A-570-067
Investigation
Public Document
E&C/VIII/KJ/IG

DATE: October 1, 2018

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

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Forged Steel Fittings from the People's Republic of China

---

I. Summary

The Department of Commerce (Commerce) finds that forged steel fittings from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2017, through September 30, 2017.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. Background

On May 17, 2018, Commerce published in the *Federal Register* its preliminary affirmative determination in the LTFV investigation of forged steel fittings from China. Between May 21, 2018, and May 28, 2018, we conducted verification of the questionnaire responses of Both-Well

[1] *See Forged Steel Fittings from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 82 FR 22948 (May 17, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

(Taizhou) Steel Fittings Co., Ltd. (Both-Well) and WWF Manufacturing (Suzhou) Co., Ltd. (WWF Suzhou).[2] We invited parties to comment on the *Preliminary Determination*.

On July 26, 2018, the petitioners,[3] Both-Well, and Jiangsu Haida Pipe Fittings Group Company Ltd. (Haida)[4] filed case briefs.[5] On August 9 and 13, 2018, the petitioners and Both-Well, respectively, submitted rebuttal briefs.[6] Based on our review of the *Preliminary Determination*, the results of the verification of Both-Well, and our analysis of the comments received, we made certain changes to our *Preliminary Determination*.

III. <u>Changes from the Preliminary Determination</u>

1. To calculate Both-Well's movement expenses for the final determination, we converted the truck and brokerage surrogate values (SVs) from a kilogram to a per-piece basis.[7]
2. We made changes to the margin calculations for Both-Well based on minor corrections found at verification.[8]

IV. <u>Discussion of Issues</u>

Comment 1: Application of the Special Rule for Multinational Corporations (MNC Rule) to the Calculation for Both-Well

Petitioners' Case Brief:

- Commerce must employ the statutorily required methodology to calculate normal value (NV), which in this case requires an analysis under the MNC Rule.
- Congress has instructed Commerce to guard against the possibility that entities with production in more than one jurisdiction could manipulate the results of investigations, or that an investigation of just one subsidiary in such circumstances could lead to inaccurate results.

---

[2] WWF Suzhou was originally selected as a mandatory respondent in this investigation. Based on representations by WWF Suzhou that it did not have sales of the subject merchandise during the POI, we did not require WWF Suzhou to respond to Commerce's questionnaire. We confirmed the accuracy of this claim at verification.

[3] The petitioners are Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (collectively, the petitioners).

[4] In the *Preliminary Determination*, Commerce preliminarily determined that Jiangsu Haida Pipe Fittings Group Company Ltd., its affiliated producer Haida Pipe Co., Ltd., and affiliated reseller Yancheng L&W International Co., Ltd. are a single entity (collectively, Haida). *See* Preliminary Decision Memorandum at 15. For the final determination, we continue to find that these three companies comprise a single entity, as the basis for our determination is unchanged from the *Preliminary Determination*.

[5] *See* Petitioners' Case Brief, "Forged Steel Fittings from the People's Republic of China: Case Brief," dated July 26, 2018 (Petitioners' Case Brief); Haida Case Brief, "Forged Steel Fittings from People's Republic of China: Case Brief of Jiangsu Haida," dated July 26, 2018 (Haida Case Brief); and Both-Well Case Brief, "Forged Steel Fittings from China: Antidumping," dated July 26, 2018 (Both-Well Case Brief).

[6] *See* Petitioners' Rebuttal Brief, "Forged Steel Fittings from the People's Republic of China: Rebuttal Brief," dated August 9, 2018 (Petitioners' Rebuttal Brief); Both-Well Rebuttal Brief, "Forged Steel Fittings from China: Antidumping," dated August 13, 2018 (Both-Well Rebuttal Brief).

[7] *See* Memorandum, "Final Determination Margin Calculation for Both-Well (Taizhou) Steel Fittings Co., Ltd. (Both-Well) (Final Determination Calculation Memo).

[8] *See* Memorandum, "Verification of the Questionnaire Responses of Both-Well (Taizhou) Steel Fittings Co., Ltd. in the Antidumping Duty Investigation of Forged Steel Fittings from the People's Republic of China (China)," dated July 9, 2018 (Verification Report), at 1.

- The first prong of the test is met because Both-Well shares ownership with a mandatory respondent in the companion Taiwan investigation.
- The second prong of the test is met because China is a non-market economy (NME); therefore, there is a particular market situation rendering domestic prices unsuitable for the calculation of NV. The petitioners cite to *Melamine Dinnerware from China* in support of their argument that the MNC Rule is applicable to NME countries.[9]
- The position taken by Commerce in *Warmwater Shrimp from China*,[10] (*i.e.*, that the second prong of the MNC Rule could never be met by a NME country), is flawed and inconsistent with the positions the United States has taken in disputes before the World Trade Organization (WTO) regarding the calculation of dumping margins for companies located in China.
- Although Commerce has stated that the MNC Rule could never apply to NMEs because the intent of Congress was to guard only against situations involving no or low volumes of home market sales, not particular market situations, this analysis ignores the addition of particular market situations to the criteria for the second prong of the test in 1994.
- The United States has made clear in litigation before the WTO regarding the application of the antidumping (AD) duty law to China that a particular market situation exists for China. Congress has created no exception to the MNC Rule for companies located in NMEs.
- Because the first two elements of the MNC Rule have been met, Commerce must compare the NV it calculates for Both-Well in this case to the related respondent in the companion investigation of Taiwan. This will be a simple exercise because the company in Taiwan did not participate in the investigation, leading to the use of information from the petition for the calculation of NV based on adverse facts available (AFA).

Both-Well Rebuttal Brief:

- Commerce regulation 19 CFR 351.301(c)(2)(i) states that allegations with respect to the basis for the determination of NV are due ten days after the relevant respondent's questionnaire response. This regulation applies to MNC Rule allegations.
- The petitioners only raised the MNC Rule in a ministerial error claim, which Commerce rejected as not being a ministerial error. The MNC Rule was not raised at any other time.
- Commerce has specific deadlines for the submission of facts from another segment of a proceeding, much less an entirely different investigation, *i.e.*, forged steel fittings from Taiwan.
- Unlike the instant investigation, in the *Melamine Dinnerware from China* case cited by the petitioners, an MNC Rule allegation was made two months prior to the *Preliminary Determination*.
- The alleged Taiwan home market prices, based on AFA, are not at all based on Both-Well's Taiwan prices.

---

[9] *See* Petitioners' Case Brief at 7 (citing *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from the People's Republic of China*, 61 FR 43337 (August 22, 1996), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China*, 62 FR 1708 (January 13, 1997) (*Melamine Dinnerware from China*)).

[10] *See* Petitioners' Case Brief at 8-9 (citing *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004-2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 12 (*Warmwater Shrimp from China*)).

- Commerce has rejected applying the MNC Rule to NMEs, citing *Warmwater Shrimp from China*. Where the NME methodology (*i.e.*, section 773(c) of the Act) is applied, Commerce is already using third-country SVs, which achieves the purpose of the MNC Rule.
- The first criterion of the MNC Rule is not met because the United States does not recognize Taiwan as a country.
- The second criterion of the MNC Rule is not met because Both-Well would claim a viable home market with respect to China sales that were sufficiently market-oriented.
- The third criterion of the MNC Rule is also not met because the petitioners fail to cite any record evidence that Taiwan NV exceeds China market NV.
- The products in Taiwan and China are not comparable; the difference in the cost of manufacturing is more than 20 percent.
- The China and Taiwan investigations have different POIs, thus violating the part of the MNC statute that requires third-country NV be contemporaneous with export prices.
- The petitioners incorrectly seek to impose AFA in this investigation even though Both-Well cooperated in this investigation.

Commerce's Position:

We disagree with the petitioners' contention that the MNC Rule is applicable. In their May 22, 2018, ministerial error comments, the petitioners argued that Commerce erred by failing to conduct the statutorily-required MNC Rule analysis which could have resulted in a higher preliminary dumping margin for Both-Well.[11] However, the petitioners' argument did not pertain to an alleged ministerial error. A ministerial error is "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."[12] Our determination to apply or not apply the MNC Rule in a proceeding does not constitute a ministerial error; rather, this determination is methodological in nature.

The MNC Rule does not apply in all cases. Indeed, the second criterion is that section 773(a)(1)(C) of the Act "applies," rather than a different NV methodology under section 773 of the Act. Furthermore, as stated in the *Preamble* to the regulations,

> There are a variety of analyses called for by section 773 that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party * * * the Department does not automatically request information relevant to a multinational corporation analysis under section 773(d) of the Act in the absence of an adequate allegation.[13]

The petitioners did not make an allegation with respect to the MNC Rule prior to the *Preliminary Determination* in this investigation, but rather, raised the allegation for the first time in their ministerial error comments.[14] The petitioners subsequently included their MNC Rule allegation

[11] *See* Letter from Petitioners, "Forged Steel Fittings from the People's Republic of China: Ministerial Error Allegations," dated May 22, 2018 (Ministerial Error Comments).
[12] *See* 19 CFR 351.224(f).
[13] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27357 (May 19, 1997) (*Preamble*).
[14] *See* Ministerial Error Comments.

as part of their case brief.[15] In both situations cited by the petitioners, *Melamine Dinnerware from China* and *Warmwater Shrimp from China,* an allegation was made several months prior to the preliminary determination/results.[16] In this investigation, the petitioners' MNC Rule allegation was not so timely submitted. Further, Commerce's regulation, 19 CFR 351.301(c)(2)(i), states that allegations with respect to the basis for the determination of NV are due ten days after the relevant respondent's questionnaire response. This regulation applies to an MNC Rule allegation, and, thus, the petitioners' allegation which was submitted well after the regulatory deadline was untimely. Section 351.404(d) of Commerce's regulations further provide, in relevant part, that in an LTFV investigation, an allegation regarding the basis for determining a price-based NV must be filed with all factual supporting information within the deadline established.[17] In this case, the timing of the petitioners' allegation was outside the time frame within which Commerce could reasonably evaluate it.

In a proceeding involving an NME country, such as (in this investigation) China, the governing provision for calculating NV is section 773(c)(1) of the Act (*i.e.*, basing NV on the factors of production (FOPs)). Section 773(c)(1) of the Act provides that, in the proceeding involving an NME country, Commerce shall determine NV on the basis of the value of FOPs utilized in producing the merchandise if (1) the subject merchandise is exported from an NME country and (2) available information does not permit the NV of the subject merchandise to be determined under section 773(a) of the Act.

Commerce's regulation, 19 CFR 351.408(a), further provides that "{i}n identifying dumping from a nonmarket economy country, the Secretary normally will calculate normal value by valuing the nonmarket economy producers' factors of production in a market economy" under section 773(c) of the Act. The *Preamble* recognizes that there may be certain circumstances in which we may use the market economy (ME) methodology set forth in section 773(a) of the Act to determine normal value in an NME proceeding.[18] However, in light of the above, a request that Commerce deviate from its normal NME methodology under section 773(c) of the Act and rely instead on a methodology under section 773(a) of the Act falls under the category of "analyses called for by section 773 of the Act that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party{.}"[19] Therefore, absent a timely allegation or request to deviate from our normal NME methodology, there is no basis for Commerce to apply a different NV methodology, such as under section 773(a) of the Act. Because the petitioners did not raise their allegation in a timely manner, Commerce has not considered an alternative NV methodology.

We further note that in *Warmwater Shrimp from China*, Commerce recognized that the MNC Rule would not apply where Commerce relied on the FOP methodology under section 773(c) of the Act, because of the requirement that the MNC Rule is applicable only if section 773(a)(1)(C)

---

[15] *See* Petitioners' Case Brief at 3.

[16] In *Melamine Dinnerware from China*, the MNC allegation was filed on September 14, 2006, prior to the preliminary determination in March 2007. In *Warmwater Shrimp from China*, the allegation was filed on May 29, 1996, prior to the preliminary determination in August 1996.

[17] Section 351.404(d) continues to refer to the deadline established in 19 CFR 351.301(d)(1), however, 19 CFR 351.301(d)(1) was amended by 19 CFR 351.301(c)(2)(i) in 2013. *See Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246 (April 10, 2013) (*Final Rule*).

[18] *See Preamble*, 62 FR at 27364.

[19] *See Preamble*, 62 FR at 27357.

of the Act applies.[20] In a review with a similar issue, *Warmwater Shrimp from Thailand*, Commerce also declined to apply the MNC Rule where the third-country market was China and the NV for that proceeding was based on section 773(c) of the Act.[21] In sustaining this decision, the Court of International Trade (CIT) and Court of Appeals for the Federal Circuit both recognized Commerce's position that the MNC Rule does not apply where Commerce has conducted its normal FOP methodology for NME countries under section 773(c) of the Act.[22] The petitioners have not addressed these court findings which are directly relevant to this issue.

Thus, although we recognize that on one occasion Commerce applied the MNC Rule to an NME respondent in *Melamine Dinnerware from China*, Commerce did not follow that determination thereafter.[23] We find the petitioners' remaining arguments to be without merit or otherwise moot, in light of their failure to raise a timely allegation.

In sum, Commerce has determined NV under section 773(c) of the Act, pursuant to its normal NME methodology, and has not received a timely allegation to deviate from this methodology by relying on the NV methodology under section 773(a) of the Act. Thus, by its terms, the MNC Rule does not apply.

Comment 2: Surrogate Country Selection

Petitioners' Case Brief:

- Commerce should select Brazil as the appropriate surrogate country because Brazil is more economically comparable to China than Bulgaria.
- Commerce's finding that Bulgaria is a significant producer of comparable merchandise is erroneous because Bulgaria exported less comparable merchandise than any other potential surrogate country. The 92 tons of purportedly comparable merchandise that Bulgaria exported is a fraction of the pipe and tube fittings that Brazil exported in 2017.
- Unlike Bulgaria, there are Brazilian data on the record for each and every FOP that are publicly available, specific to the FOP in question, net of taxes and import duties, and contemporaneous with the POI.
- Commerce has a preference for using one surrogate country, and the one set of Bulgarian financial statements on the record is not suitable for use because it does not include an auditor's report and is, therefore, incomplete.
- Commerce should reconsider its preliminary conclusion that the Bulgarian Harmonized Schedule (HS) subheading for round bar offers the best choice due to specificity because the alleged specificity is deceptive.
- Both-Well created groupings that mirrored the Bulgarian eight-digit subheading for HS heading 7214.99, effectively dictating the surrogate country choice. Both-Well could have chosen to group the consumption by eight-digit subheading for HS heading 7214.99 in other countries.

[20] *See Warmwater Shrimp from China* and accompanying Issues and Decision Memorandum at Comment 12.
[21] *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 10 (*Warmwater Shrimp from Thailand)*.
[22] *See Ad Hoc Shrimp Trade Action Committee v. United States,* 616 F.Supp.2d 1354, 1363 (CIT 2009); *Ad Hoc Shrimp Trade Action Committee v. United States,* 596 F.3d 1365, 1372 (Fed. Cir. 2007).
[23] *See Warmwater Shrimp from China* at Comment 12.

- In *Certain Aluminum Foil from China*,[24] Commerce recognized that there were no gains from using Global Trade Atlas (GTA) import data that are purportedly more specific to the inputs being consumed.
- The larger number of Bulgarian HS subheadings available for round bar is undermined by the fact that Both-Well used multiple types of steel bars to make each product.
- Commerce should not have valued Both-Well's ASTM A105 bar (*i.e.*, RB1 and RB2) using HS heading 7214.99, let alone one of the various eight-digit breakouts. By definition, HS subchapter 7214 includes non-alloy bars that are forged, hot-drawn, hot-rolled, or hot-extruded.
- In the *Preliminary Determination*, Commerce should have valued A105 bar inputs using an average of HS headings 7214.99, 7214.10, and 7214.30. However, Commerce preliminarily selected a specific HS subheading than the record supports.
- Commerce should use an average of three HS headings, *i.e.*, 7214.99, 7214.10, and 7214.30, for the final determination. The petitioners also state that Commerce should value Both Well's A105 bar using solely HS heading 7214.10 for the final determination.
- Because the harmonized schedule requires headings at the six-digit level to be the same for all countries, Bulgarian data are not superior to Brazilian data when averaging these three Bulgarian HS subheadings.
- If Commerce continues to use Bulgaria for the final determination, it should explain why the Bulgarian characteristics and thresholds at the eight-digit level are superior to other countries' breakouts, or are superior to no distinction at all, citing to record evidence to support its conclusions.
- There are no Bulgarian data on the record suitable for calculating surrogate financial ratios or a SV for natural gas.
- The GTA Bulgarian import data of natural gas are neither contemporaneous with the POI nor broad-based. Given that there were only 18 tons of Bulgarian imports of natural gas for almost all of 2017, it is clear that Bulgarian imports of natural gas are unusual and using these imports results in a SV for natural gas that is aberrational and unreliable.
- If Brazil is selected as the surrogate country for the final determination, Commerce should use certain SVs suggested by the petitioners for labor, electricity, natural gas, and movement expenses.

Both-Well Rebuttal Brief:

- Bulgaria and China are at a similar level of economic development. The difference between Bulgarian and Brazilian per capita Gross National Product (GNP) and Chinese per capita GNP, as a percentage of Chinese per capita GNP, is insignificant at five percent.
- Bulgaria's exports of 92 metric tons of pipe and tube are 70 percent of Haida's metric ton exports, and 31 percent of the pipe and tube exports from Brazil. Therefore, Bulgaria is a significant producer of subject merchandise.
- Regarding the Brazilian trade association information provided by the petitioners: (1) it is unclear if it actually represents the relevant industry in Brazil; (2) the cited information does not contain any statistics on Brazil's exports of comparable merchandise under the relevant HS subheadings during the POI, which is what Commerce considers in practice; (3) the trade association's general overview of employment and production data dates back to 2006, prior

[24] *See* Petitioners' Case Brief at 19 (citing *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) and accompanying Issues and Decision Memorandum at Comment 1 (*Certain Aluminum Foil from China*)).

to the POI; (4) with respect to the list of company names taken from the company's website, there is no information as to what the companies produce; and (5) the names of certain companies on the list suggest they could be trading companies, as opposed to producers.

- Converting the FOB data to a CIF basis using average ocean freight and insurance information would inevitably distort the actual import data. The petitioners submitted the shipping information of a single Chinese company of a single product from a single port in China to a single U.S. port. There is no way to reasonably adjust the Brazilian FOB data using that information.
- The financial statements of the Brazilian company Tupy S.A. (Tupy) is not appropriate to use for surrogate financial ratios because: (1) Tupy's business is mainly automotive products (iron casting), which is completely different from the subject merchandise; and (2) although Tupy's website shows pictures of products claimed to be subject merchandise, it is unclear if Tupy actually produces these products.
- In 2017, Tupy purchased a large quantity of forged steel fittings from Both-Well Taiwan (Both-Well's affiliate) for delivery to its Brazilian factory.
- Even if Tupy produces forged steel fittings, it remains unclear whether they are produced in Brazil or at its plants in Mexico. It is Commerce's practice not to use financial statements of a producer whose comparable merchandise is produced outside of the primary surrogate country.
- It is Commerce practice to reject the use of surrogate data from countries offering generally available subsidies. In this investigation, the only major raw material is carbon hot-rolled steel. Currently, there are five AD and three countervailing duty orders in effect against various steel imports from Brazil, including orders against carbon and alloy hot-rolled steel products.
- Because the forged steel fittings produced in Taiwan are subject to an on-going AD duty investigation, the purchase of these products from Taiwan will distort the financial ratios based on Tupy's financial statements.
- Commerce previously found that Tupy is subsidized by the Government of Brazil.
- Round bar is the most important factor in determining the surrogate country, yet the Brazil GTA import data are not specific to the type of round bar consumed by Both-Well.
- Brazilian GTA import data for round bar are not specific to chemical composition nor dimension; whereas the Bulgarian HS subheadings are specific both to carbon composition and diameter.
- Although the petitioners provide an eight-digit Brazilian HS subheading for all types of round bar reported by Both-Well, the single Brazilian HS subheading for round bar is, in fact, only specific to six digits.
- Commerce selected Bulgaria as the surrogate country in *Threaded Rod from China* where steel was the single most important input for the subject merchandise and Bulgaria provided more specific GTA import data.[25]
- The petitioners include several incorrect HS headings in their SV comments. For example, for steel scrap, the petitioners use HS heading 7204.49, while there is a more specific HS heading, 7204.41, for the steel scrap reported by Both-Well.

---

[25] *See* Both-Well Rebuttal Brief at 17 (citing *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 83800 (November 22, 2016) and accompanying Issues and Decision Memorandum at 8 (*Threaded Rod from China*)).

- The petitioners incorrectly claim that Both-Well grouped the consumption values in a certain manner to determine the choice of surrogate country. If the petitioners wanted Both-Well to report consumption differently, they should have raised the issue long ago.
- Both-Well grouped round bar consumption according to commercial reality, reflecting actual physical differences in the products. Commerce verified this information.
- The petitioners erroneously suggest that a producer can use any type of round bar in production, irrespective of carbon content and diameter. If the single Brazilian HS subheading for round bar is used, it will incorrectly include bars of carbon content and dimensions not used in the production of the subject merchandise.
- Commerce correctly used Bulgarian HS subheadings 7214.99.31 and 7214.99.39 to value A105 round bars. These Bulgarian HS subheadings are designated specifically for products with a carbon content less than 0.25 percent, which are used by Both-Well in the production of the subject merchandise. The petitioners incorrectly claim that HS heading 7214.10 is more accurate. HS heading 7214.10 represents "forged," products, which is true of all round bars. There is no further classification of other elements.

Commerce's Position:

We continue to find that Bulgaria best satisfies Commerce's criteria for selection of the primary surrogate country in this investigation. When Commerce is reviewing imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country, or countries, considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[26] If more than one country meets each of these criteria, "the country with the best factors data is selected as the primary surrogate country."[27] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter," it does not preclude reliance on additional or alternative metrics.[28] To evaluate the evidence provided by interested parties regarding significant production in Brazil, Bulgaria, and Mexico (the three countries on Commerce's surrogate country list for which SV data were provided by the parties), we examined export data from GTA for the six-digit level HS subheadings listed in the description of the scope of this investigation.[29] In reviewing these export data, we determined that none of the total export volumes from Brazil, Bulgaria, Mexico are insignificant and that interested parties have satisfied the significant production requirement under section 773(c)(4)(B) of the Act. Accordingly, we continue to find that Mexico, Bulgaria and Brazil are at the same level of economic development as China and are significant producers of comparable merchandise.[30]

---

[26] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).
[27] *Id.*
[28] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).
[29] *See* Memorandum to the File, "Less-Than-Fair-Value Investigation of Forged Steel Fittings from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated May 7, 2018 (Prelim SV Memo), at Attachment 2.
[30] *See* Preliminary Decision Memorandum at 8-10.

In considering whether Bulgaria or Brazil (no party is currently advocating for selecting Mexico as the primary surrogate country) provide the best available information for SVs, pursuant to section 773(c)(1) of the Act, we considered whether the potential SV data on the record from each country were: publicly available, product-specific, representative of broad market average prices, contemporaneous with the POI, and free of taxes and import duties.[31] The record contains SV data from Bulgaria for the inputs (materials, labor, energy) required to construct a NV. In addition, the Bulgarian data are specific to the inputs, contemporaneous, and tax- and duty-exclusive, and represent a broad market average. Accordingly, for the reasons discussed below, we continue to find that the Bulgarian SV data on the record represents the best available information for valuing FOPs, except for surrogate financial ratios (discussed below), for this final determination.

For the respondents in this investigation, round bar constitutes most of the material cost for forged steel fittings, and is therefore the most important FOP for surrogate country selection purposes in the valuation of forged steel fittings.[32] Throughout Both-Well's questionnaire responses, it has consistently stated that it consumes round bar in the production of the subject merchandise.[33] Additionally, at verification, we observed six different types of round bar in the raw material inventory, consistent with Both-Well's reporting methodology. In their case brief, the petitioners claim that Both-Well consumed forged round bar in the production of forged steel fittings, rather than unforged round bar, citing to "inventory records."[34] However, during the plant tour conducted at verification, Commerce officials observed no forged round bar raw materials in raw material inventory,[35] nor is there information in the official documents on the record indicating consumption of forged round bar material. During verification, we examined the consumption of round bar for the production of end products (forged steel fittings) in two groupings: 1) for the forging stage;[36] and 2) for the drilling/machine stage.[37] Also at the verification, we examined round bar consumption in the forging stage for which the company provided various worksheets created for the proceeding and the verification. For example, one worksheet covering June 2017, "raw material consumption," shows a column identifying "forged/unforged."[38] However, this column does not specify that the raw material (*i.e.*, the round bar) is forged or unforged. Rather, consistent with our observations at verification, this column identified the manner of processing the round bar input into a different product, not the nature of the raw material. More importantly, this worksheet identifies steel type, the material name, and the specification/size of the round bar used, which we find satisfies the specificity criterion for SV selection, particularly because this level of specificity is present and available within the Bulgarian GTA data.[39] Additionally, we note that this worksheet was created for verification, and is not the actual inventory record as suggested by the petitioners. Both-Well's

[31] *See, e.g., Drill Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51004 (August 18, 2010), unchanged in *Drill Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 196 (January 11, 2011).
[32] *See* Final Determination Calculation Memo at Attachment 2.
[33] *See, e.g.*, Both-Well's February 5, 2018, Sections C and D questionnaire response at Field Numbers 2.1-2.X.
[34] *See* Petitioners' Case Brief at 22.
[35] *See* Verification Report at 7 ("We observed the six different types of round bar in the raw material (RM) inventory.").
[36] *See* Verification Report at Verification Exhibit (VE) 31.
[37] *Id.* at VE 32.
[38] *Id.* at VE 31, pages 10-13.
[39] *Id.*

actual inventory and purchase records, which are kept in the normal course of business, have no identifier stating that the round bar is forged or not forged.[40] Further, the raw material withdrawal list for June 2017 also indicates material name, *i.e.*, A105, and the specification of the round bar,[41] with no indication that the round bar raw material is forged. Thus, the petitioners' claim that Both-Well used both forged and unforged round bar is speculation based on a worksheet created for verification, as opposed to Both-Well's actual inventory documents and purchase records. As noted above, we found no evidence of the consumption of forged round bar at Both-Well, nor did we note such evidence in our verification report.

The petitioners also argue that "Commerce should value Both-Well Taizhou's A105 bar using solely HTS 721410,"[42] based on their assertion that Both-Well consumed forged round bar. We note that HS heading 7214.10 covers "Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling: Forged."[43] Even if Both-Well did consume forged round bar, *in arguendo*, an extensive search of the record shows that there is no SV on the record of this investigation for HS heading 7214.10, nor have the petitioners cited to this SV anywhere on the record in their arguments. Nevertheless, the issue of using this HS subheading as a SV is moot because there is no evidence on the record that Both-Well consumed forged round bar as a raw material input. Although in their rebuttal brief the petitioners have interpreted Both-Well's comments to state that Both-Well uses forged material to produce forged steel fittings,[44] in actuality, Both-Well has reported that the "subject merchandise is forged from round bar."[45] Nowhere on the record did Both-Well state that subject merchandise is forged from forged round bar, nor is forged round bar reported on the record as a material input, *i.e.*, raw material purchase records.[46] Although Both-Well did not explicitly refute the petitioners' case brief allegation that it used forged round bar as a raw material in the production process, record evidence and our verification findings make it clear that it did not. Accordingly, we sought the best available source to value round bar as specifically as possible to the type of round bar consumed by Both-Well.

The Bulgarian SV data, with four HS subheadings, are more specific to the main input (round bar) when compared to the Brazilian data, because the Bulgarian data provide four distinct HS subheadings for each of the specific types of round bar (by diameter and carbon content) used by Both-Well. Out of the data available on the record, only the Bulgarian import statistics are divided by different grades of round bar based on carbon content and can be specifically matched to the grade of round bar consumed by Both-Well during the POI. Commerce reached this finding after considering the types of round bar used by Both-Well, as reported and verified, and the various carbon content sub-categories in the Bulgarian HS subheadings. The Brazilian GTA import data for a round bar SV consists of one Brazilian HS subheading under 7214.99.10,[47]

---

[40] *Id*. at pages 7-9.
[41] *Id*. at page 4.
[42] *See* Petitioners' Case Brief at 22.
[43] *See* Both-Well's Letter, "Forged Steel Fittings from China: Antidumping," dated March 5, 2018 (Both-Well SV Comments), at Exhibit SV-4a.
[44] *See* Both-Well Rebuttal Brief at 20.
[45] *See* Both-Well's February 5, 2018, Sections C and D Questionnaire Response at pdf 51. *See also* Both-Well's Rebuttal Brief at 16.
[46] *See* Verification Report at VE 39, pages 4-14.
[47] *See* Petitioners' Letter re: "Forged Steel Fittings from China: Surrogate Value Comments" (Petitioners' Final SV Comments), dated April 9, 2018, at 2 and Exhibit 5.

which is not specific to either the chemical composition or dimension of the round bar consumed by Both-Well. The Policy Bulletin explains that "data quality is a critical consideration affecting surrogate country selection" and that "a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable."[48] Finally, we disagree with the petitioners' contention that Both-Well reported its round bar FOPs to intentionally align with the Bulgarian GTA HS subheadings. We disagree with this argument because we verified Both-Well's round bar consumption records from the POI, which demonstrated that Both-Well records round bar purchases and consumption by size in the normal course of business.[49] Both-Well's official consumption records predate the initiation of this investigation. For petitioners' argument to have merit, Both-Well would have to have foreseen that Commerce would, in the future, initiate a less-than-fair-value investigation and subsequently select Bulgaria from a not-yet-existing surrogate country list, and keep its records accordingly, so that Commerce's reliance on the Bulgarian GTA import data for round bar would be inevitable.

We further disagree with the petitioners' argument that, in *Certain Aluminum Foil from China*, Commerce recognized that there were no gains from using GTA import data more specific to the inputs consumed, and therefore the less-specific Brazilian data are usable here. In that investigation, the eight-digit HS subheadings for the input at issue were averaged, and thus no more specific than the six-digit HS headings. In the instant situation, we verified that each eight-digit Bulgarian HS subheading is specific to a particular type of round bar consumed by Both-Well in the production of forged steel fittings.[50] Thus, there is no reason to average the import data for the Bulgarian HS subheadings as there was in *Certain Aluminum Foil from China*. Moreover, we disagree that Brazilian import data for a single HS subheading is appropriate to value four types of round bar consumed by Both-Well, especially when the record contains four discrete SVs for the specific round bar types used by Both-Well.

We also disagree with the petitioners' contention that the Bulgarian SV for natural gas is aberrational and unreliable. The petitioner has provided no evidentiary support that the Bulgarian GTA import data are aberrational. Its sole basis for such an allegation is that the value is not contemporaneous with the POI and is limited to a single data point from a single country with a low import quantity. As an initial matter, the gas SV import quantity of 18,000 kilograms[51] (or 18 metric tons) is not, on its face, an insignificant quantity, and there is no record evidence to suggest otherwise. Second, that a given dataset includes imports from only one country does not preclude a finding that such a dataset comprises a broad market average. Commerce has repeatedly found that country-wide data represent broad market averages, regardless of the number of countries represented in that import data.[52] When addressing claims of aberrational data, our practice, among other methods, is to examine average unit value (AUV)

---

[48] *See* Policy Bulletin.
[49] *See* Verification Report at VE 31.
[50] *Id.* at 7.
[51] *See* Prelim SV Memo at 7 and Attachment 4.6.
[52] *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014) and accompanying Issues and Decision Memorandum at Comment 7 ("…country-wide data represent broad market averages, regardless of the number of countries represented in that import data."); *see also High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying Decision Memorandum at Comment 1.

prices for similar categories from other potential surrogate countries that may be viable benchmarks without reference to the surrogate country determination.[53] This precedent simply requires that parties provide sufficient factual support when arguing that a particular value is inappropriate. When sufficient evidence is presented to show that a particular SV is not viable, Commerce will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[54] Because, as explained above, we determine that the petitioners failed to demonstrate that the Bulgarian GTA import data are unreliable, we do not find it necessary to compare the Bulgarian GTA SV data for natural gas to any potentially appropriate benchmarks submitted to the record. Finally, although Commerce does not prefer non-contemporaneous data, it will use that data when it is the best available information (and will adjust non-contemporaneous data to the POI by appropriately inflating or deflating the data). Contemporaneity is a correctable issue and does not preclude our consideration of the available data on the record here. In light of Commerce's preference for a single primary surrogate country,[55] that the Bulgarian natural gas import data is neither aberrational nor unreliable, and that the Bulgarian import data can be deflated for the POI, we continue to find that the Bulgarian natural gas import data fulfills our SV criteria. Thus, we have continued to value natural gas using the Bulgarian GTA import data, deflated for the POI.[56]

With respect to the surrogate financial ratios necessary to calculate a NV, however, we continue to find that the Brazilian financial statements constitute the best available information for calculating surrogate financial ratios, as they are the only usable financial statements on the record. In the *Preliminary Results,* we relied on the Brazilian financial statements of Tupy, a producer of comparable merchandise, to calculate the surrogate financial ratios for Both-Well. Although Tupy's financial statements are consolidated and, like the Mexican financial statements, do not break out the selling, general and administrative (SG&A) expenses, we continue to find that Tupy's financial statements are the best option in this investigation given the critical flaws present in the other financial statements on the record. The Bulgarian financial statements on the record are missing an auditor's report, and, consistent with our practice, are therefore unusable,[57] and the Mexican financial statements on the record is not the best available information to calculate surrogate financial ratios because those financial statements result in a negative surrogate SG&A ratio.

We disagree with Both-Well's argument that the financial statements of the Brazilian company Tupy are not appropriate to use for surrogate financial ratios because it does not produce

---

[53] *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) and accompanying Issues and Decision Memorandum at Comment 2.
[54] *Id.*
[55] *See*, *e.g.*, *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390, at *6 (CIT 2013) ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce's} calculations").
[56] *See* Prelim SV Memo at 7 and Attachment 4.6.
[57] *See*, *e.g.*, *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016) and accompanying Issues and Decision Memorandum at Comment 16 ("It is the Department's practice to disregard incomplete financial statements as a basis for calculating surrogate financial ratios… the Department disregarded financial statements for a number of reasons, but noted a missing auditor's report as a significant cause."); *see also Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006)

comparable merchandise. Although most of Tupy's production is cast iron engine blocks, Tupy also produces forged steel fittings meeting the ASME 16.11 specification, which is merchandise covered by the scope of this investigation. Thus, Tupy's financial statements represent the production of subject merchandise. In addition, while part of Tupy's production capacity is in Mexico, the majority of its production capacity is in Brazil, and thus its financial statements represents the production of subject merchandise in a country at the same level of economic development as China, the country under investigation.[58] Also, Both-Well has provided no evidence on the record that Tupy's alleged purchases of forged steel fittings from Taiwan will distort the financial ratios based on Tupy's financial statements. Finally, Tupy's financial statements do not reflect its receipt of countervailable subsidies, and so we find no support for Both-Well's argument that we should reject Tupy's financial statements based on Tupy having allegedly received countervailable subsidies.

Accordingly, for the reasons discussed above, we continue to find that the Bulgarian SV data on the record represent the best available information for valuing FOPs, with the exception of the financial ratios, for this final determination. Therefore, we continue to use Bulgaria as the primary surrogate country in this investigation and continue to rely on the Brazilian financial statements of Tupy for Both-Well's surrogate financial ratios.

Comment 3: Exclusion of Import Data with Quantities of Zero

Both-Well Case Brief:

- In the *Preliminary Determination,* Commerce's calculation of SVs using import values relied on certain data that reported import values with no corresponding import quantities.
- The inclusion of import values with no corresponding import quantities is distortive because the total numerator value is increased without a comparable increase in the total quantity denominator.
- Unlike the situation in *Solar Cells 2012*,[59] where it was determined that the zero-quantity sales were due to rounding, in this case, certain of the zero-quantity observations are errors.
- There are 15 zero-quantity observations with unit values 0.49 units higher than the highest unit value of the corresponding HS[60] subheading. For example, round bar is valued using HS subheading 7214.99.39. The highest unit value among this HS subheading is EUR 2,617 per MT, but the unit value, assuming a quantity of 0.49 kg for the zero-quantity entry, is EUR 25,920.41- nearly ten times the highest unit value where a quantity is reported.
- For the final determination, Commerce should exclude all observations of zero-quantity imports from the import statistics, even if the zeros are due to rounding. Rounding to zero means that the quantity is already excluded, so the value should be excluded also.
- If Commerce incorrectly includes the zero-quantity observations which are attributable to rounding, such observations should be assumed to have a quantity of 0.49 units.

---

[58] *Id.*, at 5.

[59] *See* Both-Well Case Brief at 2 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 8 (*Solar Cells 2012*)).

[60] "HS" subheading refers to the global Harmonized Schedule, while "HTS" refers specifically to the schedule used for U.S. imports of goods. Thus, when referring to import data for non-U.S. countries, the correct terminology is HS for the schedule subheadings.

Petitioners' Rebuttal Brief:

- Both-Well is correct that the GTA data for Bulgaria show a significant number of imports with zero quantities – nearly 22 percent – a very high percentage of inaccurate import data reporting.
- For most of the relevant HS subheadings, Bulgaria reports imports on the basis of metric tons, as opposed to kilograms, thus resulting in less accurate results. Calculating these unit values on the basis of AUV per metric ton of input produces highly distorted results.
- Even for those observations that contain a quantity, reporting items such as lubricant preparations on the basis of the number of metric tons imported produces extremely inaccurate results because lubricant preparations are not consumed in quantities that are anywhere near metric tons.
- It is unlikely that the different unit values in each month represent actual price differences, and more likely that the actual metric ton figure could vary by month, *i.e.*, 1 metric ton equals 0.735 metric tons one month and 1 metric ton equals 0.662 in another month.
- It is even more problematic that the vast majority of inputs into forged steel fittings, except for the round bar itself, are of quantities far smaller than one metric ton per metric ton of finished forged steel fittings.
- In *Solar Cells 2018*, zero-quantity data represented 0.03 percent of the total value of the dataset.[61] In this investigation, if Bulgaria is used as the surrogate country, zero-quantity data represent 1.03 percent of the total value of the dataset, or 34 times more than in *Solar Cells 2018*. The main reason for the different result is that in *Solar Cells 2018*, the surrogate country of Thailand reported its imports in kilograms, whereas Bulgaria reports its imports in metric tons.
- Brazil generally reports its imports on the basis of kilograms, and there are extremely few values reported with zero quantities.
- The concerns raised by Both-Well regarding the zero-quantity import data for Bulgaria represent yet another reason why Bulgaria is not an appropriate surrogate country.

Commerce's Position:

We disagree with Both-Well that the Bulgarian GTA import data are erroneous. As an initial matter, Both-Well itself submitted the Bulgarian GTA import data that Commerce relied upon in the *Preliminary Determination* and which Both-Well now argues is erroneous.[62] In the *Preliminary Determination*, we compared the Bulgarian data that Commerce downloaded from GTA[63] to the SV data that Both-Well submitted on the record[64] and found that both datasets are identical. If Both-Well was concerned with Bulgarian GTA data quality, it had ample opportunity to provide additional information relevant to the Bulgarian data or revise or clarify its SV submission wherein it recommended that Commerce use the Bulgarian GTA import data for the *Preliminary Determination*. Both-Well did not do so.

---

[61] *See* Petitioners' Rebuttal Brief at 2 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2015-2016, 83 FR 35616 (July 27, 2018) and accompanying Issues and Decision Memorandum at Comment 6 (*Solar Cells 2018*)).
[62] *See* Both-Well SV Comments, at Exhibits SV-4B and SV-4C.
[63] *See* Prelim SV Memo, at Attachments 4.1, 4.3, and 4.5.
[64] *See* Both-Well SV Comments at Exhibits SV-4B and SV-4C.

Furthermore, while Both-Well argues that the zero-quantity data are collection or reporting errors, and not an issue of arithmetic rounding, the record contains no evidence, nor have interested parties provided such evidence to support such claims. Both-Well argues the zero-quantity data points cannot correlate to a rounding issue as in *Solar Cells 2012*.[65] However, Both-Well has provided no evidentiary support for its claim that the data points with quantity expressed as zero are errors, and, further, Both-Well cannot deduce from the information on the record that the zero-quantity data points are *not* due to rounding issues. Moreover, our examination of the data points, using wooden pallets as an example below, demonstrates that quantity in metric tons is not null, but simply, in this case, rounded down when the quantity registers as .49 metric or less, in the GTA, as discussed in greater detail below.

The petitioners opined that the most plausible explanation for zero-quantity data points is a rounding issue caused by the large unit of measure used for the Bulgarian import data. We agree. The Bulgarian GTA import statistics for all FOPs on the record are expressed in metric tons, a larger unit than kilograms. Thus, theoretically, the weight of a lighter object would not register in metric tons as it would in kilograms. Furthermore, the record evidence supports this explanation. Specifically, as demonstrated below, for one of the FOPs, the import data includes two units of measure (pieces or number and metric tons) for wooden pallets under Bulgarian HS subheading 4415.20.20: "Pallets And Pallet Collars, Of Wood."[66] The data below demonstrate that under the metric-ton unit of measure, the three data points with quantity expressed as zero, in metric tons, show a non-zero quantity in the secondary unit of measure (pieces):[67]

HS	Description	Value	Currency	Qty	Unit	Qty2	Unit	Exporter
44152020	Pallets…Of Wood	217	Euro	11	NO	0	T	Belgium
44152020	Pallets…Of Wood	555	Euro	61	NO	0	T	Sweden
44152020	Pallets…Of Wood	1169	Euro	16	NO	0	T	Denmark

Furthermore, the metric tons reported in other data points of this Bulgarian HS subheading with low quantities such as one or two metric tons are not disparately greater, in per-piece units, than the above data points.[68] This example demonstrates that simply because the metric ton unit is expressed as zero does not signify a null quantity. Rather, as we explained recently in *Solar Cells 2018*, a data point for which the reported weight registers as .49 metric tons or below, is rounded down to zero, but is not actually a zero quantity. Similarly, a data point for which the reported weight registers as .50 metric tons or greater, is rounded up.

For the data cited above, Commerce agrees with the petitioners that rounding of an insignificant import quantity appears to have resulted in a quantity of zero. Further, there is no additional record information to explain the lack of import quantity for certain data points within the Bulgarian GTA import data. Therefore, we decline to reject the GTA import data, upon which

[65] *See Solar Cells 2012* at Comment 8.
[66] *See* Prelim SV Memo at Attachments 4.1, 4.3, and 4.5.
[67] *Id.* at Attachment 4.5.
[68] *Id.*

Commerce has relied in countless proceedings,[69] based on Both-Well's unsubstantiated claims that the import data are somehow erroneous with respect to the data points expressed with a zero quantity, and the fact that it was Both-Well itself which submitted this information as the best available information. Further, all of the import quantity data are subject to rounding to the nearest metric ton, not just those with a zero quantity. For example, import quantities of 100, or 10,000, are also reported within a half of a metric ton. Accordingly, there is no support for Both-Well's argument that the import data points with zero quantity be selectively filtered in order for the Bulgarian import data to be "usable."

In *Solar Cells 2012*, Commerce noted that zero-quantity data points are not aberrational because "rounding has both an upward and downward impact on AUVs. For example, while the impact of rounding in instances where GTA rounds a quantity of 0.4 to the next lower whole number increases the AUV, instances where GTA rounds a quantity of 0.6 to the next higher whole number lowers the AUV."[70] The Court sustained Commerce's determination with respect to this issue, stating that "it is reasonable for Commerce to conclude that the zero-quantity values are not the result of error but are the result of rounding quantities between 0.01 and 0.49 down to zero, and to determine that the data is reliable."[71] Here, we have reviewed the data and analyzed the data points with quantities expressed as zero. The above analysis, using pallets as the example, demonstrates that the quantities expressed as zero are not necessarily null because the alternative unit of measure shows positive quantities. Thus, the record is clear that where the GTA data indicate a zero quantity in metric tons with a corresponding value and a non-zero quantity in a secondary unit of measure, the zero quantity in metric tons does not denote an error, and instead denotes a quantity so small that it does not register in metric tons, a very large unit of measure.

In examining the data on this record, as we did in *Solar Cells 2012*, of the 1,513 data points of import data from the included countries used to calculate the SVs, there are 342 instances where import values in Euro were reported with corresponding quantities expressed as zero.[72] We examined the data further and noted that 183 data points showed import values with corresponding quantities of one metric ton.[73] As we determined in *Solar Cells 2012*, "if such instances involve aberrational data (*e.g.*, situations caused by data collection or data input errors), they should occur at random."[74] Here, the data do not show random values per quantity.

[69] *See*, *e.g.*, *Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 53490 (September 4, 2015) and accompanying Preliminary Decision Memorandum under "Factor Valuations" ("the GTA is a source that it regularly used by the Department because the data therein meet the Department's SV criteria."), unchanged *in Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016).
[70] *See Solar Cells 2012* at Comment 8.
[71] *See Solarworld Ams., Inc. v. United States*, 2018 Ct. Intl. Trade LEXIS 56, at *14 (CIT, May 18, 2018) (*Solarworld 2018*).
[72] *Id*.
[73] *Id*.
[74] *See Solar Cells 2012* at Comment 8, citing to *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011) and accompanying Issues and Decision Memorandum at Comment 5, footnote 53 ("in October 2009, the Department learned that the data reported in the GTA software, also published by GTIS, is reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department now obtains import statistics from GTA for valuing various FOPs.")

The quantities of zero and one metric ton correspond to values that are similarly low. As we determined in *Solar Cells 2012* and *Solar Cells 2018*, the import values where the quantity is expressed as zero are instances of relatively low import values that are typically in the range of import values from other countries where the imported quantity is very small. For instance, we extracted a total of 102 data points from all included countries for HS 8308.90.00 for "Clasps, Frames With Clasps Without Locks, Buckles," 65 of which have quantities expressed as zero. However, the vast majority of these zero-quantity data points have very low values when compared to the data points with relatively large quantities and correspondingly large values. The data points with low quantities such as one or two metric tons correspond to values that are comparable with the values attributed to the zero-quantity data points (*i.e.*, one data point for France shows 13,891 Euro with a zero quantity and the data point directly below it is from Hong Kong with a value of 13,862 Euro for one metric ton).[75] Thus, given the low import values for the zero-quantity imports, the fact that these values are generally consistent with low volume imports, and given that we have previously found that import quantities collected by GTA are all rounded to the nearest whole number, we can reasonably conclude that the zero-quantity data points at issue appear to be the result of rounding import quantities to zero.

Thus, consistent with *Solarworld 2018* and *Solar Cells 2018*, we find that a rounding of the smallest unit in metric tons could register a zero in the import data sourced from GTA, *i.e.*, if the reported quantity was under 0.49 metric tons.[76] Commerce finds this explanation, as proffered by the petitioners, to be the most reasonable absent any evidence on the record that the GTA data are otherwise erroneous or unusable or that the zero-quantity data points produce distortive results.[77] Without supporting evidence of erroneous data or distortive results, Both-Well's and the petitioners' claims of errors within the Bulgarian import data are purely speculative; thus, we decline to make any changes to the data for the final determination.

Finally, we disagree with the petitioners' argument that the issue raised by Both-Well is additional support for the selection of Brazil as the primary surrogate country. In the *Preliminary Determination*, we found Bulgaria to be the appropriate primary surrogate country and we have not deviated from that determination here. The petitioners' proffered explanation of the metric ton unit of measure is the most plausible given the analysis of the data we performed above. This explanation does not suggest error in the GTA import data and is consistent with our determination in *Solar Cells 2018*. Commerce is required to use the "best available information" when valuing the FOPs, based on publicly available information from a ME of comparable

[75] *See* Prelim SV Memo, at Attachments 4.5 and 4.6.
[76] *See Solar Cells 2012 at Comment 8* ("because of the insignificant value and very small quantity of imports where the reported quantity is zero, the impact of including zero quantities attributable to rounding is negligible and therefore does not distort the overall AUV for the HTS category.") *See also Solar Cells 2018* at Comment 6 ("We continue to find no basis to conclude that the zero-quantity import data included in our surrogate value calculations are errors or that these zero-quantity imports result in unreliable and distortive surrogate values. The CIT was presented with a similar argument by Trina in the second review of this proceeding and ruled that 'it is reasonable for Commerce to conclude that the zero-quantity values are not the result of error but are the result of rounding quantities between 0.01 and 0.49 down to zero, and to determine that the data is reliable.'")
[77] We note that, for each HS subheading, the values corresponding to the data points expressed in zero quantities, collectively, account for a small percentage of the total aggregate value of the respective HS subheadings. For example, the aggregate total value for all four HS subheadings for round bar is 1,088,339 Euro and the total value of the data points with quantities expressed as zero equals 43,233 Euro, which is only 3.97 percent of the total aggregate value. *See* Prelim SV Memo at Attachment 4.5 (as accompanied by the SV spreadsheet in MS Excel that contains the data).

economic development.[78] In this case, we have determined that the Bulgarian data, apart from the surrogate financial statements, is the best available information on the record because the several SVs for the main input, round bar, are more specific to the round bar used by Both-Well than the SV offered by the Brazilian import data. Thus, we continue to find Bulgaria the most appropriate primary surrogate country for valuing Both-Well's FOPs, with the exception of the surrogate financial statements, as discussed in Comment 2.

Comment 4: Conversion of GTA Data from FOB to CIF Basis

Petitioners' Case Brief:

- Any GTA data values from Brazil or Mexico used for determining the dumping margin must be converted from an FOB basis to a CIF basis to ensure an apples-to-apples comparison.[79]
- Commerce recently undertook such a conversion for another country that reports on an FOB basis, South Africa, in the final determination in *Cast Iron Soil Pipe Fittings from China*.[80]

Commerce's Position:

Because we have determined to continue to use Bulgaria as the primary surrogate country, this issue is moot.

Comment 5: Assignment of Total Adverse Facts Available to Haida

Haida Case Brief[81]

- Haida has previously explained[82] that it filed timely responses to Commerce's questionnaires, in which it fully explained the nature of its accounting system and its deficiencies, yet at no point did Commerce ever seek additional information to clarify these responses.
- Rather than requesting additional information, Commerce, without warning, issued a preliminary determination based on AFA and canceled Jiangsu Haida's verification without giving the company the opportunity to address any concerns that Commerce had with the company's questionnaire responses.
- Commerce's determination is contrary to the section 776 of the Act, which requires that Commerce give Haida an opportunity to correct any deficiency in its responses before it makes an adverse "facts available" determination.
- In Commerce's Verification Decision Memo, Commerce raised "additional concerns about the financial statements and reconciliations submitted by Jiangsu Haida and asks Jiangsu Haida to explain these apparent discrepancies using data already on the record of this case."[83]

---

[78] *See* 19 CFR 351.408.
[79] *See* Letter from Petitioners, "Pre-Preliminary Comments," dated April 11, 2018, at 6-9.
[80] See Petitioners' Case Brief at 25 (citing *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018) and accompanying Issues and Decision Memorandum at Comment 3 (*Cast Iron Soil Pipe Fittings from China*)).
[81] Haida filed its case brief on July 26, 2018, in which it incorporated arguments presented in two prior submissions from May 24, 2018 (Attachment A), and July 20, 2018 (Attachment B).
[82] *See* Haida Case Brief at 2, citing to May 24, 2018, letter (Attachment A).
[83] *Id.*, citing to Memorandum to Rebecca Trainor, Acting Director, Office VIII, re; "Forged Steel Fittings from the People's Republic of China (China); Request for Reconsideration from Jiangsu Haida Pipe Fittings Group Co., Ltd.," dated July 13, 2018 (Verification Decision Memo).

Commerce's approach to "ask Jiangsu Haida to explain these apparent discrepancies" is unfair to Jiangsu Haida and violates all notions of due process.

- None of the issues identified in the Verification Decision Memo formed the basis on which Commerce reached its determination to cancel verification. These are all *post hoc* rationalizations used as support for Commerce's concerns about Haida's responses. Commerce should be aware that to the extent that any reviewing court considers the basis for Commerce's decision to cancel the company's verification, these factors will not be taken into account because they did not form part of the agency's decision prior to the *Preliminary Determination*.
- Commerce inaccurately portrayed a difference in sales income reported in the sales reconciliation worksheet versus the income provided in the Separate Rate Application (SRA). While Commerce did not disclose the specific figures it observed, the total monthly sales revenue figure contained in each of these documents is identical.
- Commerce also stated that no sales subledgers were submitted to support the reconciliation, but this statement appears to ignore the supporting documentation submitted by Haida in its supplemental questionnaire on exactly this point, where Jiangsu Haida provided a complete list of subject and non-subject sales by invoice, as well as the supporting sales ledger.
- The information on which Commerce is now raising questions was filed on April 13, 2018,[84] a month before the *Preliminary Determination* and nearly three months before the Verification Decision Memo was issued. If Commerce had concerns regarding Haida's response, it had ample opportunity to seek clarification of this information, including through a post-preliminary supplemental questionnaire.
- The Verification Decision Memo raises precisely the type of questions that are routinely found in supplemental questionnaires issued in Commerce proceedings. Commerce's regulations under 19 CFR 351.301(c)(1)(ii) give parties the right to submit new factual information in response. However, in this case, Commerce foreclosed Haida's right to submit new factual information in response to Commerce's questions. Without the ability to submit new factual information in response to these questions – information that was never previously requested by Commerce – Haida is unable to respond to the supplemental questions presented by Commerce.
- For example, Commerce noted in the Verification Decision Memo that Haida's sales revenue in its 2017 financial statement relative to the figure provided in its sales reconciliation did not match. However, the income referenced in the sales reconciliation is only for Jiangsu Haida, while the 2017 financial statement contains consolidated sales revenue including Haida's subsidiary company, Haida Pipe Co., Ltd., that is engaged solely in domestic sales.
- If Commerce had asked these questions in a supplemental questionnaire, Haida could have submitted Haida Pipe's 2017 sales revenue to explain this difference. However, because Haida is forbidden from submitting new factual information, the company has been deprived of the right to respond to this point. Because Commerce has a statutory obligation to clarify responses prior to imposing a "facts available" determination, denying Haida the right to submit responsive information to new questions is a violation of its right to due process.
- Haida requests that Commerce reverse its decision to apply AFA to Haida because the record contains no evidence that it failed to act to the best of its ability.

The Petitioners' Rebuttal:

[84] *See* Haida's Submission re: "Audited Financial Statements for 2017," dated April 13, 2018 (April 13 Submission).

- Commerce correctly determined that Haida's responses were not adequate for verification and thus that AFA should be applied.
- The Verification Decision Memo does not contain *post hoc* rationalizations. It was not intended as a justification for the *Preliminary Determination*, but instead as an analysis of information submitted too late for the *Preliminary Determination*.
- Regardless of the reasons for which Commerce rejected Haida's responses for the *Preliminary Determination*, it provided additional reasons for rejecting those responses for the final determination.
- Although Haida selects certain aspects of the Verification Decision Memo and disputes Commerce's conclusion, Haida does not address Commerce's conclusion that it offered no explanation for the massive differences, or source documents, to substantiate the values associated with consumption quantities.[85]

Commerce Position:

Commerce disagrees with Haida's arguments and has made no changes regarding the treatment of Haida in the *Preliminary Determination*. Because of the BPI nature of the record information, the relevant BPI discussion is contained in the Haida BPI Memo[86] from the *Preliminary Determination* and the subsequent Verification Decision Memo, which we adopt for purposes of this final determination.

As discussed in greater detail in the aforementioned memoranda,[87] in its initial Section A response Haida provided audited financial statements for 2015 and 2016 for Haida and its subsidiary Haida Pipe Co., Ltd. (Haida Pipe).[88] In addition, Haida provided the unaudited financial statements for the first quarter of 2017 for both companies,[89] but did not provide its audited 2017 financial statements. In its initial Section C and D response, Haida explained:

> Jiangsu Haida expects that its audited financial statements for 2017 will be ready in March 2018. Jiangsu Haida will submit to the Department a reconciliation of its reported subject exports to the United States to the audited financial statements once it obtains the audited financial statements. Accordingly, at Exhibit C-7, Jiangsu Haida submits a reconciliation of its reported sales to its 2017 trial balance period.[90]

In addition, Haida explained that it would not provide a cost reconciliation until its audited financial statements for 2017 were prepared.[91] On April 13, 2013, Haida provided what it

[85] *See* Verification Decision Memo at 5.
[86] *See* "Memorandum to the File re; "Forged Steel Fittings from the People's Republic of China: Business Proprietary Information Regarding Jiangsu Haida Responses," dated May 7, 2018 (Haida BPI Memo).
[87] *See* Haida BPI Memo at 1-2; Verification Decision Memo at 1-3.
[88] *See* Haida's Section A questionnaire response (SAQR) dated January 29, 2018, at 15 and A-7.
[89] *Id.* at A-8.
[90] *See* Haida's Section C and D questionnaire response (SCDQR) dated February 20, at 36.
[91] *Id.* at D-23.

reported to be its 2017 financial statements, as well its cost reconciliation.[92] Haida did not provide a revised sales reconciliation.

For the reasons discussed in greater detail in the aforementioned memoranda,[93] Commerce reaches several findings with respect to Haida. As a general matter, we find that, in the normal course of business, Haida relies on anomalous financial accounting practices, which in turn call into question the accuracy and reliability of Haida's reported information. Additionally, by the time Haida submitted the 2017 financial statements on April 13, 2018, it had already reported certain anomalous record-keeping in the normal course of business. Thus, these financial statements were not prepared in accordance with Haida's normal course of business but were in fact created for the sole purpose of reporting to Commerce in this investigation, rendering them unreliable and unverifiable. Likewise, the cost reconciliation Haida eventually provided was not based on the company's financial accounting system used in the normal course of business, as requested in the SCDQR. Thus, we find that the submitted cost reconciliation is unreliable and unverifiable. Finally, based on its statements that it intended to submit a complete sales reconciliation after it obtained its audited 2017 financial statements (which it did not do), we find that Haida's purported sales reconciliation was not in fact a complete reconciliation.

As a result of the above, and for the reasons discussed in the *Preliminary Determination* and in the aforementioned memoranda, we reach two related determinations with regard to Haida.

First, we determine that Haida's practice of anomalous record-keeping regarding its financial accounting, in the normal course of business, and the nature of the anomalies affected Haida's ability to fulfill one of the four criteria to demonstrate absence of *de facto* control from the Chinese government. Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EP) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[94] The record demonstrates that, as a result of Haida's anomalous financial accounting practices, Haida failed to meet the fourth prong of the above criteria[95] to secure a separate rate.[96] Haida does not raise any specific argument challenging Commerce's determination to deny it a separate rate in

[92] *See* April 13 Submission.
[93] *See* Haida BPI Memo at 3-4; Verification Decision Memo at 3-5.
[94] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-89 (May 2, 1994); *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[95] *See*, *e.g.*, *Shandong Rongxin Import & Export Co., Ltd. v. United States*, Slip Op. 18-107 (CIT 2018) at *24 ("the Federal Circuit has repeatedly and recently affirmed that Commerce's separate rate analysis is a lawful exercise of its statutory discretion; Commerce's position that the *de facto* control analysis element of the overall separate rate determination requires satisfaction of all four factors is likewise reasonable and entitled to deference from this Court.")
[96] *See* Preliminary Decision Memorandum; *see also* Haida BPI Memo.

this investigation. To the extent Haida challenges the findings above, which informed our separate rate decision, we address those arguments in further detail below.

Second, in light of Haida's anomalous record-keeping regarding its financial accounting, in the normal course of business, and without a reliable cost reconciliation or complete sales reconciliation, we determine that the application of facts available is warranted pursuant to section 776(a)(2)(C) and (D) of the Act, *i.e.*, Haida has significantly impeded the proceeding and provided unreliable and unverifiable information.

Further, we determine that application of facts available with an adverse inference is warranted because Haida has failed to cooperate to the best of its ability pursuant to section 776(b) of the Act. The Court of Appeals for the Federal Circuit has explained that the "best of its ability" standard under section 776(b) "requires the respondent to do the maximum it is able to do" and "does not condone inattentiveness, carelessness, or inadequate record keeping."[97] The standard presumes that parties are familiar with the rules and regulations governing the sales of goods from other countries into the United States "and requires that {parties}, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries…take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable {party} should anticipate being called upon to produce."[98]

The CIT has recognized that, because cost information is essential for multiple calculations, "cost information is a vital part of {Commerce's} dumping analysis."[99] Commerce has consistently explained that in a sales-below-cost investigation, a lack of accurate cost information renders a company's response so incomplete as to be unusable.[100] We have also explained that "the cost reconciliation represents the starting point of the cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products."[101] Further, a company's failure to submit a reliable cost reconciliation prevents Commerce from reconciling the FOPs used to produce the subject merchandise to the financial accounting records kept in the normal course of business.[102]

---

[97] *See Mukand, Ltd. v. United States*, 767 F.3d 1300, 1304 (Fed. Cir. 2014) (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*).
[98] *See Nippon*, 337 F.3d 1373, 1382.
[99] *See Finished Carbon Steel Flanges from Italy: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 82 FR 9711 (February 8, 2017) and Preliminary Decision Memorandum at 5-6, unchanged in *Finished Carbon Steel Flanges from Italy: Final Determination of Sales at Less Than Fair Value*, 82 FR 29481 (June 29, 2017) (*Italy Flanges*), citing to *Mukand, Ltd. v. United States*, Slip Op. 13-41 (March 23, 2013) at 15.
[100] *Id. See also Grain-Oriented Electrical Steel from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 59223 (Oct. 1, 2014) and accompanying Issues and Decision Memorandum at Comment 1.
[101] *See Italy Flanges* at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) (*Lined Paper from India*) and accompanying Issues and Decision Memorandum at Comment 14.; *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018) at Comment 2.
[102] *See* Preliminary Decision Memorandum at 19-20. *See also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Hangers 2015*) and accompanying Issues and Decision Memorandum at Comment 1.

As described above, we find that Haida has failed to maintain accurate and reliable books and records in the normal course of business, which has further resulted in a failure to provide a reliable cost reconciliation. Haida's efforts to overcome its anomalous record-keeping by creating financial statements outside the normal course of business do not meet the standard of acting to the best of one's ability, where a party, as a regular practice,[103] maintains inaccurate books and records.[104] Further, Haida has not provided a complete sales reconciliation. Thus, we find that these are circumstances under which it reasonable to conclude that less than full cooperation has been shown.

Pursuant to section 773(f)(1)(A) of the Act, costs shall normally be calculated based on a respondent's normal books and records where such records: (1) are kept in accordance with the generally accepted accounting principles (GAAP) of the country of exportation and (2) reasonably reflect the costs associated with the production and sale of the subject merchandise.[105] In this case, Haida cannot satisfy either of the above statutory criteria, because: 1) GAAP is unlikely to support the type of adjustment that Haida makes in the normal course of business[106] and 2) the adjustment directly affects Haida's actual cost.[107] Commerce made this clear in the *Preliminary Determination*, in citing to *Mechanical Tubing from China*, that "with regard to the financial statements, audited or not, we found that 'even if Chinese GAAP did permit this particular adjustment {referencing the anomalous record-keeping}, Chinese GAAP would not permit the inaccurate accounting of COGS and profit, as present in {the respondent's} financial statement.'"[108]

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

---

[103] *See* SAQR at 23 and Haida BPI Memo at 1.
[104] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 16322 (April 16, 2018) (*Mechanical Tubing from China)* and accompanying Issues and Decision Memorandum at Comment 1 ("The proven unreliability of its accounting records over an extended period of time makes it impossible for Commerce to rely upon the underlying information used to formulate its reported factors of production and to create its cost reconciliation, making the cost reconciliation unverifiable.")
[105] *See, e.g.*, *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 16832 (April 17, 2018) and accompanying Issues and Decision Memorandum at Comment 1; *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) and accompanying Issues and Decision Memorandum at Comment 1.
[106] *See* SAQR at 23; SCDQR at D-22 through D-23; Haida BPI Memo at 1-2.
[107] *Id.*
[108] *See* Haida BPI Memo at 6, citing to *Mechanical Tubing from China* at Comment 1.

to the determination but does not meet all the applicable requirements if, among other criteria, the information can be verified.

Here, as Haida itself reported its anomalous financial accounting practices in the normal course of business, there was no additional information needed to evaluate the accuracy and reliability of Haida's reporting. Additionally, Haida was well-aware that its cost reconciliation was not based on the company's financial accounting system used in the normal course of business. Furthermore, Commerce was not required to inform Haida that it did not submit a complete sales reconciliation after it eventually submitted its 2017 audited financial statements. In sum, we find that there is no information that Haida could have provided to remedy these facts. Furthermore, aside from its questionnaire responses, Haida was provided three opportunities after the *Preliminary Determination* to explain the concerns raised by Commerce.[109] For the reasons discussed above, we further find that the information that was provided was unreliable and unverifiable.[110] Thus, we find that the requirements of sections 782(d) and (e) of the Act have been satisfied. We address Haida's arguments in turn.

Haida contends that it "fully and candidly explained the nature of its accounting system and its deficiencies{,}" and that "{a}t no point did the Department seek additional information to clarify" its responses.[111] As an initial matter, we disagree that Haida's practice of anomalous record-keeping regarding its financial accounting, in the normal course of business, and the nature of the anomalies, constitute mere "deficiencies" for the reasons described in the Haida BPI Memo. In any event, we agree that Haida has been forthcoming in describing the nature of its accounting system. Indeed, it was Haida's own explanations that informed Commerce of Haida's anomalous financial accounting practices, which called into question the reliability of its reporting. As a result, as discussed above, there were no outstanding deficiencies that required further explanation or clarity regarding Haida's reporting. Moreover, Haida's forthcoming statements do not excuse Haida from the requirement to submit a reliable and verifiable cost reconciliation, as there can be no substitute for reliable cost and financial accounting records.

Haida next contends that Commerce's Verification Decision Memo provides "*post hoc* rationalizations" in support of the *Preliminary Determination*.[112] Contrary to this assertion, the Verification Decision Memo addresses the concerns raised in Haida's May 24, 2018 filing and the subsequent *ex parte* meeting regarding Commerce's determination not to conduct a verification.[113] Commerce gave due consideration to Haida's request by re-evaluating the record evidence, and fully explained its decision not to conduct verification.[114] Further, Haida misunderstands the process of Commerce's proceedings, in which it makes a preliminary determination, accepts arguments from parties, and addresses such arguments in reaching a final determination. Preliminary determinations are just that – preliminary – and Commerce is well

---

[109] *See* Haida May 24, 2018 Letter; Haida July 20, 2018 Letter; Haida Case Brief.
[110] *See Lined Paper from India* at Comment 14 ("…without a reliable overall cost reconciliation, and a clear explanation of Navneet's product cost calculation method in the normal course of business and reported costs prior to verification, the Department is unable to proceed with the verification and, as a result, Navneet's submitted information was unverifiable").
[111] *See* Haida Case Brief at 2.
[112] *See* Haida Case Brief at 2 and at page 3 of Attachment B.
[113] *See* Memorandum to the File, re; "Forged Steel Fittings from the People's Republic of China (China); Ex Parte Meeting with Jiangsu Haida Pipe Fittings Group Co., Ltd. (Haida)," dated June 11, 2018.
[114] *See* Verification Decision Memo.

within its discretion to reconsider or further explain its determinations before reaching a final determination. Nor did the Verification Decision Memo constitute a supplemental questionnaire, such that Haida was unfairly precluded from providing additional new factual information. As noted above, there was no additional information that could remedy Haida's deficient reporting, and, in any event, Haida was provided two opportunities to address the concerns raised in the Verification Decision Memo. In sum, we did not issue the Verification Decision Memo as a supplemental questionnaire or therein provide Haida an opportunity to remedy its unreliable cost reconciliation and financial statements, because, as we stated in the *Preliminary Determination*,[115] there is no remedy for distorted accounting records, even if the respondent claimed to have self-corrected the distortions for the sole purposes of this proceeding. Rather, we issued the Verification Decision Memo in response to Haida's May 24, 2018, request for reconsideration.

Haida next argues that Commerce misunderstands Haida's business practices and that Commerce did not appreciate the differences in its 2017 audited financial statements compared to earlier years' financial statements.[116] We disagree. As discussed in more detail in the Haida BPI Memo and Verification Decision Memo, Commerce's concerns stemmed from Haida's own explanation regarding its anomalous record-keeping and financial accounting practices in the normal course of business. Further, Commerce fully understood Haida's explanations that, prior to its 2017 financial statements, which were prepared for purposes of this investigation, Haida's practices in the normal course of business would not produce financial statements which would reconcile to its costs. Haida appears to be operating under the assumption that once it submitted its 2017 financial statements, Commerce would simply disregard what Haida had previously reported as anomalous record-keeping practices. We decline to do so.

Haida also argues that it demonstrated its cooperation by reporting its anomalous record-keeping practices from the beginning of the investigation, and that Commerce never asked about the issue.[117] But for the reasons discussed above, there was no further explanation needed on this issue based on Haida's statements, and, in any event, Haida was provided multiple opportunities to address Commerce's concerns. Further, we find that Haida has failed to cooperate to the best of its ability, as discussed above.

We also disagree with Haida's contention that Commerce applied total AFA "without warning."[118] As an initial matter, Commerce does not consult with interested parties regarding its pending determinations. Rather, Commerce announces its decisions to interested parties in preliminary and final determinations; it would not be appropriate to disclose Commerce's findings to any interested parties in advance of either determination.[119] Thus, Commerce was not required to notify Haida of its preliminary determination to apply total AFA until the issuance of its *Preliminary Determination*. Furthermore, in our NME AD questionnaire, we notified Haida that unsatisfactory responses to Commerce's questions could result in an adverse finding.[120]

---

[115] *See* Preliminary Decision Memorandum at 21.
[116] *See* Haida Case Brief at pages 2-4 of Attachment A.
[117] *Id.* at pages 4-5 of Attachment A.
[118] *Id.* at page 2 of Attachment B.
[119] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2015 82 FR 18105 (April 17, 2017) and accompanying Issues and Decision Memorandum at Comment 1.
[120] *See* NME AD Questionnaire, dated December 28, 2017, at 2.

Despite its statement that Commerce applied total AFA in the *Preliminary Determination*, "without warning," as discussed above, Haida was well-aware that it maintained anomalous record-keeping in the normal course of business; that its cost reconciliation was not based on the company's financial accounting system used in the normal course of business; and that it did not provide a complete sales reconciliation.

We further disagree with Haida's contentions that Commerce inappropriately canceled verification. The *Preliminary Determination* explained our determination to apply AFA to Haida, including our finding that its information was unverifiable.[121] When a party submits substantially deficient responses, Commerce is under no obligation to use this information.[122] Under these circumstances, there is no requirement or purpose to verify the information.[123] If a respondent provides substantially incomplete questionnaire responses and Commerce must then base the company's rate entirely on facts otherwise available, as in this case, then verification is "meaningless."[124]

Haida's remaining arguments concerning the Verification Decision Memo are unavailing and do not undermine Commerce's determination to apply AFA.[125] As noted above, in the Verification Decision Memo, pursuant to Haida's request, Commerce re-examined the record evidence and reached the determination that it had no cause to revisit its determination to apply AFA and not conduct a verification. First, Commerce re-examined the sales reconciliation and found that despite its attestation that Haida "will submit to the Department a reconciliation of its reported subject exports to the United States to the audited 2017 financial statements," Haida did not, in fact, resubmit a sales reconciliation to the audited 2017 financial statements when those financial statements were finally submitted on April 13, 2018.[126] Thus, the only reconciliation of sales on the record is based on the distorted financial accounting records as reported in the SCDQR. Commerce also noted certain discrepancies in the submitted sales reconciliation – such discrepancies are not the basis for our application of AFA, but were noted to further demonstrate that we had no cause to revisit our *Preliminary Determination*.[127] In any event, we provided

---

[121] *See* Haida BPI Memo at 6-7.
[122] See section 782(e) of the Act which provides that Commerce should use information submitted by interested parties even if the information does not meet all applicable requirements but only when, *inter alia*, "the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination ...."
[123] *See Certain Hardwood Plywood Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, in Part, 82 FR 53460 (November 16, 2017) (*Plywood*) and accompanying Issues and Decision Memorandum at Comment 1; *see also Galvanized Steel Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012) and accompanying Issues and Decision Memorandum, at 11.
[124] *See Plywood* at Comment 1.
[125] *See* Haida Case Brief at pages 3-5 of Attachment B.
[126] *See* Verification Decision Memo at 3, citing SCDQR, at 36.
[127] *Id*. at 3-4.

Haida an opportunity to address these discrepancies.[128] None of the arguments provided by Haida give us cause to reconsider our determination to apply AFA in this investigation. Second, in the Verification Decision Memo Commerce re-examined the cost reconciliation[129] – we note that Haida has made no argument that our analysis of this information is incorrect.

In short, the fact that Haida openly reported that its financial accounting practices result in anomalous record-keeping in the normal course of business, and that it created financial statements outside its normal course of business for the sole purpose of responding to questionnaires in this proceeding, renders Haida's responses unreliable and unverifiable.[130] As we stated before, "information in questionnaire responses is tied to a respondent's financial reporting system and if the system is not credible or reliable, neither is the response. When this occurs, {Commerce} has no choice but to apply AFA."[131] Thus, Commerce may base its determination on facts available with an adverse inference due to the quality of the information Haida provided.

Comment 6: Correction of Ministerial Error

Petitioners' Case Brief:

- Commerce should correct the ministerial error (an inconsistent unit of measure used in calculating domestic movement expenses for Both-Well) acknowledged in its June 19, 2018, Memorandum on Ministerial Error Allegations in the *Preliminary Determination*.

Commerce's Position:

We agree with the petitioners and have made this correction. *See* "Changes from the Preliminary Determination," above.[132]

---

[128] Haida states that Commerce noted a "difference between the income figure reported for June 2017 on the worksheet Haida submitted with its sales reconciliation, and the monthly financial statement submitted with the SRA{,}" but that "the total monthly sales revenue figure contained on each of these documents…is identical." *See* Haida Case Brief at page 3 of Attachment B. We note that this explanation does not address the difference in the monthly values described in the Verification Decision Memo. Haida also argues that Commerce's statement that "no sales ledgers were submitted to support the reconciliation" ignores Haida's supplemental questionnaire response. *See* Haida Case Brief at page 4 of Attachment B. Although Haida submitted what appears to be a sales ledger and its translation in Exhibit C-10 of the March 23, 2018, supplemental questionnaire response, this information is based on the anomalous financial records kept in the normal course of business. Finally, Haida argues that, to the extent Commerce had any questions regarding its 2017 financial statement relevant to its previously reported sales reconciliation, Commerce should have issued a supplemental questionnaire. *See* Haida Case Brief at page 5 of Attachment B. For the reasons discussed above, we continue to find that any further questioning would not remedy the fact that Haida maintained anomalous financial records in the normal course of business.

[129] *See* Verification Decision Memo at 4-5.

[130] *See* SAQR at 23 and SCDQR at D-22 through D-23; *see also* Haida BPI Memo at 2-3.

[131] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 18.

[132] *See also* Final Determination Calculation Memo.

V. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final estimated weighted-average dumping margins in the *Federal Register*.

☒ ☐

____________ _____________

Agree Disagree

10/1/2018

X

Signed by: GARY TAVERMAN

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