



A-533-873
Investigation
Public Document
E&C/Office V: SSP, OQ

DATE: April 9, 2018

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

FROM: James P. Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Antidumping Duty Investigation of Certain
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from
India

I. SUMMARY

The Department of Commerce (Commerce) determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The petitioners in this investigation are ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co., USA, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners). The two mandatory respondents in this investigation are: Goodluck India Limited (Goodluck) and Tube Products of India, Ltd. a unit of Tube Investments of India Limited (collectively, TPI). The period of investigation (POI) is April 1, 2016, through March 31, 2017. We analyzed the comments submitted by interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the preliminary margin calculations for the respondents in this investigation. We recommend that you approve the positions describe in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties.



- Comment 1: Treatment of Goodluck's Sales with Misreported Product Characteristics
- Comment 2: Application of Total AFA to Goodluck
- Comment 3: TPI Scrap Adjustment
- Comment 4: Whether Commerce Should Accept TPI's Minor Corrections Presented at the TPI's Sales Verification
- Comment 5: Adjustments to TPI's G&A and Financial Expenses
- Comment 6: TPI's Grade Reporting
- Comment 7: TPI Home Market Billing Adjustments
- Comment 8: TPI's Freight Reporting
- Comment 9: TPI's Date of Sale

II. BACKGROUND

On November 22, 2017, Commerce published the *Preliminary Determination* in the LTFV investigation of cold-drawn mechanical tubing from India.¹ Commerce conducted the cost and sales verifications in Chennai and Ghaziabad, India between November 27, 2017, and December 15, 2018.² On January 9, 2018, Commerce published the *Amended Preliminary Determination* in the LTFV investigation of cold-drawn mechanical tubing from India.³ Between February 15, 2018 and March 8, 2018, Commerce received case briefs from the petitioners, TPI, and Goodluck.⁴

¹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Affirmative Determination of Sales at Less than Fair Value, in Part, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 55567 (November 22, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Verification of Sales Response of Goodluck India Limited in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated February 7, 2018 (Goodluck Sales Verification Report); see also Memorandum, "Verification of the Sales Response of Tube Products of India in the Antidumping Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel," dated February 6, 2018 (TPI Verification Report); see also Memorandum, "Verification of the Cost Response of Tube Investments of India, Ltd., (TII) and Tube Products of India (a Unit of Tube Investment of India Ltd) (collectively TPI) in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated January 17, 2018 (TPI Cost Verification Report); see also Memorandum, "Verification of the Cost Response of Goodluck India Limited in the Antidumping Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated January 17, 2018 (Goodluck Cost Verification Report).

³ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Amended Preliminary Determination of Sales at Less than Fair Value*, 83 FR 1021 (January 9, 2018) (*Amended Preliminary Determination*).

⁴ The Petitioners' Case Brief on Goodluck, "Cold-Drawn Mechanical Tubing from India: Petitioners' Case Brief on Goodluck," dated February 15, 2018 (the Petitioners' Goodluck Case Brief); see also the Petitioners' Case Brief on TPI, "Cold-Drawn Mechanical Tubing from India: Petitioners' Case Brief on Tube Investments of India, Ltd. and Tube Products of India," dated February 15, 2018 (the Petitioners' TPI Case Brief); see also TPI Case Brief, "Certain Cold-Drawn Mechanical Tubing from India: Case Brief," dated February 15, 2018 (TPI Case Brief); see also Goodluck's Case Brief, "Goodluck 2nd Redacted Case Brief: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India (A-533-873)," date March 8, 2018 (Goodluck's Case Brief). We note that this is a refiled and redacted case brief. See also the Petitioners' Rebuttal Brief on Goodluck, "Cold-Drawn Mechanical Tubing from India: Petitioners' Rebuttal Brief on Goodluck," dated February 23, 2018 (the Petitioners' Goodluck Rebuttal Brief); see also the Petitioners' Rebuttal Brief on TPI, "Cold-Drawn Mechanical Tubing from India: Petitioners' Rebuttal Brief on Tube Investments of India, Ltd. and Tube Products of India," dated February 23, 2018 (the Petitioners' TPI Rebuttal Brief); see also TPI Rebuttal Brief, "Certain Cold-

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cold-drawn mechanical tubing from India. In the *Preliminary Determination*,⁵ we set a separate briefing schedule on scope issues for interested parties.⁶ Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum.⁷ On December 4, 2017, the petitioners withdrew a portion of their comments regarding the scope language.⁸ Commerce addressed all scope comments received in the Final Scope Decision Memorandum.⁹ For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review of the record and analysis of the comments from parties, minor corrections presented at verifications and various errors identified, we made certain changes to the margin calculations for both respondents. Specifically, we made the following changes:

A. Goodluck

As discussed below we have applied total facts available with adverse inferences to Goodluck.

B. TPI

Based on the minor correction presented at verification, we requested that TPI resubmit its home market and U.S. sales databases incorporating the minor correction accepted during the verification of TPI.¹⁰ As a result, we used the updated TPI's home market and U.S. sales database in our margin calculations. Additionally, we have revised TPI's general and

Drawn Mechanical Tubing from India: Rebuttal Case Brief,” dated February 23, 2018 (TPI Rebuttal Brief); and *see also* Goodluck Rebuttal Brief, “Goodluck Administrative Rebuttal Brief: Antidumping Duty Investigation on Certain Cold-Drawn mechanical Tubing of Carbon and Alloy Steel from India (A-533-873),” dated February 23, 2018 (Goodluck Rebuttal Brief).

⁵ *See Preliminary Determination*.

⁶ *Id.* The scope case briefs were due five days after the publication of the preliminary less than fair value determinations for China, Germany, India, Italy, Korea, and Switzerland in the *Federal Register*, and the rebuttal briefs were due three days after the due date for the scope case briefs, *i.e.*, Monday, November 27, 2017 and Thursday, November 30, 2017.

⁷ *See* Memorandum, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People’s Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated November 15, 2017 (Preliminary Scope Decision Memorandum).

⁸ *See* the petitioners’ letter, “Certain Cold-Drawn Mechanical Tubing from Germany *et al.* – EN-10305-3,” dated December 4, 2017.

⁹ *See* Memorandum, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People’s Republic of China, and Switzerland: Scope Decision Memorandum for the Final Determinations: Final Scope Decision Memorandum,” dated December 4, 2017 (Final Scope Decision Memorandum).

¹⁰ *See* Letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India,” dated February 13, 2018.

administrative (G&A) expenses ratio to account for the findings during the cost verification, adjusted the scrap offset, as well as revised the financial expense ratio to exclude selling expenses and excise duty from the cost of goods sold (COGS) denominator.¹¹

V. USE OF ADVERSE FACTS AVAILABLE

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.¹²

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is

¹¹ See Memorandum, “Cost of Production and Constructed Value Calculations Adjustments for the Final Determination – Tube Investments of India, Ltd.,” dated concurrently with this memorandum (TPI Cost Calculation Memo).

¹² Under the Trade Preferences Extension Act of 2015, numerous amendments to the antidumping duty (AD) and countervailing duty (CVD) laws were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (*TPEA*). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*TPEA Application Dates*). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.¹³ In so doing, and under the *TPEA*, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) provides that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹⁵

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁶ Further, and under the *TPEA*, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The *TPEA* also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

A. Application of Total AFA for Goodluck

As discussed further in Comment 1 below, for this final determination, we find that Goodluck failed to provide information in the form or manner requested and otherwise impeded this review by failing to provide Commerce with complete and accurate home market and cost databases. As a result, Goodluck’s cost and home market sales databases are unreliable for the purposes of

¹³ See section 776(b)(1)(B) of the Act; *TPEA*, section 502(1)(B).

¹⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

¹⁶ See SAA at 870.

calculating Goodluck's estimated weighted-average dumping margin in this investigation. For these reasons, and as discussed below in Comment 1, Commerce concludes that the application of total facts available with an adverse inference is warranted with respect to Goodluck, pursuant to sections 776(a)(1), 776(a)(2)(B)-(C), and 776(b) of the Act.

B. Selection and Corroboration of the AFA Rate

In relying on AFA, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.¹⁷ In selecting an AFA margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the AFA rule, which is to induce respondents to provide Commerce with complete and accurate information in a timely manner.¹⁸ In an investigation, Commerce's general practice with respect to the assignment of a rate as AFA is to assign the higher of the highest dumping margin alleged in the petition or the highest calculated dumping margin of any respondent in the investigation.¹⁹

In this investigation, the highest petition dumping margin of 33.80 percent is higher than the calculated margin for the only cooperative mandatory respondent, TPI, and therefore is appropriate as the AFA margin.

For purposes of corroboration, in order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. We compared the highest petition dumping margin of 33.80 percent to the transaction-specific margins calculated for TPI, which were not calculated using total AFA. We find that the 33.80 percent petition margin falls within the range of the highest transaction-specific margins calculated for TPI, which appear to be sales whose terms were normal, when compared with other sales in TPI's database.²⁰ Thus, in accordance with section 776(c)(1) of the Act, we have corroborated the highest dumping margin contained in the petition, 33.80 percent, as AFA, using transaction-specific margins from the mandatory respondent TPI.

VI. DISCUSSION OF THE ISSUES

Comment 1: Treatment of Goodluck's Sales with Misreported Product Characteristics

At verification, we found that Goodluck misreported the wall thickness for certain CONNUMs. As a result, Goodluck misreported 24 CONNUMs in its cost database while 13 CONNUMs were left wholly unreported. Further, the CONNUMs for 682 sales in Goodluck's home market sales database were improperly reported as a result of this issue.

¹⁷ See section 776(b) of the Act.

¹⁸ See SAA at 870. See also, e.g., *Notice of Final Determination of Sales at Less than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988, 75990 (December 26, 2012).

¹⁹ See *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 20.

²⁰ See Memorandum, "Calculations Performed for Tube Investments of India Ltd. and Tube Products of India (collectively, TPI) for the Preliminary Determination in the Antidumping Duty Investigation of Cold-Drawn Mechanical Tubing from India," dated concurrently with this decision memorandum (TPI Analysis Memo).

The Petitioners' Comments:

- Goodluck failed to submit the proposed correction for its wall thickness field as required at its sales verification.²¹
- Commerce should not attempt to adjust Goodluck's reported data because it is impossible to assess whether the 682 revisions are appropriate in the context of verification or afterward.²²

Goodluck's Comments:

- Goodluck's failure to correct wall thickness following Commerce's Revised CONNUM letter was a clear clerical oversight. Neither Commerce nor the petitioners ever indicated that the information reported by Goodluck did not match the reporting requirements for the Revised CONNUM letter for the thickness field.²³
- Commerce should correct thickness in the CONNUM hierarchy where applicable in the home market sales and cost database.²⁴
- Commerce erred by not accepting the information regarding Goodluck's CONNUM error the first day of verification.²⁵

Commerce's Position:

We agree with the petitioners that Commerce should not attempt to adjust Goodluck's reported data. As explained below, we find that the inaccuracies affect a substantial portion of Goodluck's home market sales listings, such that these sales listings no longer form a reliable basis on which to calculate a dumping margin for Goodluck. Although Goodluck focuses its attention on one field, we note that incorrect coding for wall thickness leads to inaccurate control numbers (CONNUMs). Further, this systemic error renders the entire dumping calculation inaccurate, because the control number is fundamental to the Commerce's calculation, as it controls the allocation of costs and determines the product matches between U.S. and home markets.

Commerce released a letter on July 6, 2017 informing interested parties of the appropriate product characteristics mandatory respondents should report to Commerce in their responses to Sections B, C, and D of the original questionnaire.²⁶ On August 7, 2017, Commerce released a follow-up letter informing interested parties of a revision to certain fields of the CONNUM, including wall thickness.²⁷ At verification, Goodluck reported that due to a clerical issue, it failed to report wall thickness in its home market sales and cost databases according to Commerce's Revised Characteristics Letter.²⁸

²¹ See the Petitioners' Case Brief at 1.

²² *Id.* at 3.

²³ See Goodluck's Case Brief at 5.

²⁴ *Id.* at 6.

²⁵ *Id.* at 10.

²⁶ See Department Letter re: Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel from India, dated July 6, 2017 (Physical Characteristics Letter).

²⁷ See Department Letter re: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Revised Product Characteristics, dated August 7, 2017 (Revised Physical Characteristics Letter).

²⁸ See Goodluck Sales Verification Report at 2, 23, and Exhibit 16; *see also* Goodluck Cost Verification Report at 3.

On the first day of verification conducted at Goodluck, company officials notified Commerce that Goodluck had incorrectly reported the product characteristics for wall thickness (*i.e.*, the fifth characteristic in the product matching hierarchy), for a significant percent of its sales in the home market. We agree with Goodluck that it presented this error to Commerce at the beginning of the first day of the sales and costs verifications. However, as discussed below, Commerce did not find that this was minor. As documentation of this error, Commerce included certain information regarding the affected sales as part of one sales trace package for a pre-selected sale in which this error occurred.²⁹

We disagree with Goodluck that its misreporting of wall thickness constitutes a mere clerical error. A clerical error is defined as resulting from inaccurate copying, duplication or the like.³⁰ In terms of Goodluck's home market sales database, the correct coding of wall thickness entailed more than copying, duplicating, or the like but properly analyzing the nominal tube wall thickness and assigning the corresponding codes as directed by Commerce in its Revised Characteristics Letter. Moreover, to the extent Goodluck had already allocated expenses, it would have to reallocate them using the new CONNUM designations. Instead, Commerce finds that this is a systemic error in which 682 of Goodluck's U.S. sales were reported with the incorrect CONNUM.

With respect to Goodluck's cost database, Commerce also finds that this is not a clerical error. As noted above, Goodluck's cost database includes 24 CONNUMs that were incorrectly coded and 13 CONNUMs that were not reported. Further, due to incorrect coding for wall thickness, certain product codes were assigned to incorrect CONNUMs and as a result, the weighted average CONNUM specific costs on the record are incorrect. Any attempt by Commerce to correct these errors would involve numerous corrections and revising the weighted average CONNUM costs. Accordingly, Commerce determines that this error was not clerical, but methodological in nature.

We also find Goodluck's argument regarding Commerce's verification of Field 2.5 Nominal Wall Thickness (NWTH) in its home market sales and cost databases to be misplaced. While we agree with Goodluck that this field is used to determine the appropriate reporting code for wall thickness, we note that this field is not used when assigning the correct CONNUM. Here, it is Goodluck's misreporting of certain CONNUMs and consequent incorrect home market sales and cost databases, and not NWTH, to which Commerce takes issue.

Accordingly, we find that Goodluck did not adhere to Commerce's coding instructions, despite having the correct information on hand. In fact, Goodluck stated that this only affected their home market sales and cost databases. On the other hand, the U.S. sales database did not suffer from such an error as its CONNUMs were reported according to Commerce's direction in the Revised Characteristics Letter. As such, Goodluck failed to follow the clear instructions for this product characteristic and thus failed to properly code its home market sales and cost databases.

²⁹ See Commerce Letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Sales Verification Outline," dated November 22, 2017 (Goodluck Sales Verification Outline) at Exhibit 16.

³⁰ See section 735(e) of the Act.

Given the extent and nature of the error, there is no way for Commerce to measure accurately the effect Goodluck's coding has on the matching process. Goodluck's CONNUM coding error pervaded its home market and cost databases; the totality of which renders it difficult to gauge the effect on product matching (e.g., products matching to similar products, products matching to constructed value). The proper reporting of physical characteristics in the CONNUM hierarchy and matching CONNUMs in Goodluck's home market sales and cost databases are necessary components of Commerce's margin calculation. These physical characteristics form the basis of Commerce's model match criteria, which identifies the home market sales and U.S. sales of either identical or the most similar merchandise as the basis for normal value. The identification of identical or the most similar merchandise is determined with respect to the unique measurable physical characteristics of the merchandise.³¹ Without accurate reporting of physical characteristics and matching CONNUMs in Goodluck's databases, Commerce does not have the primary components to perform an accurate, reliable margin calculation for Goodluck.

While Goodluck attempted to present this issue as part of its minor corrections for the sales and cost verifications, Commerce determines that these are not minor corrections. It is Commerce's practice to accept insignificant changes or corrections to a respondent's data on the first day of verification. Thus, if a respondent has any information that falls into this category and wishes to present it to Commerce at the start of the cost and sales verifications, it may do so at that time and the verification teams will evaluate whether the corrections are permissible then. Commerce's verification outline explicitly stated:

Please note that verification is not intended to be an opportunity for submission of new factual information. New 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 on the record.³²

After Commerce's consideration of this issue, given the significance of the reporting errors, and the degree to which it impacts Commerce's calculations, we find that it would not be appropriate to accept the corrections offered at verification. These errors are not minor errors, but rather reach the threshold for new factual information pursuant to 19 CFR 351.301(c)(5). While Goodluck argues that the errors are unintentional, the fact remains that the errors in a factor as fundamental as the control number invalidates the allocations, matches, and calculations that follow.

³¹ See, e.g., *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 63 FR 18879, 18880 (April 16, 1998), at Comment 2 ("The creation of a product concordance inherently relies upon the matching of significant physical characteristics."); and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Model Match Comment 1 ("...Commerce focuses its selection of model match characteristics on unique measurable physical characteristics that the product can possess....").

³² See Goodluck Sales Verification Outline; see also Memorandum, "Verification of the Cost Response of Goodluck India Limited in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated January 17, 2018.

Moreover, we disagree with Goodluck that its affected databases should be corrected because neither Commerce nor petitioners ever called attention to this error. It is well settled that the onus for creating a complete and accurate record rests with the respondent. As the CIT has stated in numerous cases, “the burden of creating an accurate record rests with the respondent, not the United States Department of Commerce.”³³ In fact, Goodluck stated that it “reported the code of the nominal, *i.e.* as ordered by customer, wall thickness in accordance with the codes as indicated above” while also referencing the revised codes from the Revised Physical Characteristics Letter.³⁴ Accordingly, Commerce determines that it is Goodluck’s, and not any other parties’, responsibility to report complete and accurate records.

In sum, the ability to make accurate product comparisons goes to the heart of Commerce’s dumping methodology. Because Goodluck’s error affected its cost database, as well as a substantial portion of its home market sales listing, we are unable to make accurate product comparisons, or conduct an accurate sales-below-cost test, for Goodluck, thereby compromising the integrity of its reported data as a whole. As a result, and as discussed below, for this final determination Commerce has applied total AFA to Goodluck.

Comment 2: Application of Total AFA to Goodluck

The Petitioners’ Comments:

- Commerce should apply total adverse facts AFA to Goodluck for its major, material omissions.³⁵
- Commerce should not attempt to correct Goodluck’s wall thickness error because it is impossible to assess whether performing such a large-scale revision is appropriate in the context of verification or afterward.³⁶
- It is unclear whether the 682 sales affected by Goodluck’s misreporting of wall thickness can be corrected.³⁷
- Goodluck did not include its proposed corrections to wall thickness at the start of verification and instead surreptitiously inserted the list into a sales verification exhibit for a pre-selected sale.³⁸
- Goodluck’s erroneous reporting of wall thicknesses for a significant portion of its sales is grounds for AFA.³⁹
- With respect to Goodluck’s steel grades, the record shows that the reported metallurgies were not reliable and that the contents were not accurately reported. Further, even if the errors were for a small number of sales in the home market, the impact of erroneous grades codes

³³ See, e.g., *Ta Chen Stainless Steel Pipe v. United States*, Slip Op. 00-107 (CIT 2000) (citing *Tianjin Machinery Import & Export Corp. v. United States*, 16 CIT 931, 936, 806 F. Supp. 1008, 1015 (1992) and *Chinsung Indus. Co. v. United States*, 13 CIT 103, 705 F. Supp. 598 (1989)).

³⁴ See Goodluck’s August 25, 2017 Initial Questionnaire Response (Goodluck August 25, 2017 IQR) at B-23 – B-24.

³⁵ See the Petitioners’ Case Brief at 16.

³⁶ *Id.* at 3.

³⁷ See the Petitioners’ Goodluck Rebuttal Brief at 2.

³⁸ *Id.* at 2-3.

³⁹ *Id.* at 3.

can be very significant because the home market sales can serve as the best match for a large number of U.S. sales.⁴⁰

- Goodluck's steel grade misclassifications reveal proposed classifications which were wrong and self-serving; thus, providing further grounds for AFA.⁴¹
- Goodluck's errors on credit, insurance, indirect selling expenses and inventory carrying costs impact significant percentages of both databases and call into question the accuracy of Goodluck's reporting. These errors along with Goodluck's inaccurately reported costs lead to a finding that Goodluck's information is not usable and that the final margin should be based on AFA.⁴²

Goodluck's Comments:

- The petitioners' assertion that Commerce should apply total AFA because Goodluck's data suffers from substantial inaccuracies ignores the record and the statute.⁴³
- With respect to the CONNUM reporting mistake for wall thickness, this was caused by a simple clerical transcription error and is easily correctable.⁴⁴
- Further, Commerce verified that Goodluck accurately reported its steel grades based on Commerce's grade characteristics.⁴⁵
- The petitioners failed to show how the material information is not on the record, or how Goodluck withheld information requested by the Department, failed to provide such information in a timely manner or in the form or manner requested, significantly impeded the proceeding under the antidumping statute, or provided such information but the information could not be verified pursuant to Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act.⁴⁶
- As noted by the petitioners, "the Act further provides for allowing opportunities to remedy deficiencies and for the use of information that is somewhat deficient but still usable." In this case, the information required to correct the CONNUM clerical mistakes are readily available on the record.⁴⁷
- Because the underlying information is on the record for the clerical error, it was discoverable by Commerce and other interested parties. As such, Commerce was obligated to inform Goodluck of the nature of the deficiency and to provide Goodluck with an opportunity to remedy or explain the deficiency before making an adverse inference.⁴⁸

Commerce's Position:

Commerce agrees with the petitioners that the application of total facts available with an adverse inference is warranted for this final determination because Goodluck failed to provide information within the form and manner requested by Commerce, significantly impeded the investigation, and failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information in accordance with sections 776(a)(1), 776(a)(2)(B)-(C), and 776(b) of the Act.

⁴⁰ *Id.*

⁴¹ *Id.* at 5.

⁴² *Id.* at 5-6.

⁴³ See Goodluck's Rebuttal Brief at 9.

⁴⁴ *Id.*

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

In this case, as noted in Comment 1 above, Goodluck failed to establish the accuracy and completeness of its reported sales information at verification, and the errors and omissions were substantial. In particular, 24 of Goodluck's CONNUMs in its sales and cost databases were incorrectly reported, 13 CONNUMs were wholly unreported, and 682 of Goodluck's home market sales contained incorrect CONNUMs. As a result, Commerce concludes that Goodluck's data is unusable to calculate an accurate margin.

We agree with the petitioners that it is impossible to assess whether performing such a large-scale revision is appropriate. As noted above, there is no way for Commerce to determine accurately the effect that Goodluck's miscoding of wall thickness, and therefore CONNUMs, has on the matching process. Specifically, the weighted average CONNUM-specific costs for the revised CONNUMs are not on the record of this investigation. Re-creating a correct cost database for Goodluck would require the recalculation of costs for numerous CONNUMs as a result of the reassigning of internal products to correct CONNUMs. Similarly, because Goodluck misreported its control numbers and certain product characteristics for 682 of its home market sales, we are unable to compare sales of the most similar foreign like product to the U.S. product as required by section 773(a)(1)(B). Further, as noted above, we do not have correct cost of production, constructed value, and difference-in-merchandise adjustment for the affected sales.

Additionally, as discussed in Comment 1, we disagree that Goodluck's misreporting of wall thickness is a simple clerical transcription error and is easily correctable. Correcting Goodluck's wall thickness error does not involve merely changing one field in its home market sales database, but involves extensive SAS programming. Moreover, the cost information on the record includes 24 incorrect CONNUMs. Not on the record altogether are 13 CONNUMs. Any attempts to correct these errors would involve both extensive SAS programming and complex calculations to Goodluck's cost database.

We disagree with Goodluck that Commerce is compelled to correct Goodluck's databases because the primary purpose of the Act is to determine dumping margins as accurately as possible. Where the request for information was clear and relates to central issues in an antidumping case, such as accurate sales and cost databases, the Court of International Trade (CIT) has found that the respondent has a "statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce."⁴⁹ Further, the CIT has stated that the terms of sections 782(d) and (e) of the Act do not give rise to an obligation for Commerce to permit a remedial response from the respondent where the respondent has not met all criteria of 782(e).⁵⁰

⁴⁹ See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) (*Tung Mung*) (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1571-72 (Fed. Cir. 1990)); see also *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-33 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent's obligation to create an accurate record and provide Commerce with the information requested).

⁵⁰ See *Tung Mung* at 789 (stating that the remedial provisions of section 782(d) of the Act are not triggered unless the respondent meets all of the five enumerated criteria of section 782(e) of the Act).

In this instance, Goodluck did not report to Commerce its error until the first days of its sales and cost verifications, December 4, and December 11, 2018, respectively. Pursuant to 19 CFR 351.305(c), the deadline for new factual information is 30 days before the scheduled date of the preliminary determination, which in this investigation is October 16, 2017. As a result, Goodluck has not met all criteria of 782(e) of the Act since the information was not submitted by the deadline established for new factual information. Here, the requests for information were clear and Goodluck cannot claim that it was unaware of its obligation to submit the information, thus requiring further notification by Commerce. Record evidence clearly shows that Goodluck was aware of its obligation to report complete, accurate, and reliable cost and sales data during the POI. Therefore, Commerce finds that Goodluck had ample notification of the centrality of the issues, as well as ample opportunity to provide complete, accurate, and reliable cost and home market sales databases. However, it did not do so. As such, Commerce has met its obligation as required in section 782(d) of the Act and will not correct Goodluck's error.

In sum, we find that the necessary information is not on the record, and that Goodluck failed to provide information in the form or manner requested, and, as a result, significantly impeded the proceeding in accordance with sections 776(a)(1) and 776(a)(2)(B) and (C) of the Act. Given the above facts, we find that Goodluck failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information, as provided in section 776(b).

As explained by the CAFC:

{b}efore making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. Compliance with the "best of ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁵¹

We find that the scope of the errors and omissions identified at verification in Goodluck's data are the result of both inattentiveness and carelessness. Even though Commerce does not require perfection in questionnaire responses and recognizes that mistakes sometimes occur, Commerce does not condone the submission of incomplete and misleading responses. While Commerce was willing to accept minor data revisions, Goodluck attempted to present revisions to significant portions of its databases.

While the parties commented on Goodluck's reporting of nominal field lengths, steel grade, credit, insurance, indirect selling expenses, and inventory carrying costs, U.S. destinations, date of sale, quality rejections, cost specificity, intra-company transfers, and rebates, these arguments are rendered moot in light of Commerce's decision that the home market sales and cost data reported to Commerce are unreliable and cannot serve as the basis for calculating an estimated weighted average dumping margin for Goodluck. Accordingly, Commerce has not addressed these arguments.

⁵¹ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

For the foregoing reasons, Commerce concludes that Goodluck failed to cooperate to the best of its ability to comply with Commerce's requests for information in accordance with section 776(b) of the act and 19 CFR 351.308(a), and determines that it is appropriate to use an adverse inference when selecting from among the facts otherwise available. As AFA, we have assigned a rate of 33.80 percent, which is the highest dumping margin contained in the petition. For a discussion of the selection and corroboration of this rate, *see* the "Use of Adverse Facts Available" section, above.

Issue 3: TPI's Scrap Adjustment

The Petitioners' Comments:

- At verification Commerce noted that the reported scrap offset did not represent the actual sales value of scrap. Commerce should correct the reported scrap offset based on verification findings.⁵²

TPI's Comments:

- Commerce should continue to utilize the reported scrap offset value and not make any changes to TII's reported costs.⁵³

Commerce's Position:

We agree with the petitioners. It is Commerce's practice to grant scrap offsets that reflect the actual sales value of the scrap generated during the production of the merchandise under consideration.⁵⁴ We note that while TPI suggests that no adjustment should be made to the reported scrap offset, TPI does not provide any arguments or record reference to support its claim. At verification we found that the value assigned to the generated scrap quantities was not representative of market prices for scrap.⁵⁵ Specifically, TPI calculated the per-unit scrap value by dividing scrap sales value by scrap quantity generated during the POI. As the quantity of scrap sold more appropriately relates to the value of such sales, for the final determination we recalculated the per-unit market value of scrap by dividing the scrap sales value by scrap sales quantity.

⁵² See the Petitioners' Case Brief at 4.

⁵³ See TII's Rebuttal Brief at 6.

⁵⁴ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Germany: Notice of Final Determination in the Less than Fair Value Investigation*, 82 FR 16360 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comment 14.

⁵⁵ See Memorandum "Verification of the Cost Response of Tube Investments of India, Ltd., ("TII") in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated January 17, 2018 (TPI Cost Verification Report) at 15.

Comment 4: Whether Commerce Should Accept TPI's Minor Corrections Presented at TPI's Sales Verification

The Petitioners' Comments:

- Commerce should not make wholesale adjustments to TPI's data based on verification because the changes requested by TPI at verification are extensive and do not necessarily qualify as "minor."⁵⁶
- TPI's characterization of a long series of corrections to multiple data fields as "minor" is not accurate, as the sheer volume of corrections indicates that major corrections to the data would be required.⁵⁷
- Commerce should be judicious in any changes to the final data set, and should only make those changes that tend to lower U.S. prices, or raise home market prices.⁵⁸
- Commerce should calculate the most accurate antidumping margin possible. The Federal Circuit clarified however, that "accurate" does not mean making all changes submitted by respondents at verification. Rather, Commerce's determination, including margin calculations, are "accurate" if they are "correct as a mathematical and factual matter, and thus supported by substantial evidence."⁵⁹

TPI's Comments:

- Commerce should use all minor correction data presented, and accepted by Commerce, at the sales and cost verification in its final determination.⁶⁰
- As Commerce noted in its sales and cost verification reports that there were no material discrepancies or omissions, Commerce should accept the following minor corrections: 1) the corrections presented for INDIRSH and DINDIRSU; 2) the transposing errors noted in reporting home market freight costs; 3) revised quantity and value reconciliation; 4) the corrected packing expenses; 5) the revised G&A expense ratio and changes noted by Commerce in its verification report; and 6) the revised interest rate ratio and changes noted by Commerce in its verification report.⁶¹

Commerce's Position:

We agree with TPI that Commerce should use all minor corrections presented at the sales verification. Commerce accepted the following minor corrections presented by TPI at the sales verification: the corrections presented for INDIRSH and DINDIRSU; the minor corrections in relation to the reporting of home market freight costs; the revision to the quantity and value reconciliation; and corrections to packing expenses. In the sales verification agenda issued to TPI prior to verification, Commerce stated that new information (*e.g.*, minor corrections) would be accepted at verification only if: 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. At the outset

⁵⁶ See the Petitioners' TPI Rebuttal Brief at 1-2.

⁵⁷ *Id.* at 3.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See TPI's Case Brief at 1.

⁶¹ *Id.* at 2.

of the sales verification, TPI reported that it had made certain minor errors in its initial reporting to Commerce.

For each minor correction presented by TPI at the outset of the sales verification, Commerce was able to verify that each correction was indeed minor as defined above. For the corrections surrounding INDIRSH and DINDIRSU, we found that the amounts reported by TPI tied to their questionnaire response and that the minor correction came about in the allocation of the expense.⁶² This correction was presented and accepted as a minor revision to what was already reported by TPI. Regarding the minor corrections to the reporting of home market freight costs, the corrections made to the home market movement expenses were verified in the context of the verification of “Other Adjustments and Expenses,”⁶³ where we reviewed invoices as well as the booking of movement expenses in TPI’s books and records. Further, the minor corrections surrounding the revisions to TPI’s quantity and value amounts were reviewed and verified in the context of the entire quantity and value reconciliation, where we found no deviations, aside from the correction presented, from what was previously reported to Commerce prior to verification.⁶⁴ Lastly, the corrections to the packing expenses were verified in the context of “Other Adjustments and Expenses.” There, we were able to confirm the actual packing costs incurred by TPI per the minor correction revisions.⁶⁵ As a result, we find all of the corrections mentioned above constitute minor corrections that clarify information already on the record and/or makes minor corrections to the information already on the record. Additionally, for further discussion on the minor corrections surrounding revisions to the general and administration (G&A) and financial expenses *see* Issue 5.

Comment 5: Adjustments to TPI’s G&A and Financial Expenses

The Petitioners’ Comments:

- Commerce should implement the corrections to the reported G&A expenses and financial expenses in accordance with Commerce’s verification finding.⁶⁶

TPI’s Comments:

- Commerce should accept the revised G&A and interest expense ratios pursuant to the verification minor corrections and make changes to these ratios as noted in the verification report.⁶⁷

Commerce’s Position:

We agree with both parties. For the final determination, we recalculated the G&A and financial expense ratios incorporating the minor corrections presented at verification, and we made adjustments to the ratios pursuant to the verification findings noted in the cost verification report.⁶⁸ Specifically, for the G&A expense ratio we excluded certain corporate expenses, which

⁶² See TPI Verification Report at 17 and at VE-5.

⁶³ *Id.* at 16 and VE-11.

⁶⁴ *Id.* at 10 and VE-8.

⁶⁵ *Id.*

⁶⁶ See the Petitioners’ TPI Case Brief at 5.

⁶⁷ See TPI’s Case Brief at 1-2.

⁶⁸ See TPI Cost Verification Report at 2, 18 - 20.

relate to the general operations of the company, and selling expenses from the denominator of the ratio and included the corporate expenses in the numerator of the ratio. For the financial expenses, we excluded from the denominator of the ratio selling expenses and excise duty collected on sales, and removed the gain on sales of assets from the numerator of the ratio.⁶⁹ Gains on sale of assets are typically included in the G&A rate calculation, not financial expenses.

Comment 6: TPI's Grade Reporting

The Petitioners' Comments:

- Verification revealed that grades were misreported for home market sales, including HM1 and HM2. Even though Commerce found that the errors did not change the grade coding in these instances, the record indicates numerous instances where grades apparently have not been coded in accordance with instructions in Commerce's questionnaire.⁷⁰

TPI's Comments:

- Commerce should not adjust or otherwise modify TII's reported grade characteristics as there is no misreporting of grade characteristics by TII and therefore no adjustments to TII's reported grade characteristics are warranted or necessary.⁷¹
- The minor discrepancy noted by Commerce in its verification report with respect to a specific home market sale, HM2, had no material difference between the material grade actually used for the merchandise sold and the material grade reported to Commerce.⁷²
- TPI's reporting of GRADEH was based upon the instructions provided by Commerce. TPI used the material for each transaction as captured in its ERP system for its reporting. This process was reviewed during verification.⁷³

Commerce's Position:

We agree with TPI, and will not adjust or otherwise modify TPI's reported grade coding because TPI did not misreport grade coding in its reporting of the CONNUMs or physical characteristics of their sales to Commerce. Specifically, the petitioners point to sales HM1 and HM2 as referenced in the verification report to substantiate its claim that the record contains numerous instances where grades apparently have not been coded in accordance with the instructions in Commerce's questionnaire.⁷⁴ First, for sales HM1 and HM2, Commerce explicitly referred to the incorrect reporting of STEELGRADEH in the home market database. The STEELGRADEH field however, was not a part of CONNUM reporting requirement or any product characteristics reporting requirements set forth in Commerce's revised product characteristics letter.⁷⁵ Rather, this was a field that TPI added to its home market database and is one that Commerce has not relied on in for the margin calculation.

⁶⁹ See Memorandum to Neal M. Halper Re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Tube Investments of India, Ltd., dated April 9, 2018 (TPI Final Cost Calculation Memo).

⁷⁰ See the Petitioners' TPI Case Brief at 1-2.

⁷¹ See TPI's Rebuttal Brief at 2.

⁷² *Id.*

⁷³ *Id.* at 3.

⁷⁴ See the Petitioners' TPI Case Brief at 1-2.

⁷⁵ See Letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated July 6, 2017.

Further, though the petitioners state that there are over 780 instances in which grade reporting has been misreported to ensure that certain U.S. sales will match lower priced home market sales,⁷⁶ the petitioners have not provided substantial evidence to support this claim. The petitioners do not provide specific instances where steel grade coding was misreported (*e.g.*, specific sequence numbers) by TPI or how the specific instances of steel grade misreporting has caused a distortion in the database causing certain U.S. sales to match to a lower priced home market sale. The petitioners merely provide a chart of possible instances where this error may have occurred. Commerce however, was able to spot-check, in our review of HM1 and HM2 during verification, that the misreporting of STEELGRADEH, did not result in grade coding errors.⁷⁷ Therefore, as substantial evidence has not been provided by the petitioners to support their claim, we cannot presume that errors in grade coding exist when there is no evidence to support that conclusion. Thus, we have determined not to adjust or otherwise modify TPI's reported grade characteristics.

Comment 7: TPI Home Market Billing Adjustments

The Petitioners' Comments:

- Commerce noted at verification that home market billing adjustments were based in some cases on such criteria as “price changes demanded by the customer.” Verification also revealed that certain adjustments were calculated incorrectly. Commerce should not grant billing adjustments that are unsupported by pre-existing agreements or policies, because to do so invites post-petition manipulation of pricing in order to decrease actual margins of dumping. Commerce should, therefore deny any billing adjustments for both home market sales and U.S. sales.⁷⁸

TPI Rebuttal Brief:

- Commerce should not adjust TPI's reported home market billing adjustments. TPI did not incorrectly report home market billing adjustments nor did Commerce observe any issue with TPI's reported billing adjustments.⁷⁹
- Commerce requested that TPI resubmit its home market database and specifically instructed TPI to only make those changes in the minor corrections presented at both the cost and sales verification with respect to TPI's reported sales expenses, and cost of production. Commerce did not request that TPI make any other changes to its home market sales database, therefore it stands to reason that no further changes are required.⁸⁰

Commerce's Position:

We agree with TPI that Commerce should not adjust TPI's reported home market and U.S. billing adjustments. The petitioner argues that Commerce should deny billing adjustments because verification revealed that, for two home market sales, billing adjustments were incorrectly reported and that certain billing adjustments were made at the request of TPI's

⁷⁶ See the Petitioners' TPI Case Brief at 2-3.

⁷⁷ See TPI Sales Verification Report at 14-16.

⁷⁸ See the Petitioners' Case Brief at 3.

⁷⁹ See TPI's Rebuttal Brief at 5.

⁸⁰ *Id.* at 2.

customers. However, the petitioners have not provided compelling evidence for Commerce to deviate from its normal practice set forth in 19 CFR 351.401(c) and 351.102(b) in using the billing adjustments provided by TPI. The petitioners do not point to specific sales, aside from two home market sales mentioned in TPI's verification report, where billing adjustments were incorrectly calculated and reported to Commerce. For the two sales highlighted in the verification report, TPI explained that a typographical error, in which TPI inadvertently swapped the reported billing adjustment for both sales, created the billing adjustment reporting errors.⁸¹ Commerce did not find any other evidence throughout the verification of TPI's home market U.S. sales traces that indicated there was widespread misreporting of billing adjustments throughout TPI's databases.⁸² As a result, in accordance with 19 CFR 351.401(c) and 351.102(b), Commerce will continue to deduct the value of the post-sale price adjustment for both home market and sales to the United States, such that the adjusted prices reflect the use of the per-unit price stipulated by the renegotiation of the sales contract. Therefore, Commerce will not adjust TPI's reported billing adjustments to home market sales and sales to the United States.

Comment 8: TPI's Freight Reporting

The Petitioners' Comments:

- Verification demonstrated that home market freight charges for HM2 were misreported. As a result, Commerce should adjust reported freight charges downward for all home market sales consistent with the error found for HM2.⁸³
- Destination information was also determined at verification to have been misreported based on Commerce's review of the selected HM sales, suggesting that freight charges could be incorrect. Because destination reporting may affect the reported destination-specific freight amounts, Commerce should revise home market freight charges to the lowest reported amount for all sales, or for the two destinations at issue.⁸⁴

TPI Comments:

- Commerce should not make wholesale adjustments to TPI's reported home market freight charges. Though Commerce found the freight cost for home market sale, HM 2, was misreported due to a mathematical error, a mathematical error for a single transaction does not lead to a wholesale adjustment to the entire home market sales database.⁸⁵
- TPI did not misreport freight charges for the single transaction, HM2. Commerce verified that the freight charges for HM2 were accurate. As a result, the petitioners' unsupported argument that because there was confusion as to what was reported for the destination location for HM2, the entire home market database should be revised, is without merit.⁸⁶

Commerce's Position:

We agree with TPI that we should not adjust all of TPI's home market freight charges. The petitioners point to the misreporting of a single sale highlighted in TPI's verification report to

⁸¹ See TPI Sales Verification Report at 15-16.

⁸² *Id.* at VE 14-16 and VE 21-24.

⁸³ See the Petitioners' Case Brief at 4.

⁸⁴ *Id.*

⁸⁵ See TPI's Rebuttal Brief at 5.

⁸⁶ *Id.* at 6.

state that because Commerce found an error in the reporting of one sale, there is a potential for the misreporting of freight charges throughout TPI's home market database.⁸⁷ However, the petitioners do not provide any evidence to support this claim, in stating that Commerce should "adjust reported freight charges downward for all home market sales consistent with the error found for HM2...."⁸⁸ Despite examining other sales for this same type of error, Commerce did not find this same error occurred for the other home market sales traces examined during verification,⁸⁹ and since the petitioners have not provided specific instances where the alleged misreporting occurred, Commerce finds that there is no evidence supporting the petitioners' claim. Further, the petitioners state that for certain home market sales, Commerce found during verification that destination information was determined to be misreported by TPI.⁹⁰ Again, during verification of the reported exhibits, Commerce did not find evidence that this was a systemic problem. Commerce only noted that HM2 and HMSP1 were misreported by TPI.⁹¹ Commerce did not find any other instances where merchandise destinations were misreported by TPI. Additionally, the petitioners' suggestion is that as a result of the errors found during verification, "freight charges could be incorrect."⁹² Therefore, because the petitioners have not provided evidence to support their claims that freight charges reported throughout TPI's home market data may have been misreported, and because Commerce did not uncover any evidence of the wide spread misreporting of freight charges, Commerce will not adjust TPI's home market freight charges per the petitioners' request.

Comment 9: TPI's Date of Sale

TPI's Comments:

- Commerce should continue to use invoice date as the date of sale for the final determination.⁹³

No other party commented on this issue.

Commerce's Position: Commerce agrees with TPI and will continue to use the invoice date for this final determination.

⁸⁷ See the Petitioners' TPI Case Brief at 4.

⁸⁸ *Id.* at 4.

⁸⁹ See TPI Sales Verification Report at 13-16.

⁹⁰ See Petitioners' TPI Case Brief at 4.

⁹¹ See TPI Sales Verification Report at 13-16.

⁹² *Id.* at 4.

⁹³ See TPI Case Brief at 2.

VII. CONCLUSION

We recommend applying the above methodology for this final determination.



Agree

Disagree

4/9/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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