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

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

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

I. SUMMARY

We analyzed the comments of interested parties in the less-than-fair-value (LTFV) investigation of carbon and alloy steel wire rod (wire rod) from the Republic of South Africa (South Africa). As a result of our analysis and as discussed below, we are continuing to find that ArcelorMittal South Africa Limited (AMSA), Scaw South Africa (Pty) Ltd. (Scaw) and Consolidated Wire Industries (CWI) should be collapsed into a single entity (AMSA/Scaw/CWI) and assigned the same antidumping duty (AD) cash deposit rate, which we continue to find should be based on total adverse facts available (AFA). As a part of total AFA, there is no need for verification and any remaining margin calculation issues are moot. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

- Comment 1: Affiliation and Collapsing of AMSA/Scaw/CWI
- Comment 2: Application of Total AFA to AMSA/Scaw/CWI
- Comment 3: Commerce’s Statutory Obligations under 782(d) of the Act
- Comment 4: Verification
- Comment 5: Adjustment to General and Administrative (G&A) Expense Ratio
- Comment 6: Adjustment to Warranty Expenses



Comment 7: Adjustment to Direct Selling Expenses
Comment 8: Use of CEP Offset

II. BACKGROUND

On October 31, 2017, the Department of Commerce (Commerce) published the *Preliminary Determination* for the less-than-fair-value (LTFV) investigation of wire rod from South Africa.¹ In the *Preliminary Determination*, we preliminarily determined that AMSA, Scaw, and CWI constituted a single entity, *i.e.*, AMSA/Scaw/CWI,² and applied adverse facts available (AFA) to the single entity. Commerce also preliminarily determined that critical circumstances existed for AMSA/Scaw/CWI and for all-other exporters/producers of wire rod.

We invited parties to comment on the *Preliminary Determination*. On November 15, 2017, AMSA and Nucor Corporation submitted case briefs.³ On November 20, 2017, AMSA and the petitioner submitted rebuttal briefs.⁴ The petitioner submitted a request for a hearing on November 28, 2017,⁵ and subsequently withdrew this request on December 4, 2017.⁶

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing

¹ See *Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Preliminary Determination of No Shipments*, 82 FR 50383 (October 31, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

² See Memorandum to Erin Kearney, Acting Director, AD CVD Operations, Office VI, from John C. McGowan, International Trade Compliance Analyst, AD CVD Operations, Office VI, entitled, “Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Affiliation and Collapsing Memorandum for ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd. and Consolidated Wire Industries,” dated October 24, 2017 (Collapsing Memorandum).

³ See Letter from AMSA to Commerce, regarding “Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Case Brief,” dated November 15, 2017 (AMSA’s Case Brief); *see also* Letter from Nucor to Commerce, regarding “Carbon and Alloy Steel Wire Rod from South Africa: Nucor’s Case Brief,” dated November 15, 2017 (Nucor’s Case Brief).

⁴ See Letter from AMSA to Commerce, regarding “Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Letter in Lieu of Rebuttal Brief,” dated November 20, 2017 (AMSA’s Rebuttal Brief); *see also* Letter from Nucor to Commerce, regarding “Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Rebuttal Brief of Nucor,” dated November 20, 2017 (Nucor’s Rebuttal Brief).

⁵ See Letter from Nucor to Commerce, regarding “Carbon and Alloy Steel Wire Rod from South Africa: Request for Hearing,” dated November 28, 2017.

⁶ See Letter from Nucor to Commerce, regarding “Carbon and Alloy Steel Wire Rod from South Africa: Withdrawal of Request for Hearing,” dated December 4, 2017.

steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.*, products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

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

V. DISCUSSION OF THE ISSUES

Comment 1: Affiliation and Collapsing of AMSA/Scaw/CWI

AMSA's Case Brief

- Commerce based its decision on the affiliation between AMSA and Scaw on the common ownership by Industrial Development Corporation (IDC). Commerce's determination regarding affiliation and collapsing is substantially incorrect, unsupported by substantial evidence or otherwise not in accordance with law.⁷
- Commerce has failed to address AMSA's legal arguments regarding whether AMSA and Scaw are affiliated.⁸
- Further, Commerce based its collapsing decision on its conclusion that AMSA's and Scaw's operations are intertwined, which was supported by a "reed-thin" assertion. This further demonstrates the need for verification.⁹
- Commerce's finding of manipulation pursuant to 19 CFR 351.401(f)(2) was in error in light of the circuitous nature of Commerce's determination and AMSA's efforts to cooperate.
- Additional argument raised by AMSA refers to BPI and is found in AMSA's Case Brief.¹⁰

Petitioner's Rebuttal Brief:

- Commerce should continue to collapse AMSA, Scaw, and CWI.¹¹

⁷ See AMSA's Case Brief at 6-7 (citing Collapsing Memorandum at 8).

⁸ *Id.* at 6.

⁹ *Id.* (citing Collapsing Memorandum at 7).

¹⁰ See AMSA's Case Brief at 6.

¹¹ See Nucor's Rebuttal Brief at 6.

- Although AMSA states Commerce’s determination is incorrect, AMSA has provided no record evidence or arguments to rebut this finding.¹² In fact, AMSA has failed to address the numerous factors that Commerce considered in making its collapsing determination.¹³
- AMSA has not explained or demonstrated why the above-referenced “reed-thin” assertion is in error or what evidence on the record detracts from it.¹⁴
- In addition, although AMSA contends that verification is necessary for Commerce to examine records that can clarify the relationship between AMSA and Scaw, this would be inconsistent with Commerce’s practice as verification is not the proper forum to submit new factual information.¹⁵
- Additional clarifying evidence which is BPI further supports Commerce’s finding that AMSA and Scaw’s operations are intertwined.¹⁶

Commerce’s Position:

We disagree with AMSA. As an initial matter, AMSA argues that Commerce preliminarily and incorrectly found that AMSA and Scaw are affiliated due to common ownership by the IDC.¹⁷ To clarify, we preliminarily found, and continue to find, that the record evidence shows that AMSA and Scaw are affiliated through AMSA’s control of CWI, and Scaw’s control of CWI, which is facilitated by its management of CWI on behalf of IDC.¹⁸ AMSA does not further address Commerce’s affiliation decision with specific facts on the record that detract from this finding. Further, we disagree with AMSA that our collapsing determination is based on a “reed-thin assertion,” and further, as discussed in Comment 4, that verification was required. Moreover, AMSA fails to address the additional facts on the record which Commerce relied upon in determining that AMSA/Scaw/CWI constitute a single entity. Although we address the majority of this issue below, due to the proprietary nature of this issue and party comments, *see* the BPI Analysis Memorandum for additional explanation of Commerce’s position.

Regarding affiliation, section 771(33) of the Act provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

¹² *Id.* at 6.

¹³ *Id.* at 7.

¹⁴ *Id.* at 6.

¹⁵ *Id.*

¹⁶ *See* Nucor’s Rebuttal Brief at 8.

¹⁷ *See* AMSA’s Case Brief at 6.

¹⁸ *See* Collapsing Memorandum at 3-4.

- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

The Act further states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”¹⁹ “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”²⁰ In determining whether control over another person exists, Commerce will consider, among other factors, corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships.²¹ However, Commerce will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.²²

As discussed in more detail in the Collapsing Memorandum, in the *Preliminary Determination* we found that (1) AMSA and Scaw are affiliated, pursuant to section 771(33)(F) of the Act, (2) AMSA and CWI are affiliated, in accordance with section 771(33)(E) or (G) of the Act, and (3) Scaw and CWI are affiliated, in accordance with section 771(33)(G) of the Act.²³ Rather than addressing any of the specific facts described in Commerce’s affiliation decision, AMSA merely states that “{t}he Department found that AMSA and Scaw are affiliated due to common ownership by the {IDC}.”²⁴ As demonstrated in the Collapsing Memorandum, we preliminarily found that the record evidence shows that AMSA and Scaw are affiliated through AMSA’s control of CWI, and Scaw’s control of CWI, which is facilitated by Scaw’s management of CWI on behalf of IDC.²⁵ Further, although in the Collapsing Memorandum we discussed IDC’s ownership of both AMSA and Scaw as a factor in our collapsing determination,²⁶ this was not the sole basis of our affiliation decision. In short, AMSA points to no evidence which detracts from our affiliation findings. Instead, AMSA argues that Commerce failed to address AMSA’s legal arguments regarding whether there is affiliation.²⁷ However, aside from this cursory assertion, AMSA does not identify the legal arguments in question which would cause Commerce to reconsider its determination.

Additionally, for Commerce’s collapsing determination, 19 CFR 351.401(f) outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings. Pursuant to 19 CFR 351.401(f)(1), Commerce will treat affiliated producers as a “single entity” where those producers “have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.”

¹⁹ See section 771(33) of the Act; see also 19 CFR 351.102(b)(3).

²⁰ See 19 CFR 351.102(b)(37).

²¹ See 19 CFR 351.102(b)(3).

²² *Id.*

²³ See Collapsing Memorandum at 3-5; see also Preliminary Determination Memorandum at 6.

²⁴ See AMSA’s Case Brief at 6.

²⁵ See Collapsing Memorandum at 3-4.

²⁶ *Id.* at 7.

²⁷ See AMSA’s Case Brief at 6.

Concerning significant potential for manipulation of price or production, 19 CFR 351.401(f)(2) states that Commerce may consider the following factors:

- (i) The level of common ownership;
- (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) the degree to which operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

In determining whether there is a “significant potential for manipulation of price or production,” pursuant to 19 CFR 351.401(f)(2), Commerce identifies certain non-exhaustive factors for Commerce to consider²⁸ and bases its analysis on the totality of the circumstances, and no single factor is dispositive or required to find a significant potential for manipulation of price or production.²⁹ Additionally, the Court of International Trade (CIT) has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by Commerce in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse affiliated producers/exporters.³⁰

Furthermore, in examining factors that pertain to a significant potential for manipulation, Commerce considers both actual manipulation in the past and the possibility of future manipulation.³¹ The *Preamble* underscores the importance of considering the possibility of future manipulation, “...a standard based on the potential for manipulation focuses on what may transpire in the future.”³²

As discussed in more detail in the Collapsing Memorandum, in the *Preliminary Determination*, and based on the above framework, we found that AMSA and Scaw either currently manufacture, or have the ability to manufacture, identical or similar products without substantial retooling of either company’s facilities, pursuant to 19 CFR 351.401(f)(1),³³ and that there was a significant potential for manipulation of pricing and production between the three companies (*i.e.*, AMSA, Scaw, and CWI) pursuant to 19 CFR 351.401(f)(2).³⁴

²⁸ See 19 CFR 351.401(f)(2); *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27346 (May 19, 1997) (*Preamble*).

²⁹ See *Preamble*, 62 FR at 27346.

³⁰ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (*Koyo Seiko*) (citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum, at Comment 10).

³¹ See *Preamble*, 62 FR at 27346.

³² *Id.*

³³ See Collapsing Memorandum at 5-8; see also *Preliminary Determination* at 6-7.

³⁴ *Id.* at 6-8.

Regarding AMSA's argument that Commerce's collapsing determination is based on a single "reed-thin assertion," we disagree.³⁵ AMSA takes issue with a single, though not insignificant fact regarding CWI sales information, to support its own assertion that Commerce's collapsing determination is not based on record evidence.³⁶ However, in addition to that single fact, AMSA fails to recognize other facts on the record, as explained in the Collapsing Memorandum, upon which Commerce based its determination.³⁷ In its Collapsing Memorandum, Commerce addressed each regulatory factor noted above and found that several factors supporting a finding of collapsing had been satisfied based on specific facts on the record.³⁸ AMSA does not offer any analysis to the contrary in its administrative case or rebuttal brief regarding these specific facts or regulatory provisions.

Specifically, in the *Preliminary Determination*, we found that AMSA, Scaw, and CWI are each affiliated with each other, pursuant to 771(33)(E), (F), and (G) of the Act;³⁹ that AMSA and Scaw either currently manufacture, or able to manufacture, identical or similar products without substantial retooling of either company's facilities, pursuant to 19 CFR 351.401(f)(1);⁴⁰ and that there was a significant potential for manipulation of pricing and production between the three companies (*i.e.*, AMSA, Scaw, and CWI), pursuant to 19 CFR 351.401(f)(2).⁴¹

As for significant potential for manipulation of pricing and production, pursuant to 19 CFR 351.401(f)(2), we examined each of the three regulatory factors. In the *Preliminary Determination*, regarding 19 CFR 351.401(f)(2)(i), we found that AMSA, Scaw, and CWI have common ownership by IDC⁴² and that while there is no evidence of ownership between Scaw and CWI, the record does indicate that Scaw controls CWI through its management of CWI.⁴³ With respect to overlapping managers and board members, in accordance with 19 CFR 351.401(f)(2)(ii), we analyzed the relevant facts based on the record evidence.⁴⁴

As for intertwined operations, 19 CFR 351.401(f)(2)(iii) indicates that Commerce may consider "the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers." We examined the sharing of sales information, involvement in pricing decisions, significant transactions between the affiliated producers for the purpose of determining the existence of intertwined operations.⁴⁵

Moreover, the petitioner provided clarifying evidence on the record to further support Commerce's finding that AMSA's and Scaw's operations are intertwined.⁴⁶ As an initial matter, we agree with

³⁵ AMSA's Case Brief at 6.

³⁶ *Id.*

³⁷ *See* Collapsing Memorandum at 6-9.

³⁸ *Id.*

³⁹ *Id.* at 3-5.

⁴⁰ *Id.* at 6.

⁴¹ *Id.* at 6-8.

⁴² *Id.* at 7.

⁴³ *Id.*

⁴⁴ Due to the proprietary nature of the information, *see* Collapsing Memorandum at 7.

⁴⁵ Due to the proprietary nature of the detailed information, *see* Collapsing Memorandum at 7-8.

⁴⁶ *See* Nucor's Rebuttal Brief at 8; *see also* Letter from Nucor to the Department, entitled "Carbon and Alloy Steel

the petitioner that the BPI evidence provided by the petitioner further supports Commerce's finding that AMSA and Scaw's operations are intertwined. In addition, the petitioner referred to public information on the record which indicates that the Industrial Corporation of South Africa (IDC) – a minority shareholder of AMSA and majority shareholder of Scaw – may be able to exert even more influence over AMSA and Scaw than a traditional shareholder given that IDC is owned by the South African government (*i.e.*, the Economic Development Department).⁴⁷ In addition, last year, AMSA was required to pay a fine of 1.5 billion rand based on its admission that it engaged in collusion with Scaw and other manufacturers, “by fixing prices and discounts, allocating customers and sharing commercially sensitive information...”⁴⁸ AMSA did not provide a response to rebut this evidence. Although we did not rely on this evidence to reach our determination that AMSA and Scaw's operations are intertwined, we find that this further supports our determination.

The *Preamble* underscores the importance of considering the possibility of future manipulation: “...a standard based on the potential for manipulation focuses on what may transpire in the future.”⁴⁹ Because AMSA, Scaw, and CWI have common ownership, are involved in pricing decisions, have engaged in significant transactions, and are intertwined in additional ways, we determined that there is a significant potential for future manipulation concerning price or production of subject merchandise between the three companies.⁵⁰ As such, Commerce's affiliation and collapsing determination, as determined in the *Preliminary Determination*, is supported by the record evidence and in accordance with law.

Finally, concerning AMSA's argument that an element of the required analysis regarding Commerce's collapsing decision supports the need for verification, where Commerce can examine records relevant to this finding, we disagree.⁵¹ As explained further below, the record evidence sufficiently establishes the basis of collapsing AMSA, Scaw, and CWI. Also, as the petitioner correctly pointed out, conducting verification to collect and examine information that may clarify the relationship between AMSA and Scaw would be inconsistent with Commerce's practice because verification is typically not the proper forum to accept new factual information.

Consequently, we find that AMSA's arguments are without merit and continue to find that AMSA, Scaw, and CWI are affiliated based on the record evidence. Further, we also continue to find that record evidence supports collapsing AMSA, Scaw, and CWI into a single entity.

Wire rod from South Africa: Nucor's Deficiency Comments Regarding AMSA's Fifth Supplemental Section A, B, and C Questionnaire Response, dated October 11, 2017 at 2-6.

⁴⁷ See Nucor's Case Brief at 4-5.

⁴⁸ *Id.* at 5-6.

⁴⁹ See *Preamble*, 62 FR at 27346.

⁵⁰ Due to the proprietary nature of certain detailed information, see Collapsing Memorandum at 8

⁵¹ See AMSA's Case Brief at 6-7.

Comment 2: Application of Total AFA to AMSA/Scaw/CWI

AMSA's Case Brief

- The application of total AFA to Scaw is fundamentally flawed.⁵²
- Commerce excluded Davsteel Division of Cape Gate (Pty) Ltd. (Cape Gate) from this proceeding because Cape Gate did not ship wire rod to the United States during the POI.⁵³

Petitioner's Rebuttal Brief

- Before accepting Cape Gate's no shipment's claim, Cape Gate had to submit a certification of no shipments and Commerce subsequently issued a no shipment inquiry to CBP.⁵⁴
- Commerce should continue to apply total AFA to Scaw.⁵⁵
- In this proceeding, Scaw was named as a mandatory respondent, and indicated that it intended to participate, however, Scaw failed to respond to section A of Commerce's antidumping questionnaire by the deadline and did not request an extension of the deadline.⁵⁶
- Therefore, as Scaw failed to participate in this proceeding in any manner, Commerce's application of AFA to Scaw was appropriate,⁵⁷ and is consistent with Commerce's past practice and the statute.

Commerce's Position:

We disagree with AMSA and continue to find that total AFA is warranted for AMSA/Scaw/CWI in this final determination. As described in the *Preliminary Determination*, Scaw was identified in the Petition as a producer/exporter of subject merchandise. Specifically, the petitioner relied upon information from Datamyne, PIERS, and additional research from publicly available resources to compile a list of producers/exporters that account for virtually all exports of wire

⁵² See AMSA's Case Brief at 1-2. Although AMSA bracketed the majority of its argument, this information is public. See 19 CFR 351.105(b)(3).

⁵³ See AMSA's Case Brief at 1 (citing *Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Preliminary Determination of No Shipments*, 82 FR 50383 (October 31, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 3).

⁵⁴ See Nucor's Rebuttal Brief at 2-3 (citing Commerce Memorandum, "Antidumping Duty Investigation Concerning Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Davsteel Division of Cape Gate (Pty) Ltd.'s Response to the Commerce of Commerce's Antidumping Duty Questionnaire," dated May 25, 2017 at 2; Commerce Memorandum, "No Shipment Inquiry Regarding Davsteel Division of Cape Gate (Pty) Ltd. During the Period 01/01/2016 – 12/31/2016," dated June 5, 2017).

⁵⁵ See Nucor's Rebuttal Brief at 2.

⁵⁶ *Id.* at 3.

⁵⁷ See Nucor's Rebuttal Brief at 3 (citing PDM at 8).

rod to the United States.⁵⁸ In addition, Commerce placed CBP data on the record, and that information did not identify any shipments from Scaw.⁵⁹ However, because only three companies (Scaw included), were named in the petition, Commerce treated all three as mandatory respondents in this investigation.⁶⁰ Commerce also issued Scaw the AD questionnaire.⁶¹

We note that Scaw did not request assistance or instruction from Commerce officials regarding this matter. Scaw company officials contacted Commerce officials and indicated that Scaw intended to participate in this proceeding.⁶² In response, Commerce explained that Scaw needed “to file a formal letter of appearance in order to be placed on the Public Service List for a particular segment of a proceeding,” in accordance with 19 CFR 351.103(d)(1).⁶³ Commerce further explained how to file a letter of appearance, and noted that one had not yet been filed on behalf of Scaw. In addition, Commerce provided clarification regarding the filing of extension requests, by directing Scaw officials to page three of the antidumping questionnaire, which had been issued to Scaw.⁶⁴ Following this, employees of Scaw did not file a letter of appearance, a no shipment certification, or request an extension of time to respond to Commerce’s antidumping questionnaire. No further communications from Scaw have been received.

Although the CBP entry data on the record did not show any entries for Scaw, this does not end our inquiry nor excuse a party from complying with a request to respond to an AD questionnaire. Rather, Scaw was required to either respond to our AD questionnaire, or file a certification of no shipments. In contrast, because Cape Gate filed its no shipments certification, Commerce was able to confirm its claim with CBP. When examining a no shipments claim, Commerce’s practice is to 1) review the respondent’s no shipment claim; 2) examine CBP entry data to determine whether these data are consistent with the claim; and 3) send a “No Shipment Inquiry” to CBP requesting that CBP notify Commerce if it has evidence of shipments from the company making the claim.⁶⁵

Section 782(b) of the Act requires any person providing factual information to Commerce in connection with a proceeding to certify that this information is accurate and complete. Consequently, the failure on behalf of Scaw to submit any information concerning its lack of

⁵⁸ See the Petitions for the Imposition of Antidumping Duties on Imports of Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom; and Countervailing Duties on Imports from Turkey and Italy, dated March 28, 2017 (the Petition) at 9 and Exhibit I-7.

⁵⁹ See Letter from Commerce to All Interested Parties, dated April 19, 2017, at Attachment 1 (CBP Data).

⁶⁰ See Preliminary Decision Memorandum at 2-3 and 7. See also the petition.

⁶¹ See Preliminary Decision Memorandum at 2-3 and 7.

⁶² See Memorandum to the File, on the subject of “Antidumping Duty Investigation Concerning Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Email Communication with Scaw South Africa (Pty) Ltd. Concerning the Department of Commerce’s Antidumping Duty Questionnaire,” dated June 6, 2017 (Scaw Email Communication Memo) at Attachment 1.

⁶³ *Id.*

⁶⁴ *Id.* (citing 19 CFR 351.302(d), Section 776(a) of the Tariff Act of 1930, as amended (the Act), and Section 776(b) of the Act).

⁶⁵ See, e.g., *Fresh Garlic from the People’s Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review*, 75 FR 80458, 80460 (December 22, 2010).

shipments is not merely a procedural error, but a substantive failure to comply with the statutory requirements of Commerce's conduct of its investigation.

Therefore, Commerce continues to find that Scaw did not respond and otherwise did not participate in this investigation. Furthermore, for the reasons stated in the *Preliminary Determination*, which have not been addressed or refuted by AMSA, we continue to find that the use of total AFA is appropriate for the final determination with respect to AMSA/Scaw/CWI.⁶⁶

Comment 3: Commerce's Statutory Obligations under 782(d) of the Act

AMSA's Case Brief:

- Commerce did not provide AMSA with the statutorily guaranteed opportunity to remedy/explain deficiencies in its submission with regard to Commerce's finding that AMSA and Scaw are affiliated.⁶⁷ In other words, Commerce failed to provide AMSA with an opportunity to provide the information that Commerce ultimately found was lacking from the record, and instead applied total AFA.⁶⁸
- Commerce must give a party an opportunity to remedy/explain deficiencies and make a further finding that a party failed to meet its burden under section 776(b) of the Act, instead of drawing adverse inferences.⁶⁹
- If Commerce disagreed with AMSA's interpretation of its affiliation with Scaw, Commerce should have stated this conclusion and issued a supplemental questionnaire in order to gather needed information.⁷⁰ Without the benefit of this statutory opportunity, AMSA was under no notice that Commerce would require AMSA to collect information from Scaw, which it has no ability to control.⁷¹
- Commerce only raised the issue of Scaw's affiliation in the final supplemental questionnaire and made its determination without asking for additional information despite AMSA's demonstrated willingness to fully cooperate.⁷² Any lack of time or information necessary to further explore this issue rests with Commerce's failure to inquire about this matter earlier.⁷³
- Therefore, the application of total AFA is unsupported by substantial evidence or otherwise not in accordance with the law.⁷⁴

⁶⁶ See PDM at 7.

⁶⁷ See AMSA's Case Brief at 3-4; see also section 782(d) of the Act.

⁶⁸ *Id.* at 3-4; see also 19 CFR 351.308(a); see also section 782(d) of the Act.

⁶⁹ *Id.* at 3; see also *Citric Trading Co. v. United States*, 27 CIT 356, 370, Slip Op. 03-23, 01-00901. (March 4, 2003) (not reported in F. Supp.) (*Citric Trading*) (quoting *Borden v. United States*, 4 F. Supp. 2d 1221, 233, 264, (CIT March 26, 1998); see also section 776(b) of the Act; see also *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1302, 826, 837-838 (CIT October 29, 1999).

⁷⁰ *Id.* at 4; see also section 782(d) of the Act.

⁷¹ *Id.* at 4 (citing Fifth SQR at 1).

⁷² *Id.* at 4.

⁷³ *Id.* at 4-5.

⁷⁴ *Id.* at 4-5.

Petitioner's Rebuttal Brief:

- AMSA's argument is misplaced as it conflates Commerce's collapsing determination with Commerce's application of AFA and misconstrues Commerce's obligations.⁷⁵
- The decision to collapse AMSA, Scaw, and CWI was based on information on the record, not on adverse facts available or facts available, and Commerce did not find that there was any information lacking from the record with respect to this issue.⁷⁶
- Although Commerce's conclusion regarding AMSA and Scaw's affiliation differed from AMSA's interpretation, this does not equate to Commerce finding AMSA's submission deficient or mean that Commerce relied on facts available.⁷⁷
- To the extent that Commerce was required to notify AMSA of, and allow for the correction of, any deficiencies in its response regarding its relationship with Scaw, Commerce has already done so, as it directed AMSA to provide information on all affiliated parties in its supplemental questionnaire.⁷⁸
- As Commerce did not find AMSA's submission to be deficient and Commerce did not rely on facts available, the statutory obligations under section 782(d) of the Act to give a party an opportunity to remedy deficiencies were not applicable.⁷⁹

Commerce's Position:

We disagree with AMSA. Section 782(d) of the Act states that “[i]f the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission . . . shall promptly inform the person submitting the response of the nature of the deficiency and shall to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations” The statute only applies when there is a deficiency in one's response. However, as detailed below, we did not find that the record was deficient concerning the affiliation and collapsing issue covering AMSA and Scaw, nor did we rely on AFA for this aspect of our determination.

As described in the *Preliminary Determination*, Commerce determined that “[b]ased on {the} analysis of AMSA's questionnaire response, we preliminarily determine that evidence on the record of this investigation establishes that . . . AMSA and Scaw are affiliated”⁸⁰ and that “because record evidence signals that there is a significant potential for manipulation of price and production, we determine that AMSA, Scaw, and CWI should be collapsed.”⁸¹ In other words, as also detailed in the Collapsing Memorandum, we analyzed AMSA's questionnaire responses and, based on the record evidence, we subsequently made our collapsing determination that AMSA and Scaw should be collapsed and treated as one entity. Since the onset of this investigation we provided numerous opportunities for AMSA to provide Commerce with

⁷⁵ See Nucor's Rebuttal Brief at 4.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See Preliminary Decision Memorandum at 6. See also Collapsing Memorandum at 3-4.

⁸¹ *Id.* at 7.

information regarding all of its affiliations through the initial questionnaire and supplemental questionnaires.⁸² For example, in our First Sales Supplemental Questionnaire, we asked numerous questions to AMSA regarding affiliation.⁸³ Further, we asked how AMSA is affiliated with CWI, as CWI purchases the merchandise under investigation from AMSA.⁸⁴ In its responses, AMSA never identified Scaw as an affiliated party. However, AMSA provided other information regarding the relationship among AMSA, CWI, and Scaw, which suggested an affiliation relationship between AMSA and Scaw.⁸⁵ Also, we found that there was certain additional information on the record with regard to AMSA's relationship with these two entities, which caused us to seek further clarification of AMSA's reporting of its affiliates, which is described in detail in the Collapsing Memorandum.⁸⁶

In our Third Sales Supplemental Questionnaire, we notified AMSA that it failed to explain how each identified party is affiliated with itself, did not provide a complete list of the percentage of equity shareholding by AMSA over all affiliates, and did not provide a complete and detailed narrative description of all AMSA affiliates, including a description of how they are affiliated with AMSA for all affiliates provided previously in the First SQR.⁸⁷ In light of these facts, we requested that AMSA provide a complete and accurate chart identifying all of AMSA's affiliates that are involved in the development, manufacture, sales, and distribution of the merchandise under investigation while providing the company name, AMSA's ownership, nature of affiliation, and involvement in the merchandise under investigation.⁸⁸ AMSA responded to this question, but it did not include Scaw as an affiliate. We also asked questions regarding AMSA's sales to CWI and found certain information regarding AMSA's affiliated parties, which, combined with the above-referenced record evidence, suggested further inquiry was necessary regarding AMSA's reporting of its affiliation information.⁸⁹

⁸² See *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1361 (Fed. Cir. 2017) (“{The respondent} had already failed to provide the information requested in Commerce’s original questionnaire, and the supplemental questionnaire notified {the respondent} of that defect. §1677m(d) does not require more.”)

⁸³ See Letter from Commerce to AMSA, regarding “Less-than-Fair-Value Investigation on Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Supplemental Questionnaire for Section A,” dated June 30, 2017 (First Sales Supplemental Questionnaire); Letter from AMSA to Commerce, regarding “Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Supplemental Section A Questionnaire Response,” dated July 24, 2017 (First SQR).

⁸⁴ *Id.*

⁸⁵ *Id.* at 43-44. We note that on page 43 of First SQR, AMSA states that it is affiliated with CWI by AMSA's certain percentage ownership. We further note that on page 44 of First SQR, AMSA states that “Scaw manages CWI on behalf of {Department of Trade and Industry} as {Department of Trade and Industry} has . . . shareholding in Scaw.”

⁸⁶ See Collapsing Memorandum at 7 regarding the sharing of sales information. We note that the footnote 28 refers to certain information found in First SQR. See also First SQR at Exhibit SA-10 and Collapsing Memorandum at 8 and footnote 33 regarding significant transactions between the affiliated producers.

⁸⁷ See Letter from Commerce to AMSA, regarding “Less-than-Fair-Value Investigation on Carbon and Steel Alloy Wire Rod from the Republic of South Africa: Third Sales Supplemental Questionnaire,” dated August 16, 2017 (Third Sales Supplemental Questionnaire); Letter from AMSA to Commerce, regarding “Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Third Supplemental Sections A, B, and C Questionnaire Response,” dated September 5, 2017 (Third SQR).

⁸⁸ *Id.*

⁸⁹ See Third Sales Supplemental Questionnaire at 7-8; see also Third SQR at 9.

Given the previously obtained information on the record regarding the relationship between AMSA, Scaw and CWI, we issued the Fifth Sales Supplemental Questionnaire to further clarify the relationship among the three entities.⁹⁰ In AMSA's Fifth SQR, we obtained all necessary information to determine that the above-referenced entities should be collapsed.⁹¹ Specifically, AMSA's responses to this supplemental questionnaire confirmed that employees of Scaw perform numerous managerial functions at CWI. AMSA also explained that IDC, a majority shareholder of Scaw, is also a minority shareholder of AMSA.

In its submission following AMSA's fifth supplemental questionnaire response, Nucor provided additional record evidence that in a prior South African legal proceeding, AMSA admitted that it engaged in collusion with other steel producers, including Scaw, and agreed to pay a penalty, which served as additional evidence that both entities are affiliated and have intertwined operations.⁹² AMSA did not provide a response to rebut this finding.

AMSA, nevertheless, argues that Commerce should have issued a sixth supplemental questionnaire in order to gather more information if Commerce disagreed with AMSA's interpretation of its affiliation with Scaw.⁹³ AMSA further argues that AMSA was provided no notice that Commerce would require AMSA to collect information from Scaw, which it has no ability to control.⁹⁴ Again, as detailed above, we determined AMSA, Scaw, and CWI to be affiliated and that these three entities should be collapsed based on the record information reported by AMSA. The statutory obligations under section 782(d) of the Act were met. As explained above, we had sufficient information after receiving AMSA's fifth SQR regarding AMSA's relationship with Scaw.⁹⁵ Accordingly, we neither had to issue a supplemental questionnaire in order to gather more information nor were we required to request that AMSA collect additional information from Scaw. The fact that AMSA continues to maintain that there is no such affiliation is of no moment – the record evidence supports Commerce's determination to the contrary.⁹⁶

In addition, because we collapsed AMSA, Scaw, and CWI, we applied facts available with an adverse inference, pursuant to section 776(b) of the Act to the collapsed entity of AMSA/Scaw/CWI due to Scaw's failure to respond to our initial AD questionnaire. As stated above in "Comment 2," the necessary information regarding Scaw which would allow Commerce to calculate an accurate dumping margin for the collapsed entity is still missing. AMSA's claim that it is a cooperating party does not preclude us from applying total AFA to the collapsed entity pursuant to section 776(b) of the Act.⁹⁷ Because Scaw is a non-cooperating party that we find should be collapsed with AMSA, it is reasonable to apply total AFA to the collapsed entity to prevent Scaw from receiving the benefit of its non-cooperation.

⁹⁰ See also Letter from Commerce to AMSA, regarding "Less-than-Fair-Value Investigation on Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Fifth Sales Supplemental Questionnaire," dated September 27, 2017 (Fifth Sales Supplemental Questionnaire).

⁹¹ See (Fifth SQR at 1-5. See also Collapsing Memorandum.

⁹² See Nucor October 11, 2017 Comments at Exhibit 4.

⁹³ See AMSA's Case Brief at 4.

⁹⁴ *Id.* at 4.

⁹⁵ See Fifth SQR at 1-5. See also Collapsing Memorandum.

⁹⁶ *Siderca S.A.I.C. v. United States*, 391 F. Supp. 2d 1353, 1369 (CIT 2005) ("Reasonable minds may differ, but a determination does not fail for lack of substantial evidence on that account.").

⁹⁷ See *Mueller Commercial de Mexico, S. de R. L. De C.V. v. United States*, 753 F.3d 1227, 1236 (Fed. Cir. 2014).

In short, throughout this proceeding, AMSA had numerous opportunities to demonstrate its affiliation with Scaw because we asked numerous questions regarding affiliation. Thus, the statutory requirement under 782(d) of the Act was met. In addition, it is not unreasonable for us to apply total AFA to the collapsed entity of AMSA/Scaw/CWI despite AMSA's cooperation because Scaw is part of the collapsed entity and a non-participating respondent. As such, AMSA's argument regarding its cooperation has no merit.

Comment 4: Verification

AMSA's Case Brief:

- By deciding not to verify, Commerce has removed the possibility of providing AMSA a calculated rate in the final determination, even though the collapsing determination and application of AFA were preliminary.⁹⁸ As a result, Commerce has made a final determination in the context of a preliminary one.⁹⁹
- The failure to verify removes the possibility that the application of AFA to AMSA could later be reversed, if Commerce changes its collapsing determination, as verified information is relied upon when making a final determination.¹⁰⁰ In addition, without verification of AMSA's questionnaire responses, Commerce has no other decision than that of applying total AFA to AMSA in the final determination.¹⁰¹
- The verification of information relied on in the final determination is not elective; therefore, Commerce cannot rely on AMSA's questionnaire responses if it reverses its affiliation determination.¹⁰² The decision to decline verification is unsupported by substantial evidence or otherwise not in accordance with law.¹⁰³

Petitioner's Rebuttal Brief:

- Should Commerce decide not to collapse AMSA, Scaw, and CWI for the final determination, Commerce would not necessarily need to apply AFA.¹⁰⁴ The statute explicitly permits Commerce to rely on facts available when information has been provided, but not verified.¹⁰⁵
- In addition, if Commerce determines verification is appropriate, the final determination could be extended and verification arranged.¹⁰⁶
- While AMSA claims verification is necessary, Commerce's preliminary determination was correct and is fully supported by record evidence, and therefore consistent with

⁹⁸ See AMSA's Case Brief at 5.

⁹⁹ *Id.* at 5, (citing 19 CFR 351.205(a); see also *Shandong Dongfang Bayley Wood Co., Ltd. v. United States*, 236 F. Supp. 1346, (Ct. No. 17-00094) (CIT July 3, 2017).

¹⁰⁰ *Id.* at 5, (citing Section 782(i)(1)).

¹⁰¹ *Id.* at 6.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See Nucor's Rebuttal Brief at 5.

¹⁰⁵ *Id.* at 5.

¹⁰⁶ *Id.* (citing Section 776(a)(2)(D) of the Act).

Commerce's practice of not conducting verification when a party fails to cooperate to the best of its ability.¹⁰⁷ Further, AMSA has not presented any arguments demonstrating why/how Commerce erred in applying AFA to the collapsed entity (*i.e.*, AMSA, Scaw, and CWI).¹⁰⁸

Commerce's Position:

We disagree with AMSA. Pursuant to section 782(i) of the Act, Commerce "shall verify all information relied upon in making a final determination in an investigation." As indicated above, Commerce's decision to collapse AMSA, Scaw, and CWI is based on information on the record. However, as Scaw's sales and cost data are absent from the record, we cannot perform a verification of the completeness of the record, as this key information is missing from the record. The record evidence establishes that AMSA and Scaw should be collapsed and we do not have Scaw's data, as it failed to respond to our questionnaire. As a result, we do not have the full universe of sales and costs for the collapsed entity, and, as a result, the record is incomplete. Thus, as Scaw failed to respond to our questionnaire, we cannot perform the analysis to calculate an accurate margin for the collapsed entity.

In the *Preliminary Determination*, we noted that "dumping calculations will not be performed for the collapsed entity, AMSA/Scaw/CWI, due to the absence of record information (*e.g.*, sales and cost data for merchandise under investigation) requested from Scaw"¹⁰⁹ and that "{a}ccordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine the AMSA/Scaw/CWI preliminary dumping margin."¹¹⁰ In other words, we found that there are no reliable data for the collapsed entity due to the absence of necessary information from Scaw. In previous cases, Commerce has not conducted verification without reliable cost and/or sales data.¹¹¹ Therefore, because Scaw, a mandatory respondent, did not provide necessary information (*i.e.*, sales and cost data) requested by Commerce, verification will not be conducted. As the purpose of verification is to ensure both the accuracy and completeness of the record and, as it is not possible to verify the completeness of a record known to be incomplete, it would not have been appropriate to conduct one. Indeed, the CIT sustained Commerce's determination not to conduct a verification in similar circumstances where access to, or verification of, information necessary to this verification was withheld by one element of a collapsed entity.¹¹²

¹⁰⁷ *Id.* at 5-6.

¹⁰⁸ *Id.* at 6.

¹⁰⁹ See Preliminary Decision Memorandum at 8.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 7 (citing *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) (*Certain Lined Paper Products from India*) and accompanying Issues and Decision Memorandum at Comment 14).

¹¹² See *China Kingdom Imp. & Exp. Co. v. United States*, 31 CIT 1329, 1360-62 (2007) (finding that where one element of the collapsed entity stopped cooperating that, that "Commerce justifiably concluded that a satisfactory verification directed to the Yancheng-Qingdao entity was impossible").

Additionally, as verification is not the proper forum to collect new factual information,¹¹³ Commerce could not have obtained information regarding Scaw's sales and cost information during verification. Further, AMSA has not explained why Commerce's decision to collapse AMSA, Scaw, and CWI is incorrect – or indicated which record evidence can be used to undermine Commerce's collapsing analysis. For these reasons, Commerce's decisions to apply AFA to the collapsed entity, and to not conduct verification, are correct.

We also disagree with AMSA's assertion that Commerce's decision not to verify removes the possibility of providing AMSA with a calculated rate in the final determination, even though the collapsing determination and application of AFA are preliminary.¹¹⁴ Preliminary determinations are necessarily preliminary and thus are subject to change.¹¹⁵ Following the *Preliminary Determination*, had AMSA pointed to record evidence which detracted from our finding, or offered compelling arguments to challenge our collapsing determination, we may have reconsidered our collapsing decision. Furthermore, had Commerce deemed it appropriate, the final determination could have been postponed and verification could have been scheduled.

Nonetheless, as stated above, during the briefing stage, AMSA did not explain why Commerce's collapsing determination was factually and legally incorrect. As noted, AMSA has failed to address the specific regulatory factors that Commerce considered in making its collapsing determination, while petitioners provided additional, clarifying evidence on the record which further supported Commerce's findings. As a result, because AMSA did not provide evidence to rebut Commerce's collapsing decision, there are no compelling reasons for Commerce to reverse its collapsing determination, and conduct verification. As stated above, because AMSA has not identified information on the record that contradicts our collapsing determination since the *Preliminary Determination*, there is no need to reconsider our collapsing determination or to conduct verification.

Comment 5: Adjustment to AMSA's General and Administrative (G&A) Expense Ratio

Petitioner's Case Brief

- It is Commerce's normal practice for respondent companies to calculate its G&A expenses on a company-wide basis; however, AMSA attributed this expense to its corporate business unit.¹¹⁶ Therefore, AMSA has not adhered to Commerce's normal practice for calculating the G&A expense ratio.
- AMSA provided no basis for not calculating G&A expenses in accordance with Commerce's practice.¹¹⁷ Further, by limiting this calculation to its corporate business

¹¹³ See e.g., Issues and Decision Memorandum accompanying *Certain Carbon and Alloy Cut-To-Length Plate from Belgium*, 82 FR 16378 (April 4, 2017) at 67-68.

¹¹⁴ See AMSA's Case Brief at 5-6.

¹¹⁵ “[P]reliminary determinations are ‘preliminary’ precisely because they are subject to change.” See *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed.Cir.1995).

¹¹⁶ See Nucor's Case Brief at 2 (citing Letter from the respondent to Commerce, entitled “Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Sections B and D Questionnaire Response,” dated June 23, 2017 (BDQR) at Exhibits D-15, D-22 – D-23, D-27 – D-28).

¹¹⁷ *Id.* at 3 (citing *Issues and Decision Memorandum* accompanying *Notice of final Determination at Less Than Fair*

unit, AMSA has likely understated its G&A expenses and misallocated/excluded certain expenses.¹¹⁸

- As a result, if Commerce calculates a dumping margin for AMSA, Commerce should recalculate AMSA's G&A expenses in accordance with its normal practice.¹¹⁹

AMSA's Rebuttal Brief:

- As Commerce did not calculate a dumping margin for AMSA and the petitioner's comment is predicated on a calculated margin, the petitioner raises an issue that is not ripe for consideration.¹²⁰ Should Commerce calculate a margin, AMSA will reply.¹²¹

Commerce's Position:

Because we did not calculate a final dumping margin for the collapsed entity including AMSA, these issues are moot and we did not address them here.

Comment 6: Adjustment to AMSA's Warranty Expenses

Petitioner's Case Brief

- It is Commerce's normal practice for respondent companies to provide a schedule of direct and indirect warranty expenses incurred for the foreign like product for the three most recently completed fiscal years and to calculate a per unit cost for each year,¹²² however, AMSA did not follow Commerce's practice in either regard.¹²³
- AMSA provided no basis for not calculating warranty expenses in accordance with Commerce's practice.¹²⁴ Further, information regarding warranty expenses is missing from the record.¹²⁵
- As a result, if Commerce calculates a dumping margin for AMSA, Commerce should apply partial facts available and disallow as a direct selling expense.¹²⁶ Commerce should, however, account for warranty expenses for the below-cost test for the home market.¹²⁷

Value: Large Residential Washers from the Republic of Korea, 77 FR 75988, dated December 26, 2012 at 44.

¹¹⁸ *Id.* at 4-5 (citing BDQR at Exhibit D-17).

¹¹⁹ *Id.* at 5-6.

¹²⁰ See AMSA's Rebuttal Brief at 2.

¹²¹ *Id.* at 2.

¹²² See Nucor's Case Brief at 6 (citing BDQR at B-41).

¹²³ *Id.* at 6-7 (citing BDQR at B-41 – B-42; see also Third SQR at 16 and Exhibit SB2-10).

¹²⁴ *Id.* at 3. See also Section 776(a)(2)(A) of the Act.

¹²⁵ *Id.* at 7.

¹²⁶ *Id.*

¹²⁷ *Id.*

AMSA's Rebuttal Brief:

- As Commerce did not calculate a dumping margin for AMSA and the petitioner's comment is predicated on a calculated margin, the petitioner raises an issue that is not ripe for consideration.¹²⁸ Should Commerce calculate a margin, AMSA will reply.¹²⁹

Commerce's Position:

Because we did not calculate a final dumping margin for the collapsed entity including AMSA, these issues are moot and we did not address them here.

Comment 7: Adjustment to AMSA's Direct Selling Expenses

Petitioner's Case Brief

- AMSA stated that it incurred levies on home market sales from the South Africa Institute of Steel Construction and the Association of Steel Manufacturers.¹³⁰ AMSA reported these expenses as other direct selling expenses in fields "DIRSEL2H" and DIRSEL3H.¹³¹
- It is Commerce's normal practice to treat direct selling expenses as "expenses, such as commissions, credit expenses, and warranties, that result from, and bear a direct relationship to the particular sale in question."¹³²
- AMSA failed to provide documents to support its treatment of these levies as direct selling expenses, despite Commerce's requests.¹³³ Further, Nucor notes that as these levies are industry association membership fees, they will be incurred regardless of whether AMSA makes sales of merchandise under consideration.¹³⁴ Further, these levies also serve to promote the domestic steel market.¹³⁵
- Thus, according to Commerce's regulations, these sales do not qualify as direct selling expenses, and should rather be treated as indirect selling expenses.¹³⁶

AMSA's Rebuttal Brief:

- As Commerce did not calculate a dumping margin for AMSA and the petitioner's comment is predicated on a calculated margin, the petitioner raises an issue that is not ripe for consideration.¹³⁷ Should Commerce calculate a margin, AMSA will reply.¹³⁸

¹²⁸ See AMSA's Rebuttal Brief at 2.

¹²⁹ *Id.* at 2.

¹³⁰ See Nucor's Case Brief at 7 (citing BDQR at B-44).

¹³¹ *Id.* at 7 (citing BDQR at B-43-B-44).

¹³² *Id.* at 8. See also 19 CFR 352.410; see also Section 773(a)(6)(C)(iii) of the Act.

¹³³ *Id.* at 8 (citing Third SQR at 17 and Exhibit SB2-11).

¹³⁴ *Id.* at 9.

¹³⁵ *Id.* (citing Third SQR at 17).

¹³⁶ *Id.* at 9.

¹³⁷ See AMSA's Rebuttal Brief at 2.

¹³⁸ *Id.* at 2.

Commerce's Position:

Because we did not calculate a final dumping margin for the collapsed entity including AMSA, these issues are moot and we did not address them here.

Comment 8: Denial of AMSA's CEP Offset

Petitioner's Case Brief

- In proceedings, Commerce may grant a constructed export price (CEP) offset when the respondent company demonstrates that normal value is at a more advanced level of trade than CEP sales.¹³⁹
- Record evidence does not sufficiently demonstrate that AMSA's home market sales are at a more advanced level of trade than its home market sales.¹⁴⁰ In fact, evidence on the record indicates that AMSA's selling functions in the home market and U.S. market are similar.¹⁴¹ Further, the petitioner notes that AMSA failed to clarify discrepancies in its selling functions chart, despite repeated requests by Commerce for AMSA to provide clarification/additional information.¹⁴²
- Therefore, granting AMSA a CEP offset is not warranted.¹⁴³

AMSA's Rebuttal Brief:

- As Commerce did not calculate a dumping margin for AMSA and the petitioner's comment is predicated on a calculated margin, the petitioner raises an issue that is not ripe for consideration.¹⁴⁴ Should Commerce calculate a margin, AMSA will reply.¹⁴⁵

Commerce's Position:

Because we did not calculate a final dumping margin for the collapsed entity including AMSA, these issues are moot and we did not address them here.

¹³⁹ See Nucor's Case Brief at 9-10 (citing 19 CFR 351.412(a) and 19 CFR 351.412(f)).

¹⁴⁰ *Id.* at 10 (citing Letter from AMSA to Commerce, regarding "Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Section A Questionnaire Response," dated June 6, 2017 at A-16 and Exhibits A-10-A-11 (AQR); see also First SQR at 49-66, Exhibit SA-9, and Exhibit SA-4(MIUSA)).

¹⁴¹ *Id.* at 11-12 (citing First SQR at A-50-51 and Exhibit SA-9; see also Letter from AMSA to Commerce, entitled "Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Section C Questionnaire Response," dated June 21, 2017 at Exhibit C-12) (CQR).

¹⁴² *Id.* at 11-12 (citing First SQR at A-55 and Exhibit SA-9).

¹⁴³ *Id.* at 13.

¹⁴⁴ See AMSA's Rebuttal Brief at 2.

¹⁴⁵ *Id.* at 2.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the *Federal Register* and inform the International Trade Commission of our determination.



Agree



Disagree

1/8/2018

X



Signed by: GARY TAVERMAN