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International Trade Administration  
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October 9, 2019

MEMORANDUM TO: Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review: Finished Carbon  
Steel Flanges from Italy; 2017-2018

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on finished carbon steel flanges (steel flanges) from Italy,<sup>1</sup> in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is February 8, 2017, through July 31, 2018. This review covers 27 companies. The mandatory respondents in this review are producers/exporters of the subject merchandise, Forgital Italy S.p.A. (Forgital) and ASFO S.p.A. (ASFO). Commerce preliminarily finds that both respondents sold subject merchandise at less than normal value during the period of review. The estimated dumping margins are shown in the “Preliminary Results of Review” section of the accompanying *Federal Register* notice.

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<sup>1</sup> See *Finished Carbon Steel Flanges from India and Italy: Antidumping Duty Orders*, 82 FR 40136 (August 24, 2017)(Order).



## II. BACKGROUND

On August 31, 2018, pursuant to 19 CFR 351.213(b), Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners) filed a request for a first administrative review of the order on steel flanges from Italy; the petitioners requested a review of 27 companies.<sup>2</sup> On October 4, 2018, Commerce published a notice of initiation of the review, in accordance with 19 CFR 351.221(c)(1)(i).<sup>3</sup>

In the *Initiation Notice*, Commerce stated that, if necessary, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of steel flanges from Italy during the POR.<sup>4</sup> Accordingly, on October 25, 2018, Commerce released the CBP entry data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.<sup>5</sup> After receiving no comments, Commerce selected ASFO and Forgital for individual examination in this review, as these two companies were found to be the largest publicly identifiable producers/exporters of the subject merchandise by volume during the POR.<sup>6</sup>

Commerce issued antidumping duty questionnaires to ASFO and Forgital on November 19, 2018.<sup>7</sup> At that time, it provided interested parties with an opportunity to comment on whether and how an adjustment for “Section 232” duties should be made with respect to the calculation of normal value.<sup>8</sup> The petitioners filed comments on November 26, 2018.<sup>9</sup> No rebuttal comments were received. Because we are applying total AFA to ASFO and Forgital, as discussed further below, the issue of whether and how an adjustment for “Section 232” duties should be made with respect to the calculation of normal value is moot.

Commerce exercised its discretion to toll deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019. The revised deadline was June 12, 2019.<sup>10</sup> On June 6, 2019, we extended the time limit for completion of the preliminary results of the review to no later than October 10, 2019.<sup>11</sup>

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<sup>2</sup> See Petitioners’ Letter, “Finished Carbon Steel Flanges from Italy: Request for Administrative Review”, dated August 31, 2018, 1-3.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

<sup>4</sup> *Id.*

<sup>5</sup> See Commerce’s Letter, “Finished Carbon Steel Flanges from Italy – Release of Customs Data,” dated October 25, 2018, 1-2.

<sup>6</sup> See Memorandum, “Antidumping Duty Administrative Review of Finished Carbon Steel Flanges from Italy: Respondent Selection,” dated November 16, 2018, 1-5.

<sup>7</sup> See Commerce’s Letter to Forgital, dated November 19, 2018 (Forgital Initial Questionnaire); see also Commerce’s Letter to AFISO, dated November 19, 2018 (AFISO Initial Questionnaire).

<sup>8</sup> See Memorandum, “Comments on Adjustment for Section 232 Duties,” dated November 19, 2018.

<sup>9</sup> See Petitioners’ Letter, “Finished Carbon Steel Flanges from Italy: Comments on Adjustment for Section 232 Duties,” dated November 26, 2018.

<sup>10</sup> See Memorandum to the Record from 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, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding were tolled by 40 days.

<sup>11</sup> See Memorandum, “Finished Carbon Steel Flanges from Italy: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017-2018,” dated June 6, 2019.

### III. SCOPE OF THE ORDER

The scope of the order 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 order. 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 order.

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, 1,500, 2,500, *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.

#### **IV. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE**

##### **A. Application of Facts Available**

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

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, a full explanation for the difficulty, and a suggested alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce 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 has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

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

## 1. ASFO

As noted above, Commerce issued an antidumping duty questionnaire to ASFO on November 19, 2018.<sup>12</sup> Commerce received confirmation that the questionnaire was delivered to a representative of AFSSO.<sup>13</sup> ASFO did not respond to any sections of the questionnaire.

Consequently, we preliminarily find that necessary information is not available on the record of the review with respect to ASFO; that the company withheld information requested by Commerce; that ASFO failed to provide the information by the specified deadlines in the form and manner requested; and that, as a result, ASFO significantly impeded the proceeding. Because information necessary to calculate a dumping margin for AFSSO is not on the record, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, we are relying upon facts otherwise available to determine the estimated weighted-average dumping margin for ASFO.

## 2. Forgital

Commerce also issued an antidumping duty questionnaire to Forgital on November 19, 2018.<sup>14</sup> Forgital filed a response to Section A of the questionnaire on December 24, 2018, which Commerce found to be untimely filed and rejected from the record.<sup>15</sup> However, Forgital filed timely responses to Sections C and D of the questionnaire on February 19, 2019 (Forgital filed no response to Section B of the questionnaire, as it had no home-market sales).<sup>16</sup> Commerce then granted Forgital another opportunity to file its Section A response, and the company filed a timely response to Section A on March 6, 2019.<sup>17</sup>

On May 7, 2019, Commerce issued a supplemental questionnaire to Forgital to clarify portions of its responses to Sections A, C and D of the questionnaire.<sup>18</sup> The initial due date for Forgital to

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<sup>12</sup> See ASFO Initial Questionnaire.

<sup>13</sup> See Memorandum, "Initial Questionnaires Delivery Confirmation," dated May 16, 2019.

<sup>14</sup> See Forgital Initial Questionnaire.

<sup>15</sup> See Commerce's Letter to Forgital, dated February 15, 2019.

<sup>16</sup> See Forgital's Letter, "Finished Carbon Steel Flanges From Italy: Response to Sections C and D of the Antidumping Questionnaire of Forgital Italy S.p.A.," dated February 19, 2019 (Sections C&D Response).

<sup>17</sup> See Forgital's Letter, "Finished Carbon Steel Flanges From Italy: Response to Section A of the Antidumping Questionnaire of Forgital Italy S.p.A.," dated March 6, 2019 (Section A Response).

<sup>18</sup> See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Finished Carbon Steel

respond to this questionnaire was May 21, 2019. On May 14, 2019, Forgital filed a request in which, in part, it sought clarification on how to respond to the questionnaire, specifically on the time period on which to base its reported costs.<sup>19</sup> Commerce responded to this request on the following day and extended the initial deadline for the supplemental questionnaire.<sup>20</sup> Forgital filed a timely response to the supplemental questionnaire on May 24, 2019.<sup>21</sup> On June 6, 2019, Forgital offered to submit a revised U.S. sales file containing a formatting change that Commerce had requested in its supplemental questionnaire, but that Forgital did not submit with its supplemental questionnaire response.<sup>22</sup>

We have preliminarily determined to apply facts available to Forgital because it has impeded the proceeding by providing incomplete or inconsistent information regarding its sales and cost data; affiliates and suppliers; direct material inputs; and scrap.

### *Sales and Cost Data*

As Forgital explains in its Section A Response, it specializes in the production of hot seamless rolled rings and does not manufacture or sell steel flanges in its normal course of business.<sup>23</sup> Any subject merchandise produced and sold by Forgital before or during the POR was manufactured solely as part of a larger project for an oil and gas company, its only U.S. customer during the POR.<sup>24</sup> The terms of the project were the subject of negotiations which began in September 2015 between the parties and involved a request for quotation, a purchase order (dated November 2015), a progress payment contract, and technical documents.<sup>25</sup> All of the reported U.S. sales of subject merchandise arose from the purchase order for the project; Forgital notes in its response that these sales represented a “very small part” of its whole business with its U.S. affiliate, Forgital USA Inc. (Forgital USA), during the POR.<sup>26</sup> Forgital also notes that the price of the sale of subject merchandise was changed on two occasions.<sup>27</sup>

Although Commerce issued multiple questionnaires with respect to Forgital’s production and sale of subject merchandise, we find that Forgital’s responses were deficient or contradictory in several respects. First, Forgital failed to provide consistent responses with respect to its date of U.S. sales. In identifying the date of sale of the subject merchandise, Commerce normally will

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Flanges from Italy; 2017-2018: Supplemental Questionnaire,” dated May 7, 2019 (Supplemental Questionnaire).

<sup>19</sup> See Forgital’s Letter, “Finished Carbon Steel Flanges From Italy: Request of Forgital Italy S.p.A. for Clarification of Supplemental Questionnaire and Extension of Time,” dated May 14, 2019 (Request for Clarification).

<sup>20</sup> See Commerce’s Letter to Forgital, dated May 15, 2019 (Letter to Forgital).

<sup>21</sup> See Forgital’s Letter, “Finished Carbon Steel Flanges From Italy: Response to First Supplemental Antidumping Questionnaire of Forgital Italy S.p.A.,” dated May 24, 2019 (Supplemental Response); *see also* Forgital’s Letter, “Finished Carbon Steel Flanges From Italy: Corrective Addendum to the Response to First Supplemental Antidumping Questionnaire of Forgital Italy S.p.A.,” dated May 28, 2019 .

<sup>22</sup> See Forgital’s Letter, “Finished Carbon Steel Flanges From Italy: Request to Submit or Defer Missing Sales File Revision of Forgital Italy S.p.A.,” dated June 6, 2019.

<sup>23</sup> See Section A Response at 2-6.

<sup>24</sup> *Id.* at 6 and 19.

<sup>25</sup> *Id.* at 27-29 and exhibits A-14 and A-15.

<sup>26</sup> *Id.* at 30-31.

<sup>27</sup> *Id.* at 30.

use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.<sup>28</sup> Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>29</sup> Furthermore, Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>30</sup> Because Forgital's sales arose from one long-term contract and there were later price changes to many of these sales, there are several possible dates on which the material terms of sale were established – including purchase order date, invoice date, shipment date, or possibly the price revision date. The date selected then defines the universe of U.S. sales that Forgital is required to report to Commerce.<sup>31</sup>

In its Section C Response, which Forgital filed prior to its Section A Response, Forgital reported the earliest of invoice or shipment date as the date of sale for each of its U.S. sales.<sup>32</sup> However, in its Section A questionnaire response Forgital provided a different response, reporting invoice date (*i.e.*, the date that Forgital USA invoiced its U.S. customer) as the date of sale for each of its U.S. sales.<sup>33</sup> Furthermore, when asked to describe any changes to the terms of sale, Forgital responded that there had been a price reduction for all subject merchandise, effective in April 2017, and that the price for this merchandise was later increased due to the imposition of the antidumping duty order (*i.e.*, in August 2018).<sup>34</sup> Thus, two changes to the price, which is a material term of sale, appear to have taken place after some of the invoicing of the subject merchandise. Finally, in its Supplemental Response, in which Commerce requested further information regarding the date of sale, Forgital stated that, because of the partial prepayment contract with the U.S. customer, subject merchandise could be listed on multiple invoices and, for this reason, it had reported shipment date as the date of sale for all U.S. sales.<sup>35</sup> However, this differed from its original Section A Response, in which Forgital reported only the invoice date for all U.S. sales. Additionally, Forgital did not provide a revised U.S. sales database in its Supplemental Section A response identifying only shipment date as the date of sale for all U.S. sales. Furthermore, Forgital's Section A Supplemental response did not provide a clear explanation of the fields in the database that had lacked narrative explanation in its Section C Response.<sup>36</sup>

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<sup>28</sup> See 19 CFR 351.401(i).

<sup>29</sup> See *id.*; see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (“As elaborated by Department practice, a date other than invoice date ‘better reflects’ the date when ‘material terms of sale’ are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.”).

<sup>30</sup> See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and accompanying Preliminary Decision Memorandum (PDM) at 6-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

<sup>31</sup> See Initial Questionnaire at A-1 through A-3 and A-9; see also Supplemental Questionnaire at 10-11.

<sup>32</sup> See Section C&D Response at C-17.

<sup>33</sup> See Section A Response at 26-27.

<sup>34</sup> *Id.* at 30.

<sup>35</sup> See Supplemental Response at 16-17.

<sup>36</sup> *Id.*

Therefore, Forgital failed to provide complete and consistent information regarding its date of U.S. sale, because Forgital identified three different dates in three questionnaire responses. Given these conflicting responses, Commerce is unable to determine the most appropriate date to select as the date of sale for margin analysis purposes. It is unclear from these conflicting responses on which date the material terms of sale were established. Because of this uncertainty, we cannot select the most appropriate date of sale which, in turn, defines the universe of U.S. sales subject to the administrative review. In Section A of the questionnaire, we instruct respondents that, if they have difficulty deciding which date to use as the date of sale, to please contact the official in charge by no later than 14 calendar days after the issuance of the questionnaire.<sup>37</sup> Forgital did not seek clarification from Commerce about the date of sale but instead, repeatedly provided inconsistent and incomplete responses despite multiple requests for information and clarification from Commerce. Consequently, information is missing from the record regarding the correct date for Forgital's U.S. sales.

Furthermore, Forgital failed to provide Commerce with clear and complete reconciliations for its U.S. sales. In its section C questionnaire, Commerce specifically directed Forgital to:

Provide a reconciliation of the sales reported in your U.S. sales databases to the total sales listed in your financial statements (profit and loss/income statement). Your reconciliation **must** provide supporting documentation (*e.g.*, financial statements, trial balance sheets, relevant excerpts from general ledger, sub-ledger, *etc.*) **for each** step in the reconciliation. The reconciliation must include the following:

1. Worksheets demonstrating how the POR financial statements' sales totals tie to the general ledger sales revenue accounts. Please include the relevant supporting documents from your accounting and financial systems, such as excerpts from the general ledger, sub-ledger, *etc.*
2. Worksheets demonstrating how the general ledgers' sales revenue accounts in step one, above, tie to the sales reported in the U.S. sales databases. The worksheet should identify the total quantity and value of all sales in the fiscal years overlapped by the POR and identify the quantity and value of each category of non-subject merchandise sales that are excluded from your reported sales of foreign like product/subject merchandise (*e.g.*, sales outside the POR, sales to foreign markets other than the United States, *etc.*). Please include the relevant supporting documents from your accounting and financial systems, such as excerpts from the general ledger, sub-ledger, *etc.*
3. A detailed narrative explaining how all worksheets and supporting documentation tie together.
4. An explanation of the means used to identify and exclude all these non-subject merchandise sales (*e.g.*, internal country code, product description, *etc.*).

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<sup>37</sup> See Initial Questionnaire at A-9.



5. A product list, with product codes and descriptions, of all products excluded from the reported sales of subject merchandise.<sup>38</sup>

Despite such specific instructions, Forgital stated in its Section C Response that it was unnecessary to provide the requested sales reconciliations, in part because the project covered four years (from 2015 through 2018) and a large part of the payment was made in advance by the customer well before the reported date of sale.<sup>39</sup> Forgital added that, for this reason, it was “impossible to reconcile the {quantity and value} of subject merchandise reported in the database with the {period of review} general ledger.”<sup>40</sup> In a Supplemental Questionnaire, we again requested this information from Forgital.<sup>41</sup> In its Supplemental Response, Forgital reiterates that:

. . . there is no possibility to link directly the reported U.S. sales to the general ledger, because (a) each item of subject merchandise sold was included in more than one progress invoice, (b) part of the payments have been received in advance, and (c) part of the amount invoiced and paid happened well before the {period of review}.<sup>42</sup>

Although Forgital submitted some reconciliation documentation in its Supplemental Response, the documentation did not provide the requested ties to the company’s accounting system or its financial statements covering the review period or other fiscal years.<sup>43</sup> Thus, this necessary information is missing from the record. In our instructions to responding to the initial questionnaire, we instructed Forgital to consult with the official in charge of the review concerning any questions in responding to the questionnaire.<sup>44</sup> Additionally, section 782(c)(1) and (2) of the Act requires companies to disclose promptly any difficulties in responding to Commerce’s questions and to request assistance to figure out a path to ascertain the necessary information. Here, Forgital provided an assertion of difficulty, did not propose any alternative options which would allow for a sales reconciliation, and did not seek any assistance from Commerce.<sup>45</sup>

Finally, Forgital provided conflicting information regarding its cost of production. For the cost reconciliations, the Section D questionnaire required Forgital to tie the costs reported for each CONNUM (*i.e.*, the identifier for each unique product sold during the period of review) to the company’s cost accounting records and also to the cost of manufacturing recorded in its financial accounting system.<sup>46</sup> Forgital was required to report its costs for each CONNUM based on the actual production costs it incurred during the POR.<sup>47</sup> The questionnaire also instructed that, if it

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<sup>38</sup> See Initial Questionnaire at C-4-C-5.

<sup>39</sup> See Section C&D Response at C-2-C-4.

<sup>40</sup> *Id.* at C-4.

<sup>41</sup> See Supplemental Questionnaire at 9-10.

<sup>42</sup> See Supplemental Response at 14-15.

<sup>43</sup> See Supplemental Response at Exhibits C-18 and C-19.

<sup>44</sup> See Initial Questionnaire at G-1.

<sup>45</sup> See *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1360–61 (Fed. Cir. 2018) (affirming Commerce’s application of AFA where respondent failed to suggest alternative for provision of missing information).

<sup>46</sup> See Initial Questionnaire at D-10-D-14.

<sup>47</sup> *Id.* at D-2.

had questions concerning any part of Section D, to contact the official in charge.<sup>48</sup> In addition, we specifically requested that, if it had any questions regarding the appropriate cost calculation period for the subject merchandise, to notify Commerce in writing *before* preparing the questionnaire response to this section.<sup>49</sup> Forgital did not contact us for any clarification prior to filing its Section C&D Response. Instead, it filed a Section D questionnaire response that was internally contradictory, in which it initially referred to “all of the subject products made during the POR,” but in a subsequent section stated that “all of the subject merchandise sold during the POR was produced and shipped from the factory prior to the beginning of the POR, *i.e.*, before 8 February 2017.”<sup>50</sup> Furthermore, Forgital only provided one reconciliation that tied its cost accounting system to a 2017 profit and loss statement.<sup>51</sup>

In the Supplemental Questionnaire, we noted these contradictory and inconsistent responses and directed:

As explained in Commerce’s original questionnaire, the POR for this proceeding is February 8, 2017, through July 31, 2018. Therefore, it is required that your cost reconciliation covers the entire POR. Similarly, it is essential that your per-unit cost calculations reflect the cost to produce the subject merchandise during the POR. It appears that you have limited both your cost reconciliation and per-unit cost calculations to FY 2017. For example, on page 19 of your section D questionnaire response you explain that you calculated the FY 2017 VOH and FOH cost per-kilogram. Similarly, Exhibits D-5 and D-6 only reference FY 2017 costs. Accordingly, it is essential that you revise both your overall cost reconciliation and your per-unit costs.

We note that, even though the POR covers the period from February 8, 2017, through July 31, 2018, you may simplify both your cost reconciliation and per-unit cost calculations by using a cost calculation period that covers the period February 1, 2017, through July 31, 2018. We note that, for the purposes of preparing your cost reconciliation and per-unit costs, it is appropriate to base your costs on Forgital Italy’s unconsolidated financial statements.<sup>52</sup>

Then, one week after Commerce issued its Supplemental Questionnaire, Forgital filed its May 14, 2019, request for clarification of the cost calculation period. In this request, Forgital stated that it produced no subject merchandise during the POR; it claimed that the merchandise had been produced in 2015 and 2016. Forgital stated that, because it produced no subject merchandise during the POR, it could not derive any production costs relevant to the subject merchandise from review-period accounting records.<sup>53</sup> Forgital stated that it could, however, “fully prove” the cost reconciliation between its cost accounting system and the financial statements for FY2015 and FY2016.<sup>54</sup> Based on this information, Commerce instructed Forgital

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<sup>48</sup> *Id.* at D-1.

<sup>49</sup> *Id.* at D-2.

<sup>50</sup> See Section C&D Response at D-5 and D-26.

<sup>51</sup> See Section C&D Response at Exhibit D-6.

<sup>52</sup> See Supplemental Questionnaire at 13.

<sup>53</sup> See Request for Clarification at 2g .

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

to report its costs of production with regard to the fiscal years 2015 and 2016.<sup>55</sup> But despite stating in its request for clarification that it could reconcile reported costs to its financial statements for FY 2015 and FY 2016, inexplicably, Forgital stated in its Supplemental Response that, for its cost calculation period, it had used the years 2016 and 2017, since these were the years in which the subject merchandise was produced.<sup>56</sup>

Thus, between its initial response to Section D and its Supplemental Response, Forgital identified three different periods for purposes of its cost reporting. Furthermore, even though Forgital provided limited responses, a work order in the Supplemental Response appears to indicate that at least some of the production of subject merchandise did, in fact, occur during the POR.<sup>57</sup> In sum, due to Forgital's shifting explanations, Commerce has an unusable cost database which combines costs incurred prior to the POR with costs incurred during the POR. As the record now stands, due to Forgital's conflicting statements concerning the timing of its production of subject merchandise, Commerce cannot ascertain the extent to which the cost database reflects costs incurred during the fiscal years 2015, 2016, 2017 or some combination thereof. We observe that it was critically important in this case for Forgital to report costs accurately for the correct reporting period, since normal value would have to be based on constructed value, as Forgital had no home-market sales.

In summary, Commerce is simply unable to ascertain from Forgital's questionnaire responses some of the most basic considerations when conducting an administrative review. We are not able to identify the appropriate date of sale for its U.S. sales and to determine whether Forgital has identified and reported the correct universe of U.S. sales for the review. We are not able to reconcile the reported sales to its accounting system or audited financial statements, since the company did not provide the requested sales reconciliations. Moreover, due to the company's conflicting statements, we are unable to ascertain the period Forgital should use as the basis for its cost calculations or the period it did use to report the costs reflected in its cost database. We are also not able to reconcile its reported costs to its cost or financial accounting systems, given the company's contradictory statements and incomplete cost reconciliations. Due to Forgital's failure to submit complete and consistent costs and sales data, the record does not contain the information necessary to calculate a dumping margin for Forgital.

#### *Affiliates and Suppliers*

We requested additional information from Forgital regarding several of its affiliated parties discussed in its Section A response.<sup>58</sup> Specifically, we asked that Forgital, in relation to each of the identified affiliates, explain the activities, and "specify whether any of these individuals or companies, or their affiliates, is involved in sales or production of subject merchandise, including the production of main inputs."<sup>59</sup>

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<sup>55</sup> See Letter to Forgital at 2.

<sup>56</sup> See Supplemental Response at 27.

<sup>57</sup> See Supplemental Response at Exhibit D-32. However, a review of Exhibit D-29 in the response indicates that some job orders dated to 2015 and 2016.

<sup>58</sup> See Supplemental Questionnaire at 4.

<sup>59</sup> *Id.*

Forgital failed to provide the requested information. Rather, its response to our supplemental questionnaire did not contain any information beyond what had already been submitted with the initial responses. Specifically, in relation to Finspe SpA, Steel SaS, Neuberger Berman, and CLC international LP, Forgital only stated that they are Forgital Italy's holding companies, a fact which was already known based on Forgital's response to Section A of the questionnaire.<sup>60</sup> The fact that each of them holds significant shares of Forgital already makes them indirectly involved in sales and production of subject merchandise. Due to Forgital's insufficient response to our request for information, it is still not clear whether these holding companies own or are affiliated with any other companies involved, directly or indirectly, in the sale or production of subject merchandise.

Similarly, Forgital did not respond to our question in relation to Lucio Zilio, Gaetano Miolo, Bonato Daniele, TDM srl, and Trentino Sviluppo SpA. Forgital refers to Lucio Zilio, Gaetano Miolo, and Bonato Daniele as "legal persons," which appears to indicate that these are legal entities, *i.e.*, companies, and not individuals, although the precise identities remain unclear.<sup>61</sup>

In sum, with respect to Finspe SpA, Steel SaS, Neuberger Berman, CLC international LP, Lucio Zilio, Gaetano Miolo, Bonato Daniele, TDM srl, and Trentino Sviluppo SpA, Forgital failed to: (1) explain their activities besides the already disclosed holdings; (2) state whether Lucio Zilio, Gaetano Miolo, and Bonato Daniele are individuals or companies (*i.e.*, legal entities); (3) state whether they have any other holdings, and disclose those holdings; (4) state whether any of their affiliates is involved in sale or production of subject merchandise, including the production of main inputs; and (5) provide their financial statements.

Additionally, Forgital, in its Section A Response, referred to a single preapproved raw material provider.<sup>62</sup> Accordingly, we requested information necessary to evaluate whether there is a close supplier relationship between Forgital and its raw material supplier.<sup>63</sup> Instead of simply providing the requested information, Forgital argued that Commerce should not have asked that question, while failing to provide the requested information. Forgital admitted that "the steel used to produce the subject merchandise came from one supplier."<sup>64</sup> Forgital claims that this "supplier is an entirely independent entity," and, therefore, that Forgital "has no data of {its} sales and costs."<sup>65</sup> However, Forgital also failed to provide its own information. Specifically, we requested the total POR and fiscal year quantity and value of the input/service in question."<sup>66</sup> However, Forgital provided only values, and no corresponding quantities. In addition, the values that Forgital did provide were for the 2016 and 2017 fiscal years, not for the POR.<sup>67</sup>

Next, Forgital failed to provide the requested information on services obtained from affiliated parties. Forgital reported that it obtained certain processing services from tollers, including two

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<sup>60</sup> See Supplemental Response at 2; Section A Response at 12.

<sup>61</sup> *Id.* at 2.

<sup>62</sup> See Section A Response at Exhibit A-3.

<sup>63</sup> See Supplemental Questionnaire at 4.

<sup>64</sup> See Supplemental Response at 3.

<sup>65</sup> *Id.*

<sup>66</sup> See Supplemental Questionnaire at 5.

<sup>67</sup> See Supplemental Response at 4.

affiliated companies: Forgital Rimach and Forgital Sumec.<sup>68</sup> Accordingly, we requested the information necessary to properly apply the transactions disregarded and/or major input rules. In fact, Commerce provided a template to be filled in by the respondent.<sup>69</sup> However, Forgital failed to provide this information. Specifically, the template requests the quantities and values of the processed products for each of the two affiliated tollers and in total for unaffiliated tollers, separately for subject and non-subject merchandise.<sup>70</sup> In response, Forgital claimed that the requested schedule “is provided in Exhibit D.16.”<sup>71</sup> However, a review of Exhibit D.16 revealed that it failed to provide the requested information. Specifically: (1) there is no division between subject and non-subject products; (2) there are no separate quantities for products sent to and received from the tollers; and (3) Exhibit D.16 revealed a third affiliated processor, Fly S.p.A., even though Forgital has claimed that this company “is not involved in the development, production, sale and/or distribution of the merchandise under review.”<sup>72</sup>

Finally, Forgital obtains metallurgical testing services from an affiliate, RTM Breda. Accordingly, Commerce requested the information necessary for a proper application of the transactions disregarded rule.<sup>73</sup> Forgital submitted the requested information in Exhibit D.17, claiming that the invoices in the exhibit demonstrate that the fees charged by RTM Breda to unaffiliated parties are comparable to the fees charged to Forgital for similar services.<sup>74</sup> However, the information in Exhibit D.17 does not support Forgital’s claim. Specifically, the first page of the exhibit summarizes the prices RTM Breda charged Forgital and its unaffiliated customers for certain codes. The comparison of the prices reveals that for a large number of these codes, the prices charged to unaffiliated customers were higher. Taking into account that, according to Forgital, the cost of the testing services represents a certain percentage of COM, this service is subject to major input rule. Therefore, to enable the Commerce to adjust Forgital’s costs, Forgital should have provided the major input information in relation to this input, as requested in the Section D questionnaire.<sup>75</sup>

### *Direct Material Inputs*

Forgital failed to provide the requested monthly inventory movement schedule for its main input. In our Section D questionnaire, we requested monthly inventory movement schedules for the three most significant direct material inputs used in producing the merchandise under consideration.<sup>76</sup> Instead, Forgital submitted an annual inventory movement schedule.<sup>77</sup> This prevents Commerce from analyzing the cost fluctuations during the POR. Furthermore, Forgital indicated that it has two raw materials.<sup>78</sup> If these two materials are not interchangeable, Forgital

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<sup>68</sup> See Section A Response at 12.

<sup>69</sup> See Supplemental Questionnaire at 14.

<sup>70</sup> *Id.*

<sup>71</sup> See Supplemental Response at 28.

<sup>72</sup> *Id.*

<sup>73</sup> See Supplemental Questionnaire at 14-15.

<sup>74</sup> See Supplemental Response at 29.

<sup>75</sup> See Section D Response at 6-7.

<sup>76</sup> See Forgital Initial Questionnaire, at D-3.

<sup>77</sup> See Section D Response at Exhibit D-7.

<sup>78</sup> *Id.* at 6.

must prepare separate monthly inventory movement schedules for them;<sup>79</sup> it did not. We also requested Forgital to provide the percentage each such input represents of the total cost of manufacturing of the merchandise under consideration, but it also ignored this request.<sup>80</sup> Accordingly, in a supplemental questionnaire, we repeated our request and provided some additional explanations.<sup>81</sup> Specifically, we requested the following:

Based on the description of the production process, it appears that the only significant raw material input consumed in the production of subject merchandise is ingot. Please provide a schedule which reports, *for each month of the POR (i.e., February 2017 through July 2018)* the information listed below with respect to ingots consumed in the production of subject merchandise. Please note that it is not necessary to segregate the ingots by grade, specification, or material ID.

- Quantity and value of monthly beginning inventory
- Quantity and value of monthly purchases
- Quantity and value of consumption
- Quantity and value of ending inventory<sup>82</sup>

In response, Forgital claimed that the requested data are reported in Exhibit D.25<sup>83</sup> and it also submitted an inventory movement schedule with inconsistencies that make it unusable.<sup>84</sup> Specifically: (1) the monthly ending balances do not equal to the beginning balances of the next month; (2) the beginning balances are same for all months within the same year; and (3) the monthly quantities and values of the purchases (*i.e.*, “Entry Raw Materials”) and consumptions (*i.e.*, “Exit Raw Materials”) increase every month, which appears to indicate that these are cumulative, not monthly, values (which leads to a confusing result of annual total values of purchases or consumption being greater than the entire amounts of all operating expenses in Forgital’s financial statements. In sum, Forgital again failed to provide a valid inventory movement schedule for its only significant raw material.

### *Scrap*

In its Section D response, Forgital provided unclear explanations of its accounting for scrap in its normal records and in the reported costs. Accordingly, in a supplemental questionnaire, Commerce again requested information related to the scrap offset.<sup>85</sup> However, Forgital failed to respond directly to each sub-question, skipped over certain questions, and provided explanations that only further confused the issue. Specifically: (1) Forgital’s scrap offset is based on the quantity of scrap sold and the company does not have the information on the quantity of scrap

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<sup>79</sup> See Initial Questionnaire at D-3, question 6.

<sup>80</sup> *Id.*

<sup>81</sup> See Supplemental Questionnaire at 15-16.

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

<sup>83</sup> See Supplemental Response at 31.

<sup>84</sup> *Id.* at Exhibit D.21.

<sup>85</sup> See Supplemental Questionnaire at 15.

generated;<sup>86</sup> (2) Forgital failed to include the costs associated with rejected products;<sup>87</sup> (3) Forgital failed to demonstrate how the values in field SCRAP were calculated;<sup>88</sup> and (4) there remain unexplained fluctuations in monthly scrap prices.<sup>89</sup>

When Commerce determines that a questionnaire response is deficient, section 782(d) of the Act requires Commerce 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.” In sending Forgital multiple supplemental questions with respect to its sales and cost data, affiliates and suppliers, direct material inputs, and scrap, Commerce provided Forgital the opportunity to resolve conflicting statements and provide complete information requested by Commerce. Forgital failed to do so in its questionnaire responses, and we find that the information Forgital submitted is too incomplete or inconsistent to serve as a reliable basis for reaching a determination under section 782(e) of the Act. Therefore, we find that necessary information is missing from the record because Forgital withheld information requested of it, failed to provide information in the form and manner requested, and significantly impeded this proceeding. Based on the foregoing, and pursuant to sections 776(a)(1) and (2)(A)-(C) of the Act, we are relying entirely upon facts otherwise available to determine the estimated weighted-average dumping margin for Forgital in this review.

#### B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce 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, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>90</sup> In doing so, Commerce is not required to determine, or make any adjustments to, estimated dumping margins based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>91</sup> In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>92</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>93</sup> It is Commerce’s practice to

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<sup>86</sup> See Supplemental Response at Exhibits D.19 and D.21.

<sup>87</sup> See Section D Response at Exhibit D.13 and Supplemental Response at Exhibit D.19.

<sup>88</sup> See Section D Response at Exhibit D.13 and Supplemental Response at Exhibits D.19 and D.34.

<sup>89</sup> See Supplemental Response at Exhibit D.19.

<sup>90</sup> See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); 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>91</sup> See section 776(b)(1)(B) of the Act.

<sup>92</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870.; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>93</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (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); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19,

consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>94</sup>

We preliminarily find that neither ASFO nor Forgital has acted to the best of its ability to comply with Commerce's requests for information. ASFO failed to file a response to any section of Commerce's initial questionnaire. Forgital failed to provide responses that were sufficiently clear or complete for Commerce to ascertain if the company had reported the correct universe of U.S. sales subject to review or the correct costs for those sales. Forgital refused to file complete sales and cost reconciliations which are required to verify the accuracy of the company's responses. Forgital also did not act to the best of its ability when only it has access to the data to determine the appropriate cost reporting period and Forgital repeatedly failed to articulate clearly the appropriate cost reporting period through its conflicting statements. Finally, Forgital failed to provide information Commerce requested of it regarding its affiliates and suppliers, direct material inputs, and scrap. Accordingly, Commerce concludes that both respondents failed to cooperate to the best of their ability to comply with requests for information by Commerce. Therefore, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.<sup>95</sup>

### C. Selection and Corroboration of the Adverse Facts Available Rate

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value investigation, a previous administrative review, or other information placed on the record.<sup>96</sup> In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>97</sup>

When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary

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1997) (Preamble).

<sup>94</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>95</sup> See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying PDM at pages 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total adverse facts available when the respondent failed to respond to the antidumping questionnaire).

<sup>96</sup> See 19 CFR 351.308(c).

<sup>97</sup> See SAA at 870.



information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the less-than-fair-value investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>98</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>99</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>100</sup> However, section 776(c)(2) of the Act explains that Commerce “shall not be required to corroborate any dumping margin . . . applied in a separate segment of the same proceeding.”

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.<sup>101</sup> The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>102</sup>

As the AFA rate, we are preliminarily assigning both ASFO and Forgital a dumping margin of 204.53 percent, the AFA rate selected in the less-than-fair-value investigation.<sup>103</sup> This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>104</sup> According to 776(c)(2) of the Act, this rate does not require corroboration, because it is a dumping margin applied in a separate segment of the same proceeding – *i.e.*, the less-than-fair-value investigation.

When a respondent is not cooperative, such as ASFO and Forgital in this review, Commerce has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.<sup>105</sup> If this were not the case, the party would have produced current information showing its rate to be less.<sup>106</sup> Therefore, we preliminarily determine that the AFA rate is appropriate for purposes of this administrative review.

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<sup>98</sup> *Id.*

<sup>99</sup> *See id.*; *see also* 19 CFR 351.308(d).

<sup>100</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>101</sup> *See* section 776(d)(1)-(2) of the Act.

<sup>102</sup> *See* sections 776(d)(3)(A) and (B) of the Act.

<sup>103</sup> *See Order*, 82 FR at 40138.

<sup>104</sup> *See Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

<sup>105</sup> *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*)).

<sup>106</sup> *See Rhone Poulenc*, 899 F.2d at 1190.

## V. RATE FOR NON-SELECTED COMPANIES

This review covers 25 companies that Commerce did not select for individual examination. The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in calculating a rate for non-examined companies in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation.<sup>107</sup>

Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely {on the basis of facts available} (FA)." Accordingly, Commerce's usual practice in determining the rate for companies not selected for individual examination, has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on FA.<sup>108</sup> However, section 735(c)(5)(B) of the Act also provides that, where all weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." Furthermore, Congress, in the SAA, stated that when "the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or de minimis ... {t}he expected method in such cases will be to weight-average the zero and the de minimis margins and margins determined pursuant to the facts available."<sup>109</sup>

For the preliminary results of this review, we determined the estimated dumping margin for each of the individually examined respondents to be based entirely on facts otherwise available. Thus, in accordance with the expected method, and consistent with the Court of Appeals for the Federal Circuit's decision in *Albemarle Corp. v. United States*,<sup>110</sup> in this review, we have preliminarily assigned the non-selected companies a rate based on a simple average of the individual rates assigned to ASFO and Forgital, or 204.53 percent. Accordingly, we preliminarily assign the dumping margin of 204.53 percent to the following non-selected companies: ASFO S.p.A.—FOMAS Group; Assotherm srl; Bifrangi S.p.A.; CAT Carpenteria Metallica srl; Costruzione Ricambi Machine Industriali; Filmag Italia S.r.l.; FOC Ciscato S.p.Ar.; FOMAS; Forgia Di Bollate S.p.A.; Forgiatura A. Vienna di Antonio Vienna; Franchini

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<sup>107</sup> See, e.g., *Longkou Haimeng Mach. Co. v. United States*, 581 F.Supp.2d 1344, 1357-60 (CIT 2008).

<sup>108</sup> See *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); see also *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

<sup>109</sup> See SAA at 873.

<sup>110</sup> See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016).

Acciai S.p.A.; Galperti Forged Products; Inox Laghi S.r.l.; KIASMA SRL; Iml Industria Meccanica Ligure; Martin Valmore srl; M.E.G.A. S.p.A.; Metalfar Prodotti Industriali, S.p.A.; Officine Ambrogio Melesi & C. S.R.L.; Officine di Cortabbio s.r.l.; OFFICINE MECCANICHE CIOCCA S.p.A.; Office SANTAFEDE; Siderforgerossi Group S.p.A.; UNIGEN Steel Engineering; and VALVITALIA S.p.A.

## VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

10/9/2019

**X**



Signed by: JEFFREY KESSLER