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Investigation
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Ferrosilicon from the
Russian Federation (“Russia”)

I. Summary

We analyzed the comments of the interested parties in the antidumping duty (“AD”) investigation of ferrosilicon from Russia. As a result of this analysis and based on our findings at verification,¹ we made certain changes to the margin calculations for the respondent in this case, RFA International LP (“RFAI”).² We recommend that you approve the positions we developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from parties.

General

1. Whether to Apply Adverse Facts Available for the Final Determination

¹ See Memorandum to the File through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior Analyst, “Verification of Home Market Sales of Chelyabinsk Electrometallurgical Integrated Plant Joint Stock Company (“CHEMK”) and RFA International, LP,” dated May 22, 2014 (“HM Verification Report”); Memorandum to the File through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior Analyst, “Verification of Russia Ferro-Alloys Inc. in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation,” dated May 23, 2014 (“CEP Verification Report”); see also Memorandum to the File, “Verification of the Cost Response of RFA International, LP in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation,” dated April 23, 2014 (“Cost Verification Report”).

² In the preliminary determination, we found that RFAI, Chelyabinsk Electrometallurgical Integrated Plant Joint Stock Company (“CHEMK”), and JSC Kuznetskie Ferrosplavy (“KF”) comprise a single entity. See Ferrosilicon from the Russian Federation: Preliminary Determination of Sales at Not Less Than Fair Value, 79 FR 13620, 13621 & n.7 (March 11, 2014) (“Preliminary Determination”). The Department has not received any information that places that determination into doubt. Therefore, we continue to find that these three companies comprise a single entity.



2. Whether RFAI Failed to Fully Disclose its Home Market Sales Process
3. Whether the Record Contains the Proper Universe of Home Market Sales
 - A. *Material Terms of Sale/Date of Sale*
 - B. *Post-Invoice Changes to Physical Quantity and CONNUM*

Home Market Issues

4. Whether to Use “As Invoiced” or “As Delivered” Home Market Sales Data
5. Calculation of Imputed Credit Expenses for Partially Delivered Sales
6. Treatment of Revenues and Expenses for Certain Sales Activities/Expenses
7. Calculation of Short-Term Credit for Home Market Imputed Costs
8. Calculation of Domestic Inventory Carrying Costs
9. Calculation of Domestic Warehousing Expenses
10. Correct the Unit of Measure Conversion Applied to Home Market Inventory Carrying Costs

U.S. Sales Issues

11. Calculation of Per Unit Cost of Goods Sold for U.S. Inventory Carrying Costs
12. Calculation of U.S. Sampling Expenses
13. Calculation of Short Term Credit for U.S. Sales
14. Calculation of U.S. Indirect Selling Expenses
15. Calculation of Certain U.S. Movement Expenses
16. Whether to Use of Average-to-Transaction Price Comparisons

II. Background

On March 11, 2014, the Department published in the Federal Register the Preliminary Determination of sales at not less than fair value in the AD investigation of ferrosilicon from Russia.³ The period of investigation (“POI”) is July 1, 2012, through June 30, 2013.

We invited parties to comment on the Preliminary Determination. We received case briefs and rebuttal briefs from Petitioners⁴ and RFAI on June 10, 2014, and June 20, 2014, respectively. On July 7, 2014, we held closed and public hearings based on Petitioners’ timely filed request.

III. Scope of the Investigation

The merchandise covered by this investigation is all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10

³ See Preliminary Determination.

⁴ While the original Petitions were filed on behalf of Globe Specialty Metals, Inc. (“GSM”), CC Metals and Alloys, LLC (“CCMA”), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”), only GSM and CCMA have filed comments and arguments on behalf of these parties since before the Preliminary Determination.

percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Ferrosilicon is currently classified under U.S. Harmonized Tariff Schedule (“HTSUS”) subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. Margin Calculations

We made the following changes⁵ from the Preliminary Determination to the home market margin program:

1. We included the revenue from “sizing services” in the gross unit price (see Comment 6 below).
2. We recalculated imputed credit expenses using the short term interest rates from factoring arrangements (see Comment 7 below).
3. We recalculated the domestic inventory carrying cost calculations based on verification findings (see Comment 8 below).⁶
4. We corrected a conversion error for home market inventory carrying costs (see Comment 10 below).
5. We made changes to certain cost calculations.⁷ No interested parties filed comments regarding cost of production.

We made the following changes from the Preliminary Determination to the U.S. sales margin program:

1. We corrected the denominator used in the per-unit cost of goods sold (“COGS”) calculation used for the U.S. inventory carrying costs (see Comment 11 below).
2. We recalculated U.S. inventory carrying costs based on verification findings with respect to the FS45 sales in the United States (see Final Analysis Memo).
3. We revised U.S. inventory carrying cost and credit expense calculations using a revised short term interest rate (see Comment 13 below).

⁵ See Memorandum to the File, through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior Analyst, “Calculations Performed for RFA International LP (“RFAI”) for the Final Determination in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation (“Russia”),” (“Final Analysis Memo”) dated concurrently with and hereby adopted by this Decision Memorandum.

⁶ See id.

⁷ See Memorandum to Neal M. Halper, Director, Office of Accounting, Through Michael P. Martin, from Robert B. Greger, Senior Accountant, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – RFA International, LP (“RFAI”),” dated concurrently with and hereby adopted by this Decision Memorandum.

V. Discussion of the Issues

General

Comment 1: Whether to Apply Adverse Facts Available for the Final Determination

Petitioners' Case Brief:

- The Department should apply total adverse facts available (“AFA”) and rely on the petition margin of 24.50⁸ percent for the final determination because RFAI failed to cooperate to the best of its ability in this proceeding.
- RFAI 1) failed to describe the sales process completely and provide any sample sales documentation for storage sales; 2) failed to disclose that product characteristics and physical quantities between “as invoiced” and “as delivered” sales differ and the reasons for these differences; 3) misled the Department with respect to the proper date of sale; 4) misled the Department with varying explanations regarding the “sizing” and warehousing of ferrosilicon by categorizing it as a post-sale service;⁹ and 5) misreported shipment dates of “storage” sales that are partially delivered.
- RFAI manipulated the universe of sales such that a negative preliminary determination would result from calculations based on this data. Thus, the Department should reject RFAI’s data and assign AFA because “even a single unreported home market sale could have a very large impact on the margin of dumping calculated.”¹⁰

RFAI Rebuttal Brief:

- There is no scenario under which the Department may apply total AFA to RFAI in this investigation given the statutory framework and case precedent for applying such a measure.
- There is no evidence that RFAI withheld any information in response to questionnaires. All of the information submitted by RFAI was submitted within the time limits set by the Department. RFAI did not submit any data revisions after the submission of minor corrections at verification. RFAI did not do anything to significantly impede the investigation. Finally, the information reported by RFAI was successfully verified.
- With respect to Petitioners’ argument about changes made to data over the course of the investigation, RFAI notes that changes are common in AD proceedings and does not form the basis for the application of total AFA.¹¹

The Department’s Position:

The Department disagrees with Petitioners’ contention that RFAI’s failed to cooperate to the best of its ability in this investigation and find that the record does not support the application of

⁸ See “Petitions for the Imposition of Antidumping Duties on Ferrosilicon from Russia and Venezuela,” dated July 19, 2013, at 4 (“Petitions”).

⁹ See Petitioners’ Case Brief at 23.

¹⁰ See *id.*, at 14.

¹¹ See RFAI Rebuttal Brief at 21, citing to Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review, 71 FR 42802 (July 28, 2006) (“Stainless Steel Bar from Germany”), and accompanying Issues and Decision Memorandum at Comment 2.

AFA to RFAI. We have addressed the specifics of Petitioners' various arguments for the application of AFA to RFAI below.

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

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

In the Preliminary Determination, the Department found that RFAI, a Canadian trading company operating in Switzerland, is affiliated with several entities identified in questionnaire responses pursuant to sections 771(33)(A), (B), (E), and (F) of the Act.¹² Furthermore, we found that, based on information provided in RFAI's questionnaire responses, RFAI and the companies comprising the CHEMK Industrial Group (CHEMK and KF), the producing entities in Russia, should be considered as a single entity for purposes of this investigation. We further found that this single entity is also affiliated with two other entities operating in the United States.¹³ RFAI is the sole reseller for all goods manufactured by CHEMK and KF for export.¹⁴

Despite Petitioners' claims of misconduct and non-cooperation, we find that RFAI cooperated and has not impeded the investigation, pursuant to either section 776(a) or (b) of the Act. We address each of Petitioners' arguments in turn.

First, one of Petitioners' arguments point to the number of revisions RFAI made to its questionnaire responses, specifically to the sizing and warehousing activities. The Department finds that the number of revisions to narrative information in this case do not rise to the level of

¹² See Preliminary Determination and Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Compliance Analyst, Office V; Antidumping Duty Investigation of Ferrosilicon from the Russian Federation ("Russia"): "Preliminary Determination of Affiliation/Single Entity Treatment of RFA International LP, et. al.," dated March 4, 2014 ("RFAI Affiliation Memo").

¹³ See RFAI Affiliation Memo in which we discuss the single entity's affiliation with the two U.S. companies.

¹⁴ See, e.g., RFAI Section A Questionnaire Response dated October 28, 2013, at 6.

non-cooperation defined under the statute. Moreover, in past cases, the Department disagreed with arguments that “the number of revisions to the data causes the submitted data to be suspect in accuracy or reliability such that facts available are warranted.”¹⁵ We further determined that “{d}uring the course of an antidumping proceeding, it is not uncommon for respondents to revise or correct information previously submitted to the Department.”¹⁶ Moreover, as we stated on the record of this proceeding:

{I}nvestigations usually involve companies which have never been subject to the Department’s examination. This typically requires additional effort from the Department in the form of multiple extensive supplemental questionnaires in order to obtain data and information from respondent companies in a form that is useful for the purpose of calculating dumping margins.¹⁷

Second, the Department fully verified the information reported on the record noting no significant findings or discrepancies.¹⁸ We find that Petitioners’ allegations are speculative in nature and not substantiated by any evidence on the record that RFAI has been non-cooperative or impeded the investigation, as defined by the statute. The record does not show any evidence of RFAI impeding the investigation by providing information in an untimely fashion. Rather, the first impression created by numerous supplemental questionnaires has been misinterpreted by Petitioners as a method to defraud or confuse the Department, which we do not find to be the case.

Third, we note that petitioners in Thai Wire similarly requested that the Department assign AFA to a company based on their position that the company under investigation failed verification. The Department disagreed with this alleged failure of the company at issue based on the facts of the case and the verification report.¹⁹ Further, as is the case here, the petitioners in Thai Wire also alleged that the respondent “was not cooperative with respect to its sales reporting beginning with its initial questionnaire response.” We note that Department did not agree with the petitioners’ allegations in Thai Wire.²⁰ The record of this investigation shows that RFAI fully responded to all of the Department’s questionnaires wherein we requested clarifications of previous responses. Similar to our determination in Thai Wire, we find that Petitioners’ allegations in this case are not supported by the information on the record.

In Steel Bar from India, the Department’s final determination with respect to one of the respondents shows a clear and distinct difference in the standard for the application of AFA

¹⁵ See Stainless Steel Bar from Germany, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶ See id.

¹⁷ See Memorandum to the File, from James Doyle, Director, Office V, to Christian Marsh, Deputy Assistant Secretary, “Antidumping Duty Investigation of Ferrosilicon from the Russian Federation: Selection of Voluntary Respondent,” dated December 3, 2013; see also Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 2C.

¹⁸ See HM Verification Report, CEP Verification Report, and Cost Verification Report.

¹⁹ See Final Determination of Sales at Not Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From Thailand, 79 FR 25574 (May 5, 2014) (“Thai Wire”), and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ See id.

based on non-cooperation.²¹ For that respondent, the Department listed all the examples in which the company failed to cooperate and provide information on the record with which to calculate a margin. Such examples include, among others, failure to reconcile sales and cost data.²² In another relevant case, Thermal Paper from Germany, the Department's application of AFA to a non-cooperative respondent was due to the company's failure to provide verifiable information and the company's deliberate concealment of home market sales via a transshipment scheme, resulting in the Department's inability to reconcile the home market sales.²³ In that case, the Department found convincing and irrefutable evidence on the record of a respondent's misconduct with respect to the universe of home market sales, which is not the case here. While Petitioners allege that RFAI impeded this investigation by concealing home market sales, the record does not support such a finding. At verification the Department conducted a completeness exercise (which focuses directly on whether the proper universe of sales was reported) and reconciled RFAI's home market sales to the accounting system and audited financial statements, with no findings of unreported sales.²⁴

In addition, in Stainless Steel Bar from Germany, the Department was faced with similar allegations from the petitioners, wherein we disagreed that the respondent "misled the Department about the company's sales process...or that...responses in this review were inadequate, unverifiable, incomplete, and unreliable."²⁵ To the contrary, the Department determined that the respondent "provided adequate responses to our questionnaire and supplemental questionnaires, and provided clarification as requested by the Department. Therefore, there is no basis to apply facts available...or to draw an inference...that is adverse."²⁶ Similarly, we do not find that, under sections 776(a)(1) and (2) of the Act, RFAI withheld information requested by the Department, failed to provide information within the deadlines established in the form or manner requested by the Department, significantly impeded this proceeding, or provided unverifiable information. RFAI responded to our requests for information within the deadlines established and provided information that we were able to verify. Thus, we determine that, as in Stainless Steel Bar from Germany, the application of AFA is not warranted in this case. Accordingly, we relied on RFAI's reported data, adjusted as described above for the final determination.

Finally, we disagree with Petitioners' argument that RFAI manipulated the universe of sales such that a negative preliminary determination would result from calculations based on this data. Petitioners have not provided any calculations or quantitative analysis to support their claim that alternative subsets of data would result in an above-de minimis dumping margin. Indeed, as RFAI rebutted, Petitioners' argument and conjecture rest on a fraction of the home market sales database. Petitioners' case brief includes several exhibits where they provided quantitative

²¹ See Stainless Steel Bar From India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 69 FR 55409 (September 14, 2004) ("Steel Bar from India"), and accompanying Issues and Decision Memorandum at Comments 1 and 2.

²² See id., and accompanying Issues and Decision Memorandum at Comment 1.

²³ See Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 23220 (April 18, 2013) ("Thermal Paper from Germany"), and accompanying Issues and Decision Memorandum at Comment 1.

²⁴ See HM Verification Report at 12-14

²⁵ See Stainless Steel Bar from Germany, and accompanying Issues and Decision Memorandum at Comment 1.

²⁶ See id.

analysis.²⁷ We find that these analyses performed by Petitioners are 1) already known by the Department and 2) only relevant to a small portion of the home market sales database.

Comment 2: Whether RFAI Failed to Fully Disclose its Home Market Sales Process

Petitioners' Case Brief:

- RFAI was not cooperative with respect to reporting its sales process beginning with its initial questionnaire response, wherein it allegedly failed to describe the full process with respect to both storage and standard sales.
- During the course of the investigation, through supplemental questionnaires and at verification, the Department elicited facts that demonstrate that RFAI's description of CHEMK's sales process was incomplete and inaccurate in fundamental respects."²⁸
- Even when RFAI began to disclose certain elements of CHEMK's sales process in response to supplemental questionnaires, CHEMK did not provide prior to verification key documents needed to understand the sales process.²⁹
- Such alleged inaccuracies include failures to disclose: the existence of 'storage' sales to certain customers; the fact that for such sales, the product characteristics of the ferrosilicon actually delivered to the customer are not the same as the characteristics of the ferrosilicon that was invoiced; the reasons why the characteristics of the product delivered to the customer are different than those specified in the invoice; and the fact that CHEMK does not actually perform sizing or warehousing in exchange for the revenues it receives for sizing and warehousing.³⁰
- RFAI "provided for the first time at verification" documentation including "framework agreements," "specifications under those agreements," "subsequent addenda to the specifications," "invoices for sales" to storage sales customers, "the product certificates for sales to those customers," "the storage contracts with" those customers, "the sizing contracts with those customers," "examples of customer communications," and "shipment documentation for sales to those customers."³¹
- RFAI submitted inaccurate and misleading explanations of the "sizing" it performed and the "sizing" revenue it received in connection with its home market sales to certain customers.³²
- Verification documents confirm that the sizing revenue reported by CHEMK is not derived from the sale of a separate service, but instead is directly related to the sale of subject merchandise, and RFAI reported sizing revenue only for CHEMK's home market sales to certain customers.³³
- The minor corrections presented at verification regarding sizing were not minor.

RFAI Rebuttal Brief:

- Petitioners' claim that RFAI did not provide sample home market sales documents in its questionnaire responses is false. RFAI provided sample home market sales documents

²⁷ See Petitioners' Case Brief at Exhibits 1-4.

²⁸ See *id.*, at 16.

²⁹ See *id.*

³⁰ See *id.*

³¹ See *id.*, at 16-17.

³² See Petitioners' Case Brief at 41.

³³ See *id.*, at 45.

between the other supplier, KF, whose home market sales are included in the database and one of the customers in question. RFAI submitted the “framework agreement” between KF and one of the customers in question in its Section A questionnaire response.³⁴

- Contrary to Petitioners’ claims, there was no effort by RFAI to withhold key documents from the Department. RFAI submitted the framework agreement between KF and a customer, specifications {sales confirmations}, invoice, and product certificate to that customer.³⁵ The other documents listed by Petitioners (plus many others) were all made available at verification.
- RFAI reported the existence of its “storage sales” in the home market in the initial Section A questionnaire response.³⁶ Specifically, RFAI reported inventory management services and post-sale warehousing services in its selling functions chart.
- Its inventory management consisted of “maintaining stocks of goods in order to have them available based on customer needs,” and further described “post-sale warehousing as ‘enter{ing} into storage contracts with their trading company customers to store the material after the invoice is issued to the customer and title has transferred. This service allows the trading companies maximum flexibility in always having ferrosilicon available for their customers.’”³⁷
- RFAI also discussed the inventory management and post-sale warehousing functions in its third Section A supplemental response.³⁸
- Petitioners’ statement that RFAI failed to disclose that CHEMK “does not actually perform sizing or...warehousing in exchange for the revenues it receives for ‘sizing’ and ‘warehousing’” is false and nonsensical. The record contains contracts signed between RFAI and customers for sizing and warehousing services with payment agreements and the fees for these services.³⁹
- The Department verified that CHEMK performed those services for its customers pursuant to those contracts.
- RFAI reported sizing revenue in its second supplemental Section B and C questionnaire response. RFAI provided additional information with respect to sizing revenue in its fourth supplemental Section B and C questionnaire response in order to distinguish sizing revenue earned on a presale versus a post-sale basis.
- Contrary to Petitioners’ allegation that the minor correction for sizing was not minor, that correction did not result in a methodological change in RFAI’s reporting of sizing revenue it simply reflected that the revenue stream did not begin on the contract date but, rather, a few months later. These corrections were not made to mislead the Department. RFAI and CHEMK submitted the corrections in order to provide the most accurate data to the Department. Moreover, the revised sizing data were submitted in a timely manner, as they were provided at the beginning of the CHEMK home market sales verification.

³⁴ See RFAI Rebuttal Brief at 15, citing to its Section A questionnaire response date October 28, 2013, at Exhibits 8 and 10.

³⁵ See *id.*, at 16, citing to its Section A questionnaire response date October 28, 2013, at Exhibits 8 and 10; its Supplemental Section A questionnaire response dated December 5, 2013 at Exhibit 18.

³⁶ See RFAI Rebuttal Brief at 13, citing to its response dated October 28, 2013, at A-7.

³⁷ See *id.*, at 13-14, citing to its response dated December 5, 2013, at 14.

³⁸ See *id.*, at 14, citing to its response dated February 6, 2014, at 21, wherein it updated the home market database to include the deliveries made out of storage sales.

³⁹ See *id.*

Department's Position:

We disagree with Petitioners' argument that RFAI did not provide a complete and accurate description of its sales process to the Department during the course of this investigation. In fact, contrary to Petitioners' allegation, our analysis of the record shows that RFAI provided an accurate description of its sales process beginning with its original Section A Questionnaire Response, wherein it provided samples of specific documents generated for sales.⁴⁰

Furthermore, despite Petitioners' claim that RFAI did not provide sample sales documents, the record in fact includes the documents to which Petitioners refer, albeit that some of sample sales documents were generated by KF and not CHEMK.⁴¹

It is the Department's general practice to instruct respondents to provide documentation for certain sample sales rather than always require all the documents generated by companies for all sales made during the POI. Moreover, we note that in our original questionnaire, we requested only sample documents and sample agreements, used to support for a respondent's reported sales practice, procedure, or process that it employs in its ordinary course of business.⁴² Moreover, the Department routinely makes determinations based on sample sets of documents.⁴³ For example, in Rebar from Turkey, the Department made a determination regarding a date-of-sale issue, despite the petitioners' arguments that the respondent "has not met its burden of proof in demonstrating that contract date better reflects the date on which the material terms of sale were established because it provided only one set of sample documents."⁴⁴

As to Petitioners' argument that CHEMK only provided certain documents for the first time at verification, we disagree. RFAI provided the documents in questionnaire responses that identified the sales process, as noted above. With respect to documents examined at verification, such as customer communications,⁴⁵ we note that the courts opined that "the decision to select a particular method of verification rests solely within the agency's sound discretion."⁴⁶ Thus, our request to examine certain documents to reconcile reported information was within our discretion rather than a matter of RFAI's allegedly deliberate omissions.

Petitioners contend that RFAI's actions prevented Department officials from understanding the nature and extent of the sales processes in the home market. On the contrary, RFAI reported

⁴⁰ See RFAI Section A Questionnaire Response dated October 28, 2013, at 19.

⁴¹ See, e.g., RFAI Section A Questionnaire Response dated October 28, 2013 at 17, 19, 21-22, Exhibits 8 and 10; see also RFAI Supplemental Questionnaire Response dated December 5, 2013, at Exhibit 16-18; RFAI's Supplemental Questionnaire Response dated January 14, at Exhibit 7. We note that a review of the sales documents on the record for both KF and CHEMK appear to contain identical procedures for sales during the POI. For example, both companies issue 1) Specification documents ("Specs") which are, essentially, sales contracts, 2) invoices, 3) quality/chemistry certifications ("QC's"), etc.

⁴² See, e.g., the Departments original questionnaire dated September 5, 2013, at B-16.

⁴³ See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (November 8, 2005) ("Rebar from Turkey"), and accompanying Issues and Decision Memorandum at Comment 6.

⁴⁴ See *id.*

⁴⁵ We discuss the matter of customer communication documents in detail below in Comment 3.

⁴⁶ See Floral Trade Council v. United States, 17 C.I.T. 392, 399; 822 F. Supp. 766 (CIT 1993).

and/or addressed the existence of “storage” sales in nearly every questionnaire response.⁴⁷ In its original Section B Questionnaire Response, RFAI clearly reported that “in some instances, customers purchase and take title to ferrosilicon in bulk but only need delivery of smaller quantities over time. In these instances, customers ask the respondent to arrange for freight as needed by the customer.”⁴⁸ In the same questionnaire response, RFAI reported that “ferrosilicon is stored by CHEMK either at finished goods warehouses adjacent to the main production shops or at a warehouse outside of the factory premises. Ferrosilicon is stored by KF at finished goods warehouses adjacent to the main production shops.”⁴⁹ As a further example, within an exhibit of that questionnaire response, RFAI submitted a sample agreement for a storage contract with one of the large customers, showing a list of partial deliveries.⁵⁰ Then, RFAI, again, reported that “CHEMK and KF enter into storage contracts with their trading company customers to store the material after the invoice is issued to the customer and title has transferred. This service allows the trading companies maximum flexibility in always having ferrosilicon available for their customers.”⁵¹ The Department verified this issue in great detail and found no discrepancies or significant omissions between the reported information on the record and RFAI’s internal books and records.⁵² Thus, we the record of this investigation does not support Petitioners’ allegation that RFAI was not cooperative with respect to its storage sales

We also disagree with Petitioners’ characterization of the timeliness of RFAI’s questionnaire responses and data. The Department issued numerous supplemental questionnaires in order to obtain answers to both its own questions and key issues raised by Petitioners.⁵³ Petitioners’ allegation that the timing of responses (i.e., “five months into the investigation”) warrants an adverse inference is without merit because the Department set response deadlines within its supplemental questionnaires. Indeed, “five months” into the proceeding from the August 2013 initiation, included the time required to address respondent selection comments, select a respondent, address comments regarding model matching, and product characteristics,⁵⁴ issue the original questionnaire, and review initial responses (the original Section B and C responses were only filed in November 2013), and issue numerous supplemental questionnaires containing many issues identified by Petitioners.

We also disagree with Petitioners that RFAI’s reporting of sizing and warehousing “services” was so misleading as to contribute to a determination that application of AFA is warranted, as discussed below. RFAI reported certain sizing⁵⁵ and warehousing⁵⁶ activities and stated that sizing occurs when a customer changes the lump size it requested from RFAI whereas

⁴⁷ See, e.g., Supplemental Sections B and C Questionnaire Response dated January 5, at Exhibit 1.

⁴⁸ See RFAI Section B Questionnaire Response dated November 20, 2013, at 29-30.

⁴⁹ See *id.*, at 39.

⁵⁰ See *id.*, at Exhibit 11.

⁵¹ See RFAI Supplemental Section A Questionnaire Response dated December 5, 2013, at 14.

⁵² See HM Verification Report at 7-10.

⁵³ Petitioners filed deficiency comments for each response that RFAI filed, which required extensive time and effort by the Department to review and analyze for relevance, prior to issuing supplemental questionnaires. See, e.g., Petitioners’ Comments dated November 12, 2013, December 2, 2013, December 18, 2013, January 15, 2014, *etc.*

⁵⁴ The Department issued the initial questionnaire prior to finalizing the product characteristics for model matching due to extensive comments from both Petitioners and RFAI. The product characteristics were not finalized until well into the proceeding.

⁵⁵ See HM Verification Report at 17, footnote 6.

⁵⁶ See RFAI Questionnaire Response dated February 6, 2014, at 20-21.

warehousing generally refers to the post-sale storage CHEMK provided to certain customers after invoicing. The Department verified that such changes in requested sizing occur during the POI.⁵⁷

The record also demonstrates that CHEMK sold ferrosilicon lumps in specific sizes as well as un-sized lumps⁵⁸, despite Petitioners' claims that sales of un-sized lumps do not occur.⁵⁹ The record shows that customers requesting storage of sales have, at times during the POI, requested different lump sizes from the lump sizes identified on the original sales contract.⁶⁰ Further, where a particular sales contract first indicated un-sized lumps, and then, in an addendum requested a specific lump size, the customer would be charged for this change.⁶¹ We verified this information and noted no discrepancies. Thus, with respect to properly reporting its sizing "services", we determine that RFAI did not fail to cooperate to the best of its ability because the information provided to us in the questionnaire responses was accurate.

With respect to Petitioners' allegation that RFAI misled the Department regarding warehousing services, we also disagree. RFAI reported, and we verified with no discrepancies, that "if the customer realizes that it will not be able to withdraw all purchased ferrosilicon before the end of the month, it sends CHEMK a letter asking to transfer the remainder into storage. Such a transfer is formalized by a receipt confirming that the goods were transferred into storage."⁶² Thus, we find that respondent did not report inaccurate information and we further so find that RFAI did not fail to cooperate to the best of its ability with respect to reporting its warehousing activities. With respect to our treatment of sizing and warehousing expenses and revenues, see Comment 6 below. Thus, we find that respondent did not report inaccurate information and we further so find that RFAI did not fail to cooperate to the best of its ability with respect to reporting its warehousing activities.

Comment 3: Whether the Record Contains the Proper Universe of Home Market Sales

A. Material Terms of Sale/Date of Sale

Petitioners' Case Brief:

- RFAI misreported the date of sale for its "storage" sales because the material terms of sale, most notably product characteristics and quantity were not set until after the invoice date.⁶³

⁵⁷ See HM Verification Report at 8.

⁵⁸ See RFAI Section B Questionnaire Response at 14, where RFAI stated that "the size of the product has been reported in accordance with the codes above. Code 4 has been reported to reflect that customers sometimes purchase ferrosilicon where size is an immaterial specification..." This un-sized value was verified by the Department in several sales traces.

⁵⁹ See Petitioners' Comments dated March 24, 2014, containing an affidavit from a domestic producer of ferrosilicon attesting to this individual's experience with the sizing of ferrosilicon lumps.

⁶⁰ See, e.g., HM Verification Report at Exhibit 41, where an addendum to the original Spec identifies exact lump sizes for delivery.

⁶¹ See id., at 9.

⁶² See RFAI Questionnaire Response dated March 14, 2014, at 1-2. Incidentally, RFAI first reported the existence of post-sale storage in its original Section A Questionnaire Response dated October 28, 2013, at

⁶³ See Petitioners' Case Brief at 19.

- RFAI wrongly reported the date of invoice as the date of sale, failed to report the information needed to identify the correct date of sale, and defended its reporting of the invoice date based on passage of title, which is inconsistent with established Department practice.⁶⁴
- By reporting the invoice date as the date of sale and by failing to provide the information required to identify the correct date of sale, RFAI failed to cooperate to the best of its ability and significantly impeded the Department's investigation,⁶⁵ which also contributed to the issuance of a negative preliminary determination.⁶⁶
- In response to the Department's supplemental questionnaires, RFAI should have reported the date of sale on a different basis and should have submitted a properly revised and complete home market sales data set, but chose not to do so. Instead, RFAI insisted that the material terms of sale were set on the invoice date and that there is no difference between . . . the product invoiced and the product ultimately delivered.⁶⁷

RFAI Rebuttal Brief:

- RFAI properly reported the date of invoice as the date of sale in the home market because that is the date when the material terms of sale are final, which the Department verified.
- The material terms of sale that the Department considers most important are price and quantity. Petitioners make no claim that price ever changes.
- Despite Petitioners' objection to the statement in the verification report, the Department observed that "all material terms of sale (price, base quantity and sales terms) were finalized by the time an invoice is issued to the customer." The Department did not make a determination, but observed that, first, the price is final on the date of invoice; second, the base quantity is final on the date of invoice; and third, the material sales terms are final on the date of invoice.
- Petitioners' claim that RFAI's "stated rationale for reporting the invoice date" as the date of sale is that the title of the goods transfers upon the issuance of the invoice is false. The fact that the title transfers on the same date that the material terms of sale are set further reinforces the fact that the invoice date is the proper date of sale, because price, base quantity, and grade are also set on invoice date.
- Petitioners' cite to instructions from the customer⁶⁸ as evidence that material terms are set at delivery is without merit. The referenced delivery instruction is a document that was for a post-POI sale occurring at the time of the verification. The Department noted in its verification report, CHEMK does not maintain these instructions in the ordinary course of business and, therefore, CHEMK could not provide one for a POI sale. The document provided was a sample instruction contemporaneous with the verification and was unrelated to a sales invoice for the POI. Moreover, the sales invoice related to the post-POI delivery instruction is not on the record. Therefore, Petitioners are inferring whether the material terms of sale changed after issuance of the post-POI sales invoice.
- For these reasons, Petitioners' claim that RFAI misled the Department with respect to the material terms of sale has no merit and should be rejected.

⁶⁴ See id.

⁶⁵ See id., at 21.

⁶⁶ See id., at 22.

⁶⁷ See id., at 32.

⁶⁸ See id., at 20, citing to the HM Verification Report at Exhibit 13.

Department's Position:

We disagree with Petitioners' contention that CHEMK misreported the date of sale and, thus, that the application of AFA is warranted. According to 19 CFR 351.401(i), "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." Here, we find that the date of CHEMK's commercial invoice is the appropriate date of sale because the material terms of sale (i.e., price, quantity and sales terms) are set on the invoice date, as reported and verified, and the manner in which it is maintained in company's financial accounting system or, in other words, "recorded in the exporter's or producer's records kept in the ordinary course of business."⁶⁹ RFAI reported, and the Department verified, that RFAI based its home market sales on invoice date because the material terms of sale, which include base weight, price, and silicon grade based on GOST⁷⁰ standards, are finalized on the invoice.⁷¹

Petitioners' argument hinges on the observation that for CHEMK's "storage sales," the actual product delivered to the customer differs in physical quantity and chemical composition from the chemical composition recorded as sold on the invoice. While we agree that the record is clear that there are such changes, we disagree with Petitioners' claim that these changes are a sufficient basis for applying AFA to RFAI.

All such differences occur only in CHEMK's storage sales⁷², in which certain home market customers purchase ferrosilicon from CHEMK and then request CHEMK to store it until the customer requires delivery some time after invoicing.⁷³ While RFAI argues that its sales are similar to the "bill-and-hold" sales in Magnesium Metal from Russia⁷⁴ in which the date of sale was at issue, we find that case unavailing to the date of sale issue here because in Magnesium Metal from Russia, there were no apparent changes to the material terms of sale, while here, we acknowledge that, even though silicon grade did not change, the percentages of chemistry composition did change from the invoiced chemistry composition for, at least, a portion of those storage sales.⁷⁵ However, despite that, we determine that these changes to chemistry

⁶⁹ See 19 CFR 351.401(i). See, e.g., Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 79 FR 31092 (May 30, 2014) ("Vietnam Welded Pipe") and accompanying Issues and Decision Memorandum at Comment 2.

⁷⁰ GOST is identified as the "Interstate Standard GOST 14 1 5-93 (ISO 5445-80)," not unlike the standard used in the United States identified as the "ASTM". See, e.g., RFAI Section A Questionnaire Response dated October 28, 2013, at Exhibit 19 where KF's product description identifies compliance with the GOST State Standard.

⁷¹ See, e.g., HM Verification Report at Exhibits 33-42, which contain the "sales trace" exercises we performed at verification—these exercises included examination of whether material terms of sale differ after the date of sale reported by RFAI, which in this case is invoice date. We noted no discrepancies.

⁷² The "storage" sales account for approximately 18 percent of the total home market sales database.

⁷³ See RFAI Sections B and C Questionnaire Response dated November 20, 2013, at 29-30 where RFAI stated that "in some instances, customers purchase and take title to ferrosilicon in bulk but only need delivery of smaller quantities over time. In these instances, customers ask the respondent to arrange for freight as needed by the customer."

⁷⁴ See Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989 (September 17, 2010) ("Magnesium Metal from Russia") and accompanying Issues and Decision Memorandum at Comment 1.

⁷⁵ See id., and accompanying Issues and Decision Memorandum at Comment 1.

composition were not commercially relevant because record evidence shows that the customers paid for the merchandise and did not reject or return the merchandise.⁷⁶ We find this to be relevant because the record shows that the customer received the identical commercial grade of merchandise that was invoiced and eventually delivered without incident.

Lastly, we also disagree with Petitioners' proposal that we use a date, such as shipment date, for the date of sale. The Department's practice is to use the shipment date as the date of sale when the material is shipped prior to the issuance of the invoice. As we stated in Pipe and Tube from Mexico, "we have continued to use the invoice date as the date of sale for all...home market and U.S. sales, in accordance with the Department's practice, except in those instances where shipment occurred prior to the invoice date...In those instances, also consistent with the Department's practice, we used the shipment date as the date of sale because the price and quantity are fixed at the time of shipment."⁷⁷ Here, the record does not show any instances where CHEMK shipped ferrosilicon prior to invoice date; thus, it is not appropriate to use the shipment date as the date of sale. Moreover, we also disagree that the partial shipment delivery dates should be used as the date of sale because those delivery dates do not represent when the base quantity, value and commercial grade of ferrosilicon were finalized.

*B. Post-Invoice Changes to Physical Quantity and CONNUM*⁷⁸

Petitioners' Case Brief:

- RFAI did not disclose until it was too late to be considered for the preliminary determination that, for 'storage' sales, there are differences between the product characteristics of the ferrosilicon invoiced to the customer and the ferrosilicon actually delivered to the customer.⁷⁹ As a result, the record does not contain the proper universe of sales.
- As RFAI routinely issues two product certificates, one when the ferrosilicon is invoiced, and a second one when the ferrosilicon is delivered, it has a clear expectation that the composition of the "as delivered" ferrosilicon will be different than the composition of the "as invoiced" merchandise.
- Contrary to RFAI's claim that there is no difference between the product invoiced and the product delivered, the Department determined at verification that neither CHEMK nor the customer expects the ferrosilicon specified on the invoices for storage sales to be delivered to the customer.
- The Department examined sales documents, performed tests, and conducted sales traces at verification that confirm that the proper universe of sales was not reported. The verification documents show delays between invoice date and delivery date of the partial deliveries and that this delay in the deliveries of invoice "strongly indicate that there were unreported 'as delivered' sales during the POI of ferrosilicon that was invoiced prior to the POI."
- RFAI did not admit that the change in control numbers was due to the delivered ferrosilicon not being the same ferrosilicon as was invoiced. Instead, RFAI stated that the changes in

⁷⁶ See, e.g., HM Verification Report Sales Traces at Exhibits 33-42.

⁷⁷ See Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35244 (June 12, 2013) ("Pipe and Tube from Mexico"), and accompanying Issues and Decision Memorandum at Comment 2.

⁷⁸ The term "CONNUM" refers to the model matching hierarchy criteria used in the Department's margin program.

⁷⁹ See Petitioners' Case Brief at 18.

control numbers are due primarily to the arbitrary distinctions reflected in the control numbers (“CONNUMS”).⁸⁰ RFAI acknowledged that quantity is a material term of sale and that physical quantity changed between ‘as invoice’ and ‘as delivered’ sales.

- The Department’s established practice is to make product comparisons, and to require respondents to report CONNUMS, based on the actual physical characteristics of the product sold and delivered to the customer.⁸¹
- Contrary to this explanation, the Department determined at verification that the differences between the product characteristics “as invoiced” and “as delivered” occurred because the merchandise shipped “is not required to be the identical merchandise initially pulled { when the invoice was issued } as the original lot pick was virtual.”⁸²
- As such, the Department not only does not know what “as delivered” sales occurred during the POI, the Department also does not know which of these home market sales would have been matched to U.S. sales, because RFAI did not report the product characteristics of these “as delivered” sales. The facts regarding the delays between the invoice dates and “as delivered” sales strongly indicate that there were partial deliveries after the end of the POI of ferrosilicon that was invoiced during the POI.
- The significance of RFAI’s failure to report the proper universe of home market sales is amplified by the fact that, in this case, a disproportionate percentage and volume of the Russian producers’ home market sales is being matched to the U.S. sales in calculating the margin of dumping.⁸³

RFAI Rebuttal Brief:

- With respect to quantity, Petitioners’ argument has no merit because they rely on their flawed analysis comparing the physical weight of invoices on an “as delivered” and “as invoiced” basis. The base weight of each invoice is exactly the same as the subsequent deliveries related to the same invoice.
- In its updated home market database, RFAI properly reported the product characteristics both on an “as sold” basis and on an “as delivered” basis. RFAI explained that the reported product characteristics could vary on a particular sale on an “as invoiced” basis, as opposed to an “as delivered” basis, because of the “arbitrary distinctions reflected in the CONNUMS” and that the Department’s silicon content ranges do not match CHEMK’s own grade ranges.⁸⁴

⁸⁰ See id., at 32.

⁸¹ See Petitioners’ Case Brief at 7, citing to: Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820, 30830 (June 8, 1999); Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 64 FR 13148, 13154 (March 17, 1999); Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 65 FR 13943 (March 15, 2000) and accompanying Issues and Decision Memorandum at Comment 2; and Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea, 58 FR 37176, 37185 (July 9, 1993).

⁸² See id.

⁸³ See id., at 14.

⁸⁴ See RFAI Rebuttal Brief, at 14, citing to its response dated March 14, 2014, at 3.

- RFAI’s customers agree to any minor element changes “because only the FS grade and size matter, not the minor elements (i.e., as long as the silicon content falls within the GOST standard).”⁸⁵

Department’s Position:

The Department disagrees with Petitioners’ contention that the changes in physical characteristics and quantity of certain ferrosilicon sales between the invoice date and delivery date is sufficient basis to apply AFA to RFAI’s home market database. As Petitioners point out, the record shows that the chemical composition and physical quantity clearly changes for a small portion of the storage sales after issuance of the invoice. However, the relevant facts are that the base weight and gross unit price did not change after the invoice was issued.⁸⁶ Moreover, the core elements⁸⁷ of CHEMK’s ferrosilicon sales did not change either.⁸⁸

Petitioners’ position hinges on the argument that the invoiced product is “virtual,” while the delivered product contains a different chemical composition and, thus, is not identical to the “virtual product” invoiced. However, the fact that the invoice is based on “a placeholder product” for future delivery does not alter the fact that the customer purchased a specific grade of ferrosilicon and then receives the identical grade of ferrosilicon.

With respect to CONNUM changes, we agree there are some changes in the physical characteristics of the “as delivered” CONNUMs that are sold in both the home market and United States.⁸⁹ However, we find that the degree of these changes is negligible and does not rise to a level consistent with application of AFA for the home market database. First, the storage sales comprise only 18 percent of the home market sales, as all the CONNUM changes occur only for storage sales. Moreover, in reviewing the data, we note that not all partial deliveries of storage sales experienced changes in the CONNUM.⁹⁰ Finally, we find that the magnitude of any CONNUM changes does not hinder model-matching home market sales to U.S. sales, because the margin program output results indicate that model-matching was achieved.⁹¹ This means that there are sufficient home market sales that match to U.S. sales, based on identical or similar CONNUMs, to achieve concordance.

Furthermore, Petitioners have not provided any quantitative evidence or calculations showing that employment of the “as delivered” sales rather than the “as invoiced” sales in the margin program provide a more accurate dumping margin calculation. Petitioners’ quantitative

⁸⁵ See id., at 15.

⁸⁶ See, e.g., HM Verification Report at Exhibit 37, where the invoice and the “acknowledgement of release from storage” document show commercially identical ferrosilicon grade sold and shipped.

⁸⁷ Specifically, the base (silicon content) weight and commercial grade of the ferrosilicon.

⁸⁸ See, e.g., HM Verification Report at Exhibit 37, where the invoice and the “acknowledgement of release from storage” document show commercially identical ferrosilicon grade sold and shipped.

⁸⁹ See id., at 18-19

⁹⁰ See Final Analysis Memo where we analyzed the data based on Petitioners’ quantitative arguments in their Case Brief (Exhibits 1-4). In examining the data, we noted that only some, if any, partial deliveries of an invoice experienced CONNUM changes; and in some instances, only one CONNUM element changed. We discuss the quantitative magnitude of these changes in the Final Analysis Memo, as it is not subject to public discussion.

⁹¹ See Final Analysis Memo SAS Output Attachment 3.

comparison charts only show that there are differences in a small percentage of the home market database, which we acknowledge, without showing how these differences affect the margin calculation program.

As noted above, RFAI acknowledged, there are changes in CONNUMs between the “as invoiced” sales and the “as delivered” subset of those sales. However, as discussed in greater detail in the Final Analysis Memo, we do not find those changes to be of such magnitude as to have rendered a different result from the Preliminary Determination. As we state in the Final Analysis Memo, the vast bulk of the relatively few CONNUM changes occur for mostly characteristics further down in the CONNUM’s hierarchy.⁹² In our Final Analysis Memo, we note that while such elements do show changes, they do not affect the key factor involved in the sale, the ferrosilicon grade, which is based on the silicon content. The importance of the silicon content of the merchandise under consideration has been a frequent refrain during the proceeding, starting with the Petitions wherein Petitioners reported the ferrosilicon sales are based on silicon content (i.e., the grade).⁹³ The importance of silicon content was also addressed in the Department’s construction of the CONNUM wherein, based on interested parties’ comments, we placed the silicon content as the first element in the CONNUM hierarchy, which denotes the first physical characteristic used to match home market sales to U.S. sales. The mechanical result of this hierarchy places the emphasis on, first, matching grades based on silicon content, which is what the margin programming shows to have occurred. Consequently, we find that the “as delivered” sales of only certain ferrosilicon grades are relevant here because while home market sales data include sales of many ferrosilicon grades, the U.S. sales data are comprised of only two grades of ferrosilicon. And, of those “as delivered” sales of the same two grades of ferrosilicon, we note that the CONNUM changes do not affect the vast majority such that the dumping margin would be distortive or inaccurate.⁹⁴ Furthermore, Petitioners do not cite to one instance where the commercial grade (i.e., silicon grade of FS75 or FS65) of the product changed after the invoice date. There is no evidence on the record or noted at verification that any home market customers returned or rejected merchandise during the POI on the basis of incorrect silicon grade or non-compliant levels of the secondary elements featured in ferrosilicon.

We find that all these indicators are supported by the fact that, as verified by the Department, the record of this investigation shows no instances of ferrosilicon being rejected or returned for any reason, let alone because one of the elements differed between the invoice and the delivery. Moreover, the record shows that these are longstanding customers who purchase the vast bulk of RFAI’s production and there is no evidence on the record countering a conclusion that the storage sales delivery method RFAI provides is a long-standing practice.

Furthermore, Petitioners’ allegation that quantity changed after the invoice date is misplaced because it is based on physical quantity rather than base quantity. As we noted above, all home market sales were made with reference to the base quantity (i.e., the quantity of silicon in the physical ferrosilicon), rather than on the basis of the weight of the physical ferrosilicon.

⁹² See Final Analysis Memo, where the Department is able to discuss the proprietary nature of these quantitative analyses.

⁹³ See Petitions at 16.

⁹⁴ See Final Analysis Memo.

Moreover, we noted at verification that the base quantity of the “as invoiced” sales observations in the home market sales all reconciled without discrepancy to the sum of the base quantities of the associated “as delivered” sales observations.⁹⁵ Given these facts regarding the central importance of the base quantity, although Petitioners are correct that there are differences in the physical quantities between the “as invoiced” sales and the associated “as delivered” sales, we accord that change little weight in evaluating whether AFA is appropriate in this instance.

Petitioners’ quantitative analysis shows a percentage difference, based on physical quantity, between “as invoiced” and “as delivered” sales within the product characteristics that comprise the CONNUMs.⁹⁶ Again, as we noted above, we determine that 1) slight percentage changes in the chemistry of the silicon content (the most important physical characteristic) do not commercially change the ferrosilicon grade in home market sales and 2) the percentage of those changes are negligible.⁹⁷ Further, as noted above, we find that the CONNUM changes of the secondary elements between “as invoiced” and “as delivered” sales, do not have an affect on the commercial product sold.

Further, we disagree with Petitioners’ argument that volume of home market sales compared to U.S. sales has an effect on model-matching.⁹⁸ Petitioners’ argument is without merit because “under the Department’s model matching hierarchy, we select a similar model for matching purposes according to: the list of physical characteristics, the order of the characteristics, and the ranking of choices under each characteristic.”⁹⁹ Volume of sales is not one these criteria. As stated above, CHEMK and KF sold far more ferrosilicon grades (based on silicon content) in Russia than were sold in the United States during the POI. Thus, an analysis which does not account for that is of little value.

We also find Petitioners’ reliance on a document obtained at verification,¹⁰⁰ *i.e.*, customers’ physical quantity requirements, to be unavailing. We note that this document is for a post-POI sale, thus not relevant to our examination of POI home market sales. Petitioners’ reliance on a single post-POI document with no other contemporaneous supporting document on the record as evidence for the importance of physical weight does not suggest that importance of physical quantity supersedes the base quantity as identified on the sales contract and invoice; nor does it suggest that a different date of sale from the invoice date is appropriate in this case.

Last, contrary to Petitioners’ assertion, the Department made no determination at the on-site verification of the appropriateness of using “as invoiced” sales versus the “as-delivered” storage sales. The Department’s examination of home market sales encompassed all types of sales, including standard sales which have not been challenged

⁹⁵ See HM Verification Report at 21.

⁹⁶ See Petitioners’ Case Brief at Exhibits 1-4.

⁹⁷ See *id.*, at Exhibit 2, which we discuss in full in the Final Analysis Memo.

⁹⁸ See *id.*, at Exhibits 3 and 4.

⁹⁹ See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review, 76 FR 22867 (April 25, 2011) and accompanying Issues and Decision Memorandum at Comment 4.

¹⁰⁰ See HM Verification Exhibit 13, which the Department referenced as “current example of customer communication.”

by Petitioners.¹⁰¹ The Department’s verification of RFAI did not yield any findings of unreported sales, as the Department reconciled the sales to the books and records and financial statements.¹⁰²

Based on the above, we do not find that RFAI misled the Department with respect to: 1) the universe of sales, 2) the fact that there are changes in the secondary elements, or 3) the fact that physical quantity may change between the lead invoice and the sum of the partial deliveries shipped from that invoice. None of these alleged transgressions rises to the level of failing to cooperate to the best of one’s ability.

Home Market-Specific Issues

Comment 4: Whether to Use “As Invoiced” or “As Delivered” Home Market Sales Data

Petitioners’ Case Brief:

- If the Department does not choose to assign AFA to RFAI, the Department should use the “as delivered” universe of home market sales rather than the “as invoiced” sales because the product delivered has different physical characteristics than the product invoiced.
- Due to the improper timing of RFAI’s submissions and RFAI’s misleading statements, the Department calculated the Preliminary Determination margin using RFAI’s “as invoiced” sales data and disregarded the reported sizing revenue. Had the Department taken into account the “as delivered” sales data and sizing revenue, it would have calculated an above-de minimis margin of dumping and would have issued an affirmative determination.¹⁰³
- The Department is required to base its calculations on products actually sold for consumption in the U.S. and home markets and that it will base its product comparison on the product actually produced and shipped.¹⁰⁴ Failing to do so would result in the mismatching of home market and U.S. sales.¹⁰⁵
- In SSSS from France, the respondent reported the grades of subject merchandise invoiced to customers in fields INGRADU and INGRADH and the grades of subject merchandise actually produced and shipped to customers in fields GRADEU and GRADEH.¹⁰⁶

RFAI Rebuttal Brief:

- The Department should dismiss Petitioners’ arguments and continue to use the home market sales data as invoiced in the margin calculation.
- RFAI reported in its home market sales listing all invoices of ferrosilicon it issued during the POI, including the actual physical characteristics of the product invoiced to the customer, as documented by quality certificates issued to the customer contemporaneous with the invoice.

¹⁰¹ See HM Verification Report at 7-8.

¹⁰² See HM Verification Report at 2, where we stated that “we noted no significant issues as a result of verification at CHEMK.”

¹⁰³ See *id.*, at 31.

¹⁰⁴ See Petitioners’ Case Brief at 39.

¹⁰⁵ See *id.*, at 39.

¹⁰⁶ See Petitioners’ Case Brief at 7, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820, 30830 (June 8, 1999) (“SSSS from France”).

Title for the ferrosilicon was transferred to the customer contemporaneous with the invoice and quality certificates.

- The reported physical characteristics reflect the physical characteristics of the ferrosilicon CHEMK sold to its customer. The fact that the material delivered to the customer subsequent to the invoice may have had some relatively minor differences because of the Department's specific construction of the CONNUM characteristic criteria does not alter the fact that the ferrosilicon delivered to the customer was commercially the same as the ferrosilicon invoiced to the customer.
- Petitioners cite to SSSSC from France is inapposite because that case involves an entirely different product group in a different market with respect to differences in the grade and quality of stainless steel sold and delivered to the customer. Here, the grade of material invoiced to the customers is commercially the same as the grade of material delivered to the customer. In addition, in SSSSC from France, there is no mention of post-sale storage in the public record. Thus, it is likely that the delivery of the merchandise occurred contemporaneously with the invoicing of the merchandise and the difference between the physical characteristics of the material "as invoiced" and "as delivered" was known, which is not the case here.
- According to Petitioners, the Department "must match home market and U.S. sales based on the product characteristics of the product sold and delivered to the customer" in order to properly calculate the dumping margin. However, none of Petitioners' case cites involve a fact pattern similar to the facts of this investigation.
- Petitioners have not established that the Department's practice requires use of the "as delivered" home market sales data in this investigation. The fact that there may be commercially insignificant differences between the specific CONNUM as invoiced and the specific CONNUM as delivered to CHEMK's customers, the majority of which do not factor into the margin calculation, does not compel the Department to disregard CHEMK's "as invoiced" home market sales data.

Department's Position:

The Department disagrees with Petitioners' argument that we should use RFAI's "as delivered" home market sales for the final determination. Because we determined above that the invoice established the material terms of sale,¹⁰⁷ and we determined above that the "as invoiced" sales are commercially equivalent to the "as delivered," sales, we find it appropriate to continue use of the "as invoiced" home market sales in the final determination.

First, with respect to Petitioners' argument that there are changes to the CONNUM between the "as invoiced" sales observations and the subset "as delivered" sales observations, we noted that, based on the record and as discussed at length above, those changes are not commercially significant and did not cause any customers to reject or return any merchandise during the POI.

Second, contrary to Petitioners' declaration, the Department did not "conclude" at the on-site verification of CHEMK that it "is required to base its calculations on products actually sold for consumption in the U.S. and home markets," and that it "will base its product comparison on the

¹⁰⁷ See, e.g., Polyvinyl Alcohol From Taiwan: Final Determination of Sales at Less Than Fair Value, 76 FR 5562 (February 1, 2011) ("PVA from Taiwan"), and accompanying Issues and Decision Memorandum at Comment 3.

product actually produced and shipped.”¹⁰⁸ As stated above, we noted no significant issues as a result of verification at CHEMK.¹⁰⁹ Moreover, we concluded that the product sold and shipped are commercially equivalent despite minor changes in some physical characteristics that did not change the commercial grade of the product.

Thus, Petitioners’ reliance on SSSS from France is misapplied here. In SSSS from France, we noted that the respondent “would ship higher quality and higher cost product than what was ordered, while invoicing a customer for the lower quality and lower cost grade ordered.”¹¹⁰ Here, as noted above, we find that the invoiced ferrosilicon grade is commercially equivalent to the ferrosilicon grade eventually shipped to the customers. Specifically, the record does not contain instances where an invoice showed a grade of ferrosilicon, such as FS65, that differed from the ferrosilicon grade that eventually shipped (i.e., as noted on the delivery documents). That is, even if the chemical test shows a different exact percentage of an element, notably silicon content, these differences did not result in a different grade of ferrosilicon shipped.¹¹¹ Based on our review and analysis of the record, as a whole, and our verification, we find that 1) the product sold is commercially equivalent to the product shipped and 2) the material terms of sale were set on the invoice date, and therefore, the “as invoiced” sales observations are the appropriate subset of home market sales data to use in the final determination.

Finally, Petitioners argument that if we used “as delivered” sales instead of the “as invoiced” sales, the Department would have calculated a positive dumping margin in the Preliminary Determination is unavailing because it is based on conjecture. As we noted above, Petitioners have not provided any alternative quantitative calculations showing exactly how using the “as delivered” subset of sales, accounting for 18 percent of those home market sales, in the margin calculation program would have resulted in an affirmative determination. Based on the above analyses, we continue to determine that the product invoiced is the product sold, because the material terms of sale were set upon invoice date. Thus, for the final determination, we continue to find that the standard sales and the “as invoiced” storage sales are the appropriate universe of home market sales to match to U.S. sales.

Comment 5: Calculation of Imputed Credit Expenses for Partially Delivered Sales

Petitioners’ Case Brief:

- Where the date of payment precedes the date of shipment, the Department’s practice is to calculate negative imputed credit expenses.”¹¹²
- RFAI reported the wrong date of shipment for most of CHEMK’s home market “storage” sales.¹¹³ As a result, the Department cannot calculate accurate imputed credit expenses for CHEMK’s home market “storage” sales. In light of the documentation for such sales

¹⁰⁸ See Petitioners’ Case Brief at 39. We note that Petitioners’ statement that “the Department concluded that it ‘is required to base its calculations on products actually sold for consumption in the U.S. and home markets’ and that it ‘will base its product comparison on the product actually produced and shipped,’” references another case entirely, as the Department made no such conclusions at the verification of RFAI.

¹⁰⁹ See HM Verification Report at 2.

¹¹⁰ See SSSS from France, and accompanying Issues and Decision Memorandum at Comment 7.

¹¹¹ See, e.g., HM Verification Report at Exhibit 36 where the ferrosilicon grade sold is identical to the ferrosilicon grade shipped.

¹¹² See Petitioners’ Case Brief at 40.

¹¹³ See id.

obtained at verification,¹¹⁴ the Department should adjust its calculation of imputed expenses for “storage sales.”

RFAI Rebuttal Brief:

- It would be incorrect to adjust the credit expense calculation based on Petitioners’ argument¹¹⁵ because RFAI did not report the incorrect shipment date for any of CHEMK’s storage sales. Any adjustment per Petitioners’ line of reasoning would be contrary to CHEMK normal course of business.
- If the Department were to agree with Petitioners regarding an adjustment to the imputed credit expense, it would need to make a concurrent and reciprocal adjustment to the inventory carrying costs in order to account for a different storage period covering post-sale storage of the material.
- For storage sales, RFAI reported the date on which title transferred to the customer as the shipment date because it is the date on which CHEMK 1) provided the material to the customer for its use and disposal, and 2) removes the material placed into storage from its finished goods inventory accounts, which the Department verified.
- The existence of the storage sales does not change the fact that the title to the material transfers to the customer, that the material is removed from CHEMK’s inventory accounts, and that the material is effectively handed over to the customer on the reported date of shipment. The subsequent date of delivery of the material from storage to the customer is not relevant to the establishment of shipment date.
- The Department verified that CHEMK entered into agreements with certain customers for the storage sales, whereby the customers agreed to pay commercial credit charges to CHEMK starting from the time of invoicing until the time final payment was received.
- In the normal course of operations, CHEMK and the customers with storage sales consider the payment period to span from the date of invoicing until the time of payment.

Department’s Position:

The Department disagrees with Petitioners’ request to calculate imputed expenses using an alternative method for the home market “storage” sales.¹¹⁶ As noted above, we have determined to continue to use the “as invoiced” home market sales for the final determination. Further, given that the record shows payment terms are not contingent upon final delivery of final partial shipment, it is inappropriate for the Department to recalculate RFAI’s imputed credit expenses for the “storage sales” as suggested by Petitioners.¹¹⁷

¹¹⁴ See id. Because Petitioners bracketed a large portion of this argument, the Department cannot address the full extent of the argument regarding imputed expense calculations in this public memorandum. See Final Analysis Memo for a full discussion of the issue, which is hereby adopted by and incorporated by reference into this memorandum.

¹¹⁵ The specific details of this argument are business proprietary information.

¹¹⁶ Portions of this analysis rely on proprietary information. For proprietary details, see Final Analysis Memo.

¹¹⁷ See HM Verification Report at 17, footnote 7, where we noted that “an addendum to the framework agreement with the customer allows CHEMK to charge financing fees to the customer beginning on the date of invoice to any outstanding balance of payments left,” denoting that payment terms are set from invoice date not delivery date.

Comment 6: Treatment of Revenues and Expenses for Certain Sales Activities/Expenses

Petitioners' Case Brief:¹¹⁸

- RFAI's statement that CHEMK performs sizing on a post-sale basis is false.¹¹⁹ Therefore, the Department must incorporate Petitioners' proffered treatment of sizing in the margin calculations for the final determination.¹²⁰
- Warehousing reported by RFAI should be treated similarly to "sizing" discussed above because warehousing was not a post-sale service as reported by RFAI, but part of the sales arrangements with certain customers.¹²¹ In this case, warehousing — like sizing — is not a post-sale service; for the most part no real warehousing occurs at all.¹²²
- Because RFAI reported warehousing revenue for sales to certain customers, the material terms of such sales are not set until delivery (or receipt of the customer's delivery instructions). Thus, the sale does not occur until after any "storage."¹²³

RFAI Rebuttal Brief:

- RFAI reported in its first supplemental Section A response that the "expense associated with this {warehousing} activity is captured either in the cost of manufacturing if the product was stored at a finished goods warehouse at the plant or in warehousing expenses if the product was stored at a warehouse outside of the plant."¹²⁴
- RFAI reported the same facts in its fourth Section B and C supplemental response. Therefore, none of this information was new to the Department or to Petitioners at the time of verification.
- Petitioners' other claim that storage was not a post-sale service and that no real warehousing occurred is false. As mentioned, RFAI reported that CHEMK provided post-sale warehousing services in its various questionnaire responses.¹²⁵
- The Department should continue to treat sizing revenue for the final determination as it did in the Preliminary Determination.

Department's Position:

The parties' comments concern the treatment of expenses and revenues related to two sales activities/expenses – sizing and warehousing. We address each activity in turn.

Sizing

Sizing and sizing revenue refer to circumstances where a customer requests a different ferrosilicon lump size after having initially contracted for an initial – or no – size. CHEMK charges its customer for such sizing requests in a separately generated addendum to the sale, and

¹¹⁸ Portions of this analysis rely on proprietary information. For proprietary details, see Final Analysis Memo.

¹¹⁹ See Petitioners' Case Brief at 45.

¹²⁰ See id., at 45-46. Portions of this analysis rely on proprietary information. For proprietary details, see Final Analysis Memo.

¹²¹ See id., at 46.

¹²² See id.

¹²³ See id.

¹²⁴ See RFAI Rebuttal Brief at 18, citing to its response dated December 5, 2013.

¹²⁵ See id.

RFAI reported these as post-sale charges. In the Preliminary Determination, the Department excluded sizing revenue from the margin calculation.

Upon further review of the record, however, the Department re-evaluated its treatment of sizing revenue in the calculation. In the ordinary course of production, RFAI subjects ferrosilicon lumps to crushing and sieving, which results in lots of lumps that are segregated by size.¹²⁶ As such, sizing occurs during production of ferrosilicon and, thus, is absorbed in the cost of production.¹²⁷

When RFAI receives a sizing request from a customer, RFAI does not subject a particular lot of ferrosilicon to further crushing and grinding; rather, it simply selects from a pre-existing lot of ferrosilicon merchandise that it has already segregated by size, so as to match the size the customer requested.¹²⁸ As such, sizing does not represent an additional production step or service as it is simply selecting the size of merchandise the customer ordered.

Given these facts, and consistent with our finding in Multilayered Wood Flooring from the PRC, we disagree with RFAI that we should continue to exclude the revenue received for sizing from the margin calculation. We find that sizing revenue is a miscellaneous revenue item covering “a range of items, such as handling and restocking charges...offsetting the costs associated with manufacturing the merchandise.”¹²⁹ As in Multilayered Wood Flooring from the PRC, here, we find that sizing is charged to the customer and paid by the customer associated with the sale of ferrosilicon and, thus, offsets the costs associated with manufacturing the merchandise, as reported by RFAI. Thus, consistent with our practice, we will treat the revenue generated from this non-movement related activity as a price adjustment to gross unit home market price for the final determination pursuant to 19 CFR 351.102(b) (see Final Analysis Memo and the final margin program).¹³⁰

Warehousing

RFAI reported that: 1) “ferrosilicon is stored by CHEMK either at finished goods warehouses adjacent to the main production shops or at a warehouse outside of the factory premises”¹³¹ and 2) that, in some instances, “customers purchase and take title to ferrosilicon in bulk but only need delivery of smaller quantities over time.”¹³² RFAI also reported that its “warehousing expense refers to warehousing at the external warehouse only. Warehousing revenue refers to the revenue for warehousing overall. Warehousing expense is not quantified for warehousing that occurs at the manufacturing facility.”¹³³ RFAI also reported that warehouse “revenue is charged

¹²⁶ The record also makes clear that RFAI made POI sales of un-sized ferrosilicon. See, e.g., HM Verification Report at 9.

¹²⁷ See id., at 5.

¹²⁸ See id.

¹²⁹ See Multilayered Wood Flooring From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) (“Multilayered Wood Flooring from the PRC”), and accompanying Issues and Decision Memorandum at Comment 16.

¹³⁰ See Final Analysis Memo.

¹³¹ See RFAI Questionnaire Response dated November 20, 2013, at 39.

¹³² See id., at 29-30.

¹³³ See RFAI Questionnaire Response dated March 14, 2014, at 5.

to customers in connection with the post-sale storage of ferrosilicon at either CHEMK's plant or off-site warehouse after invoicing and after title has transferred from CHEMK to the customer."¹³⁴

With respect to warehousing, we disagree with Petitioners' argument that on-site, post-sale warehousing is ineligible for deduction from normal value as a movement expense. Section 773(a)(6)(B)(ii) of the Act directs the Department to deduct from normal value "the amount, if any, . . . attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser." Pursuant to 19 CFR 351.401(e)(1)-(2), movement expenses include any transportation and other associated expenses, including warehousing that are incurred by the seller after the merchandise leaves the original place of shipment, normally considered to be the production facility. As in a "bill-and-hold" type of sale, like in Magnesium Metal from Russia, CHEMK treats ferrosilicon sold under storage contracts as if it left the warehouse for shipment on the date it issues the invoice."¹³⁵ Thus, we find that on-site warehousing does qualify, in this case, as a movement-related expense, because the Preamble states that the Department will deduct all movement expenses (including all warehousing) that the producer incurred after the goods left the production facility.

We find that the off-site and on-site warehousing of product under the storage sales, per the signed contracts, are directly and equally related to the custody and movement of that sold merchandise. Thus, because we find that the on-site warehousing is relevant as a movement deduction, we added the revenue generated from the activity to normal value and capped the revenue at the level of total expenses consistent with our practice.¹³⁶ It is the Department's practice to cap revenue in such circumstances because "we find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profits earned on the provision or sale of services (such as freight or warehousing); such profits should be attributable to the sale of the service, but not to the subject merchandise."¹³⁷ Thus, the Department finds the expenses related to warehousing to be a deductible moving expense pursuant to section 773(a)(6)(B)(ii) of the Act and 19 CFR 351.401(e).¹³⁸ Further, consistent with our practice, we offset movement-related revenues by the related expense.¹³⁹

¹³⁴ See RFAI Questionnaire Response dated February 6, 2014, at 20-21.

¹³⁵ See Magnesium Metal from Russia, and accompanying Issues and Decision Memorandum at Comment 1.

¹³⁶ See Orange Juice from Brazil 2012, and accompanying Issues and Decision Memorandum at Comment 6 and Pipe and Tube from Thailand, and accompanying Issues and Decision Memorandum at Comment 5

¹³⁷ See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (August 11, 2009) and accompanying Issues and Decision Memorandum at Comment 3.

¹³⁸ See also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012) ("Orange Juice from Brazil 2012"), and accompanying Issues and Decision Memorandum at Comment 6 where the Department treated warehousing expenses as part of movement deductions.

¹³⁹ See, e.g., Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65272 (October 31, 2013) ("Pipe and Tube from Thailand"), and accompanying Issues and Decision Memorandum at Comment 5.

Comment 7: Calculation of Short-Term Credit for Home Market Imputed Costs

Petitioners' Case Brief:

- The Department should reject the short-term interest rate proffered by RFAI because it constitutes untimely new information submitted at the on-site verification under the guise of “minor corrections.”
- The Department should continue to use the short-term interest rate employed in the Preliminary Determination.
- RFAI also failed to provide any information regarding any financial services that KF may have had during the POI.

RFAI Rebuttal Brief:

- As the contracts on the record show, RFAI provided a sale of financial service and, like in the case of the provision of freight services, it would be inappropriate to increase gross unit price for profits earned on the provision of the financing service as this is a contracted service and accepted by the customer prior to the sales transaction.¹⁴⁰

RFAI Case Brief:

- The Department should use CHEMK’s short-term interest rate related to factoring for home market credit expenses and inventory carrying costs.
- While it did not report ruble-denominated short term borrowings in its questionnaire responses, at verification, CHEMK noted in its minor corrections submission that it had failed to consider that the interest rate charged by the bank for factoring should have been considered as its short-term borrowing rate.¹⁴¹
- The Department should use this factoring interest rate for the final determination as the short-term interest rate used for home market imputed cost calculations, because it is financing that is short-term in nature and because it is the Department’s practice to include interest on factoring transactions in the calculation of the short-term interest rate.¹⁴²
- If the Department chooses not to employ CHEMK’s short-term interest rate from factoring, then it should recalculate the interest rate employed in the Preliminary Determination.
- The two rates that the Department employed in the Preliminary Determination, using a simple average, overstate the influence of the first rate on the average and understate the influence of the second rate on the average.¹⁴³ Thus, the Department should weight the two interest rates overlapping the POI together considering the number of days in which each rate was in effect.¹⁴⁴ RFAI provided a calculation to this effect.

¹⁴⁰ See RFAI Rebuttal Brief at 10.

¹⁴¹ See RFAI Case Brief at 7. The Department notes that the full discussion of “factoring” is available within the verification report and the final analysis memorandum, as the full definition of this arrangement is business proprietary information.

¹⁴² See *id.*, at 7, citing to Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 79665 (December 31, 2013) (“Turkey Pipe and Tube”) and accompanying Issues and Decision Memorandum at Comment 3 and Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India, 67 FR 34899 (May 16, 2002) (“PET Film from India”), and accompanying Issues and Decision Memorandum at Comment 8.

¹⁴³ See RFAI Case Brief at 8-9.

¹⁴⁴ See *id.*

- Credit revenue should be capped by the expenses because CHEMK and KF have contractual arrangements with certain customers under which they provide the service of extending credit to the customers, and that under the agreement, the customers can purchase time to pay their invoices at the cost of the interest rate stated in the contract.¹⁴⁵ In other cases,¹⁴⁶ the Department had not capped credit revenue by the credit expenses because the Department determined that, in those cases, the interest revenue was treated as a post-sale adjustment, which is not the case here.

Petitioners' Rebuttal Brief:

- The Department should not cap CHEMK's and KF's commercial credit revenue by the amount of the home market imputed credit expenses.
- The Department consistently refused to cap interest revenue on accounts receivable at the amount of imputed credit expenses, and has instead treated such interest revenue as a price adjustment.¹⁴⁷
- The Department should continue to use the published Russian interest rates it used in the Preliminary Determination to calculate home market imputed credit expenses and inventory carrying costs.
- The purpose of verification is to verify the accuracy of information previously submitted to the record by the respondent, not to collect new information that had been previously requested but not reported. Thus, it was improper for RFAI to provide such new factoring information for the first time at verification.¹⁴⁸
- RFAI provided only very limited, self-selected information regarding CHEMK's factoring arrangements in its minor corrections, and none at all for RFAI's other Russian supplier, KF.
- The short-term interest rate proffered by RFAI is based on a fraction of the total physical quantity of home market sales, and with the limited information provided in the minor corrections, there is no basis to conclude that the untimely new information submitted at verification regarding CHEMK's factoring arrangements is representative of home market factoring arrangements during the POI, as RFAI claims. Thus, the information does not provide a reasonable basis for calculating an appropriate interest rate for short-term borrowing in Russian currency in this investigation.
- The interest rate on CHEMK's factoring arrangements is not an appropriate rate for use in calculating credit expenses and inventory carrying costs because the Department's

¹⁴⁵ See RFAI Case Brief at 9-10, citing to its supplemental questionnaire dated February 6, 2014.

¹⁴⁶ See *id.*, at 10, citing to Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination, 76 FR 50176 (August 12, 2011) ("Orange Juice 2011"), and accompanying Issues and Decision Memorandum at Comment 2 and Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR (January 18, 2006) ("Cement from Mexico"), and accompanying Issues and Decision Memorandum at Comment 9.

¹⁴⁷ See Petitioners' Rebuttal Brief at 3.

¹⁴⁸ See *id.*, at 6, citing to Silica Bricks and Shapes from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value, 78 FR 70918 (November 27, 2013) and accompanying Issues and Decision Memorandum at Comment 7; Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 16, 2013) and accompanying Issues and Decision Memorandum at Comment 16; Glycine from the People's Republic of China: Final Partial Determination of Circumvention of Antidumping Duty Order, 77 FR 73426 (December 10, 2012) and accompanying Issues and Decision Memorandum at Issue 6.

questionnaire explicitly states that they should be computed at the “actual cost of short-term debt,” and instructs respondents to identify “any other factors that affect net credit costs . . . to the extent that they were a precondition for acquiring the loan.”¹⁴⁹

- The Department’s verification report states that CHEMK’s factoring arrangements were not loans taken out by CHEMK against accounts receivable, but instead were sales of accounts receivable to a bank. Once CHEMK sold the receivables, the bank became the creditor to the customer and CHEMK closed out the accounts receivable in its accounting system. Thus, CHEMK’s factoring arrangements constitute asset sales rather than loans, and the interest rate charged by the bank on its purchase of the receivables reflects the bank’s assessment of the risk of non-payment of the outstanding receivables, rather than the rate at which the bank would loan money to CHEMK.¹⁵⁰

Department’s Position:

RFAI reported that CHEMK and KF do not have short-term borrowings in rubles, and therefore, obtained data from several Russian commercial banks on their short-term lending rates during the POI.¹⁵¹ RFAI did, in fact, report its factoring arrangements in the same questionnaire response, well in advance of verification.¹⁵² At verification, company officials stated that customer payment arrangements with banks were not considered when it reported that it had no short-term borrowing during the POI,¹⁵³ identified as factoring arrangements.¹⁵⁴ In addition, in the Preliminary Determination, the Department treated reported credit revenue and late payment fees as price adjustments to be added to gross unit price.¹⁵⁵ We will address each issue individually.

Treatment of Credit Revenue

Neither the statute nor the Department’s regulations speak to the treatment of fees associated with imputed credit expenses and revenue generated from imputed credit, such as those received by CHEMK in the home market sales at issue. In such circumstances, the Department must determine the most appropriate methodology to use.¹⁵⁶ Accordingly, the courts have long deferred to the Department’s technical expertise in identifying, selecting, and applying methodologies to implement the statute.¹⁵⁷

First, the Department agrees with Petitioners regarding the treatment of credit expenses and credit revenue. Consistent with our practice stated in Pipe from Korea, we continue to treat CHEMK’s interest revenue as a price adjustment to the gross unit home market price pursuant to

¹⁴⁹ See id., at 7-8, citing to the Department’s initial questionnaire dated September 5, 2013.

¹⁵⁰ See id., at 8, citing to HM Verification Report at 16, 19.

¹⁵¹ See RFAI Section B Questionnaire Response dated November 20, 2013, at 33.

¹⁵² See id., at 37.

¹⁵³ See HM Verification Report at 4.

¹⁵⁴ See HM Verification Report and RFAI Case Brief at 7.

¹⁵⁵ See Prelim Analysis Memo.

¹⁵⁶ See U.S. Steel Group v. United States, 225 F.3d 1284, 1290 (Fed. Cir. 2000) (quoting Koyo Seiko Co. v. United States, 36 F.3d 1565, 1573 (Fed. Cir. 1994)).

¹⁵⁷ See Smith-Corona Group v. United States, 713 F.2d 1568, 1582 (Fed. Cir. 1983).

19 CFR 351.401(c) and did not cap it with CHEMK's imputed credit expenses.¹⁵⁸ The Department does not cap such fees because "the amount of the discount or the additional charge effectively amounts to a post-sale price adjustment and may or may not be equivalent to any reduction or increase in the company's actual or imputed interest expenses."¹⁵⁹ Thus, we decline RFAI's request to cap credit revenue by credit expenses for the final determination.

Short-Term Interest Rate for Imputed Expense Calculations

We disagree with Petitioners' characterization of the factoring arrangement reported on the record. While Petitioners alleged that CHEMK provided new information under the guise of minor corrections presented at verification, this characterization is not an accurate accounting of the record evidence. RFAI acknowledged that it originally reported in its Section B questionnaire response that it had no short term borrowing during the POI.¹⁶⁰ However, contrary to Petitioners' assertions, RFAI also reported the existence of the factoring arrangements in that very same questionnaire response.¹⁶¹

At the on-site verification, the minor correction regarding the short-term interest rate was not a result of proffering new quantitative data. The minor corrections exhibit provides the contract with the bank showing applicable rates for specific time periods,¹⁶² which the Department noted within each sales trace conducted. Specifically, in reviewing the payment details of each sales trace where factoring occurred, the factoring arrangement with the customer was an intrinsic detail of the actual payment for ferrosilicon purchases.¹⁶³ Furthermore, as we stated in the verification outline issued to RFAI, "{n}ew information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record."¹⁶⁴ Here, we find that because RFAI had reported the existence of its factoring arrangements in its original Section B questionnaire response, our acceptance of information at verification regarding the factoring arrangements falls under the category where this information corroborates, supports, or clarifies information already on the record.

Moreover, we disagree with Petitioners' allegation that RFAI provided only very limited, self-selected information regarding CHEMK's factoring arrangements in its minor corrections, and

¹⁵⁸ See, e.g., Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35248 (June 12, 2013) ("Pipe from Korea"), and accompanying Issues and Decision Memorandum at Comment 15; Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination, 76 FR 50176 (August 12, 2011) and accompanying Issues and Decision Memorandum at Comment 2; see also Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 6.

¹⁵⁹ See Orange Juice from Brazil 2011, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶⁰ See RFAI Section B Questionnaire Response dated November 20, 2013, at 33.

¹⁶¹ See id., at 37. Since the information contained therein was bracketed as business proprietary information, we can only note here, that RFAI did report the existence of factoring arrangements.

¹⁶² See HM Verification Report at Exhibit 11 Attachment 13.

¹⁶³ See id., at 16-17.

¹⁶⁴ See the Department's Verification Outline for CHEMK dated March 20, 2014, at 2 ("HM Outline").

none at all for RFAI's other Russian supplier, KF. The information that RFAI provided at verification was not self-selected. The Department selected the sales observations that we verified. Furthermore, while Petitioners are correct that the Department only verified one of the producers, CHEMK, and not the other, KF, such point does not weigh heavily in our analysis.¹⁶⁵ First, the Department found in the Preliminary Determination that KF and CHEMK (and RFAI) comprise a single entity.¹⁶⁶ Thus, we find it appropriate to apply calculation changes resulting from verification to the other home market producer, KF, which we collapsed with CHEMK.¹⁶⁷ Second, the CIT, in upholding the Department's findings, has ruled that "Commerce was not required to use or verify all information it received from {the respondents}. It is enough for Commerce to receive and verify sufficient information to reasonably and properly make its determination."¹⁶⁸ The CIT stated that "verification is an audit process that selectively tests the accuracy and completeness of a respondent's submission."¹⁶⁹ Also of significance here is that the CIT viewed all sections of the response to be one submission; different sections of the response do not require separate verifications.¹⁷⁰ The court also explained that "verification is a spot check and is not intended to be an exhaustive examination of the respondent's business. {Commerce} has considerable latitude in picking and choosing which items it will examine in detail."¹⁷¹ Similarly, in another case, the court found that "Congress has afforded Commerce a degree of latitude in implementing its verification procedures Moreover, '{t}he decision to select a particular {verification} methodology rests solely within Commerce's sound discretion.'"¹⁷² Therefore, as explained in our verification reports, we find that the responses were sufficiently verified.

Third, we disagree with Petitioners that, because the factoring arrangement is a sale of receivables to a bank, the interest rate is not appropriate to employ here. On the contrary, the Department has consistently accepted factoring arrangements as appropriate sources of short-term interest rates. Specifically, in Turkey Pipe and Tube, we clearly stated that:

{a}n accurate measure of a company's opportunity cost should include all of its sources of short-term funds, including factoring. Since factoring is a recognized method of financing receivables, the discount from face value can be used to establish credit expense. The Department has previously recognized that factoring is a method of financing a receivable.¹⁷³

¹⁶⁵ See Petitioners' Rebuttal Brief at 7, where Petitioner note that the absence of verified information from KF, the second Russian producer, which the Department chose not to verify.

¹⁶⁶ See Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Compliance Analyst, "Antidumping Duty Investigation of Ferrosilicon from the Russian Federation ("Russia"): Preliminary Determination of Affiliation/Single Entity Treatment of RFA International LP, et. al.," dated March 4, 2014.

¹⁶⁷ See, e.g., Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 11, where the Department applied data from one company to another company in a collapsed entity.

¹⁶⁸ See Hercules, Inc. v. United States, 673 F. Supp. 454, 470 (CIT 1987).

¹⁶⁹ See Floral Trade Council v. United States, 822 F. Supp. 766, 771 (CIT 1993).

¹⁷⁰ See id., at 772 (finding that Commerce need not "...verify each item in {respondent's} questionnaire...").

¹⁷¹ See F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000); see also NTN Bearing Corp. of Am. v. United States, 186 F. Supp. 2d 1257, 1296 (CIT 2002).

¹⁷² See PPG Indus. Inc. v. United States, 781 F. Supp. 781, 787 (CIT 1991).

¹⁷³ See Turkey Pipe and Tube, and accompanying Issues and Decision Memorandum at Comment 3.

In another case, we also stated that “because we consider the factoring of receivables to constitute short-term borrowings, we have used the interest rate charged by the factoring agent to calculate the imputed credit expense.”¹⁷⁴ Thus, because the information regarding the existence of factoring arrangements was already on the record prior to verification and our practice dictates that factoring of receivables constitutes short-term borrowing, we find it appropriate to revise the imputed credit expense calculation for the final determination using the average of the factoring-related interest rates that we verified.¹⁷⁵

Comment 8: Calculation of Domestic Inventory Carrying Costs

Petitioners’ Case Brief:

- The Department should recalculate domestic inventory carrying costs based on its verification findings because at verification the Department found that RFAI miscalculated the last three parts of the domestic inventory carrying period.¹⁷⁶

RFAI Rebuttal Brief:

- RFAI agrees with the Department’s findings at verification with respect to domestic inventory carrying days, and RFAI does not object to a recalculation of the domestic inventory carrying costs based on the domestic inventory carrying days determined by the Department at verification.
- Domestic inventory carrying costs are not a deduction to U.S. net price. Domestic inventory carrying costs were not deducted by the Department in deriving U.S. net price for the Preliminary Determination, and likewise should not be deducted in deriving U.S. net price for the final determination.

Department’s Position:

The Department agrees with Petitioners and has made the appropriate re-calculations for the final determination based on verification findings. Specifically, based on our findings noted in the HM Verification Report, we re-calculated the number of days applied to the transit time from plant to intermediate warehouse, the number of days spent in intermediate warehouse, and the number of days applied to transit from intermediate warehouse to the United States port. Because the actual calculations are business proprietary information, we provided the specific re-calculations in the Final Analysis Memo, as reflected in the final margin program.¹⁷⁷

Comment 9: Calculation of Domestic Warehousing Expenses

RFAI Case Brief:

- The Department should accept its reported domestic warehousing expenses despite the Department’s finding in the verification report that the denominator used to calculate the warehousing expenses included all exported ferroalloys, not just ferrosilicon.¹⁷⁸

¹⁷⁴ See Pet Film from India, and accompanying Issues and Decision Memorandum at Comment 8.

¹⁷⁵ See HM Verification Report at Exhibit 26; see also Final Analysis Memo.

¹⁷⁶ See Petitioners’ Case Brief at 51-52.

¹⁷⁷ See Final Analysis Memo.

¹⁷⁸ See RFAI Case Brief at 3, citing to Verification Report at 33.

- The denominator used was appropriate because the numerator was on the same basis—meaning, the numerator included cost for storing total quantity of all material. The calculation had to include all costs in the domestic warehousing calculation because RFAI does not keep records of warehousing costs by commodity in the accounting software.¹⁷⁹ Because the reported costs include storage of all ferroalloys, it is appropriate that the denominator also includes the quantity of ferroalloys stored during the POI.
- The Department verified that the reported, warehouse-specific, costs reconciled directly to the company’s accounting software and trial balance and that those costs were inclusive of the warehousing of all ferroalloys stored at the warehouse. This is evidenced by documents in the verification exhibit taken by the Department. Verification Exhibit 13 shows the detail of each general ledger account included in the reported warehousing expense.¹⁸⁰

Petitioners did not provide rebuttal comments regarding this issue.

Department’s Position:

The Department agrees with RFAI regarding the appropriate denominator to use in calculating the domestic warehousing expenses. At verification, the Department noted that the denominator for the warehousing expense was comprised of all ferroalloy products to all export destinations, rather than only ferrosilicon sold to the United States.¹⁸¹ While we did not draw any conclusions as to our intention with regard to this statement, we acknowledge that we verified that the reported warehousing expense is filtered by specific intermediary warehouse, but not by commodity or export destination.¹⁸² We find that calculation for domestic warehousing was reported correctly and verified by the Department. Thus, for the final determination, we have not made any changes to the calculation of domestic warehousing expenses reported under “DWAREHU.”

Comment 10: Correct the Unit of Measure Conversion Applied to Home Market Inventory Carrying Costs

RFAI Case Brief:

- The Department should correct its unnecessary conversion of the home market inventory carrying costs from a per-metric ton basis to a per-pound basis. Specifically, in the Preliminary Determination, the Department unnecessarily converted home market inventory carrying costs from a per metric ton basis to a per pound basis, resulting in an understatement of home market inventory carrying costs and an overstatement of normal value.¹⁸³
- Because RFAI reported cost of production data for CHEMK and KF on a per metric ton basis, and the Department converted that data to be on a per pound basis in the home market margin program at the revised TOTCOM (“RTOTCOM”) calculation string, a secondary

¹⁷⁹ See id., citing to RFAI supplemental questionnaire dated January 3, 2014, at 35.

¹⁸⁰ See id., at 3.

¹⁸¹ See HM Verification Report at 33.

¹⁸² See id., at 42.

¹⁸³ See RFAI Case Brief at 11.

conversion to a per-pound basis of the domestic inventory carrying costs was unnecessary.¹⁸⁴ RFAI provided a correction to the alleged conversion error.

Petitioners did not provide rebuttal comments regarding this issue.

Department's Position:

We agree with RFAI that we unnecessarily converted domestic inventory carrying costs from metric tons to pounds. We agree that, as indicated by RFAI, the Department first converted the variable from metric tons to pounds in the TOTCOM calculation string, and then unnecessarily performed another conversion to pounds in the domestic inventory carrying cost calculation string. We corrected this for the final determination.¹⁸⁵

U.S. Sales Program Calculations

Comment 11: Calculation of Per Unit Cost of Goods Sold (“COGS”) for U.S. Inventory Carrying Costs

RFAI Case Brief:

- The Department should revise its calculation of U.S. inventory carrying costs for the final determination because, in the Preliminary Determination, the Department divided the product-specific COGS per the POI income statement by the quantity of FS75 and FS45 reported in RFAI's U.S. sales database. However, the denominator must include the total quantity of those products sold during the POI because the COGS represents the cost of all products sold regardless of market.¹⁸⁶
- The correct denominators for FS75 and FS45 are noted in the verification report and should be utilized to calculate the COGS for U.S. inventory carrying costs.

Petitioners did not provide rebuttal comments regarding this issue.

Department's Position:

The Department agrees with RFAI regarding the appropriate denominator to use for the COGS applied to the U.S. inventory carrying cost calculation. The Department inadvertently used the incorrect denominator for the COGS calculation in the Preliminary Determination, as the COGS is based on total sales to all destinations, while the denominator we used in the per-unit COGS calculation was limited to U.S. sales quantity during the POI.¹⁸⁷ We recalculated the per-unit COGS using the correct denominator the final margin program.¹⁸⁸

¹⁸⁴ See id., at 12.

¹⁸⁵ See Final Analysis Memo.

¹⁸⁶ See RFAI Case Brief at 4.

¹⁸⁷ See Prelim Analysis Memo at 4.

¹⁸⁸ See Final Analysis Memo.

Comment 12: Calculation of U.S. Sampling Expenses

Petitioners' Case Brief:

- Because the expenses were incurred on activities related to the shipment or importation of ferrosilicon to the United States, allocating them over the quantity shipped from U.S. warehouses, rather than the quantity imported during the POI, fails to allocate these expenses on the most specific basis possible.¹⁸⁹
- Because the volume of ferrosilicon imported from Russia during the POI is distortive compared with the volume of Russian ferrosilicon sold from warehouse during the POI, the reported per unit sampling expense is also distortive and should be re-calculated for the final determination.

RFAI Rebuttal Brief:

- To the extent possible, RFAI excluded expenses specific to ferrochrome from the reported sampling expense. Where RFAI could not directly attribute expenses to a specific product, it allocated a portion of them to ferrosilicon based on the proportion of ferrosilicon sales to total sales. The resulting numerator was divided by the applicable quantity of ferrosilicon sales during the POI. This allocation methodology is reasonable and does not cause any inaccuracies or distortions.

RFAI Case Brief:

- The Department should correct its calculation of sampling expenses for a sale of a particular product (FS45), per the constructed export price (“CEP”) verification report, because the Department’s conclusion that the sampling invoice applied solely to the examined sales invoice is incorrect.¹⁹⁰
- The FS45 sale was part of a much larger lot that RFAI had sampled and shipped to the United States¹⁹¹ prior to the POI and, thus, it is impossible that the sampling occurred only on the FS45 quantity that was ultimately sold on the preselected transaction.¹⁹²
- The Department’s calculation of the per-unit sampling amount in the verification report using only the quantity of the preselected FS45 transaction as the denominator results in an absurdly high per-unit expense.¹⁹³ Instead, the Department should allocate the total amount of the sampling expense on the invoice to the total quantity of FS45 material that was shipped from¹⁹⁴ its origin to the United States warehousing location, as shown in the proffered revised calculation.

Petitioners did not provide rebuttal comments to RFAI’s Case Brief arguments.

¹⁸⁹ See Petitioners’ Case Brief at 58.

¹⁹⁰ See RFAI Case Brief dated June 10, 2014, at 5.

¹⁹¹ See *id.*

¹⁹² See *id.*

¹⁹³ See *id.*

¹⁹⁴ See *id.*

Department's Position:

This issue concerns certain U.S. movement expenses, known as “sampling expenses,” reported by RFAI. The Department addresses the comments on RFAI’s other reported U.S. movement expenses in Comment 15.

As an initial matter, the Department disagrees with Petitioners’ request to allocate sampling expenses incurred over the quantity of merchandise shipped from intermediary warehouses to the United States. Petitioners fail to provide cites to any case precedent or practice where their proffered methodology is consistent with the Act, the Department’s regulations, or Department practice. Petitioners also fail to explain how their proposed recalculation, using a less-specific denominator, results in a more specific per-unit allocation than the one the Department used in the Preliminary Determination.

RFAI reported, and we verified, that it incurs expenses involved in chemically testing its products withdrawn from the intermediary, third-country warehouse as well as in the United States.¹⁹⁵ We further verified that in the United States, RFAI incurs such expenses for all its merchandise, not just ferrosilicon, so the charges are inclusive of all merchandise. Finally, there is no direct link for these CEP sales’ from shipment from Russia through to the U.S. customer. As a result, RFAI based the calculated expense on an allocation methodology.

With respect to the calculation of these expenses, section 772(c)(2)(A) of the Act and 19 CFR 351.401(e) permit the Department to reduce CEP by “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States”

The Department’s regulations permit it to consider allocated expenses and price adjustments when, as here, transaction-specific reporting is not possible. Specifically, in order to report expenses on an allocated basis, a respondent must demonstrate that the allocation: 1) is calculated on as specific a basis as possible; and 2) does not cause inaccuracies and distortions.¹⁹⁶

It does not appear on the record that the sampling expenses incurred during the POI coincide or overlap directly with the quantity transported from intermediary warehouse to the United States by the RFA Inc. lot number.¹⁹⁷ In other words, the exact POI-specific sampling of ferrosilicon is not directly linked to the quantity of ferrosilicon shipped to the United States during the POI. Thus, any per-unit calculations based on comparing two expenses that did not coincide or overlap is not a more specific measure of calculating the per-unit sampling expense. As a consequence, we find that the per-unit sampling expenses are calculated on a basis as specific as

¹⁹⁵ See HM Verification Report at 36.

¹⁹⁶ See 19 CFR 351.401(g).

¹⁹⁷ See HM Verification Report, RFAI Verification Exhibit 15 at page 1 where the RFA Inc. lot numbers created for the quantities shipped during the POI do not overlap with the lot numbers attributed to the sampling expenses incurred during the POI noted in CEP Verification Report at Exhibit 30 at page 11.

RFAI was able to provide. Further, we verified both the numerator¹⁹⁸ and denominator applied for sampling expenses with no significant discrepancies or findings.¹⁹⁹ Finally, we made no changes to the reported per-unit sampling calculation for the FS45 sales, as we determine to treat them as we treated the FS75 sales.

Comment 13: Calculation of Short Term Credit for U.S. Sales

RFAI Case Brief:

- The Department should use the weighted-average short term Federal Reserve interest rate calculated by RFAI for the calculation of U.S. credit expenses and inventory carrying costs because, while the Department employed the Federal Reserve rates, it simple-averaged those rates with the reasoning that the Federal Reserve rates are already weight-averaged.
- While the Federal Reserve rates are already weight-averaged, this has no bearing on how those distinct quarterly weights should then be averaged together. The Department's approach of utilizing a simple average to derive the POI average interest rate assumes four equal quarters and ignores the fact that each quarter of the POI had a different number of days.²⁰⁰
- The calculation of a weighted-average interest rate in its post-preliminary determination supplemental response properly reflects the different number of days to which each of the quarterly rates is applicable,²⁰¹ which is the reported rate of 2.63 percent.²⁰²

Petitioners did not provide arguments regarding this issue.

Department's Position:

The Department agrees with RFAI. Our Preliminary Determination calculation of the short-term credit rate used did not account for the specific time-period in terms of days per quarter of the POI and the quarterly reporting method of the short-term credit rate. Thus, we did not apply the quarterly rates to the relative time period of the POI.

Thus, for the final determination, the Department will use the weighted-average short-term interest rates from the Federal Reserve applied to the POI-specific time period, as reported by RFAI.²⁰³

¹⁹⁸ We note that no interested parties challenged the numerator of any reported direct selling or movement expenses, including sampling expenses.

¹⁹⁹ See CEP Verification Report.

²⁰⁰ See RFAI Case Brief at 6.

²⁰¹ See *id.*

²⁰² See *id.*, at 6-7.

²⁰³ See RFAI Supplemental B and C Questionnaire Response dated March 14, 2014, at Exhibit 3.

Comment 14: Calculation of U.S. Indirect Selling Expenses (“ISE”)

Petitioners’ Case Brief:

- The Department should re-calculate U.S. ISEs to incorporate an account from RFA Inc.’s general ledger which Petitioners consider to be inclusive of expenses incurred for subject and non-subject merchandise.²⁰⁴
- The Department should also include expenses incurred by American Management Group (“AMG”) in the ISE calculation.²⁰⁵

RFAI Rebuttal Brief:

- The Department should not recalculate U.S. ISEs to incorporate an account from the general ledger, as argued by Petitioners, because the expense in that account is not relevant nor included in U.S. sales of subject merchandise.
- Petitioners’ suggestion that the Department should include expenses incurred by AMG in the ISE calculation is contrary to Department practice. The Department only makes CEP deductions for expenses “associated with economic activity occurring in the United States.”
- While AMG is physically located in the United States, it does not support the economic activity conducted by RFA on its sales in the United States because AMG performs back office functions such as accounting, to RFAI, a European trading company.²⁰⁶ Thus, AMG provides support to RFAI in Europe, not in the United States. The location of AMG is irrelevant. Those functions could have been physically located in Switzerland or any other country, and they would have been the same functions as performed by AMG in the United States in connection with non-U.S. economic activity.
- The Department examined whether AMG plays a role in RFA’s U.S. sales during the CEP verification of RFA, Inc., and made a note of its various tests in the CEP verification report, none of which show any support services for RFA’s U.S. sales.
- Moreover, the reported ISEs already include expenses incurred by AMG on RFA Inc.’s behalf, as noted in the CEP verification report.²⁰⁷

Department’s Position:

We have not recalculate d U.S. ISEs to reflect expenses shown on the general ledger at issue. Section 772(d)(1) of the Act permits the Department to deduct from CEP the amount of certain expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise, our analysis of the record of this investigations indicates that making the deductions at issue would not be appropriate.

First, we disagree with Petitioners regarding the role of AMG in any facet of RFA Inc.’s U.S. sales. As we verified, while AMG is located in the United States, it is wholly separate and

²⁰⁴ As the nature of this specific general ledger account is business proprietary information, for proprietary details, see Final Analysis Memo.

²⁰⁵ Portions of this analysis rely on proprietary information. For proprietary details, see Final Analysis Memo.

²⁰⁶ See RFAI Rebuttal Brief at 36, citing to its responses dated October 28, 2013, at A-8; December 5, 2013, at 9; and February 5, 2014, at 7.

²⁰⁷ See *id.*, at 37, citing to CEP Verification Report at 4.

uninvolved in the sales of the merchandise under consideration in the United States.²⁰⁸ Thus, we do not find it necessary to include AMG's expenses in the ISE calculation and have not included AMG's expenses in the ISE calculation for the final determination.

Second, we also disagree with Petitioners' argument that the Department made a verification finding regarding a specific RFA Inc. general ledger account that should be part of the ISE calculation.²⁰⁹ We find that the general ledger account at issue is not relevant to sales of ferrosilicon in the United States. As the specific details for this issue are business proprietary information, we explain our determination in the Final Analysis Memo. We have calculated the ISE in accordance with 19 CFR 351.402(b), which states that "the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to the unaffiliated purchaser." Thus, for the final determination, we have not included the expenses in the general ledger account at issue in the ISE calculation.

Comment 15: Calculation of Certain U.S. Movement Expenses

Petitioners' Case Brief:

- The Department should recalculate U.S. brokerage and handling expenses and other movement expenses because RFAI made false statements regarding its reported allocation methodology for calculating these expenses.
- RFAI reported U.S. brokerage and handling expenses as inbound loading and unloading costs for ferrosilicon entering the warehouse, as well as a fee that is charged by the warehouse for each loading and unloading service.²¹⁰ RFAI also reported U.S. inland freight as costs incurred on a transport-specific basis.²¹¹
- RFAI's own responses indicate that U.S. brokerage and handling expenses and freight expenses for transport-specific shipment from U.S. port to U.S. distribution warehouse are incurred based on imports entering warehouses in the United States, not sales from those warehouses.²¹² As a result, these expenses were incurred on activities related to importation of the merchandise into the United States and movement of the imported merchandise to warehouses in the United States and, thus, are clearly and directly related to the volume of ferrosilicon imported into the United States during the POI, as opposed to related to the volume of ferrosilicon sold out of warehouse.
- Because the volume of ferrosilicon imported from Russia during the POI is distortive compared with the volume of Russian ferrosilicon sold from warehouse during the POI, the reported per unit expense is also distortive and should be re-calculated for the final determination.
- Because RFAI reported the date of importation into the United States and the date of shipment to the U.S. customer in its U.S. sales data set, RFAI could determine the amount of time the merchandise for each sale was maintained in inventory based on the date the

²⁰⁸ See CEP Verification Report at 4.

²⁰⁹ Portions of this analysis rely on proprietary information. For proprietary details, see Final Analysis Memo.

²¹⁰ See Petitioners' Case Brief at 55, citing to RFAI Supplemental Responses.

²¹¹ See *id.* The specific method of transport is proprietary information and is fully discussed in the final analysis memorandum.

²¹² See *id.*

merchandise was entered into inventory and the date of shipment to the customer and should have reported its U.S. warehouse storage costs on a sale-specific basis.

- The Department should calculate the warehouse storage cost for each U.S. sale incorporating the number of months in inventory.²¹³

RFAI Rebuttal Brief:

- The Department should accept all U.S. movement expenses as reported and verified.
- Petitioners' proposed re-calculation is less specific than the allocation reported by RFAI because Petitioners suggest that the allocation basis should have been the total quantity of ferrosilicon imported during the POI.
- RFAI was unable to report certain U.S. movement expenses incurred by RFA, Inc. on a transaction-specific basis because RFA, Inc.'s accounting system does not record those expenses on a transaction-specific basis. RFA, Inc. devised an allocation methodology for each of these expenses.²¹⁴
- RFAI's allocation basis was calculated on a warehouse-specific basis, which is more specific than an allocation based on total quantity, while Petitioners' proposed methodology is less specific than RFA, Inc.'s allocation because Petitioners' methodology does not take into account that the rate may be different at the other warehouses or that the rate may have changed during the POI.
- The Department never requested that RFAI submit all storage contracts for RFA, Inc. in effect during the POI. It would be inappropriate to cherry-pick storage contracts given that a more precise reporting methodology has been reported by RFA, Inc. RFA, Inc.'s methodology begins with the cost incurred at each warehouse, which the Department tied to its financial statements.
- The warehouse-specific costs were then allocated over the amount in inventory with an adjustment factor for ferrosilicon quantity. Therefore, the allocation of storage expenses was made on the most specific basis available and does not cause any inaccuracies or distortions.
- The U.S. Customs-related expenses reported in the USDUTYU field were allocated on the most specific basis possible. First, U.S. Customs duties and fees that were identifiable to ferrochrome were segregated and removed from the numerator. The remaining ancillary fees were allocated to ferrosilicon based on the proportion of ferrosilicon sales to total sales. The resulting numerator was divided by the applicable quantity of ferrosilicon shipments during the POI.

Department's Position:

For the reasons explained below, and as discussed more fully in the Final Analysis Memo, we deducted certain expenses²¹⁵ calculated using the per-unit expense allocation methodology from RFAI's CEP.

²¹³ See id., at 57. Portions of this analysis rely on proprietary information. For proprietary details, see Final Analysis Memo.

²¹⁴ See RFAI Rebuttal Brief at 38, citing to 19 CFR 351.401(g)(1) and (2).

²¹⁵ The movement expenses at issue are: 1) U.S. brokerage and handling, 2) a movement expense not subject to public discussion, and 3) U.S. warehousing expenses.

As an initial matter, the Department disagrees with Petitioners regarding the per-unit calculations of these movement-related expenses. Petitioners argue that the Department should recalculate these expenses because RFAI made false statements regarding its reported allocation methodology for calculating the per-unit expense for each. As we stated above, we do not find that RFAI impeded the investigation with false statements, as alleged by Petitioner. The Department verified the responses and made one finding with respect to the relatively minor sales of FS45 in the United States.²¹⁶ The Department made no other significant findings consistent with a conclusion that RFAI impeded the investigation with respect to these aspects of the U.S. sales.

Section 772(c)(2)(A) of the Act and 19 CFR 351.401(e) permit the Department to reduce CEP by “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States”

The record supports RFAI’s allocation method for reporting the expenses at issue. RFAI reported it could not calculate transaction-specific per-unit expenses for certain expenses, such as those indicated above, but was able to provide a more specific per-unit calculations for other expenses.²¹⁷

Pursuant to 19 CFR 351.401(g)(1), the Department may consider allocated expenses and price adjustments when, as here, transaction-specific reporting is not feasible, provided that the Department determines that the allocation method used does not cause inaccuracies or distortions. We find that RFAI’s movement of ferrosilicon, where discrete lot numbers do not exist from production to U.S. sale by the CEP entity (and, thus, do not link) required RFAI to use an allocation methodology to calculate the U.S. movement expenses indicated above. We accepted this allocation methodology because RFAI reported in as specific a manner as it could. We find that the reported allocation methodology for the movement expenses noted above, which we verified, is appropriate for purposes of adjusting CEP, particularly as there is nothing to indicate or support the conclusion that there are distortions or inaccuracies.

We decline to use any of Petitioners’ proffered recalculation methodologies for the following reasons. First, Petitioners’ suggestion that we recalculate the above expenses using as the denominator the quantity shipped from the foreign intermediary warehouse to the United States would not result in a more accurate allocation of the per-unit expenses over U.S. sales. As described above, those incurred expenses do not correspond, by discrete lot number, to the quantity of merchandise that shipped from the intermediary warehousing during the POI.²¹⁸

²¹⁶ See CEP Verification Report at 2.

²¹⁷ See RFAI Supplemental Questionnaire Response dated March 14, at 6, where RFAI stated that it “has determined a way to report certain transportation expenses on a transaction-specific basis by using accounts payable records. The expenses for which RFA is able to provide on a transaction-specific basis are those that occur after release from warehouse. These include trucking expense (INLFWC1U), outbound warehouse charges (USOTHTR4U), warehouse processing charges (USOTHTR3U) and warehouse fees on...sales (USWAREH1U).”

²¹⁸ See, e.g., HM Verification Report at RFAI Verification Exhibit 15 and CEP Verification Report at Exhibit 28, where we note that the lot numbers for international freight vessel sailings do not match to the lot numbers assigned to merchandise post-port arrival.

Thus, Petitioners' argument that their approach would result in a more accurate calculation is speculative and is otherwise not supported by the record. Therefore, we decline to employ Petitioners' proffered re-calculation of per-unit expenses incurred upon port arrival.

Finally, with respect to the per-unit U.S. warehousing calculation, we will not utilize Petitioners' proffered methodology because it is based on the highest warehousing rate among several warehouses utilized during the POI, as argued by RFAI.²¹⁹ We agree with RFAI that it would be improper to apply a rate for one warehouse among several to all the warehouse-specific per-unit expense calculations because doing so would not reflect the actual expenses incurred by RFAI on the whole. Moreover, this particular warehouse's rate is the highest rate and as such would likely lead to a skewed result.

Comment 16: Whether to Use of Average-to-Transaction Price Comparisons

Petitioners' Case Brief:

- In the Preliminary Determination, the Department found that over 66 percent of RFAI's sales (all CEP) confirm the existence of a pattern of CEPs for comparable merchandise that differs significantly among time periods.²²⁰
- If the Department makes the corrections to the preliminary margin calculation set forth above, the dumping margin calculated using the average-to-transaction method is significantly higher than that calculated using the average-to-average method. Accordingly, the Department should use the average-to-transaction method if it calculates a dumping margin for the final determination.²²¹

RFAI Rebuttal Brief:

- RFAI disagrees with Petitioners' proposed revisions to the preliminary margin calculation, which should not be implemented for the final determination.
- The Department should continue to find that the average-to-transaction method does not result in an overall dumping margin that is significantly higher than the dumping margin calculated using the average-to-average method. Thus, the Department should continue to use the average-to-average method in the final determination.²²²

Department's Position:

We disagree with Petitioners that the average-to-transaction comparison method is appropriate. In the Preliminary Determination, we found that while:

over 66 percent of RFAI's sales (all CEP) confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among time periods....the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the

²¹⁹ See RFAI Rebuttal Brief at 40, footnote 170.

²²⁰ See Petitioners' Case Brief at 59.

²²¹ See id.

²²² See RFAI Rebuttal Brief at 42.

average-to-average method and the average-to-transaction method. Accordingly, the Department is preliminarily using the average-to-average method for all U.S. sales in making comparisons of CEP and NV for RFAI.²²³

Based on the dumping margin calculations performed for the final determination, the Department continues to find that there is no meaningful difference in the final weighted average dumping margins between the comparison methods.²²⁴ Thus, we will continue to use the average-to-average method for all U.S. sales in making comparisons of CEP and normal value for RFAI in this final determination.

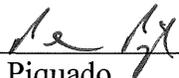
Recommendation:

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 in the investigation and the final weighted-average dumping margin in the Federal Register.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 July 2014

(Date)

²²³ See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 11.

²²⁴ See Final Analysis Memo.