UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-038
Investigation
Public Document
E&C /VI: FBaker, SHoefke

January 17, 2017

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Affirmative Final Determination in the Antidumping Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China

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I. SUMMARY

The Department of Commerce (the Department) has analyzed the comments submitted by Petitioner,[1] ACIT (Pinghu) Inc. (ACIT Pinghu) and its U.S. affiliate ACIT USA Inc. (ACIT USA) (together, ACIT), Jiangsu Jiuding New Material Co., Ltd. (Jiuding), and New Fire Co., Ltd. (New Fire), in the antidumping investigation of certain amorphous silica fabric (silica fabric) from the People's Republic of China (PRC). Following issuance of the *Preliminary Determination*,[2] verification, and the analysis of the comments received, we made changes to the margin calculations for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments from interested parties.

<u>Issues Pertaining to ACIT</u>

Comment 1: Adverse Facts Available
Comment 2: Critical Circumstances Determination

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[1] Petitioner is Auburn Manufacturing, Inc. (Petitioner).
[2] *See Antidumping Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 81 FR 70341 (September 1, 2016) (*Preliminary Determination*).

Comment 3: Calculation Errors
Comment 4: Surrogate Country Selection
Comment 5: Surrogate Value Selection for Lime

Issues Pertaining to New Fire

Comment 6: Rejection of Extension Request

Issues Pertaining to Jiuding

Comment 7: Jiuding Separate Rate

II. BACKGROUND

On September 1, 2016, the Department published in the *Federal Register* the notice of its affirmative *Preliminary Determination* in this investigation.[3] The period of investigation (POI) is July 1, 2015, through December 31, 2015.

We conducted verification of ACIT Pinghu and ACIT USA in September and October 2016.[4] On September 7, 2016, and October 3, 2016, we received hearing requests from Petitioner and ACIT, respectively.[5] On November 23, 2016, we issued the briefing schedule as stated in the *Preliminary Determination*. On December 1, 2016, we received case briefs from Petitioner, ACIT, New Fire, and Jiuding.[6] On December 6, 2016, we received rebuttal briefs from

[3] *See Preliminary Determination*.
[4] *See* Memorandum to the File: "Verification of the Questionnaire Responses of ACIT (Pinghu) Inc. in the Antidumping Investigation of Certain Amorphous Silica Fabric from the People's Republic of China," dated November 16, 2016 (ACIT EP Verification Report); *see also* Memorandum to the File: "CEP Verification of the Questionnaire Responses of ACIT (USA) Inc. in the Antidumping Investigation of Certain Amorphous Silica Fabric from the People's Republic of China," dated November 22, 2016 (ACIT CEP Verification Report).
[5] *See* Letter from Petitioner, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Hearing Request of Petitioner," dated September 7, 2016; *see also* Letter from ACIT, "Certain Amorphous Silica Fabric from the People's Republic of China," dated October 3, 2016.
[6] *See* Letter from Petitioner, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Case Brief Regarding ACIT," dated December 1, 2016 (Petitioner's Case Brief); *see also* Letter from ACIT, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Case Brief," dated December 1, 2016 (ACIT's Case Brief); *see also* Letter from New Fire, Re: "Amorphous Silica Fabric from the People's Republic of China (Investigation): Case Brief," dated December 1, 2016 (New Fire's Case Brief); *see also* Letter from Jiuding, Re: "Amorphous Silica Fabric from the People's Republic of China (Investigation): Case Brief," dated December 1, 2016 (Jiuding's Case Brief).

Petitioner and ACIT.[7] On December 7, 2016, ACIT withdrew its hearing request.[8] On December 8, 2016, Petitioner withdrew its hearing request.[9]

Based on our analysis of the comments received and our verification findings, for this final determination we have revised the dumping margins for Nanjing Tianyuan Fiberglass Material Co., Ltd. (Nanjing Tianyuan), ACIT, and the PRC-wide Entity.

III. PERIOD OF INVESTIGATION

The POI is July 1, 2015, through December 31, 2015. This period corresponds to the two most recently completed fiscal quarters prior to the month of the filing of the Petition, which was January 2016.[10]

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is woven (whether from yarns or rovings) industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica (SiO2) by nominal weight, and a nominal width in excess of 8 inches. The investigation covers industrial grade amorphous silica fabric regardless of other materials contained in the fabric, regardless of whether in roll form or cut-to-length, regardless of weight, width (except as noted above), or length. The investigation covers industrial grade amorphous silica fabric regardless of whether the product is approved by a standards testing body (such as being Factory Mutual (FM) Approved), or regardless of whether it meets any governmental specification.

Industrial grade amorphous silica fabric may be produced in various colors. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is colored. Industrial grade amorphous silica fabric may be coated or treated with materials that include, but are not limited to, oils, vermiculite, acrylic latex compound, silicone, aluminized polyester (Mylar®) film, pressure-sensitive adhesive, or other coatings and treatments. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is coated or treated, and regardless of coating or treatment weight as a percentage of total product weight. Industrial grade amorphous silica fabric may be heat-cleaned. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is heat-cleaned.

Industrial grade amorphous silica fabric may be imported in rolls or may be cut-to-length and then further fabricated to make welding curtains, welding blankets, welding pads, fire blankets,

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[7] *See* Letter from Petitioner, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Rebuttal Brief Regarding ACIT," dated December 6, 2016 (Petitioner's ACIT Rebuttal Brief); *see also* Letter from Petitioner, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Rebuttal Brief with Respect to New Fire Co., Ltd. And Jiangsu Jiuding New Material Co., Ltd.," dated December 6, 2016 (Petitioner's New Fire/Jiuding Rebuttal Brief); *see also* Letter from ACIT, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Rebuttal Brief," dated December 6, 2016 (ACIT's Rebuttal Brief).
[8] *See* Letter from ACIT, "Certain Amorphous Silica Fabric from the People's Republic of China: Withdrawal of Hearing Request," dated December 7, 2016.
[9] *See* Letter from Petitioner, Re: "Antidumping Duty Investigation on Certain Amorphous Silica Fabric from the People's Republic of China: Withdrawal of Hearing Request of Petitioner," dated December 8, 2016.
[10] *See* 19 CFR 351.204(b)(1).

fire pads, or fire screens. Regardless of the name, all industrial grade amorphous silica fabric that has been further cut-to-length or cut-to-width or further finished by finishing the edges and/or adding grommets, is included within the scope of this investigation.

Subject merchandise also includes (1) any industrial grade amorphous silica fabric that has been converted into industrial grade amorphous silica fabric in China from fiberglass cloth produced in a third country; and (2) any industrial grade amorphous silica fabric that has been further processed in a third country prior to export to the United States, including but not limited to treating, coating, slitting, cutting to length, cutting to width, finishing the edges, adding grommets, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope industrial grade amorphous silica fabric.

Excluded from the scope of the investigation is amorphous silica fabric that is subjected to controlled shrinkage, which is also called "pre-shrunk" or "aerospace grade" amorphous silica fabric. In order to be excluded as a pre-shrunk or aerospace grade amorphous silica fabric, the amorphous silica fabric must meet the following exclusion criteria: (l) the amorphous silica fabric must contain a minimum of 98 percent silica (SiO2) by nominal weight; (2) the amorphous silica fabric must have an areal shrinkage of 4 percent or less; (3) the amorphous silica fabric must contain no coatings or treatments; and (4) the amorphous silica fabric must be white in color. For purposes of this scope, "areal shrinkage" refers to the extent to which a specimen of amorphous silica fabric shrinks while subjected to heating at 1800 degrees F for 30 minutes.[11]

Also excluded from the scope are amorphous silica fabric rope and tubing (or sleeving). Amorphous silica fabric rope is a knitted or braided product made from amorphous silica yarns. Silica tubing (or sleeving) is braided into a hollow sleeve from amorphous silica yarns.

The subject imports are normally classified in subheadings 7019.59.4021, 7019.59.4096, 7019.59.9021, and 7019.59.9096 of the Harmonized Tariff Schedule of the United States (HTSUS), but may also enter under HTSUS subheadings 7019.40.4030, 7019.40.4060, 7019.40.9030, 7019.40.9060, 7019.51.9010, 7019.51.9090, 7019.52.9010, 7019.52.9021, 7019.52.9096 and 7019.90.1000. HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

V. APPLICATION OF TOTAL ADVERSE FACTS AVAILABLE WITH REGARD TO ACIT

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that the Department, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1)

[11] Areal shrinkage is expressed as the following percentage:

((Fired Area, em2 – Initial Area, cm2) / Initial Area, cm2) X 100 = Areal Shrinkage, %

and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.

As discussed in Comment 1 below, ACIT failed to reconcile its U.S. sales data to its books and records during the investigation and at the sales verifications. Importantly, the Department cannot rely on ACIT's reported data because ACIT did not demonstrate that the data tie back to ACIT's books and records and, therefore, the data are unreliable for the purposes of calculating ACIT's estimated weighted-average dumping margin. Furthermore, ACIT's inability to reconcile its reported data precluded the Department's verifiers from performing essential procedures that form the backbone of the Department's verification process.[12] As a result, and as discussed below in Comment 1, the Department concludes that application of total facts available with an adverse inference is appropriate with respect to ACIT, pursuant to sections 776(a)(1), (2)(A)-(D), and 776(b) of the Act.

The Department also continues to find that total facts available with an adverse inference should apply to Nanjiang Tianyuan and the PRC-wide Entity for the reasons explained in the *Preliminary Determination*.[13]

VI. SELECTION OF ADVERSE FACTS AVAILABLE (AFA) RATE

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping (AD) and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[14] These amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[15]

Section 776(b) of the Act 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. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested

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[12] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014) (*Steel Concrete Reinforcing Bar from Mexico*), and accompanying Issues and Decision Memorandum at Comment 6.

[13] *See* Memorandum to File, Re: "Use of Adverse Facts Available for Nanjing Tianyuan Fiberglass Material Co., Ltd.," dated August 24, 2016.

[14] *See* TPEA. The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained 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).

[15] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, at 46794-5. The 2015 amendments may be found at: https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl.

party had complied with the Department's request for information.[16] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.[17]

Section 776(c) of the Act provides that, when the Department 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.[18] The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[19] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning subject merchandise.[20]

Finally, section 776(d) of the Act also makes clear that when selecting information as AFA, the Department is not required to estimate what the weighted-average dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the information used as AFA reflects an "alleged commercial reality" of the interested party.[21]

In a less-than-fair-value investigation, the Department'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.[22] It is also the Department's practice to consider, in employing AFA, the extent to which a party may benefit from its own lack of cooperation.[23] In this investigation, the dumping margin alleged in the petition was 160.28 percent.[24] At the *Preliminary Determination*, ACIT received a calculated weighted-average dumping margin of 162.47 percent.[25] As stated above, the Department generally applies, as AFA, the higher of the highest margin from the underlying Petition or the highest calculated rate; however, in this case, the only Petition margin (160.28 percent) is lower than ACIT's preliminary calculated margin (162.47 percent). In order not to

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[16] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).
[17] *See* 19 CFR 351.308(c).
[18] *See* 19 CFR 351.308(d).
[19] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).
[20] *See* SAA, at 870; 19 CFR 351.308(d).
[21] *See* section 776(d)(3) of the Act; TPEA, section 502(3).
[22] *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.
[23] *See*, *e.g*., *Nippon Steel Corp. v. United States,* 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *see also Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 144876 (March 14, 2014).
[24] *See Certain Amorphous Silica Fabric from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 8913 (February 23, 2016) (*Initiation Notice*); *see also* Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Amorphous Silica Fabric from the People's Republic of China, (January 20, 2015) (Petition) Volume II at 17-18 and Exhibit 24.
[25] *See Preliminary Determination*.

allow ACIT to benefit from its lack of cooperation, the Department has continued to apply, as AFA, ACIT's margin as calculated in the *Preliminary Determination*. Because this is a calculated margin, based on a mandatory respondent's data, in this segment of the proceeding, it does not constitute secondary information and, therefore, there is no need to corroborate it.[26] Thus, for the final determination, as adverse facts available, we have assigned to ACIT, Nanjing Tianyuan, and the PRC-wide Entity a dumping margin of 162.47 percent.

VII. DISCUSSION OF THE ISSUES

Issues Pertaining to ACIT

Comment 1: Adverse Facts Available

Petitioner Arguments:

Petitioner states that the Department asked ACIT three times to provide a sales reconciliation that included quantity, and that ACIT failed to comply.[27] Petitioner also points out that on the third request ACIT stated, "{it} is not possible to reconcile the sales quantity reported in the sales database with the financial statements, {because} only the sales values are booked in sales {sic} ledger and reflected in the financial statements of ACIT USA."[28] Petitioner argues that what ACIT has stated is normal for every company that the Department investigates, in that a company's sales quantities are not ordinarily reflected in the company's financial statements.[29] Petitioner points out that Appendix V of the Department's antidumping questionnaire recognizes that many companies' accounting ledgers recognize only values, not sales quantities.[30] Petitioner further states that it is a company's invoicing system that includes quantity, and a quantity reconciliation, therefore, normally requires a link between the accounting system and the invoicing system.[31] Petitioner argues that quantity is reconciled from the point at which the accounting system and the invoicing system are linked by sales value.[32] Petitioner also argues that ACIT could have provided such a reconciliation of its sales quantity based on the fact that ACIT USA's invoicing system includes both sales quantity and price, as discovered at verification and noted at two different points in the verification report.[33] Therefore, Petitioner argues that ACIT failed to provide the sales reconciliation despite being able to do so.[34]

Petitioner states that, pursuant to section 776 of the Act, the Department may base a determination on facts available when necessary information is not on the record or an interested party withholds information, fails to provide information in a timely manner, significantly

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[26] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 20008), and accompanying Issues and Decision Memorandum at Comment 1.
[27] *See* Petitioner's Case Brief at 4.
[28] *Id.*, quoting ACIT's August 4, 2016 submission at 8.
[29] *Id.*
[30] *Id.*, at 4-5.
[31] *Id.*, at 5.
[32] *Id.*
[33] *Id.*, at 5-6, referencing and quoting ACIT CEP Verification Report.
[34] *Id.*, at 6.

impedes a proceeding, or provides information that cannot be verified.[35] Petitioner argues that the record is clear that ACIT withheld essential requested information, namely a sales quantity reconciliation.[36] Petitioner avers that there is no doubt that ACIT acted to impede the Department's investigation by refusing to provide information that was readily available to it.[37] Petitioner, therefore, argues that the Department should apply an inference that is adverse to the interest of ACIT.[38]

Additionally, Petitioner points out that ACIT has acknowledged discrepancies between invoiced quantity and shipment quantity.[39] Petitioner argues that, therefore, the mere existence of invoices on the record of this investigation does nothing to affirm or refute the presence of the aforementioned discrepancies.[40] Petitioner also argues that ACIT failed to provide all email correspondence with ACIT USA's customers that would have been useful in verifying sales information.[41] Petitioner states there is no record confirmation that ACIT did anything to recover emails that could have served to confirm the quantities actually provided to its customers.[42] Therefore, Petitioner recommends that the Department should apply partial adverse facts available of the highest reported quantity discount in ACIT's sales file to all sales to compensate for ACIT's deficiencies.[43]

ACIT Rebuttal Arguments:

ACIT disagrees with Petitioner and argues that the quantity discount field reported in the sales database was to cover ACIT's practice of providing extra fabric to allow the quantity delivered to match the quantity invoiced.[44] ACIT states that the Department engaged in an in-depth examination of this issue and the record reflects that the additional material is an effort to meet customer requirements rather than an effort to disguise ACIT's actual shipment quantities.[45] ACIT states that the verification report of ACIT Pinghu shows that the quantity discount is an effort to ensure that ACIT's products meet the quantity metric in the invoice and not to provide additional merchandise.[46] ACIT also points out that in the rare instance of quality issues, ACIT makes a billing adjust as documented.[47]

ACIT also argues that the Department did not adopt AFA at the preliminary determination, despite Petitioner's comments prior to the *Preliminary Determination*, and should not do so for the final determination.[48] ACIT argues that the Department cannot now find a willful refusal to cooperate when it previously determined that the same circumstances did not warrant the

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[35] *Id.*, at 7, citing 19 U.S.C. 1677e(a).
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*, at 7-8, referencing ACIT's June 30, 2016 submission at 17.
[40] *Id.*, at 8.
[41] *Id.*
[42] *Id.*
[43] *Id.* at 9.
[44] *See* ACIT's Rebuttal Brief, at 3.
[45] *Id.*
[46] *Id.*, citing ACIT EP Verification Report at 8.
[47] *Id.*, at 4.
[48] *Id.*

application of AFA.[49] ACIT states that the Department's questionnaire asks respondents to "provide a reconciliation of the sales reported in your U.S. sales database to the total sales listed in your financial statements" and because quantity is not on ACIT USA's financial statements, it cannot provide information that it does not generate or retain.[50]

ACIT further argues that the quantity reconciliation does not provide additional information as to the veracity of the sales database.[51] ACIT states that the quantity reconciliation would be merely matching ledger entries on the basis of value with corresponding invoice value and, by extension, quantity.[52] ACIT states that the sales traces from the CEP verification cover all but one of ACIT USA's reported invoices and show the link between the billed quantity and the delivered quantity.[53] ACIT also adds that it provided all emails, and Petitioner cannot point to a specific instance to support its accusation that ACIT failed to provide all email correspondence with ACIT USA's customers. Therefore, ACIT argues that partial AFA of applying the highest quantity discount is unavailing when the Department verified the quantity all discounts and the sales database, because ACIT cooperated with this investigation to the best of its ability.

Department's Position:

We determine that the application of total facts available with an adverse inference is warranted for the final determination.

As stated above, section 776(a) of the Act provides that the Department, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

Section 776(b) of the Act 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. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Department's request for information.[54] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[55]

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[49] *Id.*, at 5.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*, at 5-6.
[54] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).
[55] *See* 19 CFR 351.308(c).

In Appendix V of the Department's initial antidumping questionnaire, the Department instructed ACIT to provide a reconciliation of its sales and quantity. Specifically, it provided in relevant part:

> *Please provide a reconciliation of the sales reported in your U.S. sales database to the total sales listed in your financial statements. Provide supporting documentation (e.g., general ledger, sub-ledger, etc.) for each step in the reconciliation. The reconciliation should include the following:*
>
> *1. A demonstration of how the POI financial statements' sales totals tie to the general ledger sales revenue accounts.*
>
> 2. *A worksheet demonstrating how the general ledgers' sales revenue accounts in step one, above, tie to the sales reported in the U.S. sales database. The worksheet should identify the total quantity and value of all sales in the fiscal years overlapped by the POI and identify the quantity and value of each category of non-subject merchandise sales that are excluded from your reported sales of subject merchandise (e.g., domestic sales, sales outside the POI, sales to foreign markets other than the United States, etc.)…*[56]

In response to the Department's initial questionnaire, ACIT failed to provide a quantity reconciliation or a narrative response to supplement its sales value reconciliation.[57] Rather, ACIT provided a document entitled "Worksheet of Sales Reconciliation," without any narrative explanation, and which did not list quantities.[58] On June 7, 2016, the Department issued its first supplemental questionnaire, asking ACIT again to provide a reconciliation of its quantity and value in accordance with the instructions in the initial questionnaire.[59] In response to the Department's second request for ACIT to complete all questions in Appendix V of the initial questionnaire, ACIT only provided a revised value reconciliation, and did not provide a sales quantity reconciliation.[60] The Department then requested a third time for ACIT to provide a reconciliation of its sales quantity, in its second supplemental questionnaire.[61] On August 4, 2016, ACIT responded to the Department's third request for a quantity reconciliation. ACIT's narrative response in its entirety was:

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[56] *See* Letter from the Department to ACIT (Pinghu) Inc., dated April 1, 2016 (Department's Initial Questionnaire).
[57] *See* Letter to the Department, "Certain Amorphous Silica Fabric from the People's Republic of China: response to Section C and D," dated May 18, 2016 (ACIT CD Response), at Exhibit C-11.
[58] *Id.*
[59] *See* Letter to ACIT, "Antidumping Investigation of Amorphous Silica Fabric from the People's Republic of China: ACIT (Pinghu) Inc.'s First Supplemental Questionnaire," dated 7, 2016 at 12-13.
[60] *See* Letter to the Department, "Certain Amorphous Silica Fabric from the People's Republic of China: Response to the Department of Commerce's June 7, 2016 Supplemental Questionnaire," dated June 30, 2016 (ACIT's SQ1R) at 23-24 and Exhibit SQ1-C-16.
[61] *See* Letter to ACIT "Certain Amorphous Silica Fabric from the People's Republic of China: ACIT (Pinghu) Inc. Second Supplemental Questionnaire," dated July 14, 2016.

> *Only the sales values are booked in sales ledger and reflected in the financial statements of ACIT USA. Therefore, it is not possible to reconcile the sales quantity reported in the sales database with the financial statements.*[62]

Additionally, the Department released verification outlines to ACIT Pinghu on August 23, 2016, and to ACIT USA on October 7, 2016, prior to the Department's September 12, 2016, and October 17, 2016, verifications, respectively.[63] The outlines instructed ACIT Pinghu and ACIT USA to prepare fully for verification, and clearly indicated that ACIT Pinghu and ACIT USA should gather specific information listed in the outline from the appropriate personnel prior to the verifiers' arrival. Further, in addition to the Department's original questionnaire requiring that ACIT reconcile its reported sales to its books and records,[64] the outline specifically requested that ACIT prepare in advance of the verification the reconciliation of the quantity and value of sales reported in the Section C sales database.[65] The Department's verification outline listed specific instructions as to what information ACIT was expected to provide at verification with respect to its quantity and value reconciliation:

> *Beginning with your sales system/journal, review the reconciliation worksheets and programs that tie the sales system/journal to the general ledger and into the financial statements sales total. Then tie the sales system to the quantity and value totals reported in the most up-to-date submissions of your home and U.S. market databases.* [66]

The Department conducted its CEP verification of ACIT USA from October 17, 2016, through October 19, 2016.[67] Despite the instructions in the verification outlines, at the CEP verification, ACIT USA did not reconcile its reported sales quantity and value to its reported financial statements, but offered a reconciliation of its sales value to its federal tax return as an alternative.[68]

During CEP verification, the Department found that ACIT USA generates invoices in its QuickBooks accounting system, which store the price and quantity of each sale.[69] Bills and other information are logged into QuickBooks on a monthly basis, and regularly updated.[70] When ACIT USA generates an invoice, the QuickBooks accounting system generates the

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[62] *See* Letter to the Department, "Certain Amorphous Silica Fabric from the People's Republic of China: Response to the Department of Commerce's July 14, 2016 Second Supplemental Questionnaire," dated August 4, 2016 (ACIT's SQ2R) at 8.
[63] *See* Letter to ACIT Pinghu, "Antidumping Duty Investigation on Amorphous Silica Fabric from the People's Republic of China: Verification of ACIT (Pinghu) Inc.," dated August 23, 2016 (ACIT EP Outline), *see also* Letter to ACIT USA, "Antidumping Duty Investigation on Amorphous Silica Fabric from the People's Republic of China: CEP Verification of ACIT (Pinghu) Inc.," dated October 7, 2016 (ACIT CEP Outline).
[64] *See* Department's Initial Questionnaire at Appendix V.
[65] *See* ACIT EP Outline, *see also* ACIT CEP Outline.
[66] *See* ACIT CEP Outline.
[67] *See* ACIT CEP Verification Report at 1.
[68] *Id.*, at 9.
[69] *Id.*, at 2 and 4.
[70] *Id.,* at 4.

appropriate sub-ledger, general ledger, and trial balance entries. To generate financial reports, the accounting system has a report generation function, (*e.g.,* a query).[71] Company officials walked verifiers through the process of creating an entry of a sample sale, which included entering the product code, quantity, and price per unit.[72] Finally, because ACIT specifically stated that it was impossible to provide the requested information, the Department attempted to verify the veracity of ACIT's claim that it would be impossible for ACIT to provide a reconciliation of the sales quantity reported in the sales database. The Department verifiers found that, because ACIT's QuickBooks accounting system generated the invoices, which include both quantity and value, ACIT would have been capable of reconciling the sales quantity reported in its U.S. sales database to its normal books and records, and then reconciling the sales value to its financial statements, as requested in the Department's questionnaires.[73] This was noted and explained in ACIT's CEP Verification Report.[74]

We find that, despite the Department's detailed and specific questionnaires and instruction in the verification outline, ACIT failed to cooperate by not acting to the best of its ability to reply accurately and completely to requests for information regarding the sales of subject merchandise. Specifically, ACIT failed to reconcile the quantity and value[75] of its reported sales to the company's books and records, which is critical to the Department's analysis of whether the reported information is reliable for use in calculating ACIT's estimated weighted-average dumping margin.

Not only did ACIT repeatedly fail to provide its sales quantity reconciliation, ACIT stated that the reconciliation was an impossible task. However, Department verifiers discovered that ACIT USA's accounting system stores quantity information when it generates invoices and creates journal entries, meaning there was a direct link between ACIT USA's financial system and its ability to track, record, maintain, and quantify sales quantity.[76] Therefore, we find that it was, indeed, possible for ACIT to provide a reconciliation of its sales quantity, and ACIT's claim that it does not generate or retain the necessary information to do so is unsupported by information on the record.

We disagree with ACIT's assertion that quantity reconciliation is circular and does not provide additional information as to the veracity of the sales database. [77] The Department considers the reconciliation process to be "one of the most important tasks performed" at verification:

> It also serves another very important purpose in that it baselines accounting ledgers and worksheets that will be used to verify many other topics. Base lining documents means that verifiers have

[71] *Id.*
[72] *Id.*
[73] *See* ACIT CEP Verification Report at 9.
[74] *Id.* at 4 - 9.
[75] Instead of reconciling to ACIT USA's reported financial statements, ACIT USA proffered a reconciliation to its reported federal tax return. *See* ACIT CEP Verification Report at 9. However, as requested in the original antidumping questionnaire, the Department's normal practice is to require reconciliation to a company's financial statements, not tax returns.
[76] *See* ACIT CEP Verification Report at 9.
[77] *See* ACIT's Rebuttal Brief, at 6-7.

> established the validity of these documents by tying them into the audited financial statements and that other verified topics can be tied into these documents without having to go back to the general ledger. Thus, each of the documents used to reconcile the total quantity and value of reported POI or POR sales back to the financial report can be considered a source document. The exercise requires that verifiers establish to their full satisfaction that the tie-in to the financial statement is complete and accurate. If not, where appropriate, verifiers should continue to reconcile verified topics back to the company's general ledger.[78]

Furthermore, we disagree with ACIT that the Department cannot apply AFA, because it did not do so at the *Preliminary Determination*. As an initial matter, we note that the record of this investigation now contains additional information than that relied upon in the *Preliminary Determination*. Specifically, after the *Preliminary Determination*, the Department conducted verifications of ACIT Pinghu and ACIT USA, in which the Department found information that contradicted certain responses in ACIT's questionnaire responses (mentioned in further detail below). That the Department declined to apply AFA to ACIT in the *Preliminary Determination* does not preclude an application of AFA for the final determination, especially considering the additional information that has come to light following the *Preliminary Determination*. Further, establishing the completeness and accuracy of a respondent's reported total sales is a significant element of verification, which serves as the foundation of not only the verification, but also of the respondent's sales information submitted to the Department over the course of the investigation.[79] This is especially important in this proceeding because ACIT's quantity discount given to its customers means that ACIT Pinghu's invoices do not match its packing lists.[80] Only with a complete and accurate record that includes respondent's sales quantity and value can the Department be confident that it has a sound foundation on which to perform its analysis accurately, including comparisons of U.S. price with normal value, for the final determination. Because of the lack of ACIT's quantity and value reconciliation, the Department now finds ACIT's sales data to be unreliable.

As such, we agree with Petitioners that ACIT's quantity reconciliation was even more important given ACIT's admitted quantity discounts.[81] Because ACIT did not reconcile its quantity and value for sales of finished goods, the validity of the information reported with respect to sales data is called into question. Therefore, while ACIT contends that the Department spent time verifying such sales,[82] we find that they are unreliable because the data upon which they are based are not supported by ACIT's own records.

[78] *See Certain Corrosion-Resistant Steel Products From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 1.
[79] *See Certain Corrosion-Resistant Steel Products From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35210 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 1.
[80] *See* ACIT EP Verification Report at 13.
[81] *See* Petitioner Case Brief, at 6.
[82] *See* ACIT's Rebuttal Brief, at 5-6.

We find that ACIT's failure to provide accurate, verifiable information concerning its U.S sales renders its entire response unreliable. We note that the U.S. Court of International Trade (CIT) has upheld the Department's decision to reject respondent's data *in toto* when "it is flawed and unverifiable."[83] As in *SAIL*, in which the CIT found that the deficiencies to respondent's submissions were "pervasive and persistent,"[84] the problems encountered during the verification of ACIT were extensive and, as noted above, called the integrity of all of ACIT's submissions to the Department into question.[85] For the reasons explained above, ACIT failed its sales reconciliation; rendering the verification a failure because it casts serious doubt on the reliability of the respondent's reported information. In such instances, the Department has no assurance that a respondent accurately reported a complete universe of its sales in its questionnaire responses or that the correct value of those sales and their adjustments have been properly reported.[86]

The CIT has affirmed the Department's determination to apply total adverse facts available in such instances. For instance, in *Universal Polybag*, the Department was unable to verify several aspects of the company's reporting, including sales traces, conversion factors, reported sales quantities, total shipment rate, billing adjustments, inland freight, brokerage and handling, international freight, marine insurance or indirect selling expenses, and the company had left several important undisclosed changes until the final day of verification, leaving verifiers with no opportunity to verify that information.[87] The CIT held that this evidence demonstrated that the Department "was unable to verify information provided by King Pack, and thus Commerce properly resorted to facts available… Commerce's decision that it could disregard all of King Pac's submissions is supported by substantial evidence and in accordance with the law."[88]

Additionally, in *Magnesium from China*, the Department applied total AFA when the respondent "was not ready or able … to present its sales reconciliation to the Department until late" in the verification process.[89] Similarly, in *Steel Threaded Rod from China*, the Department applied total AFA when the verifiers were unable to reconcile the U.S. sales database with the respondent's financial statements and accounting records.[90]

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[83] *See Steel Authority of India, Ltd., v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001) ("*SAIL*"), citing *Heveafil Sdn. Vhd. v. United States*, 25 CIT 147 (Ct. Int'l Trade 2001).
[84] *See SAIL*, 149 F. Supp. 2d at 928.
[85] *See* ACIT EP Verification Report at 2, *see also* ACIT CEP Verification Report at 2, which details the Department's key findings.
[86] *See Notice of Final Results and Partial Rescission* (sic) *of Antidumping Administrative Reviews: Heavy Forged Hand Tools from the People's Republic of China*," 65 FR 43290 (July 13, 2000) and accompanying Issues and Decision Memorandum at Comment 2; *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005) ("*Magnesium from China*") and accompanying Issues and Decision Memorandum at Comment 5; *see also Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) ("*Steel Threaded Rod from China*") and accompanying Issues and Decision Memorandum at Comment 5.
[87] *See Universal Polybag Co., Ltd., v. United States*, 577 F. Supp. 2d 1284 (Ct. Int'l Trade2008) ("*Universal Polybag*") at 1295.
[88] *Id.*, 577 F. Supp. 2d as 1295-1296.
[89] *See Magnesium from China* and accompanying Issues and Decision Memorandum at Comment 1.
[90] *See Steel Threaded Rod from China* and accompanying Issues and Decision Memorandum at Comment 5.

As noted above, total sales quantity and value, and their reconciliations, are the essential building blocks of the entire verification, as well as the information submitted to the Department over the course of the investigation.[91]

Additionally, we disagree with ACIT that it fully cooperated with the Department during verification. As noted above, the Department's verification outline was released to ACIT eighteen days before the commencement of verification and clearly specified what items the verifiers intended to examine during verification. Contrary to ACIT's claim that it fully cooperated,[92] and as discussed further below, we find that ACIT failed to cooperate by not acting to the best of its ability to comply with various requests for information and to be prepared for verification. Furthermore, in *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") held that "{t}he statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."[93] The Federal Circuit stated,

> Simply put, there is no *mens rea* component to the section 1677e(b) inquiry. Rather, the statute requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information. In preparing a response to an inquiry from Commerce, it is presumed that respondents are familiar with their own records. It is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think through inadvertence, neglect, or otherwise to look beyond the files immediately available.[94]

Additionally, during verification, ACIT failed to substantiate several other of its claims. The Department notes below the various inconsistencies found at verification that further call into question the reliability of ACIT's submissions and support the Department's finding of a lack of cooperation. At verification the Department found that electricity usage rate for ACIT Pinghu's manufacturing machines of ACIT's home market sales included discounts that were not reported in ACIT's home market sales data.[95] This inaccuracy distorts ACIT's reported electrical usage for its factors of production and impeded the Department's ability to calculate an accurate weighted-average margin. Furthermore, Department verifiers discovered that the per-unit consumption for ACIT's material inputs was not actually reported on a kilogram per kilogram basis as previously reported to the Department, but on a kilogram per meter basis.[96] This inaccuracy further impeded the Department's ability to calculate an accurate margin for the *Preliminary Determination*. Finally, we also disagree with ACIT that there was no instance in

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[91] *See Certain Corrosion-Resistant Steel Products From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016), and accompanying unpublished issues and decisions memorandum at Comment 1.
[92] *See* ACIT Rebuttal Case Brief at 2-7.
[93] *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1378 (Fed. Cir. 2003) ("*Nippon Steel*").
[94] *Id.*
[95] *See* ACIT EP Verification Report at Verification Exhibit 11 and 20-21.
[96] *See* ACIT EP Verification Report at 17-19, *see also* ACIT SQ1R at Exhibit SQ1-D-5.

which ACIT failed to provide its email communication. As reported in the CEP Verification Report, ACIT was unable to provide the email correspondence related to the sale of pre-select 3, which is a test at verification used by the Department to verify the factual information reported for specific sales transactions listed in respondent's response.[97] Although ACIT provided evidence of the correspondence of its attempt to acquire its missing emails for certain sales, this documentation does not provide any pre-sale correspondence relating to the sale.[98]

In conclusion, despite the Department's detailed and specific questionnaires and instruction in the verification outline, and the questions and instructions at each verification as to what procedures and documentation were necessary to complete the verification process successfully, ACIT gave insufficient attention to its responsibility to reply accurately and completely to requests for information, as described above. Because ACIT failed to provide a verifiable quantity and value reconciliation, the Department finds that we do not have reliable information relating to U.S. sales, U.S. gross unit price, and U.S. quantity, which prevents us from calculating a reliable margin. Accordingly, the Department finds that the use of facts otherwise available is warranted with respect to ACIT, pursuant to sections 776(a)(2)(A)-(D) of the Act, and that these facts otherwise available should include an adverse inference because of ACIT's failure to cooperate to the best of its ability, pursuant to section 776(b) of the Act.

Comment 2: Critical Circumstances Determination

ACIT's Arguments:

ACIT argues the Department must reverse its preliminary finding that critical circumstances exist. It bases this argument on three grounds.

First, ACIT states that it has noted numerous issues with respect to the calculation of normal value and the resulting dumping margin calculation. ACIT argues that after the Department amends its calculations on the basis of these issues, the Department should withdraw the preliminary affirmative critical circumstances determination if ACIT's revised margin is below the threshold for imputing knowledge of dumping.

Second, ACIT argues the Department failed to explain adequately its methodology for determining that imports were massive. ACIT alleges that the Department's preliminary decision memorandum states that "after analyzing the data submitted, we determined imports were massive."[99] ACIT argues that the only clarifying statement in the preliminary determination memo is that the Department compared the period of August 2015 through January 2016 to the period February 2016 through July 2016.[100] ACIT states that the Department did not describe whether the total in the first period was compared to the following period, or whether an average monthly figure was compared. ACIT alleges that without additional knowledge as to the Department's calculation, ACIT cannot provide adequate comments on this matter.

[97] *See* ACIT CEP Verification Report at 13.
[98] *Id.*
[99] ACIT's case brief at 25, citing the preliminary decision memorandum at 4.
[100] *Id.*

Third, ACIT argues the Department omitted two significant elements of the critical circumstances determination that are required by the Department's regulations. ACIT cites to 19 CFR 351.206(h)(1), which states:

> In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will examine:
>
> (i) The volume and value of the imports;
> (ii) Seasonal trends; and
> (iii) The share of domestic consumption accounted for by the imports.

ACIT argues that the Department did not address points (ii) and (iii) of this regulation. In fact, ACIT argues, the Department adduced no evidence to support the conclusion that any increase in ACIT's exports were triggered by anything besides demand within the United States, and instead rested its critical determination on a faulty normal value calculation and unsupported conclusions about ACIT's imports.

Petitioner's Rebuttal Arguments:

Petitioner argues, with respect to ACIT's first point, that ACIT evidently overlooked the analysis that the Department placed on the record in a memorandum to the file regarding critical circumstances.[101] Petitioner alleges that, in this memorandum, the calculation is shown on page 2, and, therefore, that ACIT's assertion that there is insufficient information on the record regarding the Department's calculation is flatly wrong.

Petitioners also argue, with respect to 19 CFR 351.206(h)(1)(ii) (regarding seasonality), that ACIT has offered no data, pointed to no record evidence, or otherwise even asserted at any time in this investigation, that the amorphous silica fabric market is affected by seasonality. With regard to 19 CFR 351.206(h)(1)(iii) (regarding domestic consumption), neither ACIT nor any other party has placed on the record of this investigation any information regarding the share of domestic consumption accounted for by imports. In the absence of such data, Petitioner states, the Department reasonably concentrated its analysis on the volume and value of the imports, given its "practice to base its critical circumstances analysis on all available data."[102] Petitioner also argues that the Department's concentration on only the volume and value of imports is in accordance with its practice.[103]

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[101] *See* Petitioner's rebuttal brief at 15, citing Memorandum from Fred Baker to the File, Re: Preliminary Affirmative Determination of Critical Circumstances - Amorphous Silica Fabric from the People's Republic of China, dated August 24, 2016 (Critical Circumstances Memorandum).
[102] *See* Petitioner's rebuttal brief at 16, citing *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part, 79 FR 29423 (May 22, 2014),* and accompanying Preliminary Decision Memorandum at 15.
[103] *See* Petitioner's rebuttal brief at 16, citing, *e.g.*, *Grain-Oriented Electrical Steel From Germany, Japan, Poland, and the Russian Federation: Preliminary Determinations of Sales at Less Than Fair Value, Certain Affirmative Preliminary Determinations of Critical Circumstances, and Postponement of Russian Final Determination*, 79 FR

Department's Position:

As explained above in response to Comment 1, the Department has determined to apply adverse facts available to ACIT in this final determination. Our decision to rely on AFA is based in large part upon ACIT's failure to reconcile its sales quantity. Sales quantity is directly relevant to the issue of massive imports in a critical circumstances analysis. Therefore, we are making our final critical circumstances determination with respect to massive imports from ACIT based on an adverse inference, and find that critical circumstances exist. Thus, we have not addressed ACIT's specific comments on the Department's preliminary finding of critical circumstances.

Comment 3: Calculation Errors

Petitioner argued that the Department made certain calculation errors in the preliminary margin calculated for ACIT. However, as the Department is applying total AFA to ACIT, this issue is rendered moot, and we have not addressed this comment.

Comment 4: Surrogate Country

ACIT argued that the Department should use Romania as surrogate country instead of Thailand. However, as the Department is applying total AFA to ACIT, this issue is rendered moot, and we have not addressed this comment.

Comment 5: Surrogate Value Selection

ACIT argued that the Thai surrogate values for ACIT's factor of production (FOP) lime and hydrochloric acid are aberrational and should be replaced. Petitioner also argued that the surrogate value for lime should be replaced with one that is more specific to ACIT's reported FOP. However, as the Department is applying total AFA to ACIT, this issue is rendered moot, and we have not addressed this comment.

<u>Issues Pertaining to New-Fire</u>

Comment 6: Rejection of Extension Request

Background:

The Department issued Q&V questionnaires to eighty-one exporters of subject merchandise, including New Fire, on February 26, 2016, with a response due date of March 11, 2016.[104] New Fire submitted its Q&V response on March 17, 2016, along with an untimely filed request for an

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26941 (May 12, 2014) and accompanying Issues and Decision Memorandum for the Russian Federation at 15; *Certain Cold-Rolled Steel Flat Products From Japan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 81 FR 11747 (March 7, 2016) and accompanying Issues and Decision Memorandum at 22.

[104] *See* Memorandum from Michael J. Heaney to the File, Re: "Antidumping Investigation - Mailing of Quantity and Value Questionnaires," dated February 26, 2016.

extension of the March 11, 2016, deadline. [105] It supplemented its March 17, 2016, submission with additional information on March 18, 2016. On March 21, 2016, Petitioner submitted a request that the Department reject as untimely New Fire's March 17 and 18, 2016, Q&V submissions.[106] New Fire responded to Petitioner's submission on March 21, 2016. [107] The Department rejected New Fire's March 17 and 18, 2016, submissions as untimely on March 21, 2016.[108] On March 26, 2016, New Fire requested the Department reconsider its untimely filed request for extension.[109] Petitioner submitted a response to New Fire's request on March 28, 2016,[110] to which New Fire responded on April 1, 2016. [111]

New Fire submitted its SRA on April 8, 2016.[112] On April 8, 2016, Petitioner submitted a request that the Department reject New Fire's SRA because the Department had already rejected its Q&V response, without which New Fire would not qualify for a separate rate.[113] Later on April 8, 2016, New Fire made a rebuttal submission in which it argued that Petitioner's argument overlooked the fact that New Fire had already submitted a request for reconsideration of the Department's rejection of its Q&V response.[114]

On August 15, 2016, the Department placed on the record a memorandum to the file stating that pursuant to 19 CFR 351.301(c)(5)(i), it was accepting New Fire's March 26, 2016, request for reconsideration submission onto the record.[115] On August 24, 2016, the Department issued a response[116] to New Fire's March 26, 2016, submission, in which the

[105] New Fire uses the term "out-of-time" request for extension in its submissions to refer to what it is called an "untimely filed" request for extension in the EOT Rule, (*i.e.*, a request for extension on a document submitted after the due date). *See* 19 CFR § 351.302(c).
[106] *See* Letter from Petitioner to the Honorable Penny Pritzker, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Request to Reject Untimely Q&V Response of New Fire," dated March 18, 2016.
[107] *See* Letter from New Fire to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China (Investigation): Rebuttal to Petitioner's Objection to New Fire's Out-of-Time Request for Extension of Time to Submit Quantity & Value ("Q&V") Questionnaire Response & Q&V Response," dated March 21, 2016.
[108] *See* Letter from Michael J. Heaney to the File, Re: "Request to Reject Certain Documents in ACCESS," dated March 21, 2016.
[109] *See* Letter from New Fire to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China," dated March 26, 2016 (New Fire's March 26, 2016, letter).
[110] *See* Letter from Petitioner to the Honorable Penny Pritzker, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Rebuttal to New Fire's March 26 Letter Seeking Reconsideration of Rejection of Untimely Q&V Response," dated March 28, 2016 (Petitioner's March 28, 2016, letter).
[111] *See* Letter from New Fire to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China (Investigation): Reply to Petitioner's Opposition to New Fire's Request for Reconsideration," dated April 1, 2016.
[112] *See* Letter from New Fire to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China: Separate Rate Application," dated April 8, 2016.
[113] *See* Letter from Petitioner to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China: Request to Reject New Fire's Separate Rate Application," dated April 8, 2016.
[114] *See* Letter from New Fire to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China: Response to Petitioner's Objection to New Fire's SRA," dated April 8, 2016.
[115] *See* Memorandum from Fred Baker to the File, Re: "Acceptance of Submission from New Fire Co., Ltd.," dated August 15, 2016.
[116] *See* Letter from Robert James to Mark B. Lehnardt, Re: "Antidumping Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China," dated August 24, 2016.

Department declined to grant an extension for New Fire's March 17 and 18, 2016, Q&V submission.

New Fire's Arguments:

New Fire argues[117] that the Department exceeded its discretion and acted arbitrarily by failing to grant an extension of time for New Fire to submit its Q&V response.

In its case brief, New Fire incorporated by reference the arguments made in its March 26, 2016, request for reconsideration of its untimely filed extension request.[118] New Fire argues that, under the Department's regulations, the Department may extend a deadline that has already passed if "extraordinary circumstances" exist.[119] It states that such extraordinary circumstances exist here because New Fire (which was *pro se* at the time of the March 11, 2016, deadline date) was unable to open or access the Department's website to file its Q&V response.

New Fire argues that this inability to file its response could not have been prevented by reasonable measures given that New Fire personnel were non-native English speakers who had never before been involved in a Department proceeding. It states that the Department cannot expect the same level of fluency with Departmental procedures from the novice as it can from the expert. Furthermore, New Fire argues that its inability to open the Department's website also prevented it from timely filing an extension request. New Fire also argues that if it had a minimal quantity of shipments, its filing after the deadline would present no material interference or disruption to the Department's selecting the largest-volume exporters as mandatory respondents, or otherwise impede the Department's conducting its investigation in a timely manner.[120] New Fire also notes that the Department has granted untimely filed extension requests in the past in contexts where the circumstances were less compelling than they are here when expert U.S. trade firms in Washington, D.C., missed deadlines.

New Fire also incorporated by reference the arguments in its April 1, 2016, response to Petitioner's March 28, 2016, submission.[121] In the April 1, 2016, submission, New Fire argues that the examples given in the EOT rule (*i.e.*, natural disaster, riot, war, *force majeure*, or medical emergency) were not intended as an exhaustive list of examples.[122] Furthermore, New Fire argues that Petitioner's March 28, 2016, argument that accepting New Fire's Q&V response would open a floodgate of *pro se* exporters to raise similar arguments with respect to their late submissions overlooks the unique circumstances here.

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[117] In its case brief, New Fire incorporated by reference the arguments it submitted in its March 21, 2016, March 26, 2016, and April 1, 2016, submissions.
[118] *See* New Fire's Case Brief, page 2, citing, Letter from New Fire to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China," dated March 26, 2016 (New Fire's March 26, 2016, letter).
[119] *See* New Fire's March 26, 2016, letter, at 7, citing 19 CFR 351.302(c)(2).
[120] *Id.*, at 11, citing *Artisan Manufacturing Corporation v. United States*, 978 F. Supp. 2d 1334, 1345-47.
[121] *See* New Fire's case brief at 2
[122] *Extension of Time Limits: Final Rule*, International Trade Administration, Department of Commerce, 78 FR 57790 (September 20, 2013) (EOT Rule).

With respect to the examples of cases in which the Department has granted untimely-filed extension requests under circumstances less compelling than those here, New Fire argues the examples are not inapposite (as Petitioner claimed) because they all are examples of inadvertent mistakes by experienced lawyers working their hardest to make timely filings.

Furthermore, New Fire argues that in the Department's August 24, 2016, letter affirming its decision to reject New Fire's Q&V response as untimely, the Department failed to address New Fire's argument that other situations that the Department has found to constitute unexpected events are much lesser justifications than New Fire's justification. Thus, New Fire argues, the Department's denial of New Fire's untimely filed extension request is arbitrary and capricious, and must be reversed prior to the final determination. Specifically, New Fire cites to the following other events that were accepted as unexpected and unpreventable, and, thus, caused the Department to grant out-of-time requests for EOT:[123]

- Counsel for petitioner did not receive the service copy of respondent's comments (to which rebuttal comments were due two days later) until the day the rebuttal comments were due;[124]
- Counsel mis-logged the due date in holiday-time confusion;[125]
- Counsel inadvertently omitted "section D" from its request for an extension of time to file the sections B and C response;[126]
- Counsel mistook the due date.[127]

New Fire alleges that the circumstances in the instant proceeding are more compelling than those given above because of New Fire's non-native English language skills, complete inexperience with Department procedures, and extensive efforts to notify the Department promptly. New Fire argues that it strains credulity to claim that New Fire's situation was not unexpected and could have been prevented when the Department has found the opposite for much lesser justification.

Furthermore, New Fire argues that the CIT has explained that relevant considerations in the EOT context include "whether the interests of accuracy and fairness outweigh the burden placed on {the Department} and the interest in finality."[128] New Fire argues that the minimal inconvenience to the Department for accepting a Q&V response a few days late far outweighs the prejudicial effect New Fire will suffer. New Fire argues that because the Q&V response was only used to select respondents, its Q&V response reflecting a small volume of exports would have little, if any, effect on the Department's overall investigation. New Fire also argues that it submitted its Q&V response one day prior to respondent selection comments were due, and

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[123] *See* New Fire's Case Brief, page 2, citing New Fire's April 1, 2016, submission.
[124] *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 17435 (March 29, 2016) (*Fish Fillets from Vietnam*).
[125] *See Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016) (*Cold-Rolled Flat Products from Korea).*
[126] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016) (*Ribbons from Taiwan*).
[127] *See Welded Line Pipe From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Line Pipe from Turkey*).
[128] *See* New Fire's Case Brief, at 3, citing *U.S. Magnesium* at 1324-1325.

nearly two weeks before the Department selected respondents. Finally, New Fire argues that it timely filed its SRA.

New Fire argues that all these documents were filed long before the Department issued its preliminary determination, and, therefore, considerations of finality are of little weight. On balance, New Fire concludes, interests of accuracy and finality far outweigh the burden placed on the Department and the interests of finality.

Petitioner's Rebuttal:

In its rebuttal brief, Petitioner incorporated by reference its March 18, 2016, request to reject New Fire's Q&V response[129] and its April 8, 2016, request to reject New Fire's separate-rate application.[130] Petitioner argues that the Department's regulations define an "extraordinary circumstance" as an "unexpected event that: (i) could not have been prevented if reasonable measures had been taken, and (ii) precludes a party or its representative from timely filing an extension request through all reasonable means."[131] Petitioner argues that the reasons New Fire gave for its late filing fail to rise to the level of "extraordinary circumstances," and that neither New Fire's March 17, 2016, nor March 18, 2016, letter establishes that it took reasonable measures to prevent any unexpected event from occurring. Petitioner argues that there are numerous reasonable measures New Fire could have taken. One reasonable measure would have been for New Fire to read the first sentence of the "General Instructions" listed in attachment III to the questionnaire, which states "{a}ll submissions must be made electronically using the department's ACCESS website at https://access.trade.gov."[132] Another reasonable measure, Petitioner argues, would be for New Fire, having obtained a message stating "{t}he domain is incorrect, or the page does not exist," to re-examine the domain name input in the computer, and compare it to the domain name listed in the General Instructions. Another reasonable measure, Petitioner states, would be for New Fire to have telephoned the officials in charge as soon as it experienced difficulty in uploading its submission to ACCESS, explaining that it did, indeed, attempt to file electronically the Q&V response before the deadline. A final reasonable measure, Petitioner states, would have been for New Fire to file its Q&V response early, which would have allowed it enough time to make a manual filing should it find itself unable to upload the filing into ACCESS.

Petitioner further argues that if the Department were to accept New Fire's late filing simply on the basis that the filer was *pro se* from China, it would effectively give exporters in future antidumping and countervailing duty proceedings a "free pass" to file untimely responses, because the same arguments and assertions made by New Fire could just as easily be made by any Chinese exporter.

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[129] *See* Letter from Petitioner to the Honorable Penny Pritzker, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Request to Reject Untimely Q&V Response of New Fire," dated March 18, 2016.
[130] *See* Letter from Petitioner to the Honorable Penny Pritzker, Re: "Certain Amorphous Silica Fabric from the People's Republic of China: Request to Reject New Fire's Separate Rate Application," dated April 8, 2016.
[131] *Id*., at 2, citing 19 CFR 351.302(c)(2).
[132] *See* Petitioner's March 18, 2016, submission at 3, citing the February 23, 2016, Q&V questionnaire at Attachment 3.

Department's Position:

We reaffirm our determination not to grant New Fire's untimely-filed request for an extension of time to accept its Q&V response, and disagree with New Fire that, in making this determination, the Department exceeded its discretion or acted arbitrarily.

The Department's regulations provide that a party may request an extension before the applicable time limit expires, and that an untimely-filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. The Department's regulations define an "extraordinary circumstance" as an unexpected event that could not have been prevented if reasonable measures had been taken, and that precludes a party or its representative from timely filing an extension request through all reasonable means.[133]

Here, record evidence shows that the cause of New Fire's inability to open the Department's website was its failure to type the correct URL address.[134] A failure of this nature amounts to nothing more than inattentiveness, and is one that could have been prevented if the reasonable measure of sufficient attentiveness had been utilized. Furthermore, the Department has already stated that inattentiveness is among the reasons it would not likely consider to constitute an extraordinary circumstance.[135]

Moreover, New Fire has stated that it attempted to file the Q&V response several times beginning on March 7, 2016, (four days before the filing deadline), and was unable to do so.[136] The Q&V questionnaire gave the names and telephone numbers of two Department officials[137] and also the phone number of the ACCESS Help Desk,[138] all of which New Fire could have contacted to request help. Thus, New Fire had four days after it began experiencing difficulties with filing in which it could have sought help from the Department with respect to either submitting its Q&V response or submitting a timely request for extension, but it did not do so. Therefore, New Fire's unexpected event fails to meet the definition of an exceptional circumstance, as provided in 19 CFR 351.302(c)(2)(i) and (ii).

Furthermore, by failing to contact the Department via telephone, New Fire also did not comply with the regulatory requirement that:

> {if} a submitter is unable to comply with the electronic filing requirement, as provided in 351.103(c), and in accordance with section 782(c) of the Act, the submitter must notify the Department promptly of the reasons the submitter is unable to file the

[133] *See* 19 CFR 351.302(c)(2)(i) and (ii).
[134] *See* New Fire's March 26, 2016, letter at 7 and Exhibit 2 and 3 (containing an image of the screen when New Fire attempted to access the Department's ACCESS website, in which it appears that New Fire failed to type ".gov" at the end of the URL address); *see also* New Fire's Case Brief, page 3.
[135] *See* EOT Rule, 78 FR at 57793.
[136] *See* New Fire's March 26, 2016, letter at 7.
[137] *See* Q&V questionnaire at 2.
[138] *Id.*, at III-4.

document electronically, provide a full explanation, and suggest alternative forms in which to submit the information.[139]

Moreover, our determination not to accept New Fire's Q&V response is consistent with Department precedent regarding late filings. Specifically, in *CCSP from Taiwan,*[140] the Department rejected an administrative review request from interested party, Neo Solar Power Corporation (NSP). NSP attempted to submit an administrative review request on the due date for such requests, but experienced technical issues with ACCESS. NSP contacted the Department for the first time via telephone two days after the filing deadline, and submitted its review request four days after the deadline. The Department rejected the request for review because it was untimely. On appeal, the CIT upheld the Department's rejection of the review request.[141] It ruled that the technical issues NSP was having with ACCESS did not constitute an "extraordinary circumstance" because NSP could have taken the reasonable measure of contacting the ACCESS Help Line before the deadline expired.[142] The Department reaches the same conclusion here with respect to New Fire that the CIT did with respect to NSP.

With respect to the cases cited by New Fire, we find that these cases are distinguishable from the instant proceeding. First, New Fire argues that in *Fish Fillets from Vietnam*, a party missed the 10:00 a.m. deadline for submitting a request for an extension, but the Department accepted the extension request anyway. However, we find that *Fish Fillets from Vietnam* differs from the instant case in that in *Fish Fillets from Vietnam*, the party was unaware of the need for the extension until it received the service copy of the respondent's comments, which was after the 10:00 a.m. deadline had already passed. It then submitted the extension request the same day.[143] In the instant case, New Fire was aware of the technical difficulties it was having with ACCESS a full four days before the Q&V response was due, and did not contact the Department until six days after the Q&V response was due.

Second, New Fire argues that in *Cold-Rolled Flat Products from Korea*, a party overlooked the fact that its section D supplemental questionnaire response was due at 12:00 p.m., rather than 5:00 p.m., on the due date, but the Department ultimately accepted the submission. However, we find that in *Cold-Rolled Flat Products from Korea*, the party submitted an extension request the same day the response was due, and the requested extension was of less than 24 hours.[144] Thus, *Cold-Rolled Flat Products from Korea* clearly differs from the instant case in which New Fire did not contact the Department until six days after the Q&V response was due.

Third, New Fire argues that in *Ribbons from Taiwan*, a respondent timely requested an extension request for the response to sections B-C of the questionnaire, but intended to request the

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[139] *See* 19 CFR 351.303(b)(2)(ii)(C).
[140] *See Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014) (*CCSP from Taiwan*).
[141] *See Neo Solar Power Corporation v. United States*, Consol. Court No. 16-00088, Slip Op. 16-111 (CIT December 1, 2016) (*Neo Solar Power*).
[142] *Id*., at 8.
[143] *See* New Fire's March 26, 2016, submission at Attachment 6, containing February 24, 2016 Letter from Catfish Farmers of America, *et al*., to the Honorable Penny S. Pritzker.
[144] *See* New Fire's March 26, 2016, submission at Attachment 6, containing January 5, 2016 and January 8, 2016 Letters from Hyundai Steel Company to the Honorable Penny Pritzker.

extension for the response to sections B-D of the questionnaire. Accordingly, the Department granted the extension request for only sections B-C. Two days after the section D response was due, the party discovered the error, and immediately contacted the Department and submitted an extension request for the section D response.[145] The situation in *Ribbons from Taiwan* differs from the instant situation in that the error occurred in a timely-filed extension request, and did not involve an untimely filed extension request. Thus, a showing of "extraordinary circumstances" was not required in order for the Department to grant the extension request.

Finally, New Fire argues that in *Line Pipe from Turkey,* a respondent inadvertently logged a due date of February 12, 2015, in its records as the due date for a submission, rather than February 11, 2015. After noticing the error, it filed the submission on February 11, 2015, but after 5:00 p.m., for which reason it was recorded as a February 12, 2015, submission. On February 12, 2015, it made a submission requesting the Department to accept the late filing.[146] Ultimately the Department accepted the submission. However, unlike in the instant case, in *Line Pipe from Turkey* the late filing was late by only one day, and the party submitted a request for extension the very next day. Here, New Fire did not submit the Q&V response or contact the Department until six days after the due date.

Thus, the cases to which New Fire cite are distinguishable from the instant case, and are not precedents that would require the Department to grant New Fire's untimely filed extension request.

Moreover, we do not find persuasive New Fire's arguments that the company was *pro se* at the time of the filing or that it was a non-native English speaker. A *pro se* company still must take reasonable measures to comply with deadlines, just like any other interested party. With respect to its non-fluency in English, New Fire has pointed to no part of the Q&V questionnaire instructions that could not have been translated had New Fire hired a translator, which would be a "reasonable measure" to take for a company that ships to an English-speaking country such as the United States. Furthermore, New Fire's failure to enter the correct URL address (*i.e.*, ".gov") is an inattentiveness issue, and not a translation issue.

Finally, we do not agree with New Fire with respect to "whether the interests of accuracy and fairness outweigh the burden place on {the Department} and the interest in finality." In *Neo Solar Power*, the CIT ruled in the context of considering "accuracy and fairness" that, even though the plaintiff may suffer great prejudice, the Department had not abused its discretion when it rejected the review request.[147] The CIT stated that the Department is very strict, and seldom, if ever, accepts late review requests, and that the reason the review request was late was due to various errors on the part of the respondent.[148] Similarly, the Department is strict about deadlines for Q&V responses, and New Fire has cited no instances where the Department has accepted a Q&V response that was six days late. It is also undisputed that the Q&V response

[145] *See* New Fire's March 26, 2016, submission at Attachment 6, containing February 18, 2015 Letter from Roung Shu Industry Corporation to the Honorable Penny Pritzker.
[146] *See* New Fire's March 26, 2016, submission at Attachment 6, containing February 19, 2015 Letter from Toscelik to Secretary of Commerce.
[147] *See Neo Solar Power*, at 11.
[148] *Id.* at 14.

was New Fire's failure to type the correct URL, and that New Fire failed to contact the Department until six days after the deadline for the Q&V response. Thus, given the failures on New Fire's part, and in accordance with the CIT's ruling in *Neo Solar Power,* we determine that our rejection of New Fire's Q&V response was not an abuse of discretion.

Issues Pertaining to Jiuding

Comment 7: Jiuding Separate Rate

Background:

Jiuding submitted a timely response to the Department's Q&V questionnaire on March 11, 2016,[149] and a timely submission of a separate rate application (SRA) on April 8, 2016**.**[150] On June 30, 2016, the Department issued a supplemental questionnaire to Jiuding with respect to its SRA.[151] The original due date for the response was July 7, 2016, at 5:00 p.m. However, because the Department did not process Jiuding's May 4, 2016, APO application until July 5, 2016, the Department granted, at Jiuding's request,[152] an extension until 5:00 p.m., July 12, 2016, for Jiuding's response to the supplemental questionnaire.[153] On July 11, 2016, Jiuding submitted a request for an additional extension until July 15, 2016.[154] The Department did not respond to this request, and Jiuding submitted its response to the supplemental questionnaire on July 15, 2016.

On August 2, 2016, the Department rejected Jiuding's July 15, 2016, supplemental questionnaire response (SQR) on grounds that it had not been submitted by the July 12, 2016, due date, and was, therefore, untimely.[155] In explaining its determination to reject the July 15, 2016, SQR, the Department cited the EOT Rule, which provides that if the Department does not notify the requesting party of the disposition of its extension request by 5:00 p.m. on the deadline date, then the submission is due by the opening of business (*i.e.*, 8:30 a.m. on the next work day).[156] Thus, the Department stated in its August 2, 2016, rejection letter that because it did not respond to Jiuding's July 11, 2016, extension request, the deadline for submitting the SQR was 8:30 a.m. on July 13, 2016. Therefore, the Department stated that Jiuding's SQR filed on July 15, 2016, was

[149] *See* Letter from Jiuding to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China (Investigation): Quantity and Value Questionnaire Response," dated March 11, 2016.
[150] *See* Letter from Jiuding to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China: Separate Rate Application," dated April 8, 2016.
[151] *See* Letter from Robert James to Jiuding, Re: "Antidumping Investigation of Amorphous Silica Fabric from the People's Republic of China: Jiangsu Jiuding New Material Co., Ltd.'s Separate Rate Application Supplemental Questionnaire" (Supplemental Questionnaire).
[152] *See* Letter from Jiuding to the Honorable Penny Pritzker, Re: Amorphous Silica Fabric from the People's Republic of China (Investigation): Request for Extension of Time, dated July 5, 2016.
[153] *See* Letter from Robert James to Jiuding, dated July 6, 2016.
[154] *See* Letter from Jiuding to the Honorable Penny Pritzker, Re: Amorphous Silica Fabric from the People's Republic of China (Investigation): 2nd Request for Extension of Time, dated July 11, 2016.
[155] *See* Letter from Robert James to Jiuding, dated August 2, 2016.
[156] *See* Jiuding's Case Brief, page 1-5, citing EOT Rule, 78 FR at 57792.

untimely, and was being rejected from the record.[157] The Department denied Jiuding's request for a separate rate in the *Preliminary Determination*.[158]

Jiuding's Arguments:

Jiuding argues the Department erred in its preliminary determination by rejecting as untimely its response to the Department's SRA supplemental questionnaire, thus disqualifying Jiuding for a separate rate. Jiuding argues the Department should accept its SQR, and grant it a separate rate.

First, Jiuding argues the EOT Rule is invalid on its face because it allows the Department to deny, or fail to act on, extension requests when circumstances make it unreasonable to deny the EOT request. That is, among other possible reasons for denying a request, the EOT Rule allows the Department to fail to act on a request out of sheer laziness, refusal to do one's work, spite for the relevant party or its counsel, under a pattern of addressing some parties' requests while delaying action on others, or for no reason at all. All of these reasons, Jiuding argues, would be unreasonable justifications for applying the EOT Rule, and could not be sustained in court.

Second, Jiuding argues that the EOT Rule is inapplicable to Jiuding's situation because the EOT Rule was intended to apply to "11th-hour" extension requests, and Jiuding's request was not a last-minute request.[159] Jiuding states that, in contrast to the situation contemplated by the EOT Rule, Jiuding submitted its extension request a full day and a half before the 5:00 deadline for the SQR. Jiuding states it was unreasonable for the Department not to consider the merits of Jiuding's extension request, given the amount of time the Department had to consider the request; the sincerity of the request; the necessity of the extension for Jiuding to provide a complete SQR; and the fact that the Department caused part of the problem by not timely processing the APO application of Jiuding's counsel. For these reasons, Jiuding states that the Department exceeded its discretion by failing to consider Jiuding's unique circumstances. Furthermore, Jiuding argues, given the fact-intensive nature of the discretionary decision whether to grant an extension, the Department exceeded its discretion by failing to provide a reasoned explanation for denying an extension.[160]

Third, Jiuding argues that good policy considerations favor accepting Jiuding's SQR. It cites *U.S. Magnesium*, where the CIT ruled that relevant considerations in extension determinations include "whether the interest of accuracy and fairness outweigh the burden placed on {the Department} and the interest in finality."[161] With respect to accuracy and fairness, Jiuding states that it timely submitted its extension request on the basis of a sincere need for just three extra days to complete the information request, and submit the SQR to the Department. The information and documentation in the SQR, Jiuding states, if accepted, would have provided the Department with all the information it needed to determine Jiuding's separate status. Further, Jiuding states that its difficulty responding earlier was in part due to the Department's delay in

[157] *Id.*
[158] *See Preliminary Determination, and PDM at 13.*
[159] *See* Jiuding's case brief at 9, citing EOT Rule, 78 FR at 57791-2.
[160] *See* Jiuding's case brief at 10, citing *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1369 (Fed. Cir. 1998).
[161] *Id.*, citing *U.S. Magnesium LLC v. United States*, 895 F. Supp. 2d 1319, 1324-25 (Ct. Int'l Trade 2013) (*U.S. Magnesium*).

providing Jiuding access to the supplemental questionnaire by failing to process Jiuding's APO application until two days before the initial SQR deadline.

With respect to finality, Jiuding argues that here the interests in finality are minimal. Specifically, it states that it submitted the SQR just three days after the deadline that the Department, by inaction, refused to extend, and nearly two months before the Department published the preliminary determination. Thus, it states, there was still significant time before the preliminary decision was due, and there remains significant time before the final decision is due. Therefore, Jiuding concludes, the interests in accuracy and fairness far outweigh the interests in finality.

Moreover, Jiuding states that justifying the rejection of its SQR solely on the Department's inaction does not set good precedent. It states that, as the Department did not cite a reason for denying the extension request, the only reason seems to be the Department's own inaction. Jiuding contends that this rationale eliminates the ability of any party to rely upon the Department to evaluate reasonably an extension request when, as here, the Department's information request requires more time to respond than the Department has granted the party to respond. Jiuding claims that this approach would encourage incomplete submissions just so the party does not miss the filing deadline, despite the risk the parties run that an incomplete submission will be rejected for not conforming to the manner in which the Department requested, and the risk of the application of AFA for not providing a complete response after having been given an opportunity to do so. Jiuding states that this result would be contrary to the Department's stated purpose for the EOT Rule, which is "to provide additional certainty to parties participating in AD and CVD proceedings."[162]

Jiuding argues that, alternatively, if the Department decides not to accept Jiuding's SQR, it should base Jiuding's separate status on facts available (FA) (*i.e.*, on the basis of the information included in its timely filed SRA), and not AFA. It argues that an adverse inference is not warranted here because the record of this investigation demonstrates that Jiuding acted to the best of its ability and cooperated with the Department's requests for information.

Furthermore, Jiuding argues that the Department never made a separate finding regarding Jiuding's cooperation in this proceeding, and is, therefore, barred by the statute from imposing AFA on Jiuding.[163] Thus, Jiuding argues, the Department cannot apply the China-wide rate to Jiuding because it is an AFA rate. Jiuding argues that the Department's rationale provided in the *Preliminary Determination*[164] does not apply to Jiuding, because it timely submitted a Q&V response and extension request explaining the difficulty it was having in obtaining all the information the Department had requested in the supplemental questionnaire. Moreover, Jiuding argues the Department has an obligation to assist interested parties experiencing difficulties, and "shall provide such interested parties any assistance that is practicable in supplying such information."[165] The assistance required here, Jiuding states, would have been a very slight accommodation to the due date.

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[162] *See* Jiuding's case brief at 12, citing EOT Rule at 57791.
[163] *Id*., at 14, citing section 776(b)(1) of the Act.
[164] *See* Jiuding's case brief at 14-15, citing the PDM at 17.
[165] *Id*., at 15, citing section 782(c)(2), and *World Finer Foods, Inc. v. United States*, 24 CIT 541 544 (2000).

Petitioner's Arguments:[166]

Petitioner argues that the Department was correct to reject Jiuding's SQR as untimely. It argues that the Department did not grant the additional extension that Jiuding requested on July 11, 2016, and the due date for the SQR, therefore, remained July 12, 2016. Moreover, Petitioner states that the July 12, 2016, deadline was a date that Jiuding had indicated in its July 5, 2016, extension request would provide adequate time for Jiuding to complete its response.[167]

Petitioner also states that the Department's practice is to reject submissions that are filed on an untimely basis, and that in this very investigation the Department did reject an untimely filed Q&V response from New Fire. Petitioner also points out that the Department's supplemental questionnaire to Jiuding said, "{the} Department will not accept any requested information submitted after the deadline. As required by section 351.203(d) of our regulations, we will reject such submissions as untimely." Petitioner concludes that the Department should follow its consistent past practice, as well as its practice in this case, and reject Jiuding's SQR.[168]

Department's Position

We disagree with Jiuding that the Department should have accepted Jiuding's SQR, and we continue to find that Jiuding does not qualify for a separate rate.

First, with regard to the validity of the EOT Rule, we find that this rule is valid. The EOT Rule was promulgated under the Department's standard procedures for rulemaking, including the publication of a proposed final rule,[169] and the addressing of all comments.[170] At this time no court has ruled it invalid. Jiuding, nevertheless, argues the rule is invalid because it permits the Department to deny a timely request for reasons that would be unreasonable (*e.g.*, sheer laziness, spite toward the party's counsel, refusal to do one's work), and that would not be sustained in court. However, we do not agree with Jiuding that the EOT Rule "permits" the Department to deny an extension request for such reasons.

Second, we do not agree with Jiuding that the EOT Rule is invalid as applied to Jiuding. Jiuding bases this argument on the supposition that the EOT Rule was intended to address 11th-hour extension requests, whereas Jiuding submitted its request a full day and a half before the 5:00 due date. The paragraph from the EOT Rule that Jiuding cites reads as follows:[171]

> Concerning when the time limit expires, if a submission is due on Monday, December 2, 2013, for example, the submission must be received by 5:00 p.m. Eastern Time on that date. If a party requests an extension of that time limit, the party's extension

[166] Petitioner's rebuttal comments consisted of its July 22, 2016, submission, which it incorporated by reference in its rebuttal brief.
[167] *See* Petitioner's July 22, 2016, submission at 2.
[168] *Id.*, at 3.
[169] *See Modification of Regulations Regarding the Extension of Time Limits*, 78 FR 3367 (January 16, 2013).
[170] *See EOT Rule*.
[171] *Id.*, at 57792.

> request must be received before 5:00 p.m. on Monday, December 2, 2013, or it will be considered untimely. On the other hand, if the Department specifies that a submission is due on Monday, December 2, 2013, at 12:00 noon, the party's extension request must be received before 12:00 noon on Monday, December 2, 2013, or it will be considered untimely. (Citations omitted.)

However, we note that the paragraph in the EOT Rule immediately subsequent to the paragraph cited by Jiuding reads as follows:

> Parties should be aware that the likelihood of the Department granting an extension will decrease the closer the extension request is filed to the applicable time limit because the Department must have time to consider the extension request and decide on its disposition. Parties should not assume that they will receive an extension of a time limit if they have not received a response from the Department. For submissions that are due at 5:00 p.m., if the Department is not able to notify the party requesting the extension of the disposition of the request by 5:00 p.m., then the submission would be due by the opening of business (8:30 a.m.) on the next work day. See 19 CFR 351.103(b).

We find nothing in this latter paragraph that suggests it is intended to be governed by the example given in the previous paragraph. Furthermore, the Department has stated that this rule emphasizes, rather than diminishes, its reluctance to allow parties to self-grant extensions.[172] Based on the language in the EOT Rule, because Jiuding had not received a response from the Department by 5:00 p.m. on the deadline for submission of its SQR, Jiuding had notice that its SQR would be due at 8:30 a.m. on the next business day, *i.e.*, July 12, 2016.

Furthermore, with regard to Jiuding's argument that the Department itself was responsible for part of the problem by not processing Jiuding's APO sooner, we note that in its July 5, 2016, request for extension, Jiuding mentioned the late-processing of the APO as one basis for its request for a five-day extension until July 12, 2016.[173] The Department granted this extension request in full.[174] However, in its July 11, 2016, request for an extension until July 15, 2016, although Jiuding mentioned the date it received the APO version of the supplemental questionnaire, it did not include the late-processing of the APO as a basis for the extension request.[175] If the late processing of the APO was a reason why Jiuding was experiencing any continuing difficulties in preparing the SQR, it should have stated such in the July 11, 2016, extension request.

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[172] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2015,* 81 FR 43991 (July 6, 2016) (*SOBA from Taiwan*), and accompanying Issues and Decision Memorandum at Comment 2.
[173] *See* Letter from Jiuding to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China (Investigation): Request for Extension of Time," dated July 5, 2016.
[174] *See* Letter from Robert James to Jiuding, dated July 6, 2016.
[175] *See* Letter from Jiuding to the Honorable Penny Pritzker, Re: "Amorphous Silica Fabric from the People's Republic of China (Investigation): 2nd Request for Extension of Time," dated July 11, 2016.

Third, with regard to Jiuding's argument that good policy considerations favor accepting Jiuding's SQR, we disagree. In administering the antidumping law, the Department must balance competing policy considerations and priorities, one of which is completing its administrative proceedings in a timely manner. For this reason, it is important that parties adhere strictly to deadlines, including with respect to SRAs and supplemental questionnaires pertaining to SRAs. It has, therefore, been the Department's practice to enforce its deadlines strictly. For example, the Department has stated:

> Adherence to the deadlines set forth by the Department is necessary for the orderly administration of each review, in particular to allow the Department to gather and analyze the necessary information from all parties and make its determinations within statutory deadlines. It is particularly important that SRCs {separate rate certifications} and SRAs are submitted early in a proceeding so that the Department can determine whether an entity is separate from Vietnam, to pursue questions that may arise, and provide opportunities for parties to comment on the information on the record.[176]

The Department has also recently explained its basis for strictly enforcing its deadlines, and the consequences of not doing so, as follows:

> {u}ntimely filings and untimely extension requests hinder the efficient conduct of our proceedings, and lead to the Department needing to devote additional time and resources to addressing such untimely filings and requests. Additionally, although the burden associated with a single late-filed questionnaire response may be perceived as minimal, that burden is not minimal when aggregated across all proceedings. Accordingly, for the efficient conduct of its proceedings, it is critical that parties adhere to the deadlines established by the Department.[177]

It is for the above-cited reasons that the Department rejected Jiuding's SRA SQR as untimely, even though, as Jiuding pointed out in its case brief, the preliminary determination was not due for another two months. That is, the burden on the Department's ability to meet its deadlines would not be minimal if it allowed parties across all proceedings to self-grant extensions. Moreover, the Federal Circuit has upheld the principle that it is for the Department to decide when requested information is needed. When respondent Dongtai Peak Honey Industry Co., Ltd. (Dongtai Peak) argued that the Department erred in rejecting its supplemental section A questionnaire response, the Federal Circuit, quoting the government's brief, stated, "{i}t is not

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[176] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010), and accompanying Issues and Decision Memorandum at Comment 11.
[177] *See SOBA from Taiwan*, at Comment 2.

for Dongtai Peak to establish Commerce's deadlines or to dictate to Commerce whether and when Commerce actually needs the requested information."[178]

Finally, with respect to Jiuding's argument that if we continue to reject its SRA SQR, we should determine its separate-rate status on FA, rather than AFA, we disagree with the premise of its argument. Our determination to deny Jiuding a separate rate is not an AFA determination. The CIT addressed this issue when a respondent Advanced Technology & Materials Co., Ltd. (AT&M) made the same argument. The CIT stated:

> Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. "These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent who has not received a separate rate." *Watanabe Group v. United States*, 34 CIT __, __, 2010 Ct. Intl. Trade LEXIS 144, Slip Op. 10-139 at 9 n.8 (2010), citing *Since Hardware (Guangzhou) Co. v. United States*, 34 CIT __, 2010 Ct. Intl. Trade LEXIS 119, Slip Op. 10-108 at 23 (Sep. 27, 2010)).[179]

Therefore, we disagree with Jiuding's arguments with respect to AFA. As in the above cases, we continue to find that Jiuding did not demonstrate its eligibility for a separate rate in this proceeding. Because Jiuding has not rebutted the presumption of state control, we continue to treat it as part of the PRC-wide entity for this final determination.

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[178] *See Dongtai Peak Honey Industry Co., Ltd. v. United States*; 777 F.3d 1343 (2015), citing United States brief at 23.

[179] *See Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (Ct. Int'l Trade 2013). *See also Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016), at Comment 9.

VIII: RECOMMENDATION

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

☒ ☐

____________ ____________
Agree Disagree

1/17/2017

X

Signed by: PAUL PIQUADO

____
Paul Piquado
Assistant Secretary
for Enforcement and Compliance