UNITED STATES DEPARTMENT OF COMMERCE
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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 P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that carbon and alloy steel wire rod (wire rod) from Spain is, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The Department preliminarily determines that critical circumstances do not exist for Global Steel Wire (GSW), CELSA Atlantic SA (CELSA Atlantic), Compania Espanola de Laminacion (CELSA Barcelona) (collectively, CELSA), and all-other exporters/producers of wire rod. The Department also preliminarily determines that critical circumstances exist for ArcelorMittal Espana S.A. (AME). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 28, 2017, the Department received an antidumping duty (AD) petition covering imports of wire rod from Spain,[1] which was filed in proper form by Gerdau Ameristeel US Inc.,

[1] *See* 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 - Petitions for the Imposition of Antidumping and Countervailing Duties, dated March 28, 2017 (the Petition).

Nucor Corporation, Keystone Consolidated Industries, Inc., and Charter Steel (collectively, the petitioners). The Department initiated this investigation on April 17, 2017.[2]

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[3] Accordingly, on April 26, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.[4] On May 3, 2017, we received comments on behalf of CELSA and the petitioners regarding the respondent selection process.[5] On May 25, 2017, the Department limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the merchandise under consideration by volume, which in this case were AME and GSW.[6]

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the appropriate physical characteristics of wire rod to be reported in response to the Department's AD questionnaire.[7] On May 10, 2017, the petitioners and various other interested parties in this investigation and the companion AD investigations for Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Turkey, Ukraine, United Arab Emirates, and the United Kingdom, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.[8] Between May 10, 2017, and June 30, 2017, the petitioners and various other interested parties filed rebuttal comments. Based on the comments received, the Department issued a memorandum to interested parties which contained the product characteristics for this and the companion AD investigations.[9]

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[2] *See Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

[3] *See Initiation Notice*, 82 FR at 19212.

[4] *See* Memorandum to The File, "U.S. Customs Data for Respondent Selection," dated April 26, 2017 (Customs Data).

[5] *See* Letter from CELSA, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Comments on CBP Data," dated May 3, 2017, *see also* Letter to the Secretary of Commerce from Petitioners, "Carbon and Alloy Steel Wire Rod from Spain: Respondent Selection Comments," dated May 3, 2017.

[6] *See* Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain," dated May 25, 2017.

[7] *See Initiation Notice*, 82 FR at 19208.

[8] *See* Letter from the petitioners, "Re: Carbon and 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 - Comments on the Department's Proposed Product Comparison Hierarchy," dated May 10, 2017; *see also* Letter from POSCO, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea. the Russian Federation, South Africa. Spain, Turkey. Ukraine. United Arab Emirates. and the United Kingdom: Comments on Product Characteristics and Model Match Methodology," dated May 10, 2017; s*ee also* Letter from British Steel Limited (British Steel), "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea. the Russian Federation, South Africa. Spain, Turkey. Ukraine. United Arab Emirates. and the United Kingdom: British Steel's Rebuttal Comments on Product Characteristics," dated May 15, 2017.

[9] *See* Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determination" (Preliminary Scope Decision Memorandum), dated August 7, 2017.

The Department issued its AD questionnaire to AME and GSW on May 26, 2017.[10] On June 29, 2017, AME informed the Department of its withdrawal from participation in the investigation.[11] Between June 26, 2017 and October 20, 2017, CELSA timely responded to the Department's original and supplemental questionnaires.

On August 21, 2017, and pursuant to section 733(c)(1)(B) of the Act, and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination until no later than October 24, 2017.[12]

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016 through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2017.[13]

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,[14] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.[15] Certain interested parties from the companion wire rod investigations commented on the scope of the wire rod investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[16] We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.[17] In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties, and since the issuance of the Preliminary Scope Decision Memorandum, certain parties submitted scope case briefs or scope rebuttal briefs.[18] We will issue a final scope decision on the records of the wire rod investigations after considering the comments submitted in the scope case and rebuttal briefs.

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[10] *See* Letters to CELSA and AME, regarding the AD questionnaire, dated May 26, 2017.
[11] *See* Letter from AME, "Carbon and Alloy Steel Wire Rod from Spain – ArcelorMittal Espana's Withdrawal from Participation as a Mandatory Respondent in the Antidumping Investigation," dated June 29, 2017.
[12] *See Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 39564 (August 21, 2017).
[13] *See* 19 CFR 351.204(b)(1).
[14] *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[15] *See Initiation Notice*, 82 FR at 19207-08.
[16] Preliminary Scope Decision Memorandum.
[17] *Id*.
[18] *See* Letter from POSCO dated September 6, 2017, entitled "Scope Issues Case Brief," Letter from British Steel Limited dated September 6, 2017, entitled "British Steel's Scope Case Brief," and Letter from the petitioners dated September 13, 2017, entitled "Rebuttal Brief in Response to the Scope Case Briefs of British Steel and POSCO."

V. AFFILIATION AND COLLAPSING

Section 771(33)(A), as amended, states that members of a family shall be considered "affiliated" or "affiliated persons." Section 771(33)(F) of the Act further provides that persons shall be considered affiliated when there are two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.[19] "Person" is defined to include "any interested party as well as any other individual, enterprise, or entity, as appropriate." The Court of International Trade has upheld the Department's interpretation of "any person" in section 771(33)(F) of the Act as encompassing "family."[20] Thus, if members of a certain family control two companies, then these companies are affiliated under section 771(33)(F) of the Act. Section 771(33) of the Act further stipulates 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, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) notes that control may be found to exist within corporate groupings.[21] The Department's regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[22]

CELSA

For the reasons set forth in the proprietary Preliminary Affiliation Memorandum, which we hereby incorporate by reference, we preliminarily determine that the nine companies under common control, including GSW, CELSA Atlantic, and CELSA Barcelona, are affiliated pursuant to section 771(33)(A) and (F) of the Act.[23]

The Department relies on the totality of the circumstances in deciding when to treat affiliated parties as a single entity pursuant to 19 CFR 351.401(f). In this case, we have sufficient information to find that GSW, CELSA Atlantic, and CELSA Barcelona are affiliated. We further find that GSW, CELSA Atlantic, and CELSA Barcelona have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities. Moreover, record evidence demonstrates significant potential for manipulation of prices and production between GSW, CELSA Atlantic, and CELSA Barcelona because of: 1) level of common ownership; 2) overlapping management; and 3) intertwined

[19] *See* section 771(33)(F) of the Act.
[20] *See Ferro Union Inc. v. Wheatland Tube Co.*, 44 F. Supp. 2d 1310, 1326 (CIT 1999) (stating, "{A] family can reasonably be considered an 'entity' or an 'enterprise' because family members likely share a common interest."); *see also* Dongkuk Steel Mill Co. v. United States, 29 C.I.T. 724, 731 (2005).
[21] *See* SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994) (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).
[22] *See also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27298 (May 19, 1997).
[23] For further discussion of this issue, *see* Memorandum entitled, "Certain Carbon and Alloy Steel Wire Rod from Spain: GSW, CELSA Atlantic, and CELSA Barcelona Affiliation and Collapsing Memorandum (CELSA Prelim Affiliation and Collapsing Memorandum), dated concurrently with this preliminary determination.

operations.[24] In accordance with 19 CFR 351.401(f) and the Department's practice,[25] we are treating GSW, CELSA Atlantic, and CELSA Barcelona as a single entity for the purposes of this preliminary determination.[26]

VI. DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether CELSA's sales of subject merchandise were made in the United States at LTFV, the Department compared the export price (EP) and constructed export price (CEP), as appropriate, to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A) *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[27] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

[24] *See* CELSA Prelim Affiliation and Collapsing Memo.
[25] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007), and accompanying Issues and Decision Memorandum; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010), and accompanying Issues and Decision Memorandum, at 4 and Comment 6.
[26] *See* CELSA Prelim Affiliation and Collapsing Memo.
[27] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen's *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) *Results of the Differential Pricing Analysis*

For CELSA, based on the results of the differential pricing analysis, the Department preliminarily finds that 78.61 of the value of U.S. sales pass the Cohen's *d* test,[28] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for CELSA.

VII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[29]

[28] *See* CELSA Analysis Memorandum.
[29] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (*quoting* 19 CFR 351.401(i)). IQR, at A-17, A-20, and Exhibit A-9.

In *Allied Tube & Conduit Corp. v. United States*, the U.S. Court of International Trade noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' {the Department} that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'"[30] After examining the record, the Department has determined that there is insufficient evidence demonstrating that a date other than invoice date better reflects that date on which the material terms of sale were established.[31] Given that the price and quantity were not finalized until issuance of the first invoice, we find that the material terms of sale are established on the date of first invoice. Accordingly, we have used the first invoice date as the date of sale for all home market sales for purposes of this preliminary determination.

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by CELSA in Spain during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristic reported by CELSA. For CELSA's sales of wire rod in the United States, the reported control number (CONNUM) identifies the characteristics of wire rod. We used the following product characteristics in the construction of the CONNUM: carbon content, metallic coating, chromium content, nickel content, vanadium content, phosphorus and sulfur content, depth of decarburization, manganese content, molybdenum content, silicon content, sulfur content, nitrogen content, diameter range, and heat treatment.

IX. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

CELSA reported that it made both EP and CEP sales during the POI. Based on our date of sale analysis, we determined that all U.S. sales should be treated as EP sales. Therefore, for all sales made by CELSA, we used EP methodology, in accordance with section 772(a) of the Act, because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and therefore, CEP methodology was not otherwise warranted. For further discussion, *see* the section above entitled, "Date of Sale."

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[30] *Allied Tube*, 132 F. Supp. 2d at 1088.

[31] Due to the proprietary nature of various elements pertaining to the date-of-sale discussion, this information may not be publicly disclosed. For a complete discussion of the date-of-sale topic, including the corresponding Department analysis, *see* the CELSA Preliminary Determination Calculation Memorandum.

For CELSA's EP sales, the Department calculated EP based on a packed price to the first unaffiliated purchaser in the United States. The Department made adjustments for credit expenses, other direct selling expenses, indirect selling expenses incurred in the country of manufacture, and inventory carrying costs in the country of manufacture, as appropriate. The Department also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. inland freight.[32]

X. NORMAL VALUE

A) *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for CELSA was greater than five percent of the aggregate volume of its U.S. sales of merchandise under consideration. Therefore, we used home market sales as the basis for NV for CELSA, in accordance with section 773(a)(1)(B) of the Act.

B) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[33] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[34] In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV

[32] *See* CELSA Analysis Memorandum for further information regarding these adjustments.
[33] *See* 19 CFR 351.412(c)(2).
[34] *Id.*; *see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

based on sales in the comparison market at the same LOT as the EP or CEP sales. The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on CV, those of the sales from which we derived selling, general, and administrative expenses and profit. In this investigation, CELSA and its affiliates reported EP and CEP sales to the United States, but as discussed above, we have treated all of CELSA's sales as EP sales.[35]

To determine whether the home-market sales are made at a different LOT than CELSA's sales to the U.S., we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer. If home-market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, and the difference affects price comparability, then we make a LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.

In implementing these principles in this investigation, we examined information obtained from CELSA regarding the marketing stage(s) involved in the home and U.S. markets, including a description of the selling activities performed for each channel of distribution. CELSA reported sales in the home market to end-users, trading companies, distributors, retailers, cold-drawers and wire-mesh producers. CELSA reported one channel of distribution for home-market sales based on a single point of shipment to the unaffiliated customer, *i.e.*, from the factory/mill to the customer (HM Channel 1). In its Section A initial questionnaire response, CELSA reported the following selling activities associated with sales made through its one channel of distribution in the home market: (1) inventory maintenance, (2) general promotion and marketing, (3) sales forecasting, (4) direct sales personnel, (5) sales/marketing support, (6) freight and delivery arrangements, (7) product defect claim-related services, (8) order processing and invoicing, (9) technical service support, (10) packing, (11) provide after-sale services, (12) provide freight and delivery support.[36] CELSA claimed differences in the level of performance of these selling activities. While CELSA reported freight and delivery arrangements and freight and delivery support as two distinct types of selling functions, we do not find these activities to constitute two different selling functions, given information on the record. We therefore considered these to constitute the same selling function for purposes of our analysis. Because CELSA reported sales to unaffiliated customers in the HM at the same point of distribution, and marketing stage, we found that the HM channel of distribution constitutes one level of trade.

During the POI, CELSA made sales to two types of customers in the U.S., *i.e*., end-users and distributors. CELSA reported making these sales through two channels of distribution: (1) direct factory/mill sales from Spain to unaffiliated U.S. customers (U.S. Channel 1), and (2) indirect sales from the factory/mill in Spain that first enter a distribution warehouse in the U.S. before shipment to unaffiliated U.S. customers (U.S. Channel 2).[37] CELSA reported performing the same selling activities for U.S. sales in both distribution channels as it did for HM sales. Specifically, CELSA reported that the selling functions between the two U.S. channels of distribution differ from each other with respect to only inventory maintenance, freight and delivery arrangements and support, and order processing. Regarding freight, delivery

[35] For further discussion regarding the reported EP and CEP sales refer to Section VII above, "Date of Sale."
[36] *See* IQR, at A-16, Exhibit A-7, and Exhibit A-10.
[37] *See* IQR, at A-16

arrangements and support, and order processing, while CELSA reported that it performed these levels of selling activities at a high level of intensity for U.S. Channel 2 sales, it reported that it performed the level of selling activity at a medium level of intensity for U.S. Channel 1 sales. However, after examining the level of performance among these selling functions, we did not find they amounted to significant differences in activity level, particularly given that U.S. Channel 2 sales accounted for the majority of sales made to the United States during the POI. This left inventory maintenance as the only selling function between the two U.S. distribution channels where with a potential difference in the level of selling activity. However, we do not deem a difference in the level of selling activity associated with only one selling function among two channels of distribution to meet the regulatory standard of a "separate marketing stage," even if the level of selling activity were to differ significantly. Accordingly, we preliminarily determine that only one level of trade exists for sales made to the United States.

For purposes of comparing the U.S. LOT to the HM LOT, we examined further the inventory maintenance selling function - the one selling function that was reported as having the greatest difference in the level of intensity between the HM and U.S. LOT. We evaluated the number of days in which CELSA held its merchandise in inventory between the two U.S. channels of distribution and compared these to the average number of days in inventory between the U.S. and HM channel of distribution and did not find a significant difference.[38] Moreover, we determined that these products are driven by demand, which CELSA not only forecasts for the majority of its U.S. customers, but also for which CELSA had a contractual arrangement during the POI. This generally occurs where a particular customer may order a certain made-to-order product at regular intervals to have ready for that customer at a moment's notice.[39] Therefore, we find that the amount of time in which CELSA held merchandise in inventory, particularly for sales made by GSW in the home market and to the United States, does not lend itself to a consequential time difference in holding inventory and thus, does not constitute a significant difference in the level of selling activity between the two markets.

Furthermore, given that the type of products and sales practices are generally the same for most of the sales in the HM and U.S. markets, we preliminarily determine that the selling activities with respect to its HM and U.S. sales are not sufficiently different to constitute separate levels of trade. Therefore, for this preliminary determination, we did not make a LOT adjustment because all price comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate. Additionally, having determined that the LOT in the HM matched the LOT of the U.S. sales, and thus does not constitute a more advanced stage of distribution than the LOT of U.S. sales, we did not make a CEP offset to normal value.

C) *Affiliated Party Transactions and the Arm's-Length Test*

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that

[38] *See* CELSA's Letter, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Sections B-D Response," dated July 17, 2017, at B-22. Due to the proprietary nature of this aspect of the LOT analysis, this information may not be publicly disclosed. For a discussion of this aspect of the LOT analysis, *see* CELSA Preliminary Determination Calculation Memorandum.

[39] *See, e.g.*, IQR, at A-21; *see also*, CELSA's Letter, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Spain: Pre-Preliminary Determination Comments," dated October 12, 2017 (CELSA Pre-Prelim. Comments).

the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices.[40] During the POR, CELSA made sales to affiliated parties in the home market. To test whether its home market sales to affiliated parties were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all billing adjustments, discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices.[41] In our calculations of NV, we included sales to affiliated parties that were made at arm's-length prices and excluded sales that were not made at arm's-length prices.

D) *Cost of Production (COP) Analysis*

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.[42] Accordingly, the Department requested this information from CELSA in this investigation. We examined its cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and financial expenses. We relied on the COP data submitted by GSW on October 4, 2017 except as follows.[43] We adjusted CELSA's COP data to reflect our application of the major input rule pursuant to section 773(f)(3) of the Act.[44] Additionally, we made an adjustment to reflect our application of the transactions disregarded rule pursuant to section 773(f)(2) of the Act.[45] We adjusted GSW's submitted costs to capture an unreported yield loss attributable to the cutting process.[46] Finally, we adjusted GSW's reported net general and administrative expenses to deny an offset for sales of scrap which had been included as an offset to GSW's direct materials cost and to insure all expenses had been included in GSW's calculation.[47]

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[40] *See* 19 CFR 351.403(c)
[41] *See* Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002).
[42] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015) (*Applicability Notice*).
[43] *See* Memorandum labeled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Global Steel Wire S.A., CELSA Atlantic S.A., and Compania Espanola de Laminacion," dated October 24, 2017 (Cost Calc Memo).
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

2. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of CELSA's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E) *Calculation of NV Based on Comparison-Market Prices*

For CELSA, we calculated NV based on delivered and ex-work prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for billing adjustments, rebates, and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act. We also made circumstance-of-sale adjustments (*i.e.*, credit expenses), pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.401(b). We added U.S. packing costs and deducted home market packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale, where appropriate (*i.e.*, commissions, credit expenses, and bank charges). Specifically, we deducted direct selling expenses incurred

for home market sales and added U.S. direct selling expenses.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

XI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE FACTS AVAILABLE

For the reasons stated below, we determine that the use of adverse facts available is appropriate for the preliminary determination with respect to AME.

A) *Application of Facts Available*

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Department; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information 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(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further 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.

AME did not respond to our original questionnaire or otherwise participate in this investigation.[48] As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that AME withheld information the Department requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding. Moreover, because AME failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, 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 AME's preliminary dumping margin.

[48] *See* Letter from AME, "Carbon and Alloy Steel Wire Rod from Spain – ArcelorMittal Espana's Withdrawal from Participation as a Mandatory Respondent in the Antidumping Investigation," dated June 29, 2017.

B) *Use of Adverse Facts Available*

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.[49] In doing so, and under the Trade Protection and Enforcement Act,[50] the Department 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.[51] In addition, the SAA explains that the Department 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."[52] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference in selecting from the facts available.[53] It is the Department's practice to consider, in employing adverse inferences in selecting from the facts available, the extent to which a party may benefit from its own lack of cooperation.[54]

We preliminarily find that AME has not acted to the best of its ability to comply with the Department's request for information. It failed to respond to the Department's questionnaire. The failure of AME to participate in this investigation and respond to the Department's questionnaire has precluded the Department from performing the necessary analysis to calculate weighted-average dumping margins for it based on its own data. Accordingly, the Department concludes that AME failed to cooperate to the best of its ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use adverse facts

[49] *See* 19 CFR 351.308(a); *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[50] On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See* TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. *See Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

[51] *See* section 776(b)(1)(B) of the Act.

[52] *See*, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

[53] *See, e.g., Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *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); *Preamble*, 62 FR at 27340.

[54] *See, e.g., Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

available in determining a rate for AME.[55]

C) *Selection and Corroboration of the AFA Rate*

Section 776(b) of the Act states that the Department, when employing adverse facts available, 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.[56] In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[57] The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.[58]

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[59] The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[60] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[61] Further, under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[62]

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

[56] *See also* 19 CFR 351.308(c).

[57] *See* SAA, at 870.

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

[59] *See* SAA, at 870.

[60] *Id.*; *see also* 19 CFR 351.308(d).

[61] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

[62] *See* sections 776(d)(3)(A) and (B) of the Act.

With respect to the investigation covering wire rod from Spain, the highest dumping margin calculated for merchandise under consideration from Spain in the petition is 32.64 percent.[63] In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margin of 32.64 percent to the transaction-specific dumping margins for the mandatory respondent, CELSA, we found product-specific margins at or above the petition rate[64] and, as a consequence, we find that the rate alleged in the petition, as noted in the *Initiation Notice*, is within the range of transaction-specific margins computed for this preliminary determination.

In order to corroborate the petition rate, and thus determine its probative value, we examined the information on the record: CELSA's margin program, specifically, the transaction-specific margins.[65] This approach is reasonably at the Department's disposal and has been sustained by the Court of Appeals for Federal Circuit as a sufficient basis for corroboration.[66] As a result of this examination, which is based on business proprietary information, we found the petition rate is corroborated to the extent practicable.[67] Therefore, we find that the 32.64 percent rate alleged in the petition is both reliable and relevant and sufficiently adverse within the meaning of section 776(c) of the Act.

Thus, we preliminarily assigned this AFA rate to the subject merchandise from AME.

XII. PRELIMINARY AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

On July 6, 2017, the petitioners alleged that critical circumstances exist with respect to imports of the subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).[68] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A) *Legal Framework*

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of

[63] *See Initiation Notice*, 82 FR at 19207.
[64] *See* CELSA Preliminary Analysis Memorandum, at Attachment 2.
[65] *See* Memorandum: "Antidumping Duty Administrative Review of Certain Steel Nails from Taiwan: Corroboration," dated July 31, 2017 (Corroboration Memorandum).
[66] *See KYD, Inc. v. United States*, 607 F.3d 760, 766 (Fed. Cir. 2010) (finding Commerce's choice of AFA rate well-grounded because it was supported by evidence submitted with the petition and by Commerce's calculation of high-volume transaction-specific margins for cooperative companies . . . .").
[67] *See* Corroboration Memorandum.
[68] *See* Letter to the Secretary of Commerce from Nucor, "Carbon and Alloy Steel Wire Rod from Russia, South Africa, Spain, Turkey, and United Kingdom: Critical Circumstances Allegations," dated July 6, 2017 (Critical Circumstances Allegation).

dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been "massive imports" of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(l) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

In addition, 19 CFR 351.206(h)(2) provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports "massive." Under 19 CFR 351.206(i), the Department defines "relatively short period" generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.[69] This section of the regulations further provides that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.[70]

B) *Critical Circumstances Allegation*

The petitioners allege that section 733(e)(1)(A) of the Act is met by virtue of the dumping margins alleged in the Petition, which could be as high as 32.70 percent on a transaction-specific basis.[71] Thus, the petitioners assert that certain dumping margins alleged in the Petition, which were up to 32.70 percent, exceed the 15 percent threshold used by the Department to impute knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.[72] The petitioners further argue that importers of wire rod from Spain have been on notice that dumped imports are likely to cause injury since the ITC's May 2017, preliminary affirmative injury finding.[73]

The petitioners argue that, regarding section 733(e)(1)(B), which examines whether there have been "massive imports of the subject merchandise over a relatively short period," the Department should use the minimum three-month base and comparison periods for shipment data of a base

[69] *See* 19 CFR 351.206(i); *see also Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations, Policy Bulletin 98.4*, 63 FR 55364 (Oct. 15, 1998) ("Commerce has traditionally compared the three-month period immediately after initiation with the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of-the subject merchandise").
[70] *See* 19 CFR 351.206(i).
[71] *See* Critical Circumstances Allegation at 6.
[72] *Id.*
[73] *Id. Citing Carbon and Certain Alloy Steel Wire Road from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom*, Inv. Nos. 701-TA-573-574 and 731-TA-1349-1358, USITC Pub. 4693 (May 2017) (ITC Preliminary Affirmative Injury Determination).

period from January 2017-March 2017 and a comparison period from April 2017-June 2017, as provided under 19 CFR 351.206(i) when considering the date on which the petition was filed, July 21, 2016.[74] The petitioners allege that import statistics released by the ITC indicate shipments of merchandise under consideration during the comparison period increased significantly in terms of volume (over 15 percent) between the base period and the comparison period, and as a result, exceeded the threshold for "massive" imports from Spain of wire rod, as provided under 19 FR 351.206(h) and (i).[75]

CELSA did not submit any rebuttal comments to the petitioners' critical circumstances allegation.

C) *Analysis*

The Department's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioners' critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.[76]

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.[77] The petitioners identify no such orders with respect to wire rod from Spain. Furthermore, based on our research, we have found no evidence of any AD order on wire rod from Spain encompassing the same or similar scope of merchandise subject to this investigation. Thus, we preliminarily find that there is not a history of injurious dumping of wire rod from Spain.

We must next determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and that there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, the Department normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.[78] For CELSA we have calculated a preliminarily weighted-average dumping margin of 20.25 percent. As a result, for purposes of this investigation, the Department preliminarily determines that the knowledge standard is not

[74] *Id*. at 12.
[75] *Id.*
[76] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*Carbon Steel Pipe Final Determination*); *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009) (*SDGE Final Determination*).
[77] *Id.*
[78] *See, e.g., Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

met because preliminary margins are less than 25 percent for EP sales and the Department preliminarily determines CELSA did not have any CEP sales.[79] Accordingly, for CELSA, because the statutory criteria of section 733(e)(l)(A) of the Act has not been satisfied, we did not examine whether imports from CELSA were "massive" over a relatively short period, pursuant to section 733(e)(l)(B) of the Act.

Likewise, we are preliminarily assigning to all other producers and exporters a rate of 20.25 percent. Thus, for all other producers or exporters of wire rod from Spain, the Department preliminarily finds that the criteria under sections 733(e)(1)(A)(i) and (ii) of the Act have not been met. Accordingly, the Department preliminarily determines that the margins for CELSA and for all others do not provide a sufficient basis for imputing knowledge of sales at LTFV to the importers of subject merchandise and that critical circumstances do not exist for all other producers or exporters of wire rod from Spain.

Because the other mandatory respondent in this investigation, AME, was uncooperative, we are assigning, as AFA, a rate of 32.64 percent, the highest margin in the Petition, which we have corroborated to the extent practicable as noted above. Because the preliminary dumping margin exceeds the threshold sufficient to impute knowledge of dumping, these margins provide a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to the importers.

In determining whether imports of the subject merchandise were "massive," the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption accounted for by the imports.[80] In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the Petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the Petition (*i.e*., the "comparison period"). If the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.[81] Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[82]

It is the Department's practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison periods.[83] However, as noted above, AME did not respond to any of our requests for information.[84] Therefore, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted. Accordingly, we preliminarily find

[79] *See* "Preliminary Determination" section of the accompanying *Federal Register* notice.
[80] *See* 19 CFR 351.206(h)(1).
[81] *See* 19 CFR 351.206(i).
[82] *Id.*
[83] *See, e.g., Carbon Steel Pipe Final Determination*, 73 FR at 31972-73; *SDGE Final Determination*, 74 FR at 2052-53.
[84] *See* the "Application of Facts Available and Adverse Facts Available" section of this memorandum.

that there were massive imports of merchandise from AME, pursuant to our practice. As such, we have determined that critical circumstances exist for AME.

We will make a final determination concerning critical circumstance for wire rod from Spain when we issue our final determination of sales at LTFV for this investigation.

XII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒ ☐

Agree Disagree

10/24/2017

X 

Signed by: GARY TAVERMAN

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