione's September 25, 2020 DSQR at 8-10.

²⁰⁷ See Petitioners' Case Brief at 25-26.

²⁰⁸ *Id.* at 25.

²⁰⁹ *Id.* at 10-13.

²¹⁰ *Id.* at 10-13.

²¹¹ *Id.* at 27-29.

²¹² *Id.* at 10-13.

²¹³ See Laminazione's September 25, 2020 DSQR "lam_cop03" cost database.

²¹⁴ See Laminazione's Rebuttal Brief at 6-7; *see also* Laminazione's September 3, 2020 DSQR at 60-63 and Exhibits Supp. D-4, D-29-A to C, D-32-A to C.

²¹⁵ See Laminazione Final Cost Memorandum at Attachment 3.

section 782(i) of the Act. Further, Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

The record evidence addressed in the sections A through F above, leads us to conclude that the issues raised by the petitioners with respect to Laminazione's cost reporting do not meet the threshold for total AFA (*i.e.*, do not demonstrate that Laminazione failed to cooperate to the best of its ability). Therefore, for the final determination, we have continued to rely on Laminazione's reported COP and CV data, adjusted to re-allocate the conversion costs among products with common NMSURF, COIL, GAUGE, MSURF and TEMPER, as discussed above.²¹⁶

Comment 5: Whether a Duty Drawback Adjustment for Laminazione is Warranted

Petitioners' Case Brief:

- Commerce should deny Laminazione's request for a duty drawback (DDB) adjustment because it failed to demonstrate that it meets Commerce's two-prong test for determining eligibility, *i.e.*, that (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise), and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.²¹⁷
- The DDB customs documentation submitted by Laminazione fails to demonstrate how much input product was consumed in the exported product. It fails to submit any consumption documentation issued by, or submitted to, the Italian authorities or any internal records, to substantiate the yield reported to the Italian customs authorities.²¹⁸
- The consumption factor applied by the Italian customs authorities seems to be determined by the relationship of the quantity of ingots reported imported on the customs documentation and the quantity of the exported product.²¹⁹
- Because Laminazione failed to demonstrate how this "factor" used by the Italian authorities is tied in any manner to respondent's actual production experience, it failed to satisfy the second prong.²²⁰
- The DDB adjustment claimed in Laminazione's U.S. sales data base is not substantiated in its reporting, as no such DDB is identified in its accounting records or sales documentation, and no Italian customs documentation for a requested sales trace has been provided.²²¹
- Laminazione's exempted import duties were not accurately imbedded in Laminazione's reported cost of manufacture (COM), because the adjustment factor used to calculate DDB costs includes certain costs in the denominator that are not exempted through Italy's DDB

²¹⁶ *Id.*

²¹⁷ See Petitioners' Case Brief at 32 (citing *Low Melt Polyester Staple Fiber from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, in Part, 83 FR 29094 (June 22, 2018) (*Low Melt PSF Korea*), and accompanying IDM at 18 (Comment 3).

²¹⁸ *Id.* at 32-33.

²¹⁹ *Id.* at 32-33.

²²⁰ *Id.* at 32-33.

²²¹ *Id.* at 34.

program. Including those costs artificially diminishes its per-unit DDB adjustment factor, because the numerator is not on the same basis as the denominator.²²²

- The cost claimed as a drawback in the cost data base is significantly different from the DDB amount claimed in the U.S. sales data base, indicating that the cost adjustment is not calculated on the same basis as the U.S. sales DDB adjustment.²²³
- Commerce should reject Laminazione's claim for an adjustment to its U.S. prices and costs for DDB, because it fails to satisfy Commerce's criteria for granting a DDB, and the existence of a methodological reporting issue between its cost and sales DDB amounts.²²⁴

Laminazione's Rebuttal Brief:

- Commerce should reject the petitioners' argument and continue to make a duty drawback adjustment in the final determination, because Laminazione already demonstrated in its reply to the petitioners' pre-prelim comments the basis for the DDB adjustments as requested.²²⁵
- As already demonstrated by Laminazione in its supplemental responses, the Italian customs authority tracks the entry of aluminum ingots by issuing the "*temporanea importazione*" that records the volume of aluminum ingots imported and the amount of uncollected duties.²²⁶
- Upon export of the aluminum products, Laminazione declares to the Italian customs authority the "*temporanea importazione*" number of the import product, allowing the Italian customs authority to deduct the volume of the aluminum products exported from the aluminum ingots imported under the "*temporanea importazione*."²²⁷
- Laminazione provided numerous documents on the record demonstrating how the Italian customs authority has knowledge of the quantity of aluminum ingots consumed in the exported finished products, as well as internal records demonstrating the DDB adjustment is directly linked and dependent upon the exported MUC.²²⁸
- The petitioners wrongly argue that the DDB adjustment factor includes costs in the denominator that are not exempted through the Italian DDB program; however, as explained in the cost responses, the per-unit cost of the purchased raw materials, *i.e.*, aluminum ingots

²²² *Id.* at 34-35 (citing *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018) (*Steel Wire Rod from Turkey*), and accompanying IDM at Comment 1; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016), and accompanying IDM at Comment 3; *Certain Oil Country Tubular Goods from Turkey: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1240 (January 10, 2018) (*OCTG Turkey*), and accompanying IDM at 4-5; *Diethyl Terephthalate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 28824 (June 26, 2017) (*Diethyl Terephthalate from Korea*), and accompanying IDM at Comment 6; and *Low Melt PSF Korea* IDM at Comment 3).

²²³ *Id.* at 36.

²²⁴ *Id.* at 36-37.

²²⁵ See Laminazione's Rebuttal Brief at 21 (citing Petitioners' Letter, "Common Alloy Aluminum Sheet from Italy – Petitioners' Pre-Preliminary Determination Comments Regarding Laminazione Sottile S.p.A.," dated September 17, 2020) (Petitioners' Pre-Prelim Comments); and Laminazione's Letter, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy: Reply to Petitioners' Pre-Preliminary Determination Comments on Laminazione Sottile S.p.A.," dated September 28, 2021).

²²⁶ *Id.* at 21-22.

²²⁷ *Id.* at 22.

²²⁸ *Id.*

and scrap, includes movement expenses, and hence, the DDB factor is calculated on the same basis as the per-unit cost of the aluminum input.²²⁹

- The factor applied by the Italian customs authority serves to reconcile the volume of aluminum products exported to the total volume of aluminum ingots imported under the related “*temporanea importazione*.” The DDB adjustment factor was calculated by multiplying the value of the ingots imported under each “*temporanea importazione*.”²³⁰
- The petitioners are incorrect in their claim that Laminazione failed to provide information, such as evidence of payment, regarding the sales trace, requested in Commerce’s in lieu of On-Site Verification Questionnaire.²³¹
- Laminazione explained in its responses that the invoiced purchase price varies, depending on whether the importer has to pay the duties or not, and is reflected as such in its accounting system. In that particular sales trace, the invoice price was net of duties. Therefore, the documentation does not identify DDB related to that sale.²³²
- The petitioner’s argument regarding the DDB cost adjustment vs. the U.S. sales adjustment is meaningless, as Commerce bases the U.S. sales adjustment on the amount reported in the cost data base.
- Commerce previously acknowledged that, when inputs are sourced domestically and imported, and the domestically sourced inputs are not subject to duties, Commerce makes an upward adjustment to EP or CEP, “***properly allocating the amount rebated or not collected to all production***” for the POI based on cost, to ensure the dumping calculation is duty neutral on both sides of the dumping calculation.²³³
- For its U.S. sales, Laminazione calculated the DDB amount based on invoice, linking each sales invoice to the related “*temporanea importazione*,” while on the cost side, the uncollected duties were spread across products manufactured during the POI and reported the DDB amount related to MUC only. This explains why the total extended DDB amount in the cost data base is lower than the total extended DDB in the U.S. sales data base.²³⁴

Commerce’s Position:

In the *Preliminary Determination*, we accepted Laminazione’s claimed U.S. duty drawback adjustment because it provided information to satisfy the criteria of the two-prong test.²³⁵ For the final determination, we continue to grant Laminazione a duty drawback adjustment.

Consistent with Commerce’s practice, we applied our two-prong test to determine whether a duty drawback adjustment is appropriate. Specifically, to satisfy section 772(c)(1)(B) of the Act,

²²⁹ *Id.* at 23.

²³⁰ *Id.* at 23-24.

²³¹ *Id.* at 24.

²³² *Id.* at 24-25.

²³³ *Id.* at 24-25 (citing *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016) (*Certain Corrosion-Resistant Steel Products from India*), and accompanying PDM at 15; see also *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335 (recognizing that the duty drawback adjustment is intended to prevent dumping margins from being created or affected by the rebate or exemption of import duties on inputs used in the production of exported merchandise) (*Saha Thai*)).

²³⁴ *Id.* at 26.

²³⁵ See *Preliminary Determination*, and accompanying PDM at 14.

which states that EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of the subject merchandise to the United States,” and to confirm Laminazione’s entitlement to a duty drawback adjustment, we employed a two-prong test to ensure that (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise), and (2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.

Based on our analysis, we find that Laminazione meets the requirements of Commerce’s two-prong test for a duty drawback adjustment. We find that Laminazione proved that the relevant import duty exemptions were directly linked to the exportation of subject merchandise.²³⁶ Further, Laminazione demonstrated that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product.²³⁷

While the petitioner argues that the explanations and documentation provided by Laminazione do not demonstrate Laminazione’s eligibility based on either a link between imports and exports or sufficient quantities of exports *vis-à-vis* DDB exemptions reported received, we disagree. Laminazione provided a listing of all temporary import documents issued by the Italian customs authority, the “*temporanea importazione*,” identifying the volume and value of aluminum inputs imported and consumed in the export product, and the amount of uncollected duties that would be due covering the POI. Laminazione also provided a listing of its exports of subject and non-subject merchandise it manufactured from those inputs during the POI. Laminazione further explained that, upon export, it has to declare to the Italian customs authority under which temporary import document the merchandise is being exported to monitor and confirm that it meets its export obligation for the duty-free imports. Laminazione provided sample sales documentation that can be tied to those listings, and the export customs documentation links the export to the import of the duty-free input *via* the *temporanea importazione*. The sales traces provided by Laminazione include the documentation issued by the Italian customs authority upon import of the aluminum ingots, duty-fee, and consumed in the export product of that sale.²³⁸ Further, we disagree with the petitioners’ contention that the DDB adjustment claimed in Laminazione’s U.S. sales database is not substantiated in its reporting, because no such duties were identified in its accounting records or sales documentation, and no Italian customs documentation for a requested sales trace were provided. Laminazione explained in its response that the invoice of the imported material says either “duty paid,” in which case the importer of record pays the import duties and the final purchase price includes such duties, *i.e.*, it is not separately listed on the invoice, or “duty unpaid,” and no import duties are collected because the manufacturer will export the merchandise produced with such imported inputs. Because the duties, if levied, are included in the purchase price, the duties are neither separately stated on the invoice nor entered separately in the accounting system. Laminazione supported this with screen

²³⁶ See Laminazione May 29, 2020 AQR at Exhibit A-9.

²³⁷ See Laminazione August 4, 2020 BCSQR at Exhibit C-14; *see also* Laminazione September 4, 2020 BCSQR at Exhibit S1-C13.

²³⁸ See Laminazione June 25, 2020 BCDQR at C-43-44 and Exhibit C-14; Laminazione August 4, 2020 BCSQR at 28-32 and Exhibits S1-C11, S1-C13, and S1-C16(A)-(C); Laminazione June 25, 2020 BCDQR at Exhibit D-13; and Laminazione May 29, 2020 AQR and July 10, 2020 AQR at Exhibit A-9.

shots of the respective transactions in its accounting system. Accordingly, the DDB adjustment reported by Laminazione is not reflected in its accounting records.²³⁹

The petitioners argue that Laminazione failed to demonstrate how this “factor” used by the Italian authorities is tied in any manner to respondent’s actual production experience, and therefore failed to satisfy the second prong. We disagree with the petitioners that in an antidumping proceeding, a respondent must demonstrate that the factor used by a government can be linked to respondent’s actual production experience. Rather, the respondent claiming the DDB adjustment must “demonstrate that there were sufficient imports of the imported raw material to account for the duty drawback on the export of the manufactured product.”²⁴⁰ In this case Laminazione demonstrated that it imported a sufficient amount of aluminum ingots duty-free to be consumed in the manufactured subject- and non-subject merchandise that it exported to the United States and other countries during the POI. This is supported by the case record.²⁴¹ Laminazione provided tables listing the imports of aluminum ingots in quantity and value and provided the corresponding exports during the POI, linked by the customs authority’s temporary import and export documentation. This is reconciled with Laminazione’s cost reporting. Laminazione’s cost response provides its actual yield calculations, which reconcile with its overall cost reporting.²⁴² Thus, we determine that Laminazione met the second prong to be eligible for a DDB adjustment.

Furthermore, we agree with Laminazione that the DDB adjustment factor was properly calculated on the same basis as its calculation of the per-unit cost of aluminum inputs, as the average cost of aluminum was based on purchase prices inclusive of movement expenses. Accordingly, Laminazione included the same in the denominator of the DDB adjustment factor.²⁴³

The factor applied by the Italian customs authority to determine whether respondent’s export volume is sufficient in relation to the duty-free import volume, as well as its methodology of derivation, are separate from Laminazione’s actual production experience. That factor serves to determine whether Laminazione fulfilled its export obligation, *i.e.*, whether Laminazione’s exports suffice to meet the duty-free import volume on the temporary customs import documentation, and serves to determine, whether Laminazione is potentially liable for customs duties. The factor the Italian customs authority applies to the import/export relationship is separate from Laminazione’s actual production experience, and they do not necessarily have to be congruent with each other. In a duty exemption scheme like this, the factor is applied by the responsible government authority to ensure that the company receiving the duty exemptions fulfills its obligations under the scheme, and does not owe any duties to the Italian customs authority, and that would be excluded from any DDB adjustment factor calculations. The

²³⁹ See Laminazione August 4, 2020 BCSQR at 28-20 and Exhibit S1-C15; Laminazione September 3, 2020 DSQR at D-43-46; and Laminazione’s September 25, 2020 DSQR at S2-D45-46.

²⁴⁰ See *Avesta Sheffield, Inc. v. United States*, 17 CIT 1212, 1216 (CIT 1993); see also *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea*, 57 FR 53693.

²⁴¹ See Laminazione June 25, 2020 BCDQR at Exhibit D-15; and Laminazione September 3, 2020 DSQR at D-53 and Exhibit S1-D23.

²⁴² *Id.* at Exhibits D-13 and D-15; and Laminazione’s September 25, 2020 DSQR.

²⁴³ See Laminazione September 3, 2020 DSQR at 46; and Laminazione June 25, 2020 BCDQR at Exhibit D-15.

applicable duty rate based on which Laminazione calculated the DDB adjustment, is supported by the official duty schedule established by the EU Taxation and Customs Union.²⁴⁴

We need not address whether the cost adjustment for DDB is on the same basis as the U.S. sales adjustment, as we, consistent with our current practice, base the DDB adjustment on the duties imposed on inputs.²⁴⁵ As we stated in the *Preliminary Determination*:

Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.²⁴⁶ This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.²⁴⁷

Thus, consistent with our practice, we continue to make an upward adjustment to U.S. price for duty drawback based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.²⁴⁸ Specifically, we have adjusted the U.S. price for duty drawback, but limited the adjustment to the actual duty costs included in the CONNUM-specific costs reported in the cost database.

Comment 6: Whether Commerce’s Partial Reliance on an AFA Rate to Determine the All-Others Rate is Supported by the Record

AluPro’s Case Brief:

- AluPro believes the all-others rate preliminarily determined by Commerce was inappropriate and unreasonably punitive, because it is based in part on a total AFA rate without any record evidence indicating such rate reasonably reflects the potential dumping margins for producers and exporters not individually investigated.²⁴⁹
- The all-others rate for exporters and producers not individually examined should be the weighted-average of the AD margins of the mandatory respondents, excluding any zero or *de minimis* rates, pursuant to sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act. Section

²⁴⁴ See Laminazione August 4, 2020 BCSQR at 38 and Exhibit S1-C14; and Laminazione’s Verification Response at Exhibit VQ-6.

²⁴⁵ See, e.g., *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018) (*Steel Wire Rod from Turkey*), and accompanying IDM at Comment 1.

²⁴⁶ See *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), and accompanying PDM at 15.

²⁴⁷ See PDM at 10 (emphasis added), which explains that the CAFC stated in the *Saha Thai* litigation that “it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha’s actual import duty exemption under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP.” See *Saha Thai*, 635 F. 3d. at 1344.

²⁴⁸ See *Steel Wire Rod from Turkey* IDM at Comment 1.

²⁴⁹ See AluPro’s Case Brief at 1.

735(c)(5)(B) directs Commerce to use “any reasonable method” to establish the all-others rate.²⁵⁰

- In the *Preliminary Determination*, Commerce based the all-others rate on the simple average of the two mandatory respondents, which was a zero rate and a rate based on AFA, respectively, resulting in an all-others rate of 14.57 percent.²⁵¹
- The SAA²⁵² provides that, in case the calculated margins are zero or *de minimis* or based on the facts available, but calculating the weighted average is not feasible, “or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.”²⁵³
- In multiple cases the U.S. Courts have held that it was improper for Commerce to average the zero/*de minimis* margins and AFA margins, where Commerce cannot show, based on record evidence, that the average was “reasonably reflective of potential dumping margins for non-investigated exporters or producers,” because that method did not reflect economic reality of all other separate rate companies.²⁵⁴
- In *Changzhou Wujin* the Court held that applying the average rate that is half as adverse as the AFA rate was arbitrary and capricious, and in *Baroque Timber* the Court stated Commerce did not assume its responsibility of assuring that the chosen method for determining the all-others rate is commensurate with the respondents economic reality and actual rates.²⁵⁵
- Applying the all-others rate of 14.57 percent, calculated from the zero margin of the sole cooperative respondent, and the AFA margin from the uncooperative respondent amounts to applying partial AFA to all other exporters and producers, that were not uncooperative.²⁵⁶
- There is no evidence on the record indicating that the margin 14.57 percent is reflective of Alupro or any other company not individually examined. Thus, as companies normally follow market prices, it must be assumed that the most reasonable basis to determine an all-others margin is one that resembles Laminazione’s calculated margin.²⁵⁷

Petitioners’ Rebuttal Brief

- Alupro argues that the all-others rate of 14.57 percent does not reflect the pricing practices of other Italian producers and exporters, and that Commerce should apply the zero percent rate determined for Laminazione in the *Preliminary Determination* instead.²⁵⁸

²⁵⁰ *Id.* at 2.

²⁵¹ *Id.* at 2-3.

²⁵² Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at n. (SAA).

²⁵³ See Alupro’s Case Brief at 3 (citing SAA at 4201 (emphasis added)).

²⁵⁴ *Id.* at 3 (citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378-79 (Fed. Cir. 2013) (*Yangzhou Bestpak* 716 F.3d 1370)).

²⁵⁵ *Id.* at 3-4 (citing *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 701 F.3d 1367 (Fed. Cir. 2012) (*Changzhou Wujin* 701 F.3d 1367); *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 971 F. Supp. 2d 1333, 1344 (Ct. Int’l Trade 2014) (*Baroque Timber* 971 F. Supp. 2d 1333); *Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354 (Ct. Int’l Trade 2014) (*Navneet Publications* 999 F. Supp. 2d 1354); and *Yantai Oriental Juice Co. v. United States*, 27 C.I.T. 477 (2003)).

²⁵⁶ *Id.* at 4 (citing *Baroque Timber* 971 F. Supp. 2d at 1344; and *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1381 (Ct. Int’l Trade 2009) (*Amanda Foods*, 647 F. Supp. 2d 1368)).

²⁵⁷ *Id.* at 4.

²⁵⁸ See Petitioners’ Rebuttal Brief at 31.

- Alupro’s arguments are flawed, because (1) basing the all-others rate on Laminazione’s zero rate is directly contrary to the language of the SAA, that requests the all other rate to be based on an average of zero and AFA rates as “any other reasonable method; and (2) Commerce has previously rejected Alupro’s arguments in similar fact patterns.²⁵⁹
- Section 735(c)(5)(A) of the Act prevents Commerce from relying on zero or *de minimis* margins, or margins based entirely on facts available; however, if those are the only rates determined in a proceeding, an exception pursuant to section 735(c)(5)(B) of the Act applies, and Commerce may apply any reasonable method to establish the all-others rate, including the average of the rate assigned to the individually examined producers.²⁶⁰
- The SAA at 873 specifically directs Commerce to weight-average the zero and *de minimis* margins and the margins based on facts available, as in the instant case.
- Commerce’s corroboration analysis applying the component analysis by comparing NV and U.S. price underlying the highest petition dumping margin to the NV and net U.S prices calculated for Laminazione, demonstrates that the petition rate is reasonable.²⁶¹
- The statute and case law permit Commerce to base a rate for respondents not selected for individual examination on an AFA rate even though Commerce did not find those respondents uncooperative.²⁶²

²⁵⁹ *Id.* at 31.

²⁶⁰ *Id.* at 31-32.

²⁶¹ *Id.* at 32.

²⁶² *Id.* at 33 (citing *Navneet Publications* 999 F. Supp. 2d at 1359; and *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) (*Bestpak* 716 F.3d 1370, 1378)).

Commerce's Position:

Commerce follows section 735(c)(5) of the Act when calculating the all-others rate in a market economy investigation. That provision provides that we are to rely on a rate equal to the weighted average of the rates calculated for the individually investigated respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available. However, when all the weighted average dumping margins for individually investigated exporters and/or producers are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act directs Commerce to apply “any reasonable method” to establish the all-others rate, which includes averaging those estimated dumping margins for the exporters or producers individually investigated (*i.e.*, the rates that are zero, *de minimis* or based entirely on facts available). The SAA explains that “{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.”²⁶³ However, the SAA also explains that “if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.”²⁶⁴ In the instant proceeding, Commerce selected two mandatory respondents and calculated a zero or *de minimis* margin for one respondent and relied on AFA to determine the margin of the other respondent in the *Preliminary Determination*. In this case, the “expected method” was not feasible because we determined that Profilglass’ reported sales were incomplete and that its data was unreliable; thus, we did not have the volume data necessary to weight-average the zero and AFA rate of the mandatory respondents. Accordingly, we determined to use another reasonable method and calculated the all-others rate by taking a simple average of the two margins derived for the two mandatory respondents, *i.e.*, the zero margin and the AFA rate.²⁶⁵

In its case brief, AluPro argues that there is no evidence on the record indicating that the all-others margin of 14.57 percent is reflective of AluPro or any other company not individually examined. AluPro contends that companies like itself follow market prices, leading to the assumption that the most reasonable basis to determine an all-others rate is to base it on Laminazione’s calculated margin. AluPro further asserts that the inclusion of an AFA margin in the all-others rate for cooperative respondents is punitive, tantamount to applying partial AFA, and would not be reflective of the economic reality of cooperative respondents. We disagree with AluPro that the all-others rate calculated in this investigation is unreasonable. In the absence of any calculated positive margins, the Act directs Commerce to use any reasonable method to derive the all-others rate, and the SAA explains that if the expected method (a weighted-average of the zero and *de minimis* margins and margins determined pursuant to the facts available) is not feasible, then Commerce may use any other reasonable method. This includes the simple average of a zero margin and an AFA rate. Although AluPro contends that the 14.57 percent rate is not reasonably reflective of its own potential dumping margin, or those for non-investigated exporters or producers, we disagree. Further, we disagree that Laminazione’s zero percent margin is appropriate for use as an all-others rate in this investigation. First, Commerce derived the AFA rate for the uncooperative respondent in this

²⁶³ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 873.

²⁶⁴ *Id.*

²⁶⁵ See *Preliminary Determination*, 86 FR 65342, 65343.

proceeding, using the margin alleged in the petition was calculated based on a comparison of NV and U.S. price, and Commerce corroborated this AFA rate with the range of values for NV and US price calculated for Laminazione. Furthermore, the petition margin Commerce selected as AFA was derived from a price quote of a company covered by this investigation, and thus, indicates that potential dumping by the all-others rate companies existed during the POI in excess of the zero percent rate calculated for Laminazione.²⁶⁶ This is contrary to *Changzhou Wujin*, as cited by AluPro, where the initial petition margin was not fully corroborated. Here, the petition margin not only demonstrates the existence of a margin higher than the zero margin calculated in this proceeding for the one respondent, it is also indicative of the existence of dumping at different levels, and proof that the commercial experience is different for different companies. Therefore, Commerce's calculation of the all-others rate as the simple average of the zero calculated margin and the AFA rate is supported by substantial evidence on the record of this proceeding and is reasonably reflective of potential dumping margins for non-investigated producers and exporters. Therefore, we are not changing our methodology for calculating the all-others rate for the final determination in this investigation.

Comment 7: Whether the Geographical Scope of this Investigation Conflicts with the WTO AD Agreement and Application of Adverse Facts Available is Justified

EU Delegation's Case Brief:

- The extremely wide geographical scope and the inclusion of basically all aluminum supplying countries to the United States calls into question Commerce's standards of initiation, as the World Trade Organization (WTO) Antidumping Duty (AD) Agreement requires evidence of the existence of dumping and injury as a condition for initiation.²⁶⁷
- The low and *de minimis* level antidumping rates calculated for the cooperating respondents indicate that so many countries cannot be dumping, and that the antidumping instrument needs a more targeted approach. Article 9.1 of the WTO AD Agreement encourages the AD instrument to remain limited to those origins causing injury.²⁶⁸
- Targeting all of these countries is against the spirit of the WTO Antidumping Agreement, and increased imports into the United States are likely due to the imposition of measures against China in 2018. U.S. importers' requests for exclusions from the Section 232 measures are indicative of U.S. domestic demand.²⁶⁹
- The high duties applied to one respondent in the *Preliminary Determination* are not justified, and Commerce only obtained this margin by resorting to AFA, claiming lack of cooperation, although the particular respondent appears to have fully cooperated, constituting a violation of Article 7 of Annex II of the WTO AD Agreement.²⁷⁰
- The Panel findings in *WT/DS295/R Mexico - Definitive Anti-Dumping Measures on Beef and Rice*, laid out its understanding of evaluating best information available and how to base findings on secondary information.²⁷¹

²⁶⁶ See Volume X of the Petition at Exhibit AD-IT-1, Attachment 2; see also Italy AD Supplement at 5.

²⁶⁷ See EU Delegation's Case Brief at 3.

²⁶⁸ *Id.* at 3.

²⁶⁹ *Id.* at 3-4.

²⁷⁰ *Id.* at 4.

²⁷¹ *Id.* at 5 (citing *WT/DS295/R Mexico - Definitive Anti-Dumping Measures on Beef and Rice* at 7.166).

- Another WTO decision, WT/DS482/R *Canada – anti-dumping measures on imports of certain carbon steel welded pipe from the separate customs territory of Taiwan, Penghu, Kinmen and Matsu* confirmed that approach and further stated that “any punitive use of facts available is inconsistent with the disciplines on facts available,” such as the selection of the highest transaction-specific dumping margin from a cooperative exporter without a comparative evaluation and assessment, is inconsistent with the approach of incentivizing cooperation and preventing circumvention by non-cooperative exporters.²⁷²

Petitioners’ Rebuttal Brief

- The EU Delegation’s case brief called into question Commerce’s standard of initiation, as it believes doubtful, so many countries are dumping, and without citing to any specific violation of the United States’ WTO obligations or U.S. laws. This is contradicted by Commerce’s rigorous application of U.S. law in initiation of the investigation of aluminum sheet from Italy.²⁷³
- As recognized in the EU Delegation’s brief, in its preliminary determinations, Commerce found above *de minimis* margins in every country subject to these investigations, and respondents across these investigations with *de minimis* or zero margins, will not be subject to antidumping duty orders, in accordance with U.S. law and WTO obligations.²⁷⁴
- The EU Delegation’s concerns regarding the on-going injury determinations are unfounded because they fall within the purview of the International Trade Commission (ITC), and are thus irrelevant to Commerce AD calculations.²⁷⁵
- Commerce clearly explained its determination that the application of AFA to Profilglass was warranted, supported by evidence on the record and in accordance with U.S. law, and the EU Delegation’s brief indicates being misinformed about Profilglass’ level of cooperation.²⁷⁶
- Profilglass’ responses were critically insufficient, unreliable and unusable, affecting all parts of its reporting, and Commerce’s actions in response were not inconsistent with U.S. law or Article 6 of Annex II of the WTO AD Agreement.²⁷⁷
- The EU Delegation’s citations to WTO decisions do not add to Commerce’s reaching its final determination and failed to provide an analysis relating the facts to those cases. Additionally, WTO decisions are not binding on the United States, and Commerce’s compliance with U.S. law guides its final determination. The application of AFA to Profilglass is consistent with U.S. laws, *i.e.*, sections 776 and 782 of the Act.²⁷⁸

Commerce’s Position:

The EU Delegation contends that a wide geographic scope, and the inclusion of basically all aluminum supplying countries to the U.S. calls into question Commerce’s standards of initiation. We note that U.S. law and regulations are in compliance with the United States’ obligations under

²⁷² *Id.* at 5 (citing WT/DS482/R *Canada – anti-dumping measures on imports of certain carbon steel welded pipe from the separate customs territory of Taiwan, Penghu, Kinmen and Matsu* at 7.143).

²⁷³ See Petitioners’ Rebuttal Brief at 34.

²⁷⁴ *Id.* at 34.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 34-35.

²⁷⁷ *Id.* at 35.

²⁷⁸ *Id.* at 35-36 (citing *Timken*, 354 F.3d at 1344; *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343 (Fed. Cir. 2005) (*Corus Staal*)).

international agreements, such as the WTO. Further, in this proceeding, Commerce received properly filed petitions from the respective U.S. industry sector, that Commerce reviewed and determined met the standards and requirements for initiation as set forth in the U.S. Statute and Commerce's regulations, and are a matter of public record. Therefore, the number of countries for which petitions are filed, and the number of petitions on which Commerce initiates an investigation are determined purely on the basis of the information on the record, as are Commerce's findings, that reflect whether all the requirements for initiation under U.S. law are met.

Furthermore, we reject the EU Delegation's allegation that Commerce applies an indiscriminate use of AFA, to Profilglass in particular, in this proceeding. As discussed above, Commerce's findings are solely based on the facts on the record, that lead to Commerce's conclusion that Profilglass is an uncooperative respondent in this investigation.

VI. RECOMMENDATION

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

☒

Agree

☐

Disagree

3/1/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance