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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

REGARDING: Administrative Review of the Antidumping Duty Order on Cut-To-Length Carbon-Quality Steel Plate Products (CTL Plate) from Italy

SUBJECT: Issues and Decision Memorandum for the Final Results

SUMMARY

We have analyzed the comments of the interested parties in the above-referenced administrative review of the antidumping duty order on CTL Plate from Italy. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On March 6, 2006, the Department of Commerce (the Department) published the preliminary results of this antidumping duty administrative review of CTL Plate from Italy. See Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 11178 (March 6, 2006) (Preliminary Results). The period of review (POR) is February 1, 2004, through January 31, 2005.

We invited parties to comment on the Preliminary Results. We received timely comments from the respondent, Palini and Bertoli S.p.A. (Palini), and one other interested party, Wirth Steel (Wirth). We received timely rebuttal comments from the petitioner, Nucor Corporation (Nucor). Based on our analysis of the comments received, we have determined that

the Department will continue to find that Palini had knowledge of sales to the United States and that the application of adverse facts available (AFA) is appropriate. However, the Department has changed the rate applied as AFA.

LIST OF THE ISSUES

Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether the Department's Conclusion was Correct That Palini Knew or Should Have Known That its Goods Were Destined for the United States.

Comment 2: Whether the Record Supports the Department's Decision to Apply AFA.

Comment 3: Whether the AFA Rate Selected by the Department is Contrary to law.

Comment 4: Whether the Administrative Record is Complete.

CHANGES TO THE PRELIMINARY RESULTS OF REVIEW

Based on our analysis of the comments received, the Department has made changes from the Preliminary Results. Specifically, for these final results, we have selected a dumping margin of 10.31 percent as AFA for Palini.

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department's Conclusion was Correct That Palini Knew or Should Have Known That its Goods Were Destined for the United States.

Palini states that the Department describes "export price" as the "price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company . . . (and) the party making such a sale, with knowledge of the destination, is the appropriate party to be reviewed." See Preliminary Results, citing section 772(a) of the Tariff Act of 1930, as amended (the Act). Palini asserts that the Department applies a knowledge test intended to determine whether the producer knew or should have known that the subject merchandise was destined for the United States. Palini contends that the Department's conclusion in the Preliminary Results, that Palini was advised of the port of discharge for the shipments from Italy and knew at the time of sale that its goods were destined for the United States, is unsupported by the record evidence in this review.

First, Palini contends that all of the purchase orders received from Wirth during this review contained shipment terms that called for shipment only to Canadian ports. According to

Palini, all purchase orders indicated shipment to Toronto or Windsor, and the numbers assigned to the purchase orders included a suffix code which indicated the Canadian port to which the material was to be shipped — "-T" for Toronto and "-WO" for Windsor. Palini contends that the purchase orders set forth the information required to be stenciled on each plate: the purchase order number, the Canadian port of discharge, the size in inches, the grades, the heat number and the country of origin. Palini asserts that it stenciled the steel in accordance with the requirements set forth in the purchase orders.

Second, Palini states that the terms of sale were FOB stowed, Port of Monfalcone, Italy, on every transaction during the POR, and therefore, the responsibility for the goods ceased once the material was on board the vessel. According to Palini, its Canadian customer Wirth determined the final destination of the goods. Palini also argues that the bills of lading confirm that Wirth chartered the oceangoing vessel and paid the international freight for the shipments. Palini contends that its mill test certificates and sales invoices confirm that Palini knew only that it was supplying its Canadian customer, as opposed to a U.S. customer, as these documents show the name of Wirth. According to Palini, the fact that the broker identified Palini as the exporter on some entries, but also identified Wirth as the exporter on other entries, demonstrates that the broker did not intend to use the term "exporter" to identify the party who determined the ultimate destination of the goods.

Third, Palini claims that the instruction sheet for Wirth's broker usually indicated the transportation method — barge, rail, or truck — selected to move the goods to the United States from Canada, is normally prepared after the goods were shipped from Italy, usually about the time the goods were transported from Canada to the United States. Except for two sales noted by the Department in the Preliminary Results that were shipped to U.S. ports, all sales were shipped to a Canadian port. Although it states that it knew generally that Wirth had customers in both Canada and the United States, Palini claims that there is no evidence that it knew or should have known that a particular shipment (or a portion of a shipment) was destined for a purchaser in the United States. At the time that Palini advised Wirth of "cargo readiness," Wirth arranged for the international freight and advised Palini of the port of discharge, but not the ultimate destination of the goods. Palini states that, although some of the material discharged in Canada ultimately was sold by Wirth to customers in the United States, it would be ridiculous, and unsupported by any evidence, to argue that Palini knew or should have known that the shipments to Canada were "destined" for the United States.

Fourth, Palini claims that it is unclear from the Preliminary Results whether the Department has reached its conclusion that Palini knew or should have known that its shipments were destined for the United States based on the two direct shipments to the United States, or based upon the shipments destined for Canada, but ultimately sold to a U.S. customer. Since the Department's discussion of the knowledge issue centers solely on the fact that Wirth advised Palini of the port of discharge at the time of shipment, Palini assumes the Department's knowledge decision is based only on the two direct shipments because Palini's knowledge of Canadian ports of discharge cannot support the conclusion that Palini knew (or should have

known) the material discharged in Canada was destined for the United States.

If the Department is in fact centering the knowledge issue on Palini's knowledge of the two direct shipments, Palini argues that, for the first shipment, it does not dispute that it knew that the port of discharge was a U.S. port, but states that there is no evidence demonstrating that it knew whether some, all, or none of the shipment would be sold in the United States. In regard to the second shipment, Palini cites the purchase order it received from its Canadian customer, specifying that the cargo should be stenciled with the word "Windsor." For this purchase order, Palini states that it issued three sales invoices, one of which listed a U.S. port of discharge. Palini again asserts that there is no evidence demonstrating that it knew whether some, all, or none of this shipment was destined for sale in the United States.

Palini distinguishes this case from LG Semicon Co., Ltd. v. United States, 1999 WL 1458844 (CIT 1999) (LG Semicon Co.) and Wonderful Chemical Industrial, Ltd. v. United States, 259 F. Supp. 2d 1273 (CIT 2003) (Wonderful Chemical), which were cases where third country companies resold subject merchandise in the U.S. market. Unlike LG Semicon Co., (1) Wirth had no capacity limitations and demand for subject steel was high throughout the world during the POR; (2) Wirth is a steel trading company, which is one of the most common sales channels for steel; and (3) Palini was not monitoring the U.S. market, but instead chose Wirth as its North American distributor. In Wonderful Chemical, a Chinese company admitted that it knew that the Hong Kong trading company sold subject merchandise to the United States, and issued certificates of origin and fumigation certificates stating a U.S. destination. Palini states that the Department incorrectly cites Wonderful Chemical for the proposition that the Department does not have to show a producer's actual knowledge of the ultimate destination. Palini argues that, pursuant to Wonderful Chemical, the Department, in fact, must demonstrate that the producer had actual knowledge of the final destination of its exports. Palini claims that it did not know nor have any reason to know the ultimate destination of any particular shipment, and under the facts in this case, knowledge of port of discharge is not equivalent to actual or constructive knowledge of the goods' final destination.

Wirth states that it was the exporter of CTL Plate which it imported for its own account and resold to its customers located in Canada and the United States. Wirth contends that, pursuant to its purchase orders, Wirth took title of the merchandise at the port of loading, designated the ports of discharge (Windsor or Toronto), and directed Palini to stencil the words "Windsor" or "Toronto" on all the steel plates. Wirth asserts that it designates, at the approximate time of arrival of the vessel, which portion of the shipment would be entered in Canada and which portion would be held "in bond" for eventual shipment to the United States. Wirth contends that only it and not Palini knew the exact quantities and value of each shipment which would be entered in Canada or the United States. In the case of the second U.S. shipment cited by the Department, Wirth asserts that it took an unusual step by diverting to the United States part of a shipment originally designated to be unloaded at Windsor. Wirth claims that Palini simply did not have exact quantities and values for steel entered into the U.S. market during the POR, citing Palini's June 14, 2005, email to the Department.

In rebuttal to Palini and Wirth, Nucor argues that the Department properly found that Palini knew or should have known that one or more sales to Wirth were destined for the United States, and that Palini's U.S. sales were subject to the review. Citing section 772(a) of the Act, Nucor states that the basis for the export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. In order to reach the conclusion that Palini knew or should have known that its sales were destined to the United States, Nucor states that the Department applied the "knowledge test," considering such factors as (1) whether that party prepared or signed any certificates, shipping documents, contracts or other papers stating that the destination of the merchandise was the United States; (2) whether that party used any packaging or labeling which stated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise otherwise indicated that the destination was the United States; and (4) whether that party admitted to the Department that it knew that its sales were destined for the United States. Nucor contends that, in this case, the Department found that (1) Wirth informed Palini of the location of the port of discharge prior to shipment; (2) Palini's commercial invoice identifies the port of discharge; (3) Palini provided all of the shipping information, including the port of discharge, to Wirth's shipping agent at Wirth's request; and (4) Palini's shipping marks, which are completed prior to shipment and are stenciled onto each plate, include the port of discharge. In addition, Nucor states that the documents Palini provided for the two direct shipments identify the ports of discharge as U.S. locations. According to Nucor, the Department correctly determined that Palini had knowledge of direct shipments to the United States of subject merchandise and that Palini's sales are subject to this review.

Nucor argues that the evidence in this review (specifically the invoices, bills of lading, and entry documents for two shipments) demonstrates Palini's knowledge of the destination and contradicts Palini's claim that it did not have such knowledge. Nucor notes that, for the first shipment identified by the Department as a U.S. shipment, Palini does not dispute that at the time of shipment it was aware that the port of discharge was a U.S. port. According to Nucor, a review of the customs entry documentation for this shipment reveals that Palini is the listed exporter and expected the port of entry to be a U.S. port. Nucor also contends that Palini acknowledges that only part of the merchandise that entered through the first shipment was transported to Canada. For the second shipment identified by the Department as a U.S. shipment, Nucor contends that a review of the customs entry documentation leads to similar findings. Nucor argues that the Department had no choice but to presume a U.S. destination and should continue to do so. In rebuttal to Palini's claims that the inconsistent use of the term "exporter" demonstrates that the customs broker did not intend the term "exporter" to indicate the party who determined the final destination of the goods, Nucor argues that the inconsistency does not change the fact that the customs broker named Palini as the exporter and named a U.S. port as the expected port of entry. Regardless of who determined the final destination, Nucor contends that these and other documents confirm that Palini had knowledge that the shipment was discharged in the United States.

Nucor also argues that Palini's attempts to distinguish LG Semicon and Wonderful Chemical from the instant case are misguided. Nucor contends that LG Semicon is not synonymous with the Department's knowledge test, but only represents one application of the knowledge test, given the facts of that case. Nucor argues that the knowledge test can be applied in different circumstances, and in the present circumstance, the documents issued by Palini itself are unusually strong evidence of Palini's knowledge. Regarding Wonderful Chemical, Nucor notes that Palini alleges that the Court of International Trade (CIT) ruled that the Department must demonstrate that the producer had actual or constructive knowledge of the final destination of its exports, and knowledge of the port of discharge does not constitute either actual or constructive knowledge of the goods' final destination. Nucor argues that Palini had both actual and constructive knowledge of the final destination of its exports, as (1) the U.S. port was listed as the destination, not just the port of entry, on the invoice prepared by Palini, and (2) Palini admits that only a portion of the merchandise entered through the U.S. port was subsequently shipped to Canada, and the remainder was sold in the U.S. market.

Department's Position

As we did in the Preliminary Results, we continue to find that Palini knew, or should have known, at the time of sale that two of its sales of subject merchandise were shipped directly to the United States. Because Palini had such knowledge, these two sales are subject to this administrative review. As we stated in the Preliminary Results, under section 772(a) of the Act, the basis for export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be reviewed. The Department's test for determining knowledge is whether the relevant party knew or should have known that the merchandise was for export to the United States. See Statement of Administrative Action Accompanying the Trade Agreements Act of 1979, H.R. Rep. No. 4537, 388, 411, reprinted in 1979 U.S.C.A.N. 665, 682 (SAA for 1979 Act). In determining whether a party knew or should have known that its merchandise was destined for the United States, the Department's well-established practice is to consider such factors as: (1) whether that party prepared or signed any certificates, shipping documents, contracts or other papers stating that the destination of the merchandise was the United States; (2) whether that party used any packaging or labeling which stated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise otherwise indicated that the destination was the United States; and (4) whether that party admitted to the Department that it knew that its shipments were destined for the United States. See, e.g., Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran, 70 FR 7470 (February 14, 2005) and the accompanying Issues and Decision Memorandum at Comment 1; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part: Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea, 64 FR 69694 (December 14, 1999); Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's

Republic of China, 64 FR 69723 (December 14, 1999) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706 (May 3, 2006)) (upheld by CIT in Wonderful Chemical, 259 F. Supp. 2d at 1280); and Certain Pasta from Italy: Termination of New Shipper review, 62 FR 66602 (December 19, 1997) (Pasta from Italy).

Palini contends that this case is factually distinguishable from the one at issue in Wonderful Chemical, in that Palini claims it did not have knowledge that the final destination of the goods was the United States. Palini asserts that a finding of such knowledge is required by the CIT's ruling in Wonderful Chemical. However, Palini's reliance on Wonderful Chemical is inapposite. The CIT, in Wonderful Chemical, specifically stated that "{i}n determining whether the producer knew or should have known that the subject merchandise would be exported {to the United States}, this court has held that Commerce need not find that the producer had actual knowledge of the final destination of its exports." See Wonderful Chemical, 259 F. Supp. 2d at 1279 (citing Allegheny Ludlum Corp. v. United States, 215 F. Supp. 2d 1322, 1331 (CIT 2000) (Allegheny Ludlum)). Therefore, Palini's argument that for it to have "knowledge" of U.S. sales it must have known the final destination of the goods is unsupported by the CIT's rulings in both Wonderful Chemical and Allegheny Ludlum.

Palini has not refuted the Department's specific factual findings in the Preliminary Results, that its commercial invoices and bills of lading for these two shipments list U.S. destinations. See Palini's Case Brief at 8-9. Palini admits that (1) Wirth informed Palini of the location of the U.S. destination prior to shipment; (2) Palini's commercial invoice identifies the United States as the destination of the merchandise; (3) Palini provided all of the shipping information, including the U.S. destination, to Wirth's shipping agent at Wirth's request. Id.; see also Palini's January 27, 2006, submission at 3-4. Based upon these undisputed facts, the Department continues to find that, for the two sales in question, Palini knew or should have known that these sales were for export to the United States. This finding is consistent with section 772(a) of the Act and the Department's application of the knowledge test, as described in the SAA for 1979 Act and upheld by the CIT in numerous contexts. See, e.g., L.G. Semicon Co., Ltd. v. United States, 23 CIT 1074 (1999); see also NSK Ltd. v. Koyo Seiko Co., 190 F. 3d 1321 (Fed. Cir. 1999) (upholding the use of the knowledge test to determine whether plaintiff was a "reseller"); Wonderful Chemical, 259 F. Supp. 2d at 1280; and Allegheny Ludlum, 215 F. Supp. 2d at 1331.

Comment 2: Whether the Record Supports the Department's Decision to Apply AFA.

Palini notes that, in the Preliminary Results, the Department concluded that Palini withheld information specifically requested by the Department, significantly impeded the proceeding, and failed to cooperate to the best of its ability in complying with the Department's requests for information, pursuant to 776(a) and (b) of the Act. Palini asserts that its antidumping duty margin should continue to be the rate calculated for Palini in the original investigation because of its lack of knowledge of the final destination of the merchandise sold to

Wirth. Palini asserts that the record shows that it had no U.S. sales or entries during this review period. Palini claims that the Department's assertions that Palini failed to report its sales of subject merchandise, and that it had knowledge that merchandise it shipped from Italy entered the United States during the POR, are erroneous. Palini argues that the record in this review shows that Wirth was the importer of record, and that Palini knew only the ports of discharge, rather than the final destination of the merchandise.

Palini argues that even if the Department continues to apply a facts available analysis in this review, the record does not support the application of an adverse inference. After the Department issued its questionnaire on May 11, 2005, and its follow-up letter on June 6, 2005, Palini states that it responded with an email on June 14, 2005, directing the Department to contact Wirth for addition information. Palini states that it sent another email on June 29, 2005, which stated that their delayed response was due to a lack of English-speaking personnel, and requested an extension of 60 days to respond to the questionnaire. Palini asserts that the Department ignored Palini's correspondence, made no attempt to try to assist Palini, and did not respond to Palini's request for an extension of time. Palini claims that it heard nothing from the Department for six months, until January 5, 2006, when the Department issued a supplemental questionnaire. Palini maintains that there is no explanation on the record for either the Department's failure to grant an extension, or the Department's six-month hiatus. When the Department issued its January 5, 2006, supplemental questionnaire, requesting commercial documents relating to two sales, Palini states that the Department granted one extension request, and that it submitted an 89-page response that included every sales invoice, purchase order, bill-of-lading, and freight invoice related to the two sales. Therefore, Palini contends that the record in this review demonstrates that Palini did cooperate with the Department by identifying who made sales of Palini merchandise in the United States, by requesting additional time to respond to the Department's questionnaires, and by providing complete and timely responses to the Department's June 6 letter and its January 5, 2006, supplemental questionnaire. Palini claims that the record does not describe a respondent that failed to cooperate to the best of its ability, and it does not support the Department's application of an adverse inference.

Wirth also claims that the record shows that the Department did not respond to Palini's emails of June 14, 2005, and June 29, 2005, or a fax that Wirth sent to the Department on June 14, 2005. Wirth argues that the Department's statement in the Preliminary Results that U.S. Customs and Border Protection (CBP) data and entry documents appeared to contradict Palini's claim that it had no knowledge of which sales to Wirth entered the United States is not correct because Wirth, rather than Palini, exported the steel and only Wirth knew which portion of any shipment of steel was ultimately destined for Wirth's customers in Canada or the United States. Wirth claims that the Department never contacted Wirth, although requested to do so by both Palini and Wirth, and never sent Wirth a questionnaire. Wirth asserts that Palini received no written response from the Department until January 5, 2006, when the Department sent Palini a supplemental questionnaire. Wirth notes that the Wirth and Palini communications of June 14 and June 29 were listed in a Department memorandum dated on October 2, 2005, which listed emailed, faxed, and mailed communications received by the Department without any explanation

as to what the communications contained, or the Department's responses to them. Wirth states that Palini approached Wirth, and Wirth agreed to contact the Department to find out the status of Palini's request for an extension of time in which to answer the questionnaire. Wirth claims that on July 13, 2005, the Department orally advised Wirth that Palini need do nothing for the present as the Department was still considering its request for an extension of time. Wirth claims that in a subsequent conversation in August 2005, the Department advised that it was considering drafting a supplemental questionnaire to send to Palini in the Fall and that Palini should await receipt of this questionnaire.

After the Department published a notice in the Federal Register extending the time limit for issuing the preliminary results of review on October 20, 2005, Wirth claims that Palini again approached Wirth to contact the Department. Wirth asserts that on October 24, 2005, the Department advised Wirth that Palini would receive a questionnaire in a week or two concerning its sales. According to Wirth, in two separate telephone conversations with Wirth's counsel that occurred in November 2005, the Department advised Wirth that the new questionnaire had been delayed and, in December 2005, that the questionnaire would not be sent to Palini until after the holidays. Wirth maintains that the record establishes that Palini received no written communications from the Department until January 6, 2006. Wirth states that, when Palini received this questionnaire, the cover letter stated in part that any information submitted after the applicable deadline would be considered untimely and might be returned to the submitter, and that in such case the Department might have to use the facts available for the preliminary results. Wirth contends that Palini's questionnaire response of January 26, 2006, was presumably to the Department's satisfaction, since no follow-up requests for information or clarification appear on the record, no part of the questionnaire was returned to Palini, and there is no evidence on the record that the Department communicated further with Palini. In the Preliminary Results, Wirth claims that the Department notes that the January 6, 2006, supplemental questionnaire asked Palini whether it had knowledge of the port of discharge of its sales to Wirth. Wirth contends that this question is a different question than had been answered by Palini in its June 14, 2005, email in response to the Department's initial questionnaire, which asked Palini whether it had sales or shipments to the United States during the POR, and if so, in what quantities. Wirth claims that Palini informed the Department on June 14, 2005, that the port of discharge was mainly Windsor, and Palini did not have, nor does it currently have, any knowledge of what portion of steel was eventually entered in Canada or the United States.

Wirth also argues that despite the Department's statement in the Preliminary Results that it was unable to issue additional questionnaires or calculate a dumping margin for Palini's entries within the statutory time for completing the review, the record establishes that the Department essentially kept Palini on hold for six months, only communicated with Palini three times during the course of its nine month review, and never contacted Wirth at all. Wirth maintains that, while the Department has discretion in conducting administrative reviews, that discretion does not obviate the Department's responsibility to conduct its reviews in a reasonable manner. Wirth reiterates that the Department must make determinations supported by substantial evidence on the record and in accordance with the law. Wirth argues the Department cannot apply AFA since

the record does not support the statutory criteria for the application of AFA.

In rebuttal, Nucor argues that Palini's intermittent emails and late partial responses do not constitute meaningful participation in this review. According to Nucor, even though Palini was required to submit a questionnaire response to the Department by May 26, 2005, Palini failed to formally submit any documentation to the Department until January 25, 2006. According to Nucor, Palini blames the Department for its own failure to cooperate and to comply with the Department's regulations. Nucor states that its extension request was in the form of an email, not a letter as required by the Department's regulations, and was not served on any of the petitioners in this review. Nucor asserts that since Palini participated in the original investigation, Palini knows that it cannot rely on an email request for an extension to a questionnaire response. Nucor contends that the Department is not obligated to treat an email as a formal filing, and the Department communicated to Palini that the Department does not consider fax and email communication as official communication. Nucor maintains that it is Palini's burden, not the Department's, to properly request an extension and then to ensure that the request is granted before ignoring the deadline. According to Nucor, the Department properly treated Palini as non-responsive for this review. Nucor also contends that Palini's January 25, 2006, submission amounted to dumping a stack of unexplained documents on the record at the end of the review, with insufficient time for Nucor and Department to properly review them. Nucor contends that this warrants the application of facts available.

Furthermore, Nucor argues that the Department was correct in the Preliminary Results by applying AFA because Palini withheld information specifically requested by the Department, significantly impeded the proceeding, and failed to cooperate to the best of its ability in complying with the Department's requests for information. Nucor states that the Department found that Palini failed to respond to the initial questionnaire and failed to report its sales and entries of subject merchandise made during the POR, even when it knew that such sales were subject to the administrative review, warranting the application of AFA. Nucor argues that the Department should continue to apply AFA in the final results of this review, as the record demonstrates a pattern of non-compliance and failure to cooperate on the part of Palini, behavior that has significantly impeded the Department's conduct of this review. Nucor states that Palini's June 14, 2005, email (1) was more than two weeks after the May 26 deadline for responding to the questionnaire and (2) failed to respond to the questions set forth in the Department's questionnaire. The email informed the Department that Palini's exports were made through Wirth, and that Palini had no knowledge of the portion shipped to the U.S. market, which the record demonstrates to be a false assertion, according to Nucor. Nucor claims that the record shows that Palini failed to respond to the Department's May 11, 2005, questionnaire, did not report its sales of subject merchandise made during the POR, and furthermore, did not respond to the Department's June 6, 2005, letter in an accurate and truthful manner when it reported that it had no knowledge of shipments to the United States during the POR.

Nucor notes that, as a result of Palini's refusal to provide information, the Department requested documentation directly from CBP in order to obtain information related to Palini's

U.S. sales during the POR. Nucor asserts that Palini, only after being presented with information gathered from CBP, did Palini acknowledge that some of its sales went directly to the United States. Nucor notes that Palini's response came eight months after the deadline for the initial questionnaire response, and because Palini chose to withhold this information until the final stages of the review, the Department was unable to issue additional questionnaires or calculate a dumping margin for Palini's entries within the statutory time for completing this review. Therefore, Palini significantly impeded the proceeding. According to Nucor, the record in this review demonstrates a pattern of non-compliance and failure to cooperate on the part of Palini, warranting the application of AFA in the final results of this review.

Department's Position

We agree with Nucor that Palini withheld information requested by the Department, significantly impeded this segment of the proceeding, and failed to cooperate to the best of its ability. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadlines for submission of the information, or in the form or manner requested, subject to section 782 of the Act, (C) significantly impedes a proceeding under this title, or (D) provides information that cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act further states that the Department shall not decline to consider submitted information if all of the following requirements are met: (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.

As discussed in more detail below, Palini did not submit the information requested by the Department in the May 11, 2005, questionnaire by the established deadline, leaving the Department with no information to review or verify. Section 782(d) of the Act directs the Department to notify a respondent when the Department finds its response deficient. Since there was no response to the May 11, 2005, questionnaire, there is no information for the Department to review. Thus, section 782(d) of the Act does not apply in this case. In addition, Palini's failure to respond to the Department's May 11, 2005, request for information resulted in an incomplete record of review, which could not serve as a reliable basis for the Department to reach an applicable determination, thereby impeding this review. Thus, in deciding these final results of review, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based Palini's dumping margin on facts otherwise available because Palini (1) withheld information specifically requested by the Department in the May 11, 2005, questionnaire and (2) significantly impeded the antidumping proceeding because the incomplete record of review cannot serve as a reliable

basis for the Department to reach an applicable determination.

In this case, although the Department provided Palini with notice of the consequences of failure to respond adequately to the May 11, 2005, questionnaire before the applicable deadline, Palini chose not respond to the questionnaire. See May 11, 2005, questionnaire at page G-3. Specifically, the Department requested, in its May 11, 2005, questionnaire, that Palini report the total quantity and value of the merchandise under review sold during the POR in (or to) the United States. Id. at question one. In addition, this questionnaire stated "{i}f you are aware that any of the merchandise you sold to third countries was ultimately shipped to the United States, please contact the official in charge within two weeks of the receipt of this questionnaire." Id. at question nine. As discussed below, Palini failed to respond to question one of the Department's questionnaire even though it had two sales that it shipped directly to the United States during the POR. In addition, even though it had sales to a third country, of which some portion was ultimately shipped to the United States, Palini failed to contact the official in charge as requested by the questionnaire.

Rather than immediately conclude that Palini was a non-cooperative respondent, the Department, on June 6, 2005, issued a letter, pursuant to 19 CFR 351.213(d)(3), to Palini in which the Department requested that Palini indicate whether the reason for its failure to respond to the May 11, 2005, questionnaire was because Palini had no shipments or sales to the United States during the POR. In response to the June 6, 2005, letter, Palini informed the Department that "all of our exports to {the} USA were made through our Canadian customer Wirth Steel. They purchase steel from us mainly for shipment to Windsor, Ontario and we have no knowledge of the portion of the orders that ultimately are delivered 'in bond' into the U.S. market." See Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, "Receipt of Emailed, Faxed, and Mailed Communication," dated October 2, 2005, at Attachment 1, which includes Palini's June 14, 2005, email. We note that Palini made no mention in its response to the Department's June 6, 2005, letter that it shipped two of its sales directly from Italy to the United States.

Prompted by Palini's June 14, 2005, assertion that it had no knowledge of which sales entered the United States, the Department requested documentation from CBP in an attempt to confirm Palini's statements in the June 14, 2005, email. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to The File, "Request for U.S. Entry Documents" dated June 29, 2005. When the Department received information from CBP that Palini had sales shipped directly from Italy, some portion of which were entered for consumption into the U.S. market, thereby contradicting Palini's June 14, 2005, assertion, it made several requests to CBP for more detailed information. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to The File, "Request for U.S. Entry Documents" dated October 4, 2005. In the end, the Department requested and obtained a large number of customs entries from CBP pertaining to Palini and Wirth, and conducted analysis of these documents. See Memoranda from Thomas Martin, International Trade Compliance Analyst, to The File, "U.S. Entry Summary Documents" dated January 4, 2006, and January 18, 2006. After analyzing the relevant

documentation from CBP, the Department sent a supplemental questionnaire to Palini to give it an opportunity to explain the discrepancies between its June 14, 2005, email and the CBP documents demonstrating direct shipments from Italy and consumption entries. See January 6, 2006, supplemental questionnaire.

Palini submitted its supplemental questionnaire response on January 27, 2006. In response to the Department's request to clarify its initial statement that it has "no knowledge of the portion of the orders that ultimately are delivered 'in bond' into the U.S. market," Palini replied that "the portion {of Palini's sales} that Wirth Steel shipped to Canada, part of it was kept in bond in Canada and then shipped later to the USA. Alternatively some of the steel delivered to U.S. ports was kept in bond and {subsequently} shipped to Canada." See Palini's January 27, 2006, submission at 3. Thus, Palini clarified that it knew that some of its sales to Wirth were delivered to U.S. ports, but that it did not know which portion of those sales remained within the U.S. market.

Palini also stated in its supplemental response that Wirth provided it with the destinations for each shipment and that Palini included this information in its commercial invoices and shipping documents. Id. at 3-4. Palini provided its commercial invoices and bills of lading for the two sales in question, which are kept in the normal course of business. Id. at pages 12-15, 48, and 50 of the Attachment. These documents list U.S. destinations, thereby demonstrating that Palini had knowledge that these two sales were shipped directly to U.S. destinations. In the Preliminary Determination, the Department applied the knowledge test to these facts and found that Palini had knowledge of direct shipments to the United States of subject merchandise. See Preliminary Determination at 71 FR at 11180. For these final results, we continue to find that Palini had knowledge that two of its sales to Wirth were destined for the United States. However, as discussed above, the Department's knowledge test does not require Palini to know the final destination of the subject merchandise. See Issues and Decision Memorandum at 6-7.

In sum, Palini failed to respond to the Department's May 11, 2005, questionnaire or to request an extension of the deadline prior to the due date for the questionnaire, as required by section 351.302(c) of the Department's regulations.[1] Palini did not report its two sales of subject merchandise shipped to the United States, nor did Palini indicate in response to the Department's June 6, 2005, letter that it knew that two of its sales were destined for the United States. Palini only acknowledged that two of its sales were shipped directly to the United States after the Department informed Palini that CBP documents contradicted its earlier assertions. The Department, therefore, finds that Palini withheld information that the Department specifically requested. Additionally, by not responding to the initial questionnaire and waiting to reveal its

[1]Because Palini's June 29, 2006, email requesting an extension of the deadline was submitted four weeks after the deadline for the questionnaire, the Department correctly did not consider the email to be an extension request in accordance with 19 CFR 351.302(c). Pursuant to 19 CFR 351.302(c), an extension granted to a party must be approved in writing. The Department did not, at any time, grant Palini an extension.

knowledge that two of its sales were shipped directly to the United States, Palini impeded this segment of the proceeding by preventing the Department from issuing supplemental questionnaires to obtain and examine its sales of subject merchandise, and from calculating a dumping margin for Palini's sales within the statutory time for completing this review. Therefore, the Department has determined that it must base Palini's dumping margin on the facts otherwise available pursuant to sections 776(a)(2)(A) and (C) of the Act.

In response to Palini's contention that the Department ignored Palini's correspondence, and made no attempt to assist Palini, the Department disagrees with Palini's characterization of the facts. Despite the fact that Palini's and Wirth's communications to the Department were not in accordance with the filing requirements set forth in section 351.302(d) and (f)(2) of the Department's regulations, the Department did not reject the correspondence as improperly filed. The Department instead placed the emails and faxed letter on the administrative record, and served them on interested parties on Palini's behalf. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to The File, "Receipt of Emailed, Faxed, and Mailed Communication," dated October 2, 2005. The Department did not ignore Palini's correspondence. In fact, prompted by Palini's assertion of no shipments, the Department requested documentation from CBP multiple times in an attempt to confirm Palini's statements in the June 14, 2005, email. Additionally, when the Department next solicited factual information from Palini, the Department, in the cover letter to its January 5, 2006, supplemental questionnaire, gave Palini explicit instructions on how to properly file documents on the record.[2]

Based on the record evidence, specifically Palini's failure to answer the May 11, 2005, questionnaire and its failure to disclose the two sales to the United States until the Department presented it with contradictory CBP documentation, Palini impeded this segment of the proceeding by preventing the Department from issuing supplemental questionnaires to obtain and examine its sales of subject merchandise, and from calculating a dumping margin for Palini's sales within the statutory time for completing this review. See section 776(a)(2)(C) of the Act. Additionally, Palini did not cooperate to the best of its ability in responding to the Department's requests for information, all of which is kept by Palini in the normal course of business. See section 776(b) of the Act. The Federal Circuit has explained that to cooperate to the best of one's ability means that a respondent must do "the maximum it was able to do" in responding to the Department's requests for information. See Nippon Steel Corp. v. United States, 337 F. 3d 1373, 1382 (Fed. Cir. 2004). The Federal Circuit, in Nippon, held that, "{w}hile the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to

[2]Pursuant to the Department's normal practice, a complete set of filing instructions were also included in the Department's May 11, 2005, questionnaire.

produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so." Id. at 1382. Palini had the information regarding the destination of these shipments in its records, however, Palini did not search its records to provide an answer to the Department's "no shipments" question. Rather, it referred the Department to Wirth, and did not disclose that it knew that two of its sales to Wirth were shipped directly to the United States until it was notified that the Department obtained contradictory evidence from CBP. Based on the evidence on the record and consistent with sections 776(a) and (b) of the Act, the Department continues to find that Palini withheld requested information, significantly impeded the investigation, and failed to cooperate to the best of its ability. Therefore, the Department will continue to use AFA to determine Palini's dumping margin.

In response to Wirth's contention that the Department should have contacted Wirth when requested to do so by email and fax, the Department also disagrees. In response to a request by the petitioner, the Department initiated an administrative review with respect to five companies, including Palini. As Wirth was not named in the petitioner's request, Wirth was not initiated upon, and is therefore not a respondent in this review. If Wirth had information necessary for Palini to respond to the Department's questionnaire, Palini had the burden of obtaining the information from Wirth, and providing it to the Department. See Shandong Huarong Mach. Co. v. United States, Slip Op. 2005-54 (CIT May 2, 2005) at 19 ("it is well established that the burden of creating an adequate record lies with respondents.") (citing Tianjin Mach. Imp. & Exp. Corp. v. United States, 806 F. Supp. 1008, 1015 (CIT 1992)); see also Chinsung Indus. Co. v. United States, 705 F. Supp. 598, 601 (CIT 1989). Moreover, the issue before the Department in determining whether Palini's sales were properly subject to the administrative review was whether Palini knew or should have known that its sales were for export to the United States. Information from Wirth regarding its sales to the United States of merchandise manufactured by Palini would not have answered the fundamental question of Palini's knowledge. Additionally, despite its indication that it wanted to participate in the proceeding in its facsimile, Wirth did not file a notice of appearance in the proceeding or request an Administrative Protective Order until after the Preliminary Results. See Letter with Attachments from the Law Firm of Sharretts, Paley, Carter, and Blauvelt P.C., dated March 17, 2006.

Finally, the Department makes its finding of lack of cooperation, pursuant to section 776(b) of the Act, with respect to Palini, not to Wirth. The application of AFA is being used to establish the assessment rate on the entries deriving from the two sales Palini knew or should have known were for export to the United States, and to establish the future cash deposit rate for merchandise produced by Palini. Consistent with the Department's clarification of its "automatic assessment" regulation, all POR entries of subject merchandise produced by Palini and exported to the United States by Wirth, without Palini's knowledge, will be liquidated at the "all others" rate in effect on the date of entry, i.e., 7.85 percent. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

Comment 3: Whether the AFA Rate Selected by the Department is Contrary to Law.

Palini argues that F.LLI De Cecco Di Filippo Fara S. Martin S.p.A v. United States, 216 F.3d 1027 (Fed. Cir. 2000) (De Cecco), which held that the Department may not impose an unjustifiably high, punitive rate that has been discredited by the agency's own investigation, prevents the Department from applying the 30.75 percent margin selected in the Preliminary Results as AFA. Palini argues that the Department conceded in the Preliminary Results of this review that it was unable to corroborate the petition rate selected for Palini as AFA, and although the AFA petition rate selected by the Department was the low end of the range of margins alleged in the petition, Palini contends that it does not make the rate more reasonable, accurate, or representative of Palini's actual rate. Palini claims that, as in De Cecco, the petition rates in the original investigation of CTL Plate from Italy were discredited by the actual rates calculated by the Department, as one respondent received a *de minimis* margin and Palini received a weighted-average margin of 7.85 percent, substantially lower than the margins alleged in the petition. Palini argues that because the AFA petition rate is discredited, and there have been no reviews from which another respondent's margin could be used, the Department is left with the only calculated rate on the record, Palini's original margin of 7.85 percent. In response to the Department's statement that it will not use Palini's calculated 7.85 percent margin from the investigation, because the Department must ensure that Palini does not obtain a more favorable result by failing to cooperate, than if it had cooperated fully, Palini argues that the CIT has held that the Department must choose an AFA rate that accurately reflects what a company's rate would have been had it cooperated, which Palini argues is its margin from the investigation, with an added amount to deter noncompliance. Palini cites Shandong Huarong General Group Corp. v. United States, 2005 WL 2365322 (CIT 2005) (Shandong Huarong), in support of its argument.

Citing section 776(c) of the Act, Wirth argues that when the Department relies on secondary information, the Department, to the extent practicable, has to corroborate that information from independent sources that are reasonably at the Department's disposal. According to Wirth, when the Department chooses to use information from a petition as a basis for an AFA rate, such information must be capable of corroboration, and be accurate. Wirth also cites De Cecco, stating that Congress could not have intended for Commerce's discretion to include the ability to select unreasonably high rates with no relationship to the respondent's actual dumping margin. Wirth also cites World Finer Foods, Inc. v. United States, 24 C.I.T. 541, 548 (2000), arguing that the Department must select a margin that, although adverse, bears some rational relationship to the current level of dumping in the industry, and must provide proper corroboration explaining the probative value of the data used in determining the AFA margin.

Wirth submits that the petition margin rate of 30.75 percent preliminarily used by the Department was not only uncorroborated, but was incapable of corroboration, and was inaccurate given that the Department calculated a margin of 7.85 percent for Palini during the investigation. Wirth contends that, although the petition margin is not a proper basis for determining an AFA rate, margins determined in an original investigation are a proper basis for determining an AFA rate, citing D&L Supply Co. v. United States, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). Wirth also

notes that the Department did not provide a supporting corroboration analysis and memorandum, which it contends normally accompany and support the preliminary results when the Department applies AFA.

Wirth contends that, while the Department may not use an inaccurate rate as a basis for an AFA margin, it may use other information on the record, including the results of subsequent reviews, so long as such information in not discredited. According to Wirth, the Department did not examine whether any information on the record would discredit the selected rate. Wirth maintains that the Department cannot apply a margin that has been discredited, and the Department must select a margin which bears a rational relationship to the manner to which it is to be applied, citing Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334, 1335 (CIT 1999) (Ferro Union) and De Cecco. Wirth argues that the petition margin rate is not reliable because it is based on unverified allegations, was substantially discredited by the Department's own determination, and is out of step with supply and demand. Wirth also notes that the Department, in its most recent sunset determination on CTL Plate from Italy published in the Federal Register of August 8, 2005, determined that 7.85 percent was the most appropriate current rate of dumping likely to apply were the order revoked. See Continuation of Antidumping and Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, Japan, and Korea, 70 FR 72607 (December 6, 2005). According to Wirth, this confirms the validity of the rate determined in the original investigation.

Wirth argues that, furthermore, information available on the record does not support an inference that the petition rate might reflect Palini's actual dumping margin, because the rate chosen by the Department was many times higher than the rate calculated for Palini, and the magnitude of a rate increase alone can indicate that the Department's selection of an antidumping rate may have been punitive. Wirth cites Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F. 3d 1330, 1339 (Fed. Cir. 2002), which held that the AFA rate must have some relationship to commercial practices in the particular industry. Wirth contends that Palini was a cooperative respondent, and therefore the Department's preliminary decision is unduly harsh and punitive. Wirth also contends that Wirth would also be penalized by the rate chosen by the Department, as it is an independent reseller and importer of record, even though it volunteered to complete a questionnaire and assist the Department. Wirth contends that it should thus not be treated in the manner of a respondent that has completely refused to submit information, even if the Department determines that Palini was not cooperative.

Nucor argues in rebuttal that it is the Department's general practice to assign respondents who fail to cooperate with the Department's requests for information the highest margin determined for any party in the less-than-fair value (LTFV) investigation or in any administrative review. Nucor contends that it is also the Department's practice to ensure that the margin is sufficiently adverse as to effectuate the purpose of the fact's available role to induce respondents to provide the Department with complete and accurate information in a timely manner. Nucor argues that the Department must ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. According to Nucor, the only reliable

information on the record from which to calculate the AFA rate is the petition, because, as the Department stated in the Preliminary Results, using the rate calculated for Palini in the investigation would be inappropriate given the presumption that if Palini could have done better by cooperating in this review, it would have produced current information showing the margin to be less. If the Department applied Palini's rate from the investigation, Nucor contends then it would allow Palini to obtain a more favorable result by failing to cooperate than if it had cooperated fully. As there have been no administrative reviews since the investigation, Nucor asserts that the only remaining source of information is the petition.

In rebuttal to Palini's and Wirth's arguments that the AFA rate selected by the Department should be rejected because it is based on an uncorroborated figure, Nucor argues that section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on secondary information, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Nucor argues that the Department's regulations state that corroboration may not be practicable in a given instance, and that when this is the case, it will not prevent the Department from applying an adverse inference. Nucor cites NSK Ltd. v. United States, 346 F. Supp. 2d 1312 (CIT 2004) (NSK Ltd.), which held that the corroboration requirement itself is not mandatory when not feasible. Even though the Department did not have information available on the record to fully corroborate the margin, Nucor contends that this does not preclude the Department from relying on this information to calculate Palini's AFA rate. In NSK Ltd., the CIT held that, in the case of an uncooperative respondent, the Department is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to noncooperation with its investigations, assuring a reasonable margin. Nucor argues that the Department has the discretion to use the petition rate as AFA, even if it cannot corroborate the rate.

Department's Position

Section 776(b) of the Act provides that in applying AFA, the Department may rely on information derived from the petition, a final determination in the investigation under this subtitle, any previous review, or any other information placed on the record. However, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall "to the extent practicable, corroborate that information from independent sources that are reasonably at {its} disposal." See Section 776(c) of the Act. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act states that "corroborate" means to determine that information has probative value. See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 at 870 (1994) (SAA). The Department has determined that to have probative value, information must be reliable and relevant. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, 61 FR 57391, 57392 (November 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from

interested parties during the particular investigation. See SAA at 870; and Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (March 11, 2005).

In the petition, filed on February 16, 1999, the petitioners calculated estimated dumping margins for the identified respondents, including Palini, ranging from 30.75 to 93.30 percent. The petitioners calculated these margins using the Average Unit Value (AUV), which served as an estimate of export price (EP), using import statistics obtained from the International Trade Commission (ITC) for the three Harmonized Tariff Schedule of the United States (HTSUS) categories accounting for the largest volume of subject imports from Italy during the first eleven months of 1998. In addition, the petitioners based normal value (NV) on their own production experience. See Initiation of Antidumping Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia, 64 FR 12959, 12963 (March 16, 1999) (CTL Plate from Italy Initiation Notice). Therefore, in an attempt to corroborate the petition margins, the Department compared the petitioner's AUVs from the period of investigation (POI) with the AUVs for the POR for the same HTSUS categories, using Census data from the ITC Trade Data Web. See Memorandum from Thomas Martin, International Trade Compliance Analyst, "Comparison of Average Unit Values," dated July 5, 2006. We found that the AUVs for subject merchandise have increased between the POI and POR. Regarding NV, there is no information on the record of this review with which to use in corroborating the petition's NV. Therefore, the Department has found that the information from the petition is not probative in this review.

Although the Department disagrees with Palini that De Cecco stands for the principle that all petition rates are discredited if a lower rate is calculated in the investigation, in this specific case the Department agrees that the petition rate was demonstrated to be non-probative in this review. Because the petition rate is not probative in this review, there have been no prior administrative reviews of this order, and no interested party has placed information on the record to be used as a source of the AFA rate, the Department must look to information from the investigation as the basis for the AFA rate. See section 776(b) of the Act. The only information on the record of the investigation which can serve as a basis for an adverse margin is Palini's own information. The Department continues to find that using Palini's own rate from the investigation would not be sufficiently adverse so as "to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8932 (February 32, 1998). The Department also finds that using Palini's rate from the investigation would not prevent Palini from obtaining a more favorable result by failing to cooperate than if it had cooperated fully. See SAA at 870; see also D&L Supply Co. v. United States, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). The Federal Circuit recognized in De Cecco that the AFA rate must necessarily be higher than any estimate of the respondent's actual rate. See De Cecco, 216 F. 3d at 1032. Therefore, the Department has chosen the highest dumping margin calculated for any model for Palini in the LTFV investigation, 10.31 percent, as the applicable AFA rate. See

Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, "Amended Final Determination Calculation Memorandum," dated July 5, 2006. This rate is reliable as it is based on Palini's own information and is relevant to Palini's own practices in selling CTL Plate to the United States.

Comment 4: Whether the Administrative Record is Complete and Whether the Department's Determination is Based on Substantial Evidence on the Record.

Citing section 516a(b)(2)(A)(1) of the Act, Wirth argues that an administrative review must contain all information on the record, and the record in the review must include a copy of all information presented or obtained during the course of the review, including all government memoranda and records of *ex parte* meetings. Wirth cites Acciai Speciali Terni S.P.A. et al. v U.S., 120 F. Supp. 2d 1101, 1104 (2000) (Acciai Speciali), which cited the De Cecco holding that the Department had a statutory obligation to include in the administrative record summaries of *ex parte* communications with the Department, as it is information before the Department, regardless of whether the Department chose to ignore it. Wirth argues that the whole administrative record, therefore, consists of all documents and materials directly or indirectly considered by agency decision-makers, and includes evidence contrary to the agency's position. Wirth argues that if the record is not complete, then the requirement that the agency decision be supported by the record would be meaningless. See Portland Audubon Society v. Endangered Species Committee 984 F. 2d 1534, 1548 (9th Cir. 1993) (internal citations omitted). Wirth also argues that a determination by the Department must be reached by reasoned explanation supported by a stated connection between the facts found and the choice made. See Steel Authority of India, Ltd. v. U.S., 149 F. Supp. 2d 921, 929 (CIT 2001). Wirth argues that the record evidence overwhelmingly supports the conclusion that Wirth and Palini cooperated to the best of their ability.

Nucor does not rebut this argument.

Department's Position

The Department disagrees with Wirth that the record is incomplete in any way. Wirth cites no specific information that it believes was solicited or obtained by the Department through phone conversations, or any other manner, which was not placed on the record. Wirth does note that prior to its counsel's entry of appearance on behalf of Wirth, Wirth's counsel had several phone conversations with Department personnel. However, the Department did not solicit or obtain any information from counsel in those conversations. In fact, these conversations involved counsel for Wirth attempting to solicit information from the Department about the conduct of and schedule for the proceeding of a company, Palini, it does not represent. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to Thomas Futtner, Acting Office Director, "Phone Conversations with Beatrice Brickell of Sharetts Paley Carter and Blauvelt PC," dated June 9, 2006. Because the Department did not obtain any information relevant to its decision from these conversations, Wirth's reliance on Acciai Speciali Terni and

De Cecco is inapposite.

The Department also disagrees with Wirth that its determination is not supported by substantial evidence or set forth in a reasoned explanation connecting the facts found and the choice made. As discussed above, the Department made its findings in the Preliminary Results by applying its knowledge test to the evidence provided by Palini in its questionnaire response. See Preliminary Results, 71 FR at 1180. The Department noted that Palini itself admitted that (1) its unaffiliated customer informed Palini of the location of the port of discharge prior to shipment; (2) Palini's commercial invoice identifies the port of discharge/destination; (3) Palini provided all of the shipping information, including the port of discharge, to Wirth's shipping agent at the customer's request; and (4) Palini's shipping marks, which are completed prior to shipment and are stenciled onto each plate, include the port of discharge. Moreover, the documents Palini provided for two sales that were shipped directly from Italy identify the ports of discharge as locations in the United States. Id. Similarly, the Department evaluated the evidence and determined that Palini had satisfied the statutory criteria for having facts available and AFA applied to it. Id. at 1181. Additionally, in this Issues and Decision Memorandum, the Department has responded to arguments from both sides with regard to those decisions. An examination of the evidence in light of the statute and the Department's practice supports the Department's conclusions with respect to Palini's knowledge and the application of AFA. See Comments 1 and 2 above.

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 results of this administrative review in the Federal Register.

Agree _____ Disagree_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date