A-580-886
POR: 05/01/2018-04/30/2019
Public Document
E&C/OIV: SMB/KAG

March 4, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review of Ferrovanadium from the Republic of Korea; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) has preliminarily determined that two of the three respondents under review, specifically Korvan Ind, Co., Ltd. (Korvan) and Woojin Ind. Co., Ltd. (Woojin), made no shipments of subject merchandise to the United States during the period of review (POR), May 1, 2018 through April 30, 2019, and has preliminarily assigned a dumping margin to the third respondent, Fortune Metallurgical Group Co., Ltd. (Fortune), based upon the application of adverse facts available (AFA). Commerce is conducting this administrative review of the antidumping duty (AD) order on ferrovanadium from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results of review. Unless the deadline is extended pursuant to section 751(a)(3)(A) the Act, we will issue the final results of review no later than 120 days after the publication of these preliminary results of review.

II. BACKGROUND

On May 15, 2017, Commerce published the AD order on ferrovanadium from Korea in the *Federal Register*.[1] On May 1, 2019, Commerce notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with

[1] *See Ferrovanadium From the Republic of Korea: Antidumping Duty Order*, 82 FR 22309 (May 15, 2017).

anniversaries in May 2019, including the AD order on ferrovanadium from Korea.[2] On May 31, 2019, Commerce received a request from AMG Vanadium LLC (the petitioner) to conduct an administrative review of the AD order on ferrovanadium from Korea with respect to Korvan, Woojin, and Fortune for the period May 1, 2018 through April 30, 2019.[3] On June 9, 2019, Commerce initiated the requested review.[4]

After initiating this review, on July 25, 2019, Commerce issued AD questionnaires to Korvan, Woojin, and Fortune.[5] On August 12, 2019 and August 16, 2019, Woojin and Korvan, respectively, submitted no shipments letters.[6] Fortune did not submit a no shipments letter nor did it respond to the AD questionnaire. On August 30, 2019, the petitioner commented on Korvan and Woojin's no shipment claims.[7]

On September 11, 2019, December 5, 2019, and December 9, 2019, Commerce placed on the record CBP information regarding the no shipments claims, namely the results of its query of CBP data for all POR entries of subject merchandise from Korvan and Woojin,[8] CBP entry documents,[9] and CBP's response to Commerce's no shipments inquiry.[10] On September 18, 2019, the petitioner commented on the results of the CBP data query.

On January 6, 2020, the petitioner submitted comments for consideration in the preliminary results of review.[11]

On January 22, 2020, Commerce extended the due date for issuing the preliminary results of this

---

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 18479 (May 1, 2019).
[3] *See* Petitioner's Letter, "Ferrovanadium from the Republic of Korea: Request For Administrative Review," dated May 31, 2019.
[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739 (July 15, 2019).
[5] See Commerce's Letters to Korvan, Woojin, and Fortune with the AD Questionnaire attached dated July 25, 2019.
[6] *See* Woojin's Letter: "Ferrovanadium from the Republic of Korea: Statement of No Shipments" dated August 12, 2019, (Woojin No Shipment Letter); *see also* Korvan's Submission dated August 16, 2019 (which is a corrected version of the August 8, 2019, submission which Commerce rejected because it contained filing deficiencies)(Korvan No Shipment Letter).
[7] *See* Petitioner's Letter, "Ferrovanadium from the Republic of Korea: Response to Korvan's and Woojin's No Shipment Claims," dated August 30, 2019.
[8] *See* Commerce's Letter, "2018-2019 Antidumping Duty Administrative Review of Ferrovanadium from the Republic of Korea: Release of U.S. Customs and Border Protection Information," dated September 11, 2019 (Data Query Results).
[9] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Ferrovanadium from the Republic of Korea: Entry Documents," dated December 5, 2019 (Entry Documentation).
[10] *See* Commerce's Letter, "Ferrovanadium from the Republic of Korea (A-580-886) Re: No shipment inquiry with respect to the company below during the period 05/01/2018 through 04/30/2019," dated December 9, 2019 (No Shipments Inquiry).
[11] See Petitioner's Letter, "Ferrovanadium from the Republic of Korea: Pre-Preliminary Results Comments," dated January 6, 2020 (Petitioner Pre-Preliminary Comments).

review until March 6, 2020.[12]

On February 18, 2020, Korvan responded to Commerce's February 6, 2020, supplemental questionnaire.[13] On February 24, 2020, the petitioner commented on Korvan's SQR.[14]

III. SCOPE OF THE ORDER

The product covered by the order is all ferrovanadium regardless of grade (i.e., percentage of contained vanadium), chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium. Ferrovanadium is classified under Harmonized Tariff Schedule of the United States ("HTSUS") item number 7202.92.0000. Although this HTSUS item number is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As noted above, on August 12, 2019, and August 16, 2019, Woojin and Korvan, respectively, timely submitted no-shipment claims to Commerce.[15] While nothing on the record called into question Woojin's no shipments claim, the Data Query Results and No Shipments Inquiry results[16] appeared to call into question Korvan's no shipments claim. Given this record information, which is business proprietary, we carefully examined related CBP entry documentation and issued a supplemental questionnaire to Korvan to obtain information related to Commerce's "knowledge test." Commerce has established and applied a "knowledge test" for purposes of determining whether various parties involved in importing and exporting goods have reportable sales.

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

[12] *See* Memorandum, "Ferrovanadium from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated January 22, 2020.
[13] *See* Commerce's Letter, "2018-2019 Antidumping Duty Administrative Review of Ferrovanadium from the Republic of Korea: Supplemental Questionnaire," dated February 6, 2020 (Supplemental Questionnaire); *see also* Korvan's Letter, "Supplemental Questionnaire Response of Korvan Ind. Co. Ltd.," dated February 18, 2020 (Korvan's SQR).
[14] *See* Petitioner's Letter, "Ferrovanadium from the Republic of Korea: Reply to Korvan's Supplemental Questionnaire Response," dated February 24, 2020 (Petitioner's February 24, 2020 Response).
[15] *See* Woojin No Shipment Letter; *see also*Korvan No Shipment Letter.
[16] *See* No Shipments Inquiry.

company.[17] Commerce's test for determining knowledge is whether the relevant party knew, or should have known, at the time of sale that the merchandise was for export to the United States.[18] In determining whether a party knew, or should have known, at the time of sale whether its merchandise was destined for the United States, Commerce's well-established practice is to consider such factors as: (1) whether the party prepared or signed any certificates, shipping documents, contracts or other documents indicating that sales of the merchandise under consideration were sales of merchandise destined for the United States; (2) whether the party used any packaging or labeling for sales of the merchandise under consideration which indicated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise under consideration otherwise indicated that its destination was the United States; and (4) whether that party admitted to Commerce that it knew that its sales of the merchandise under consideration were sales of merchandise destined for the United States.[19]

In Korvan's SQR, it reported that it did not have any indication that any of its domestic or export sales of ferrovanadium during the POR were ultimately destined for the United States. Korvan explains that it did not prepare any certifications or documentation for its domestic or export sales of ferrovanadium during the POR that provided any indication that the merchandise was ultimately destined for the United States. Korvan also explains that it had no knowledge or any reason to believe that the ferrovanadium it sold to customers in other countries or to its domestic customers was ultimately destined for the United States. Korvan confirms that the ferrovanadium it has sold to the United States in the past is not distinguishable from the ferrovanadium that Korvan sold to third countries based on specifications, brands, quality, vanadium content percentage, or any other feature. Also, Korvan confirmed that it would not use specific labeling or packaging for ferrovanadium sold to the United States that was not used for its sales to domestic or other export customers.[20] In Korvan's SQR, it provided various sales documentation requested by Commerce to support its claim.[21] In sum, Korvan claims it did not

---

[17] *See Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299 (July 12, 2006) and accompanying Issues and Decision Memorandum (IDM) at Comment 1 (*CTL Plate from Italy*).

[18] *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).

[19] *See CTL Plate from Italy* and accompanying IDM at Comment 1, *see also*, *e.g.*, *Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran*, 70 FR 7470 (February 14, 2005) and accompanying IDM 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 the Court of International Trade in *Wonderful Chemical Industrial v. United States*, 259 F. Supp. 2d 1273, 1280) (CIT 2003)); *Certain Pasta from Italy: Termination of New Shipper Review*, 62 FR 66602 (December 19, 1997).

[20] *See* Korvan's SQR at pages 2-6.

[21] *Id.* at Exhibits SQR-A, SQR-B, SQR-C and SQR-D.

know, or have reason to know, that the ferrovanadium it sold during the POR was destined for the United States.[22]

The petitioner contends that Commerce should determine whether Korvan did, or did not, have knowledge that the third-country shipment at issue was destined for the United States and then either assign Korvan an AFA rate for this shipment, if it had knowledge, or issue a questionnaire to the reseller of the Korvan-produced ferrovanadium soliciting the information necessary to calculate a dumping margin for the ferrovanadium that entered into the United States during the POR. The petitioner bases its argument for issuing the reseller a questionnaire on guidance issued by Commerce regarding assessment rates in its *1998 Assessment Policy* notice. Specifically, the petitioner notes that in that notice, Commerce explained that:

> If {}an interested party requests the Department to conduct a review of the producer's sales, *the review applies to all sales of the producer, including any sales to resellers of the producer's merchandise, unless the reseller had its own company-specific rate at the time of entry and the producer did not know that the sales to the reseller were destined for the United States* . . . These may include sales to resellers of merchandise that ultimately came to the United States without the producer's knowledge where the entries of the merchandise were suspended at the producer's cash deposit rate. Because the producer did not set the price to the United States for these sales, these entries of this merchandise will not be assessed final antidumping duties at the producer's rate at the conclusion of the review. *The rate instead will be based on the interested party in the chain of commerce that actually set the price to the United States*.[23]

According to the petitioner, the above passage indicates that the review applies to all sales of the producer, including any sales to resellers of the producer's merchandise, unless the reseller had its own company-specific rate at the time of entry and the producer did not know that it sold merchandise to the reseller that was destined for the United States. The petitioner points out that the reseller of the Korvan-produced ferrovanadium does not have its own company-specific AD rate. Thus, if Korvan did not know, or have a reason to know, that the ferrovanadium that it sold to the reseller was destined for the United States, the petitioner maintains that it is incumbent upon Commerce to determine an AD rate for the reseller based on the reseller's pricing practices.[24] According to the petitioner, Commerce took this approach in the AD investigation of *GOES from the Czech Republic* where it selected a reseller as a mandatory respondent and issued

[22] *Id.* at 1.
[23] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 63 FR 55361, 55363 (October 15, 1998) (*1998 Assessment Policy*) (emphasis added).
[24] *See* Petitioner's February 24, 2020 Response.

a questionnaire to the reseller where the producer had no knowledge that sales to the reseller were of merchandise under consideration that was destined for the United States.[25]

We examined relevant CBP entry documentation on the record and Korvan's SQR and found no evidence that Korvan knew, or had reason to know, that certain ferrovanadium at issue, which it produced and sold, was destined for the United States. There is no indication that Korvan prepared or signed any certificates, shipping documents, packaging or labeling, contracts or other papers or documents indicating that sales of the ferrovanadium at issue were sales of ferrovanadium destined for the United States. Additionally, there is no evidence that the ferrovanadium at issue could be considered destined for the United States based on specifications, brands, quality, vanadium content percentage, or any other feature. Lastly, Korvan contends that it did not know, or have reason to know, that its sales of the merchandise under consideration were sales of merchandise destined for the United States. Based on the foregoing, we preliminarily determine that Korvan did not know, or have reason to know, that ferrovanadium which it produced and then sold during the POR, or in the three months prior to the POR, was destined for the United States.

In such a situation, the petitioner asserts that Commerce must issue an AD questionnaire to the reseller to determine its AD rate based on its pricing practices. We disagree. The petitioner misinterprets Commerce's explanation of its AD practices with respect to resellers. The passage quoted above, and relied upon by the petitioner, which is from the *1998 Assessment Policy* notice, does not require Commerce to conduct an AD administrative review of, and determine a company-specific AD margin for, a reseller of subject merchandise when no review of that reseller has been requested. Rather, that passage indicates that when a producer is under review, U.S. entries of a producer's merchandise sold to the United States by a reseller without its own AD rate would not be automatically liquidated when no one requested a review of the reseller, but would remain unliquidated until Commerce determined whether the producer had knowledge of the destination of that merchandise. It is in that sense that the review "applies" to such sales. Where the producer had no such knowledge, and thus was not the price setter for the U.S. sales, it would be inappropriate to assess final antidumping duties on the entries at the producer's rate. Therefore, Commerce noted in the *1998 Assessment Policy* notice that "{t}he rate instead will be based on the interested party in the chain of commerce that actually set the price to the United States."[26] This does not mean that Commerce must individually review the reseller. Commerce made that clear in the *1998 Assessment Policy* notice when it concluded its discussion of the appropriate assessment rate for a reseller for which no review was requested by explaining:

---

[25] *See Grain-Oriented Electrical Steel from the Czech Republic: Preliminary Determination of Sales at Less Than Fair Value,* 79 FR 26717 (May 9, 2014) (*GOES from the Czech Republic*) and accompanying Preliminary Decision Memorandum at 2-3.

[26] *See 1998 Assessment Policy*, 63 FR at 55363.

> {a}s no review of the reseller's sales was conducted, there is no company-specific data on which to base a company-specific reseller rate. Therefore, the only appropriate assessment rate is the all-others rate.[27]

This methodology was reiterated in the notice addressing interested parties' comments on the *1998 Assessment Policy* notice in which Commerce explained:

> If, on the other hand, the Department determines in the administrative review that the producer did not know that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will not be liquidated at the assessment rate the Department determines for the producer or automatically at the rate required as a deposit at the time of entry. *In that situation, the entries of merchandise from the reseller during the period of review will be liquidated at the all-others rate if there was no company-specific review of the reseller for that review period*.[28]

Commerce went on to explain that:

> This clarification establishes an assessment policy for any unreviewed reseller. If the all-others rate is not an accurate reflection of the market, *then an interested party can request a review of that reseller. Within the context of the review the Department will then consider that reseller's specific selling experience in determining the appropriate rate*.[29]

This makes it clear that Commerce will consider the reseller's specific selling experience in determining the appropriate rate *when a review has been requested of the reseller*. No review has been requested of the reseller at issue within the applicable time limits for requesting an administrative review of this order. Therefore, we do not intend to issue an AD questionnaire to the reseller or examine its selling practices in this review.

The petitioner's reliance on *GOES from the Czech Republic*[30] is misplaced. That proceeding involved an investigation, while here we are conducting an administrative review. Commerce's regulations, which provide procedures and rules for applying the statute, and more specifically 19 CFR 351.213(b)(1) and (2), state that:

> {e}ach year during the anniversary month of the publication of the antidumping duty order … a domestic interested party … may request in writing that the Secretary conduct

---

[27] *Id.*

[28] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (2003 *Assessment Policy*) (emphasis added).

[29] *Id*., 68 FR at 23955 (emphasis added).

[30] *See GOES from the Czech Republic*, and accompanying Preliminary Decision Memorandum at 2-3.

> an administrative review under section 751(a)(1) of the Act of *specified individual exporters or producers* covered by an order …
>
> an exporter or producer covered by an order … may request in writing that the Secretary conduct an administrative review *of only that person*. (emphasis added).

Moreover, section 751(a)(1) of the Act notes that Commerce will review and determine that amount of any antidumping duties "… if a request for such a review has been received …" Thus, it is clear that parties must be named in a timely review request in order to be under review. The reseller at issue was not named in any review requests covering the instant POR.

Since nothing on the record calls into question Woojin's no shipments claim and we have preliminarily determined that nothing on the record demonstrates that Korvan knew, or had reason to know, at the time that it sold ferrovanadium during the POR (and during the three months before the POR) that the ferrovanadium was destined for the United States, we have preliminarily determined that neither company made any sales or shipments of subject merchandise to the United States during the POR.

Since we preliminarily determined that nothing on the record demonstrates that Korvan knew, or had reason to know, at the time that it sold ferrovanadium during the POR (and during the three months before the POR) that the ferrovanadium was destined for the United States, we have not applied AFA to Korvan.

V. APPLICATION OF FACTS AVAILABLE AND ADVERSE INFERENCES

As noted above, mandatory respondent Fortune received the AD questionnaire that Commerce issued in this review, but failed to respond to the questionnaire. In accordance with sections 776(a) and (b) of the Act, because Fortune did not respond to Commerce's questionnaire, we preliminarily determine that it is appropriate to base Fortune's dumping margin on facts available, with an adverse inference, *i.e.*, AFA. For the reasons discussed below, we are preliminarily assigning a dumping margin of 54.69 percent to Fortune.

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

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 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 (listing certain requirements that must be met for Commerce to consider information that does not meet all applicable requirements), Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In 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,[31] nor is Commerce 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.[32] The SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[33] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[34]

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 less-than-fair-value investigation, a previous administrative review, or other information placed on the record,[35] including the highest of the dumping margins from prior segments of the proceeding.[36]

While section 776(c) of the Act provides that, when Commerce relies on secondary information, it shall, to the extent practicable, corroborate that information,[37] Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[38]

Fortune did not respond to Commerce's AD questionnaire or otherwise participate in the proceeding. As a consequence, we preliminarily find that necessary information is not available on the record and that Fortune withheld information requested by Commerce, failed to provide

---

[31] *See* section 776(b)(1)(B) of the Act.
[32] *See* section 776(d)(3)(B) of the Act.
[33] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol 1 (1994) at 870.
[34] *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);; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).
[35] *See* 19 CFR 351.308(c).
[36] *See* section 776(d)(1)-(2) of the Act.
[37] *See* 19 CFR 351.308(d).
[38] *See* section 776(c)(2) of the Act.

information by the specified deadlines, and significantly impeded the proceeding.[39] Moreover, because Fortune failed to provide any information in response to the AD questionnaire, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are basing Fortune's preliminary dumping margin upon the facts otherwise available.

Next, we considered whether it is appropriate to use an adverse inference in applying the facts otherwise available based on a failure of Fortune to act to the best of its ability to comply with a request for information. The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the meaning of failure to act to "the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that "ability" refers to " the quality or state of being able."[40] Thus, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum that it is able to do.[41] The CAFC acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.[42] Hence, compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a review.[43]

The failure of Fortune to respond to Commerce's questionnaire or otherwise participate in the review indicates that it did not put forth its maximum effort to provide Commerce with full and complete answers to the inquiries made in this review. Accordingly, we preliminarily conclude that Fortune failed to cooperate to the best of its ability to comply with a request for information by Commerce in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.[44]

As noted above, section 776(b) of the Act notes that Commerce, when employing an adverse inference, 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.[45] In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to

---

[39] *See* sections 776(a)(1) and (a)(2)(A), (B), and (C) of the Act.
[40] *See Nippon Steel*, 337 F.3d at 1382..
[41] *Id.*
[42] *Id.*, 337 F.3d at 1380.
[43] *Id.*, 337 F3d at 1382.
[44] *See*, *e.g.*, *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 AD questionnaire).
[45] *See* 19 CFR 351.308(c).

cooperate than if it had fully cooperated.[46] Commerce's practice in selecting a rate as total AFA is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information and corroboration is required).[47] In this case, we are preliminarily assigning Fortune, as AFA, the highest dumping margin from the investigation, 54.69 percent.[48] Because Commerce applied this dumping margin in a separate segment of this proceeding, pursuant to section 776(c)(2) of the Act, we need not corroborate this rate for purposes of AFA in this review.

VI. RECOMMENDATION

We recommend applying the above methodology for the preliminary results of this review.

☒ ☐

Agree Disagree

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[46] *See* SAA at 870.
[47] *See Certain Hot-Rolled Steel Flat Products from Australia: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 56817 (November 14, 2018), and accompanying Preliminary Decision Memorandum at 10-12, unchanged in *Certain Hot-Rolled Steel Flat Products from Australia: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 19241 (April 30, 2019); *see also Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009).
[48] *See Ferrovanadium From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 FR 14874 (March 23, 2017).