



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

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Investigation  
**Public Document**  
AD/CVD Ops VI: MYS, EAA

DATE: June 23, 2017

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman  
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  
Finished Carbon Steel Flanges from Italy

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## **I. SUMMARY**

We analyzed the comments of interested parties in the less-than-fair-value (LTFV) investigation of finished carbon steel flanges from Italy. As a result of our analysis and as discussed below, we are continuing to find that Officine Ambrogio Melesi & C. S.r.l. (Melesi) and ASFO S.p.A. (ASFO) (collectively, Melesi/ASFO) should be collapsed and assigned the same antidumping duty (AD) cash deposit rate, which we continue to find should be based on total adverse facts available (AFA). We are also continuing to assign a margin based on total AFA to imports of Metalfar Prodotti Industriali S.p.A. (Metalfar), a respondent which withdrew its participation in the investigation prior to the preliminary determination. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

- Comment 1: Collapsing of Melesi and ASFO
- Comment 2: Application of Total AFA to Melesi/ASFO
- Comment 3: Use of the Highest Petition Rate as the Total AFA Rate for Melesi/ASFO
- Comment 4: Verification of Melesi/ASFO



## II. BACKGROUND

On February 8, 2017, the Department of Commerce (the Department) published the *Preliminary Determination* for the LTFV investigation of finished carbon steel flanges from Italy.<sup>1</sup> On February 2, 2017, Melesi/ASFO, a mandatory respondent in the investigation, submitted a request for reconsideration of the *Preliminary Determination* regarding verification.<sup>2</sup> On February 9, 2017, Department officials met with counsel to Melesi/ASFO to discuss the requests raised in the Melesi/ASFO February 2, 2017 Letter.<sup>3</sup> On February 10, 2017, Department officials met with an official from the Italian Embassy to discuss the requests raised in the Melesi/ASFO February 2, 2017 Letter.<sup>4</sup> On February 17, 2017, the Department informed Melesi/ASFO that we will not grant the requests raised in the Melesi/ASFO February 2, 2017 Letter.<sup>5</sup> On March 1, 2017, Melesi/ASFO submitted a letter requesting the Department provide a substantive written response to its February 2, 2017 Letter.<sup>6</sup> On March 7, 2017, Department officials contacted counsel to Melesi/ASFO regarding the Melesi/ASFO March 1, 2017 Letter, and informed counsel that the *Preliminary Determination* stands as is and the Department does not have additional analysis to offer.<sup>7</sup>

We invited parties to comment on the *Preliminary Determination*. On March 10, 2017, Melesi/ASFO submitted a case brief.<sup>8</sup> On March 17, 2017, Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners) submitted a rebuttal brief.<sup>9</sup>

## III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2015, through March 31, 2016.

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<sup>1</sup> 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) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Letter from Melesi and ASFO to the Department, regarding “Antidumping Duty Investigation of Finished Carbon Steel Flanges from Italy: Request for Reconsideration of Preliminary Determination Regarding Verification,” dated February 2, 2017 (Melesi/ASFO February 2, 2017 Letter).

<sup>3</sup> See Memorandum from Moses Y. Song, International Trade Compliance Analyst, Office VI, to the File, regarding “Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from Italy: Department of Commerce Meeting with Legal Counsel to Officine Ambrogio Melesi & C. S.r.l. and ASFO S.p.A.,” dated February 17, 2017.

<sup>4</sup> See Memorandum from Moses Y. Song, International Trade Compliance Analyst, Office VI, to the File, regarding “Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from Italy: Department of Commerce Meeting with Counsel of Italian Embassy,” dated February 17, 2017.

<sup>5</sup> See Memorandum from Moses Y. Song, International Trade Compliance Analyst, Office VI, to the File, regarding “Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from Italy: Phone Call with Counsel to Officine Ambrogio Melesi & C. S.r.l. and ASFO S.p.A.,” dated February 28, 2017.

<sup>6</sup> See Letter from Melesi and ASFO to the Department, regarding “Antidumping Duty Investigation of Finished Carbon Steel Flanges from Italy: Department’s Response to Melesi’s Request for Reconsideration,” dated March 1, 2017 (Melesi/ASFO March 1, 2017 Letter).

<sup>7</sup> See Memorandum from Brian C. Davis, Program Manager, Office VI, to the File, regarding “Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from Italy: Phone Call with Counsel to Officine Ambrogio Melesi & C. S.r.l. and ASFO S.p.A.” dated March 7, 2017 (the Department’s March 7, 2017 Memorandum).

<sup>8</sup> See Letter from Melesi/ASFO to the Department, regarding “Antidumping Duty Investigation of Certain Finished Carbon Steel Flanges from Italy: Case Brief,” dated March 10, 2017 (Melesi/ASFO Case Brief).

<sup>9</sup> See Letter from the petitioners to the Department, regarding “Finished Carbon Steel Flanges from Italy: Rebuttal to Case Brief by Officine Ambrogio Melesi & C. S.R.L.,” dated March 17, 2017 (the petitioners’ Rebuttal Brief).

#### IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or de-burring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this investigation. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this investigation.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.*, 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.*, flat face, full face, raised face, *etc.*), configuration (*e.g.*, weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term “carbon steel” under this scope is steel in which:

- (a) iron predominates, by weight, over each of the other contained elements:
- (b) the carbon content is 2 percent or less, by weight; and
- (c) none of the elements listed below exceeds the quantity, by weight, as indicated:
  - (i) 0.87 percent of aluminum;
  - (ii) 0.0105 percent of boron;
  - (iii) 10.10 percent of chromium;
  - (iv) 1.55 percent of columbium;
  - (v) 3.10 percent of copper;
  - (vi) 0.38 percent of lead;
  - (vii) 3.04 percent of manganese;
  - (viii) 2.05 percent of molybdenum;

- (ix) 20.15 percent of nickel;
- (x) 1.55 percent of niobium;
- (xi) 0.20 percent of nitrogen;
- (xii) 0.21 percent of phosphorus;
- (xiii) 3.10 percent of silicon;
- (xiv) 0.21 percent of sulfur;
- (xv) 1.05 percent of titanium;
- (xvi) 4.06 percent of tungsten;
- (xvii) 0.53 percent of vanadium; or
- (xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

## **V. DISCUSSION OF THE ISSUES**

### **Comment 1: Collapsing of Melesi and ASFO**

#### *Melesi/ASFO's Case Brief*

- The Department should decline to collapse Melesi and ASFO and revise all relevant findings based on these two companies as separate and non-collapsed respondents, as the Department's decision to collapse them is contrary to its practice and not supported by the totality of the circumstances and evidence on the record.<sup>10</sup>
- The Department does not collapse related parties except in unusual circumstances where there is a strong possibility of price manipulation.<sup>11</sup> However, the record does not demonstrate that this case presents an unusual situation where there is a strong possibility of price or production manipulation; the facts in this case are similar to a prior case where

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<sup>10</sup> See Melesi/ASFO Case Brief at 1.

<sup>11</sup> *Id.*, at 1-2 (citing *Nihon Cement Co. v. United States*, 17 CIT 400, 426-27 (CIT 1993) (*Nihon Cement*) (quoting *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19089 (May 3, 1989)), and *Koyo Seiko Co. Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (*Koyo Seiko*)).

the Department determined that collapsing was not warranted.<sup>12</sup> Furthermore, the Court of International Trade (CIT) affirmed the Department's decision in that case.<sup>13</sup>

- Melesi's minority ownership status without the legal right to inspect ASFO's books and records directly is insufficient to demonstrate any significant potential for the manipulation of price or production.<sup>14</sup>
- The common board membership between Melesi and ASFO is not significant. The chief executive officer (CEO) of Melesi is the only common board member of ASFO's board of directors and, other than a general right to vote, he does not have the legal authority to control the outcome of board activities, since Italian law requires the votes of an absolute majority of directors to approve any proposal, and there are six board members.<sup>15</sup> Moreover, he has no legal right to require ASFO to report information pertaining sales and production.<sup>16</sup>
- Record evidence does not support a finding that operations between Melesi and ASFO are intertwined; although both companies can manufacture similar merchandise without substantial retooling of their facilities, there is no evidence that the companies shared information that could lead to the potential for price or production manipulation.<sup>17</sup>
- The Department has not demonstrated that arm's-length transactions between the two companies, which are home market competitors, have any effect on the development, production, sales, or distribution of merchandise under investigation or indicate there is a potential for price or production manipulation.<sup>18</sup> Moreover, during the POI, Melesi did not resell merchandise under investigation produced by ASFO in the home market or the United States and ASFO did not export subject merchandise to the United States.<sup>19</sup>
- By cancelling verification based on the failure of ASFO to timely submit a cost reconciliation, which is not related to the factual and legal issue concerning collapsing, the Department deprived Melesi/ASFO of the opportunity to demonstrate that collapsing is unwarranted.<sup>20</sup>

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<sup>12</sup> *Id.*, at 2-5 (citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 70 FR 54711, 54714 (September 16, 2005) and accompanying Issues and Decision Memorandum at Comment 10 (*Ball Bearings*)). Melesi and ASFO note that, in that case, despite the fact that respondent Koyo was: (1) affiliated with another company through a minority ownership; (2) had production facilities for similar products and could change manufacturing priorities without substantial retooling; and (3) purchased a significant portion of its affiliate's production, the Department did not collapse Koyo and its affiliate, because it found there was insufficient evidence to demonstrate that the operations of the two companies were intertwined.

<sup>13</sup> *Id.*, at 5 (citing *Koyo Seiko*, 516 F. Supp. 2d. at 1346).

<sup>14</sup> *Id.*, at 5-6.

<sup>15</sup> *Id.*, at 6.

<sup>16</sup> *Id.*, at 7.

<sup>17</sup> *Id.*, at 7-8.

<sup>18</sup> *Id.*, at 7-9 (citing *Nihon Cement*, 17 CIT at 427).

<sup>19</sup> *Id.*, at 8.

<sup>20</sup> *Id.*, at 9.

## *Petitioners' Rebuttal Brief*

- The Department should continue to collapse Melesi and ASFO, as the Department's decision was in accordance with law, regulation, and its established practice.<sup>21</sup>
- Record evidence demonstrates that Melesi and ASFO are affiliated pursuant to section 771(33) of the Tariff Act of 1930, as amended (the Act) and that the two companies meet the collapsing criteria under 19 CFR 351.401(f)(1) and (2).<sup>22</sup>
- The level of connections/relationships between Melesi and ASFO is not present in *Koyo Seiko*, which is an outlier case with respect to the Department's collapsing practice.<sup>23</sup>
- In *Zhaoqing New Zhongya Aluminum Co., Ltd.*, the Department collapsed three companies even though neither common ownership nor common managerial employees/board members existed and a respondent had no transactions with its two other affiliates because members of the same family owned and/or managed the three companies.<sup>24</sup>
- The Department routinely collapses affiliates in which there was only minority shareholding, which has been upheld by the CIT.<sup>25</sup>
- While Melesi would seem to suggest that the Department has to demonstrate actual manipulation, that is not a requirement for collapsing under the Department's regulations.<sup>26</sup>
- The facts on the record already demonstrate that collapsing is warranted and verification is not meant to be an opportunity for Melesi/ASFO to place new facts on the record on the issue of collapsing.<sup>27</sup>

### **Department's Position:**

We disagree with Melesi/ASFO. As an initial matter, Melesi/ASFO argues that the Department only collapses related parties in "unusual situations," where there is a strong possibility of price manipulation, citing *Nihon Cement* and *Koyo Seiko*.<sup>28</sup> In both of the cited cases, the CIT was referring back to a statement of Departmental practice in the 1989 final determination of the less-than-fair value investigation of antifriction bearings from the Federal Republic of Germany.<sup>29</sup> However, since then, the Department has promulgated a regulation that directly speaks to the criteria that the Department considers in determining whether to collapse companies (*i.e.*, 19 CFR 351.401(f)). During the rulemaking process, the Department explicitly rejected a

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<sup>21</sup> See the petitioners' Rebuttal Brief at 1.

<sup>22</sup> *Id.*, at 2-3.

<sup>23</sup> *Id.*, at 3-4 (citing *Koyo Seiko*, 516 F. Supp. 2d at 1345-47).

<sup>24</sup> *Id.*, at 4 (citing *Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 70 F. Supp. 3d 1298, 1306 (CIT 2015) (*Zhaoqing New Zhongya Aluminum Co., Ltd.*)).

<sup>25</sup> *Id.*, at 4-5 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Taiwan*, 66 FR 49618 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 1, and *United States Steel Corp. v. United States*, 179 F. Supp. 3d 1114, 1136 (CIT 2016)).

<sup>26</sup> *Id.*, at 5 (citing *Hontex Enterprises Inc. v. United States*, 248 F. Supp. 2d 1323 (CIT 2003)).

<sup>27</sup> *Id.*, at 6.

<sup>28</sup> See *Nihon Cement*, 17 Ct. Int'l Trade at 426-27; *Koyo Seiko*, 31 Ct. Int'l Trade at 1535.

<sup>29</sup> *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19089 (May 3, 1989).



suggestion that it clarify that it will only collapse companies in “extraordinary” circumstances.<sup>30</sup> Specifically, the Department stated that a “determination of whether to collapse should be based upon an evaluation of the factors listed in paragraph (f), and not upon whether fact patterns calling for collapsing are commonly or rarely encountered.”<sup>31</sup> In other words, we are not required to examine whether the circumstances are “unusual;” rather, the pertinent question is whether the criteria under 19 CFR 351.401(f) have been satisfied.

Pursuant to 19 CFR 351.401(f)(1), the Department will treat affiliated producers as a “single entity” where those producers “have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.”

In regards to significant potential for manipulation of price or production, 19 CFR 351.401(f)(2) states that the Department may consider the following factors:

- (i) The level of common ownership;
- (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) the degree to which operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

In determining whether there is a “significant potential for manipulation of price or production,” the Department bases its analysis on the totality of the circumstances, and no single factor is either dispositive or required to find a significant potential for manipulation of price or production.<sup>32</sup> Furthermore, in examining factors that pertain to a significant potential for manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.<sup>33</sup> The *Preamble* underscores the importance of considering the possibility of future manipulation, “...a standard based on the potential for manipulation focuses on what may transpire in the future.”<sup>34</sup> In the *Preliminary Determination*, we examined all three factors enumerated in 19 CFR 351.401(f)(2) with respect to past, present, and the potential for future, manipulation of price or production.

In the *Preliminary Determination*, we found that, based on a review of the company responses, Melesi and ASFO were affiliated during the POI, pursuant to section 771(33)(E) of the Act; that they had production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, pursuant to 19 CFR 351.401(f)(1); and

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<sup>30</sup> See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27345 (May 19, 1997) (*Preamble*).

<sup>31</sup> *Id.*

<sup>32</sup> See *id.* at 27346.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

that there was a significant potential for manipulation of pricing and production between the two companies, pursuant to 19 CFR 351.401(f)(2).<sup>35</sup>

Melesi/ASFO does not contest the Department's finding that ASFO and Melesi are affiliated pursuant to section 771(33)(E) of the Act, nor do they dispute that both manufacture, or are able to manufacture, identical or similar products without substantial retooling of either facility. Therefore, we continue to find that these factors have been satisfied.

With respect to the remaining prong, we found in the *Preliminary Determination* that, based on a consideration of the totality of the circumstances between Melesi and ASFO, there exists a significant potential for the manipulation of price or production between the two companies.<sup>36</sup> This finding was based on the evidence reflecting that there was significant common ownership between Melesi and ASFO during the POI, that Melesi's CEO served on ASFO's board of directors, and that the companies had intertwined operations (*i.e.*, a significant number of transactions of foreign like product during the POI).<sup>37</sup>

Melesi/ASFO has made no arguments that would cause us to revisit our preliminary finding in this final determination. With respect to 19 CFR 351.401(f)(2)(i), the level of common ownership, Melesi/ASFO argues that its minority ownership level is "insufficient" to demonstrate any significant potential for manipulation of price or production, especially considering that Melesi does not have the authority under Italian law to inspect ASFO's books and records. Melesi/ASFO further note that the CIT in *Koyo Seiko* found it particularly significant that Koyo Seiko, as a minority shareholder, had no legal right under Japanese law to compel its affiliate to provide it with sales and cost data.<sup>38</sup> However, as noted above, the Department examines the potential for manipulation of price or production based on the totality of the circumstances, and no single factor is dispositive or required to find a significant potential for manipulation of price or production.<sup>39</sup> When viewed in light of the totality of the circumstances, and our other findings under 19 CFR 351.401(f)(2), we continue to find that Melesi's significant minority ownership interest in ASFO is relevant to determining whether there is a significant potential for manipulation of price or production.

With respect to 19 CFR 351.401(f)(2)(ii), Melesi/ASFO argues that the common board membership is not significant, because there is only one common board member and he cannot control the outcome of board activities. Melesi also argues that this case is analogous to the Department's findings in *Ball Bearings*, which the CIT sustained in *Koyo Seiko*. Although the facts in *Ball Bearings* are somewhat similar, there, Koyo only shared two officers, who served as "non-stationed auditors," with its affiliate.<sup>40</sup> Here, by comparison, Melesi's CEO serves as a member of ASFO's board of directors and, as such, has the power to vote at ASFO's board

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<sup>35</sup> See Memorandum to Scot Fullerton, Director, AD CVD Operations, Office VI, from Moses Y. Song, International Trade Compliance Analyst, AD CVD Operations, Office VI, on the subject of "Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from Italy: Affiliation and Collapsing Memorandum for Officine Ambrogio Melesi & C. S.r.l.", dated January 26, 2017 (Collapsing Memorandum).

<sup>36</sup> Collapsing Memorandum at 5-6.

<sup>37</sup> See Collapsing Memorandum at 5-6.

<sup>38</sup> See *Koyo Seiko*, 516 F. Supp. 2d at 1346 n.20.

<sup>39</sup> See *Preamble*, 62 FR at 27346.

<sup>40</sup> See *Ball Bearings* at Comment 10.



meetings, which we found in the *Preliminary Determination* to be significant, considering that the board is vested with the broadest power for the ordinary and extraordinary management of the company.<sup>41</sup> Thus, we continue to find the factor under 19 CFR 351.401(f)(2)(ii), which is the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, is met in this instance and is a persuasive factor in our finding of the significant potential for the manipulation of price or production between the two companies.

Additionally, Melesi/ASFO argues that the Department has not demonstrated that arm's-length transactions between Melesi and ASFO (*i.e.*, home market competitors) have any effect on the development, production, sales, or distribution of merchandise under investigation or indicate there is a potential for price or production manipulation.<sup>42</sup> Moreover, Melesi/ASFO argues that, during the POI, Melesi did not resell merchandise under investigation produced by ASFO in the home market or the United States and ASFO did not export subject merchandise to the United States.<sup>43</sup> Neither of these claims undermines the application of 19 CFR 351.401(f) in our judgment. As explained above, in accordance with 19 CFR 351.401(f), the Department determines whether a significant *potential* for the manipulation of price or production exists between the entities at issue. Although evidence of *actual* manipulation of price or production is obviously highly probative of whether there exists significant *potential* for manipulation of price or production, it is not necessary to make such a finding, as Melesi/ASFO's two arguments seem to suggest. Instead, the Department generally weighs the factors identified in 19 CFR 351.401(f)(2), one of which is "{w}hether operations are intertwined, such as through . . . significant transactions between affiliated producers."

Finally, Melesi/ASFO argues that, by cancelling the sales and cost verifications of the companies, the Department eliminated the opportunity to better understand the relationship of the companies, which could have led us to the conclusion that their collapsing was not warranted. In preliminarily finding that the companies should be collapsed, we then found it appropriate to apply total AFA to the margin of the single entity because Melesi/ASFO had failed to provide a cost reconciliation in a questionnaire response. In other words, key information was missing from the record that could not be verified, as it had never been submitted. Melesi/ASFO is essentially arguing that we should have performed verifications of a partial record in order to obtain information that would have prompted us to revise our collapsing decision. But the purpose of verification is to ensure both the accuracy and completeness of the record<sup>44</sup> and, as it was not possible to verify the completeness of a record known to be incomplete, we could not fulfill the respondent's request for one. Furthermore, verification is not an opportunity for parties to provide information not previously placed on the record; thus, it is unclear how information obtained at a verification of Melesi or ASFO would have changed the outcome of our decision to collapse the companies.

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<sup>41</sup> See Collapsing Memorandum at 6.

<sup>42</sup> See Melesi/ASFO Case Brief at 7-9.

<sup>43</sup> *Id.*, at 8.

<sup>44</sup> See 19 CFR 351.307(d).

## Comment 2: Application of Total AFA to Melesi/ASFO

### *Melesi/ASFO's Case Brief:*

- Melesi/ASFO responded to the Department's requests for information to the best of its ability.<sup>45</sup> Therefore, use of an adverse inference was not appropriate.
- Because the scope of the facts available provision is limited to information that is missing from the record, the Department should only apply facts available as a gap filler for the information missing from the record.<sup>46</sup> If the Department continues to find that an adverse inference is appropriate, the Department must limit the adverse inference to ASFO's cost reconciliation (the only information missing from the record).
- In this proceeding, the missing information (*i.e.*, the ASFO cost reconciliation) is of limited relevance to the calculation of Melesi/ASFO's antidumping margin.<sup>47</sup>
- The application of total AFA is not warranted because the missing ASFO cost reconciliation does not render the remaining information unreliable or unverifiable.<sup>48</sup> The Department found no other deficiencies in the information provided by Melesi/ASFO.
- Additionally, unlike in the cases relied upon by the Department in the *Preliminary Determination*, here, the Department did not provide Melesi/ASFO with the requisite opportunity to supply the omitted cost reconciliation.<sup>49</sup>

### *Petitioners' Rebuttal Brief:*

- The Department should continue to apply total AFA to Melesi/ASFO.<sup>50</sup>

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<sup>45</sup> See Melesi/ASFO Case Brief, at 12-13 (citing section 782(e)(4) of the Act; section 351.308(a) of the Department's regulations; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003) (explaining that the Department "must examine a respondent's actions and assess the extent of the respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information").

<sup>46</sup> *Id.*, at 11, 13-14 (citing *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Doc. 103-826 at 656, 869 (1994) (SAA); *Am. Silicom Techs. v. United States*, 26 Ct. Int'l Trade 1216, 1217-1218 n. 1 (2002); *Krupp Thyssen Nirosta GmbH v. United States*, 24 Ct. Int'l Trade 666, 672-673 (2000); *Shandong Huarong Gen. Group Corp.*, 30 Ct. Int'l Trade 1269, 1281 (2006))

<sup>47</sup> *Id.*, at 11-12 and 15.

<sup>48</sup> *Id.*, at 14-16 (citing *Fujian Lianfu Forestry Co., Ltd. v. United States*, 33 Ct. Int'l Trade 1056, 1059 (2009); *Zhejiang DunAn Hetian Metal Co., Ltd. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (noting that total AFA may be appropriate where none of the reported data is reliable or usable)). Specifically, Melesi/ASFO argues that the Department had no basis to reject its submissions pursuant to 19 U.S.C. 1677m(e).

<sup>49</sup> See *id.*, at 10, 16-19 (citing section 782(d) of the Act; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 (December 8, 2003) (*Prestressed Concrete Steel Wire Strand from Mexico*) and accompanying Issues and Decision Memorandum at Comment 6 (issuing three supplemental questionnaires allowing the respondent to correct the deficiency at verification); *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 Products from India*) and accompanying Issues and Decision Memorandum at Comment 14 (issuing three supplemental questionnaires to identify deficiencies and allow the respondent to remedy the deficiency; *Mukand Ltd. v. United States*, 767 F.3d 1300, 1303-04 (Fed. Cir. 2014) (issuing four supplemental questionnaires prior to applying total AFA)).

<sup>50</sup> See the petitioners' Rebuttal Brief at 6-7.

- The Department has previously applied total AFA in proceedings where the cost reconciliation was not provided or was deficient.<sup>51</sup>
- Melesi/ASFO's failure to submit the necessary cost reconciliation evidences a willful lack of cooperation.<sup>52</sup>

### **Department's Position:**

We disagree with Melesi/ASFO and have continued to apply total AFA to Melesi/ASFO for this final determination. Contrary to Melesi/ASFO's assertion, the Department does not have reliable or verifiable information on the record of this investigation pertaining to Melesi/ASFO's cost of producing the merchandise under consideration. Rather, as explained more fully below, due to Melesi/ASFO's failure to act to the best of its ability in responding to the Department's original section D questionnaire, the Department did not receive an overall cost reconciliation from ASFO (as part of the collapsed Melesi/ASFO entity), which was necessary for the Department to meaningfully analyze Melesi/ASFO's section D questionnaire cost response and calculate a reliable margin.

As described in the *Preliminary Determination*, the Department explained in the cover letter of the antidumping questionnaire that Melesi/ASFO was required to respond to each question in the questionnaire and, in the event that Melesi/ASFO required an extension of time to respond to any portion of the questionnaire, instructed Melesi/ASFO to submit a written request for an extension of time to respond.<sup>53</sup> The Department explained that any extension request must be in writing and comply with 19 CFR 351.302(c).<sup>54</sup> The Department explicitly explained that "{s}tatements included within a questionnaire response regarding a respondent's ongoing efforts to collect part of the requested information, and promises to supply such missing information when available in the future, do not substitute for a written extension request."<sup>55</sup> Further, the Department cautioned that "failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act."<sup>56</sup>

On November 29, 2016, rather than submitting a response to each question in the Department's antidumping duty questionnaire or requesting an extension for additional time to respond completely, ASFO (as part of the collapsed Melesi/ASFO entity) submitted a partial response and explained that it had not been able to prepare the cost reconciliation requested in questions III.B.1 through III.B.5 of the section D portion of the antidumping duty questionnaire by the response deadline, and that it would "make it available to the Department and the other parties as soon as possible."<sup>57</sup> ASFO's response was not accompanied by the

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<sup>51</sup> *Id.* (citing *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 42395 (August 2, 2007) and accompanying Issues and Decision Memorandum at Comment 2, affirmed, *Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349 (CIT October 30, 2009); *Lined Paper Products from India*, 71 FR at 45012-45013.)

<sup>52</sup> *Id.*

<sup>53</sup> See Letter from the Department to ASFO, dated November 2, 2016 (the antidumping duty questionnaire).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See ASFO's response to section D of the antidumping questionnaire, dated November 29, 2016, D-23 (where ASFO stated that it would continue to work on the reconciliation and submit it as soon as possible).

requisite extension request. Furthermore, despite ASFO's statements that it would provide the information "as soon as possible," ASFO never even attempted to file the reconciliations with the Department.

#### A. The Application of Total Facts Available

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

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

Section 782(c)(1) of the Act provides that if an interested party, promptly after receiving a request from the Department, notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

The Department continues to find that necessary information is missing from the record and that ASFO (as part of the collapsed Melesi/ASFO entity) failed to submit the requested cost reconciliation by the deadline for submission, withheld information requested of it, and significantly impeded the Department's ability to analyze ASFO's submitted costs within the meaning of sections 776(a)(1) and (2)(A)-(C) of the Act.

Although Melesi/ASFO does not dispute that reliance upon facts available is warranted, Melesi/ASFO contends that use of facts available (and similarly, AFA) should be limited to filling the gap created by the failure to provide a cost reconciliation. We disagree that "the

scope of the facts available provision is limited to information that is missing from the record” and that therefore partial facts available is appropriate.<sup>58</sup> To the contrary, the Court of Appeals for the Federal Circuit (Federal Circuit) found in *Mukand* that “{i}n general, use of partial facts available is not appropriate when the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty.”<sup>59</sup>

The deficiency at issue here is similarly “core to the antidumping analysis.” The Department requires accurate and complete information pertaining to a respondent’s cost of producing merchandise under consideration because such information: (1) provides the basis for determining whether comparison market sales were made in the ordinary course of trade and can be used to calculate normal value; (2) is necessary to the difference-in-merchandise analysis in situations where there are no sales of identical merchandise in the home-market which can serve as the basis for normal value;<sup>60</sup> and (3) in certain instances (*e.g.*, where there are no comparison market sales made at prices above the cost of production), provides the basis for normal value itself.<sup>61</sup> The Department has explained that in sales-below-cost investigations, such as the current investigation, a lack of accurate cost information renders a company’s response so incomplete as to be unusable.<sup>62</sup> Accordingly, the Department examines and confirms not only that a respondent has reported that the aggregate pool of costs which the respondent reports as being attributable to the merchandise under consideration is accurate and complete, but also that the costs are reasonably and accurately allocated to individual product matching control numbers (CONNUMs). The CIT has recognized that the Department “‘must ensure that {a respondent’s} reported costs capture all of the costs incurred by the respondent in producing the subject merchandise’ before it can appropriately use that respondent’s cost allocation methodology.”<sup>63</sup> Finally, the Department has 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.”<sup>64</sup>

We disagree with Melesi/ASFO’s characterization of the ASFO cost reconciliation as being of “limited relevance.”<sup>65</sup> Melesi/ASFO’s failure to submit the requested reconciliation within the deadlines established in the cover letter to the Department’s antidumping questionnaire prevented the Department from determining ASFO’s total cost of manufacturing products

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<sup>58</sup> See Melesi/ASFO Case Brief at 11.

<sup>59</sup> *Mukand Ltd. v. United States*, 767 F.3d 1300, 1308 (Fed. Cir. 2014) (*Mukand*) (citing *Shanghai Taoen Int’l Co. v. United States*, 360 F.Supp.2d 1339, 1348 n. 13 (Ct. Int’l Trade 2005)).

<sup>60</sup> See *JTEKT Corp. v. United States*, 49 F. Supp. 2d 1206, 1338, 1339 n.3 (Ct. Int’l Trade 2015) (explaining that “Commerce also applies a “difference-in-merchandise adjustment” (“DIFMER” adjustment) for any difference in the variable cost of manufacturing, excluding any potential matches for which the DIFMER adjustment would exceed 20%”).

<sup>61</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023 (September 15, 2005) (*Stainless Steel Bar India*) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>62</sup> *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.

<sup>63</sup> See *Sidenor Indus. SL*, 664 F. Supp. 2d at 1356 (quoting *Myland Indus., Ltd. v. United States*, 31 Ct. Int’l Trade 1696, 1703 (2007)).

<sup>64</sup> See *Lined Paper Products from India*, 71 FR 45012 and accompanying Issues and Decision Memorandum at Comment 14.

<sup>65</sup> See Melesi/ASFO Case Brief at 15.



during the POI, as well as the portion of those manufacturing costs attributable to the merchandise under consideration. Moreover, because the Department is unable to determine ASFO's total cost of manufacturing for the merchandise under consideration during the POI, the Department is unable to determine whether the summation of ASFO's per-unit costs captures their applicable portion of ASFO's total manufacturing costs during the POI. Also, because the Department is unable to analyze ASFO's per-unit costs, the Department is unable to determine whether ASFO's home-market sales were made above their respective cost of production, so that such home-market sales can serve as a potential source for normal value, calculate potential difference-in-merchandise adjustments, or calculate constructed value.<sup>66</sup>

Because the Department has determined that it is appropriate to treat Melesi and ASFO as a single entity pursuant to 19 CFR 351.401(f), ASFO's failure to submit the requested cost reconciliation prevented the Department from meaningfully analyzing any of the information pertaining to the Melesi/ASFO collapsed entity's cost of producing the merchandise under consideration during the POI. Without the cost reconciliation, we find that the information that Melesi/ASFO provided is too incomplete to serve as a reliable basis for reaching a determination under section 782(e) of the Act. In particular, as explained above, the Department has no reliable cost of production information with which to conduct an analysis.<sup>67</sup> The CIT has recognized that, because cost information is essential for multiple calculations, "cost information is a vital part of {the Department's} dumping analysis."<sup>68</sup> Additionally, the Department has previously found that failure to provide a cost reconciliation warrants use of total AFA.<sup>69</sup>

We disagree with Melesi/ASFO's contention that the missing cost reconciliation is of limited relevance, because of its claim that ASFO made no sales to the United States and that there is no CONNUM overlap between ASFO and Melesi. As discussed above, the Department has determined that it is appropriate to collapse (*i.e.*, treat as a single entity) Melesi and ASFO because there is a significant potential for manipulation of price or production.<sup>70</sup> Without a cost reconciliation, the Department is unable to determine whether ASFO reported its cost of producing merchandise accurately and whether, in fact, there was no overlap of CONNUMs between Melesi and ASFO. More importantly, the Department is unable to determine whether any of the merchandise produced by ASFO could serve as a basis for normal value in instances where Melesi's sales to the United States do not have identical matches in the home market. The Department has explained previously that "{t}he ability to make appropriate product comparisons goes to the heart of the Department's dumping methodology."<sup>71</sup>

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<sup>66</sup> See *supra* note 58 and accompanying text.

<sup>67</sup> See *supra* note 14 and accompanying text. See also *Lined Paper Products from India*, 71 FR 45012 and accompanying Issues and Decision Memorandum at Comment 14 (stating that "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").

<sup>68</sup> See *Mukand, Ltd. v. United States*, Slip Op. 13-41 (March 23, 2013) at page 15.

<sup>69</sup> See *e.g.*, *Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 and accompanying Issues and Decision Memorandum at Comment 6 (noting that "the Department's practice has been to reject a respondent's submitted information in total when flawed and unreliable cost data renders any price-to-price comparison impossible").

<sup>70</sup> See *supra* notes 33 – 36 and accompanying text.

<sup>71</sup> See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less*



We disagree with Melesi/ASFO that the cases cited by the Department are inapposite because “the Department identified the deficiency and provided respondents with multiple opportunities to correct the deficiencies *prior* to applying total AFA,” whereas “ASFO’s deficiency was not mentioned by the Department until the preliminary determination.”<sup>72</sup> As outlined above, when the Department determines that a questionnaire *response* is deficient, section 782(d) of the Act requires the Department to “inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency.” However, in this case, there was no deficient response to the Department’s request for a cost reconciliation. Rather, there was no cost reconciliation provided *at all*; ASFO itself acknowledged that it provided no cost reconciliation.<sup>73</sup> Furthermore, Melesi/ASFO did not promptly notify the Department of any difficulty in completing the cost reconciliation prior to the deadline, together with a full explanation and suggested alternative forms in which Melesi/ASFO was able to submit the information, pursuant to section 782(c) of the Act. Therefore, we disagree that the factual differences identified by Melesi/ASFO between this case and others is meaningful.<sup>74</sup>

Based on the foregoing, in the final determination, we are continuing to rely entirely upon facts otherwise available to determine the estimated weighted-average dumping margin for the collapsed entity in this investigation.

#### B. Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>75</sup> In doing so, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>76</sup> In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>77</sup> Furthermore, affirmative evidence of bad faith on

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*Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (Apr. 4, 2017) and accompanying Issues and Decision Memorandum at Comment 11.

<sup>72</sup> See Melesi/ASFO Case Brief at 15.

<sup>73</sup> See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1338 (Fed. Cir. 2002) (“Ta Chen knew that ‘the nature of the deficiency’ was its complete failure to respond. The statute only applies when a ‘response to a request’ is deemed to not comply. A failure to respond is not the same as a ‘response’ as required by the statute. Therefore, Commerce was under no statutory duty to formally tell Ta Chen that its failure to respond was deficient.”).

<sup>74</sup> We also note that Melesi/ASFO agrees that “{s}ince ASFO’s cost reconciliation is missing from the record, the Department may resort to facts available to fill in this gap.” Melesi/ASFO Case Brief at 14. In other words, Melesi/ASFO appears to concede that the Department complied with the statutory requirements for the use of facts available. It is, thus, unclear why Melesi/ASFO believes this case differs from others cited by the Department.

<sup>75</sup> See also 19 CFR 351.308(a); see also *Stainless Steel Bar from India*, 70 FR at 54025-26; and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

<sup>76</sup> See section 776(b)(1)(B) of the Act.

<sup>77</sup> See SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty*

the part of a respondent is not required before the Department may make an adverse inference.<sup>78</sup> It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>79</sup>

The Department continues to find that Melesi/ASFO did not act to the best of its ability to comply with the Department's request for information. The best-of-its-ability standard asks whether the respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in a proceeding.<sup>80</sup> While we agree with Melesi/ASFO that the standard requires that the Department "examine respondent's abilities, efforts, and cooperation in responding to the Department's requests for information,"<sup>81</sup> we note that the Federal Circuit also stated that the standard "does not condone inattentiveness, carelessness, or inadequate record keeping."<sup>82</sup> In this investigation, by its own admission, Melesi/ASFO failed to submit the requisite cost reconciliation, even though the information was within its possession.<sup>83</sup> Moreover, Melesi/ASFO's characterization of its acknowledged failure to submit the reconciliation as an "oversight"<sup>84</sup> is exactly the type of inattentiveness and carelessness that Court has recognized as not satisfying the best-of-its-ability standard. We also note that, even though Melesi/ASFO ignored the explicit instruction in the cover letter of the antidumping questionnaire, which cautioned that statements included in responses regarding ongoing efforts to collect the requested information are not appropriate and indicated that ASFO would submit the reconciliation as soon as possible, Melesi/ASFO never submitted or even attempted to submit the cost reconciliation. Accordingly, because we determine that Melesi/ASFO did not act to the best of its ability, we have continued to apply an adverse inference, pursuant to section 776(b) of the Act.

### **Comment 3: Use of the Highest Petition Rate as the Total AFA Rate for Melesi**

#### *Melesi/ASFO's Case Brief:*

- The Department's use of the highest Petition rate as total AFA rate is uncorroborated, punitive, and unreasonable, contrary to the statute and court decisions.<sup>85</sup>
- The Department's corroboration analysis consists entirely of citing to the Petition and initiation checklist; although the Petition may serve as a basis for AFA, the Department's

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*Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>78</sup> See, e.g., *Nippon Steel Corp.*, 337 F.3d 1373 at (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000).

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

<sup>80</sup> See *Nippon Steel Corp.*, 337 F.3d at 1382.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> See Melesi/ASFO's Case Brief at 14 (stating that "Melesi and ASFO do not dispute that ASFO did not provide a cost reconciliation").

<sup>84</sup> *Id.* at 10.

<sup>85</sup> See *id.* at 21-22 (both citing *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1334 (CTL 2009), *F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) and *Timken Co. v. United States*, 354 F. 3d 1334, 1345 (Fed. Cir. 2004), and referencing 19 U.S.C. § 1677e(c) and (d)(3)).

reliance on the Petition and checklist, in light of verifiable information available on the record, is inconsistent with the corroboration requirement under the statute, as the Petition is based on an unverifiable allegation of dumping, not a determination of dumping.<sup>86</sup>

- Contrary to the Department's claim that the only reliable information on the record is from the Petition because of Melesi's failure to provide information requested in questionnaires, Melesi/ASFO cooperated and submitted sufficient information for the margin calculation and corroboration.<sup>87</sup>

#### *Petitioners' Rebuttal Brief:*

- It is the Department's practice that the highest rate calculated in the Petition is often assigned as the AFA rate when a party knowingly fails to cooperate to the best of its ability in providing information requested by the Department.<sup>88</sup>
- The Department's application of the highest Petition rate as the AFA rate is corroborated and supported by the record in this investigation.<sup>89</sup> Moreover, the only reliable information on the record is from the Petition, because both respondents in this proceeding failed to provide information requested by the Department.<sup>90</sup>
- While Melesi/ASFO claims that the Department can use information submitted by Melesi and ASFO to calculate a dumping margin, that information is incomplete and unverified. A respondent is not allowed to choose which data it wants to be used for its margin calculation and the Department is not required to determine, or make adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Department's request for information.<sup>91</sup>

#### **Department's Position:**

We disagree with Melesi/ASFO. Pursuant to section 776(c) of the Act, when the Department relies on secondary information as the basis for AFA, the Department must "corroborate that information from independent sources that are reasonably at its disposal."<sup>92</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>93</sup> To "corroborate" means that the Department satisfies itself that the secondary information to be used has probative value.<sup>94</sup> To corroborate secondary information, the

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<sup>86</sup> *Id.*, at 21-23 (citing *Yantai Xinke Steel Structure Co. v. United States*, Consol. Ct. No. 10-00240, Slip Op. 12-95 (CIT 2012) and *World Finer Foods v. United States*, 24 CIT 541, 547-48 (CIT 2000) (citing SAA at 870)).

<sup>87</sup> *Id.*, at 23.

<sup>88</sup> See the petitioners' Rebuttal Brief at 7 (citing, e.g., *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 20) (*Line Pipe from Turkey*).

<sup>89</sup> *Id.*, at 7-8.

<sup>90</sup> *Id.*, at 8.

<sup>91</sup> *Id.* (citing Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA)).

<sup>92</sup> See section 776(c) of the Act; see also Preliminary Decision Memorandum at 9.

<sup>93</sup> See SAA at 870.

<sup>94</sup> See SAA at 870; see also 19 CFR 351.308(d).

Department will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>95</sup> Further, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>96</sup>

In the *Preliminary Determination*, the Department found that the factual information in the Petition and supporting documents are the only reliable information on the record on the issue of dumping.<sup>97</sup> We stated that, because the AFA rate determined for Melesi/ASFO is derived from a rate in the Petition<sup>98</sup> and, consequently, based upon secondary information, the Department must corroborate the rate to the extent practicable.<sup>99</sup> We determined that the highest Petition margin of 204.53 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis.<sup>100</sup> As set forth in the *Preliminary Determination*, and discussed again below, for purposes of this final determination, we continue find that the highest Petition margin of 204.53 percent is reliable.

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in this Petition for use as AFA for purposes of this final determination. During our pre-initiation analysis, we also examined the key elements of the export price and normal value calculations, and the alleged dumping margins.<sup>101</sup> During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition, that corroborates key elements of the export price and normal value calculations used in the Petition to derive the dumping margins alleged in the Petition.<sup>102</sup> As we already stated at the *Preliminary Determination*, because Melesi/ASFO failed to provide information that the Department requested in its initial and supplemental questionnaires, the factual information in the Petition and supporting documents are the only reliable information on the record on the issue of dumping.<sup>103</sup>

Our examination of the information is discussed in detail in the Italy Initiation Checklist, where we considered the petitioners’ export price and normal value calculations to be reliable after

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<sup>95</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>96</sup> See sections 776(d)(3)(A) and (B) of the Act.

<sup>97</sup> See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 10.

<sup>98</sup> See Petitions for the Imposition of Antidumping Duties on Imports of Finished Carbon Steel Flanges from India, Italy and Spain and Countervailing Duties on Imports from India, dated June 30, 2016 (the Petition).

<sup>99</sup> See Preliminary Decision Memorandum at 10.

<sup>100</sup> See Italy Initiation Checklist; see also Preliminary Decision Memorandum at 10.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

recalculation.<sup>104</sup> In the *Preliminary Determination*, we confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and an affidavit, as well as publicly available information.<sup>105</sup> We obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the export price and normal value calculations provided in the Petition.<sup>106</sup>

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>107</sup> Because there are no other participating cooperative respondents in this investigation, we relied upon the dumping margins alleged in the Petition, which is the only information regarding the finished carbon steel flanges industry on the record.<sup>108</sup> In calculating normal value, the petitioners relied on both home-market price quotes and constructed value, basing the cost of manufacture on the input factors of production from Boltex (adjusted for known differences between the Italian and U.S. finished carbon steel flanges industries during the POI) and valuing factors of production (including labor and electricity) using publicly available data on costs specific to Italy and contemporaneous with the POI.<sup>109</sup> The petitioners relied on audited financial statements of an Italian producer of comparable merchandise to determine fixed overhead, selling, general and administrative expenses, and profit rate.<sup>110</sup> In calculating export price, the petitioners relied on the average unit values of entries of finished carbon steel flanges from Italy under HTSUS subheadings reflecting the importation of finished carbon steel flanges into the United States. The petitioners deducted foreign inland freight and foreign brokerage and handling expenses derived from the World Bank’s *Doing Business, Economy Profile 2015, Italy*, Google Maps, and Import Genius.<sup>111</sup> Based on this information, we determined that the highest dumping margin alleged in the Petition is relevant.

Although Melesi/ASFO argues that this is incorrect, given that there is “verifiable” information on the record in Melesi’s and ASFO’s responses, we disagree that there is alternative information on the record upon which to base or corroborate an AFA rate. In essence, Melesi/ASFO argues

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<sup>104</sup> *Id.*

<sup>105</sup> See Preliminary Decision Memorandum at 10.

<sup>106</sup> *Id.*

<sup>107</sup> See section 776(d)(3) of the Act; see also *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, In Part, 81 FR 3108 (January 20, 2016) and accompanying Issues and Decision Memorandum (IDM) at Comment 2 (*Certain Uncoated Paper from Australia*).

<sup>108</sup> See *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with the Department that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that “{t}he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition”); see also *Certain Uncoated Paper from Australia* IDM at Comment 2.

<sup>109</sup> See Volume III of the Petition, at 6.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*, at 2-7.



that the Department should rely upon its information to corroborate an AFA rate, notwithstanding that the Department found *this same information* to be too incomplete to serve as a reliable basis for reaching a determination. Similarly, this information is not reliable for purposes of corroboration, given that Melesi/ASFO did not adequately cooperate in this proceeding. Were the Department to rely on this information, notwithstanding Melesi/ASFO's failure to cooperate, we would be allowing Melesi/ASFO some measure of control over the information on which we rely, notwithstanding Melesi/ASFO's failure to cooperate to the best of its ability.<sup>112</sup> That situation is untenable, in our judgment.

Ultimately, as discussed above, because the other mandatory respondent in the investigation also received a margin based upon total AFA, the only reliable information on the record to serve as AFA are the dumping margins provided in the Petition.<sup>113</sup> Likewise, the only reliable information available to corroborate that rate was from the Petition. Finally, as noted by the petitioners, it is our practice, as discussed in *Line Pipe from Turkey*, to use the highest of these rates as the AFA rate.<sup>114</sup> Thus, we will continue to use this rate in the final determination.

#### **Comment 4: Verification of Melesi and ASFO**

##### *Melesi/ASFO's Case Brief*

- The Department's refusal to conduct a verification of Melesi/ASFO is contrary to law; the Department cannot simply decline to conduct a verification without providing any reasons why cancellation of the verification is necessary, when Melesi/ASFO has provided sufficient information to calculate an accurate margin and is willing to cooperate.<sup>115</sup>
- Despite Melesi/ASFO's request to reconsider the Department's decision not to conduct verification, the Department neither granted such request nor provided a written explanation.<sup>116</sup>
- The Department's decision to cancel verification is unduly punitive, since the Department did not identify the deficiency that would lead to cancellation of the verification until the *Preliminary Determination* and did not provide Melesi/ASFO with an opportunity to correct deficiencies before it decided to cancel verification, which is contrary to the Department's practice.<sup>117</sup>

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<sup>112</sup> See *Steel Authority of India, Ltd. v. United States*, 149 F. Supp. 2d 921, 928 (Ct. Int'l Trade 2001) ("Moreover, if the Department were forced to use the partial information submitted by respondents, interested parties would be able to manipulate the process by submitting only beneficial information. Respondents, not the Department, would have the ultimate control to determine what information would be used for the margin calculation. This is in direct contradiction to the policy behind the use of facts available.")

<sup>113</sup> See Petitions for the Imposition of Antidumping Duties on Imports of Finished Carbon Steel Flanges from India, Italy and Spain and Countervailing Duties on Imports from India, dated June 30, 2016.

<sup>114</sup> See *Line Pipe from Turkey*, and accompanying Issues and Decision Memorandum at Comment 20.

<sup>115</sup> See Melesi/ASFO Case Brief at 23-26 (citing *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F. 3d 1333, 1338 (Fed. Cir. 2011) (citing 19 U.S.C. § 1677m(i)(1) and *Since Hardware (Guangzhou) Co., v. United States*, Consol. Ct. No. 09-00123, Slip Op. 2011-146 (CIT 2011)).

<sup>116</sup> *Id.*, at 24-25.

<sup>117</sup> *Id.*, at 26.



### *Petitioners' Rebuttal Brief:*

- None of the statutes or cases cited by Melesi/ASFO indicate that the Department lacks discretion not to verify a respondent when the respondent has not acted to the best of its ability.<sup>118</sup>
- As Melesi/ASFO did not provide sufficient information to calculate a dumping margin (*i.e.*, it failed to submit ASFO's cost reconciliation requested by the Department), such information could not be verified.<sup>119</sup>

### **Department's Position:**

We do not agree with Melesi/ASFO's arguments. Pursuant to section 782(i) of the Act, the Department "shall verify all information relied upon in making a final determination in an investigation." But the Department is not relying upon Melesi/ASFO's reported data in making its final determination, considering the unreliability of the data. As discussed above in our response to Comment 1, the Department cannot perform a verification of the completeness of the record when it is known that key information is missing from that record. As explained above in Comment 1, the purpose of verification is to ensure both the accuracy and completeness of the record<sup>120</sup> and, as it was not possible to verify the completeness of a record known to be incomplete, we could not conduct one. Indeed, the CIT sustained the Department's determination not to conduct a verification in similar circumstances where access to, or verification of, information necessary to this verification was withheld by one element of a collapsed entity.<sup>121</sup>

With respect to Melesi/ASFO's argument that the decision to forego verification is "unduly punitive," given that the Department did not identify the deficiencies in its questionnaire responses until after the *Preliminary Determination*, as discussed in our response to Comment 2, the collapsed entity failed to provide requested information or to file a request for an extension of time to provide the information. In other words, there was no deficiency other than ASFO's failure to respond; ASFO was given the opportunity to provide the requested cost reconciliation prior to the *Preliminary Determination*, and it chose not to do so.

Furthermore, we disagree with Melesi/ASFO's assertion that the Department did not provide any reasons for not conducting a verification of its questionnaire responses. In the *Preliminary Determination*, we noted 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."<sup>122</sup> Citing *Lined Paper Products from India*, we further noted that "without a reliable overall cost reconciliation, ... the Department is unable to proceed with the verification and, as a result, ... submitted information was unverifiable."<sup>123</sup>

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<sup>118</sup> See the petitioners' Rebuttal Brief at 7.

<sup>119</sup> *Id.*

<sup>120</sup> 19 CFR 351.307(d).

<sup>121</sup> See *China Kingdom Imp. & Exp. Co. v. United States*, 31 CIT 1329, 1360-62 (2007) (finding that where one element of the collapsed entity stopped cooperating that, that "Commerce justifiably concluded that a satisfactory verification directed to the Yancheng-Qingdao entity was impossible").

<sup>122</sup> See Preliminary Decision Memorandum at 6.

<sup>123</sup> *Id.*, at 7 (citing *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of*

We further explained that, “{b}ecause the mandatory respondents {including Melesi/ASFO} did not provide necessary information {(i.e., ASFO’s cost reconciliation)} requested by the Department, verifications will not be conducted.”<sup>124</sup>

## VI. 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 in the *Federal Register* and inform the International Trade Commission of our determination.



Agree



Disagree

6/23/2017

X

Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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*Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) (*Certain Lined Paper Products from India*) and accompanying Issues and Decision Memorandum at Comment 14).

<sup>124</sup> *Id.*, at 12.