



A-475-835
Administrative Review
POR: 2/8/2017-7/31/2018
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April 14, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on
Finished Carbon Steel Flanges from Italy; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty (AD) order on finished carbon steel flanges (steel flanges) from Italy covering the period of review (POR) February 8, 2017 through July 31, 2018. This administrative review covers 27 companies. The mandatory respondents are Forgital Italy S.p.A. (Forgital) and ASFO S.p.A. (ASFO).

As a result of our analysis of the comments received, we made no changes since the *Preliminary Results*.¹ We recommend that you approve the position described in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Whether to Continue to Apply Total Adverse Facts Available to Forgital

II. BACKGROUND

On October 17, 2019, Commerce published the *Preliminary Results* of this administrative review and invited parties to comment.² On November 18, 2019, we received a timely filed case brief

¹ See *Finished Carbon Steel Flanges From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 55551 (October 17, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

² See *Preliminary Results*, 84 FR at 55552.



from Forgital,³ and, on November 25, 2019, we received a timely filed rebuttal brief from Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners).⁴

On February 10, 2020, Commerce extended the final results of this review to no later than April 14, 2020.⁵

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 proceeding. 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, 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;

³ See Forgital’s Letter, “Finished Carbon Steel Flanges From Italy: Case Brief of Forgital Italy S.p.A.,” dated November 18, 2019 (Forgital’s Case Brief).

⁴ See Petitioners’ Letter, “Finished Carbon Steel Flanges from Italy: Rebuttal Brief of Weldbend Corporation and Boltex Manufacturing Co., L.P.,” dated November 25, 2019 (Petitioners’ Rebuttal Brief).

⁵ See Memorandum, “Finished Carbon Steel Flanges From Italy: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2017-2018,” dated February 10, 2020.

- (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. DISCUSSION OF THE ISSUES

Comment 1: Whether to Continue to Apply Total Adverse Facts Available to Forgital

Forgital's Arguments

Date of Sale Information

- Forgital's submissions regarding the date of sale are reasonable and consistent and provide no justification for the imposition of adverse facts available (AFA).⁶
- Forgital filed its Section A response after its Section C response because Commerce initially rejected the section A response but then allowed Forgital to resubmit it subsequent to filing its section C response. Forgital's resubmitted section A response (which was filed in the same form as its prior submission and reported invoice date as the date of sale) was not meant to retract its section C response, which stated the earlier of invoice or shipment date as the date of sale based on Forgital's evolved understanding of how to report date of sale. Forgital then reconfirmed in its supplemental questionnaire response, which listed shipment date as the date of sale. Forgital's responses were therefore not contradictory but represented an "evolution" in its understanding that shipment date is the correct date of sale.⁷
- It is clear from Forgital's submissions that it believes the correct date of sale is the shipment date, as reported in the sales file. There is no ambiguity or contradiction in Forgital's submissions.⁸
- Because Forgital's sales do not follow the sales pattern Commerce usually sees in cases involving the sales of goods, (*i.e.*, purchase order, shipment, invoice, payment, in that order), Forgital wanted to be sure the necessary information was on the record no matter what date of sale Commerce decided was best, and therefore reported the various pro-forma invoice dates as well. The entire universe of sales is on the sales listing, regardless of what date is used, and so there is no reason to be concerned that sales might be omitted.⁹
- While Forgital continues to believe that it correctly designated the date of shipment to be the date of sale, as reported on the sales file, it also provided every other potential transaction date Commerce might prefer to use as the date of sale, including the purchase order date, pro forma invoice dates, date of shipment to the customer, the subsequent sales invoices from Forgital USA (Forgital's U.S. subsidiary and importer/reseller of subject merchandise), dates of payment, and dates of entry.¹⁰
- Commerce had both (a) a clear and unambiguous statement from Forgital about what date it proposed as the correct date of sale, and (b) all the elements necessary to determine if it preferred any other date as the date of sale.¹¹

⁶ See Forgital's Case Brief at 4-6.

⁷ *Id.* at 4-6, 12-13, 15-17.

⁸ *Id.* at 6.

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 7-10.

¹¹ *Id.* at 10-11.

- While Forgital believes that the shipment date is the most logical and appropriate, it would not object to whatever date of sale Commerce determines is appropriate, and it accordingly made sure that every possible alternative was accommodated by information on the record.¹²
- Finally, even if some ambiguity were to exist in Forgital's explanations or reporting, the extreme remedy of total adverse facts available is not warranted. Rather than a complete rejection of Forgital's submission, Commerce could apply facts available. Since all sales are reported on the file under any date of sale scenario, Commerce may simply disregard the sales that fall outside the POR under its preferred alternative.¹³

Sales Reconciliation

- Information on the record demonstrates that the reported sales tie to the financial accounts.¹⁴
- Forgital provided, at Exhibit C.17, the reconciliation between General Ledger and Financial Statement for 2017 and 2018, covering the POR months.¹⁵
- The reconciliation tracks each sale from the sales database through the General Ledger to the Financial Statement and confirms that the entire universe of subject merchandise sales invoiced and/or shipped to the customer during the POR appears on the sales file.¹⁶
- Commerce did not request clarification on Forgital's sales reconciliations in a supplemental questionnaire.¹⁷

Cost of Production (COP)

- Forgital did not produce any subject merchandise during the POR. The products sold during the POR were all produced prior to the POR. Accordingly, in its initial response, it reported the costs for the period in which the merchandise was produced.¹⁸
- Since providing the COP for subject merchandise produced in the POR, when no such products were in fact produced, would be impossible, Forgital's counsel contacted Commerce to explain the issue, and as instructed by Commerce, filed a letter requesting that Commerce permit it to continue to report the production costs for the period in which the merchandise was produced.¹⁹
- In that letter, Forgital's counsel stated his understanding that the production took place during the 2015-2016 period and stated that Forgital expected to reconcile its production costs to the 2015 and 2016 financial statements. Forgital later learned that in fact, all of

¹² *Id.* at 10-11.

¹³ *Id.* at 17.

¹⁴ *Id.* at 18.

¹⁵ *Id.* (citing 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)).

¹⁶ *Id.* at 18-19.

¹⁷ *Id.* at 18.

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 20 (citing 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)).

the production of subject merchandise was carried out in 2016 and in 2017. Accordingly, Forgital proceeded to provide the costs for the actual years of production, 2016 and 2017.²⁰

- While Forgital’s Request for Clarification incorrectly identified a different period, the point of the request was clear – to report the costs in the years in which the subject merchandise was produced.²¹

Affiliates and Suppliers

- Forgital both “explained” its affiliated parties’ activities, and “specified” that they were not involved in the production or sale of subject merchandise, as requested in Commerce’s Supplemental Questionnaire.²²
- Commerce asked Forgital to specify whether Lucio Zilio, Gaetano Miolo, and Bonato Daniele are individuals or companies. Forgital responded that these parties are individuals.²³
- Forgital’s affirmative statement confirming that none of the listed affiliated companies or individuals are involved in the production or sale of subject merchandise is supported by the terms of the underlying project contract related to all production and sales of the subject merchandise. None of the affiliates or potential affiliations identified in the Preliminary Decision Memorandum appears on the listing of potential suppliers and subcontractors in the contract documents.²⁴
- Forgital correctly reported that it has an unaffiliated supplier who supplies its primary material input. Commerce inquired as to whether there was a close supplier relationship between Forgital and the supplier. Forgital provided full information showing that there was no such relationship, and it showed that the level of purchases from the supplier is so small that any notion of affiliation by close supplier relationship is objectively disproven.²⁵
- Forgital correctly reported that it obtained certain processing services from two affiliated tollers, Forgital Rimach and Forgital Sumec. Forgital has reported all requested information, including the “template” referred to in the Preliminary Decision Memorandum, in its Section D response.²⁶

²⁰ *Id.* (citing Request for Clarification).

²¹ *Id.* at 21.

²² *Id.* at 23-24 (citing Commerce’s Letter, “Administrative Review of the Antidumping Duty Order on Finished Carbon Steel Flanges from Italy; 2017-2018: Supplemental Questionnaire,” dated May 7, 2019 (Supplemental Questionnaire)).

²³ *Id.* at 24-25 (citing Supplemental Questionnaire at 4 and Supplemental Response at 2).

²⁴ *Id.* at 26-27.

²⁵ *Id.* at 27-28.

²⁶ *Id.* at 30-32 (citing 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) at D-7 and Exhibit D.8).

- While certain additional information requested by Commerce was not included in the table, the relevant data to complete the cost reconciliation is included in the submissions.²⁷
- Forgital reported in Exhibit D.16 that Fly S.p.A. is an affiliated subcontractor. However, Exhibit D.16 identifies the total external machining made by affiliated subcontractors during the POR, for both subject and non-subject products. The machining performed by Fly S.p.A. did not involve the production of subject merchandise.²⁸
- Forgital described that testing services for the production of its subject merchandise was provided by an affiliate, RTM Breda. As requested by Commerce, Forgital submitted a listing of its invoice prices from RTM Breda and invoice prices for RTM Breda's services provided to other testing clients. Exhibit D.17 shows that in some cases, the price charged to Forgital is lower. This does not necessarily evidence non-commercial price discrimination in Forgital's favor based on the affiliation because RTM Breda provides a wide variety of services that vary in difficulty and intensity based on the nature of the testing and the product. Thus, there is no reason to conclude that Forgital is paying less for the same service. Nevertheless, even were Commerce to conclude that the cost input component for testing was tainted by the affiliation, the appropriate response is not total AFA, but rather the application of facts available.²⁹

Direct Material Inputs

- Forgital reported the monthly inventory schedule for its raw material inputs in its Supplemental Response, at Exhibit D.21.³⁰
- Forgital also reported the monthly quantity and value of ingots used to produce subject merchandise in the Supplemental Response Addendum, at Exhibit D.20.³¹
- The total amounts (both quantity and value) from Exhibit D.20 match the inventory totals reported in Exhibits D.12 and D.29 for the COP reconciliation.³²
- In Exhibit D.25, Forgital proved that the balance of raw materials, work-in-process, semifinished goods, and finished goods as of December 31, 2017 ties with the total shown on trial balance and financial statement. In the same exhibit, Forgital provided a sample of a detailed inventory record by raw-material type. Exhibit D.31 identifies the codes for the raw materials used for subject merchandise production.³³
- With respect to non-interchangeable inputs, in Exhibits D.12 and D.29, Forgital reported the job number for every product code. Using the job number, every product can be linked with detailed costs reported in Exhibit D.31. Then, together with Exhibit D.20, it is a straightforward exercise to identify the movement inventory schedule for every

²⁷ *Id.* at 32-34 (citing Sections C&D Response at D.8 and D.12 and Supplemental Response at D.16, D.27, D.29, and D.31).

²⁸ *Id.* at 34-35 (citing Supplemental Response).

²⁹ *Id.* at 35-37 (citing Supplemental Response).

³⁰ *Id.* at 37 (citing Supplemental Response).

³¹ *Id.* at 37 (citing Supplemental Response and 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 (Supplemental Response Addendum)).

³² *Id.* at 37-38 (citing Sections C&D Response, Supplemental Response, and Supplemental Response Addendum).

³³ *Id.* at 38 (citing Supplemental Response).

material used in subject merchandise production.³⁴

- In Exhibit D.8, Forgital reported the total percentage that the raw materials constitute of the total COP. Then, from Exhibits D.12, D.29, and D.31, one can readily define the percentage that each steel type bears in respect to the COP file.³⁵
- In Exhibit Br-3, Forgital demonstrates the calculation of the requested percentages (*i.e.* the percentage each input represents of the total cost of subject merchandise) using information from Exhibits D.31 and D.32.³⁶
- In Exhibit D.21, Commerce incorrectly assumed (1) that the columns labeled “Stock at the Beginning of the Year” represent the stock at the end of every month, and since it made that assumption it concluded (2) that the beginning balances are the same for all months in the year.³⁷
- In Exhibit Br-1, Forgital shows the derivation of an alternative calculation for the inventory movement schedule. Applying this formula to the previously submitted data shows the information Commerce requested was reported in Exhibit D.21.³⁸

Scrap

- Forgital supplied Commerce with the information it requested regarding scrap costs.³⁹
- Forgital explained in its Section D response that the costs associated with rejected products have been reported in the COP database as part of variable overhead costs. That is, the unit cost of rejected products was calculated and reported as the total cost of rejected products divided by the total net kilograms of subject merchandise produced. Forgital believes this to be an accurate and even conservative cost allocation, which refers to the entire production of subject merchandise and not only to a single product.⁴⁰
- Forgital reported its monthly scrap sales for the entire 2016-2017 period, reconciling the total sales for each year with the respective financial statement value.⁴¹
- The methodology for calculating and reporting the per-kilogram value in the SCRAP field in the COP file has been fully explained in Exhibits D.12 and D.29.⁴²
- There is no reason to expect that should be a single constant scrap price. Forgital produces two types of scrap. While Forgital sells both types as scrap, they are very different types of scrap, with different values, and so the price can vary depending on the material type.⁴³

Communications with Commerce

- Commerce departed from its usual review procedure in two ways which greatly

³⁴ *Id.* (citing Sections C&D Response and Supplemental Response).

³⁵ *Id.* at 38-39 (citing Supplemental Response).

³⁶ *Id.* at 39-40 (citing Supplemental Response).

³⁷ *Id.* at 40.

³⁸ *Id.* at 41.

³⁹ *Id.* at 42.

⁴⁰ *Id.*

⁴¹ *Id.* at 43 (citing Supplemental Response at Exhibit D.19).

⁴² *Id.* (citing Sections C&D Response and Supplemental Response).

⁴³ *Id.* at 44.

complicated Forgital's efforts to cooperate with the review. That is, first Commerce denied Forgital's reasonable extension requests, allowing less time for Forgital to provide its supplemental responses, and second, Commerce declined to seek clarification of any remaining issues or seek missing information.⁴⁴

- Forgital participated in good faith and with maximum effort and cooperated to the full extent of its ability.⁴⁵
- Commerce should revoke its preliminary determination of total AFA against Forgital and should publish a proper calculated margin in the final results.⁴⁶

Petitioner's Rebuttal

- Because Forgital's serious and extensive failures to provide requested information in this review go to many fundamental aspects of a reliable dumping calculation, the application of total AFA to the respondent is fully consistent with the statute and Commerce precedent.⁴⁷
- Commerce precedent indicates that a failure to submit complete U.S. sales or cost reconciliation warrants the application of total AFA.⁴⁸
- Commerce has concluded that "an incomplete reconciliation is not a reconciliation" for purposes of its dumping analysis.⁴⁹
- Commerce has found, in multiple cases, that failure to reconcile a sales or cost database to the respondent's accounting system warrants the application of total AFA.⁵⁰
- In short, the inability to reconcile the U.S. sales or cost dataset necessarily means that Commerce has no basis to accept the respondent's Section C or D database as complete and accurate, which, in turn, renders the calculation of a reliable dumping margin impossible.⁵¹
- In this case, Commerce correctly finds that Forgital failed to submit complete and reliable U.S. sales and cost reconciliations, which are just two examples of many of the respondent's fundamental failures in this review. Therefore, Commerce's preliminary determination is fully consistent with the statute and agency precedent.⁵²
- Forgital's missing of a mandatory filing deadline, as well as its failure to follow Commerce's instructions, proves Forgital's inattentiveness and carelessness in preparing questionnaire responses in this administrative review, warranting the application of AFA.⁵³

⁴⁴ *Id.* at 46.

⁴⁵ *Id.*

⁴⁶ *Id.* at 53.

⁴⁷ *See* Petitioners' Rebuttal Brief at 3.

⁴⁸ *Id.*

⁴⁹ *Id.* (citing *Certain Steel Nails From Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018), and accompanying Issues and Decision Memorandum at Comment 2).

⁵⁰ *Id.*

⁵¹ *Id.* at 4.

⁵² *Id.*

⁵³ *Id.* at 6.

- In sum, no relief should be given to a respondent who made extensive procedural and substantive errors.⁵⁴

Commerce's Position:

As explained in detail below, Commerce continues to find that it is appropriate to apply total AFA to Forgital for these final results.

Sections 776(a)(1) and (a)(2)(A)-(D) of the Tariff Act of 1930, as amended (Act), provide that, if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act further 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.

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.

As discussed in the *Preliminary Results* and below, because Forgital impeded the proceeding by providing incomplete or inconsistent information regarding its sales and cost data, affiliates and suppliers, direct material inputs, and scrap, the application of facts available is appropriate under section 776(a) of the Act.⁵⁵ Furthermore, we continue to find that the use of an adverse inference, pursuant to section 776(b) of the Act, in selecting among the facts available is

⁵⁴ *Id.*

⁵⁵ See Preliminary Decision Memorandum at 6.

warranted, because Forgital failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information.⁵⁶

Regarding Forgital's argument that its submissions related to the date of sale are consistent,⁵⁷ we disagree. Forgital argues that "there is no ambiguity or contradiction in Forgital's submissions;"⁵⁸ that it "unambiguously identified the shipment date as the date of sale;"⁵⁹ and that Commerce had "a clear and unambiguous statement from Forgital about what date it proposed as the correct date of sale."⁶⁰ However, as explained in the Preliminary Decision Memorandum, we found that Forgital failed to provide consistent responses with respect to its date of sale for its U.S. sales.⁶¹

Although Forgital frames its inconsistent responses regarding the date of sale as demonstrating an "evolution" in its reporting,⁶² the overriding fact is that, regardless of chronology, Forgital identified three distinct dates as the date of sale in three separate submissions. First, in its Section C Response, Forgital reported the earliest of invoice or shipment date as the date of sale for each of its U.S. sales.⁶³ However, Forgital then provided a different response in its Section A questionnaire response, where it reported the 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.⁶⁴ Finally, when asked in a supplemental questionnaire for 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.⁶⁵ Moreover, 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).⁶⁶

Thus, although Forgital argues that it has "consistently reported one single date of sale, and that is the date of shipment,"⁶⁷ Commerce continues to find that Forgital provided inconsistent answers in its submissions concerning the shipment date and date at which the material terms of sale were established, without adequate explanation in its questionnaire responses as to why. In its Case Brief, Forgital attempts to craft a narrative of evolution in its responses to date of shipment. However, this constant evolution in its responses is problematic because it prevents Commerce from clearly understanding the record during the course of the proceeding and making an appropriate and accurate determination with respect to date of sale for purposes of the

⁵⁶ *Id.* at 15-16.

⁵⁷ See Forgital's Case Brief at 4.

⁵⁸ *Id.* at 6.

⁵⁹ *Id.* at 7.

⁶⁰ *Id.* at 10.

⁶¹ See Preliminary Decision Memorandum at 6-8.

⁶² See Forgital's Case Brief at 12.

⁶³ See Section C&D Response at C-17.

⁶⁴ 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) at 26-27.

⁶⁵ See Supplemental Response at 16-17.

⁶⁶ See Section A Response at 30.

⁶⁷ See Forgital's Case Brief at 16.

margin analysis. Although Forgital has apparently settled on the date of shipment as the appropriate date of sale in the United States, it remains unclear from the record evidence on which date the material terms of sale were established and consequently whether shipment date is indeed the correct date of sale.

Further, Commerce was unable to determine from other documents on the record the date on which the material terms of sale were established. Forgital lists a number of potential dates it argues Commerce could have selected as the date of sale.⁶⁸ However, as noted by Forgital, adjustments to price and quantity were made after the issuance of its progress payment invoices, and it acknowledges that those invoices cannot be used as the date of sale.⁶⁹ Given these adjustments, the purchase order date would not be an appropriate selection for the date of sale either. Furthermore, Commerce could not determine from the final invoices issued by Forgital USA whether those dates represented the dates on which the material terms of sale were established. Finally, we did not have the supporting documentation necessary to consider as the date of sale the date of payment or the date of entry. 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. Forgital asserts that its sales file “reports the maximum possible number of sales, *i.e.*, the entire universe of sales that can be relevant under any conceivable date of sale scenario.”⁷⁰ Forgital further contends that “if the Department dislikes the shipment date as the date of sale, the appropriate action is not to reject the entire submission, but to choose a different date.”⁷¹ However, the issue here is not whether Commerce “likes” or “dislikes” the shipment date as the date of sale. Rather, the issue is that the information needed to determine whether that is the correct date of sale is unclear from the record. Absent this information, Commerce could not appropriately determine the universe of U.S. sales subject to this review and therefore did not have the necessary information for calculating a dumping margin.

In addition, Forgital did not seek clarification from Commerce about the date of sale. In Section A of the questionnaire, we instruct respondents to contact the official in charge by no later than 14 calendar days after the issuance of the questionnaire if they have difficulty deciding which date to use as the date of sale.⁷² Instead of contacting the official in charge, Forgital repeatedly provided inconsistent and incomplete responses regarding its date of sale despite Commerce’s multiple requests for information and clarification. Consequently, information is missing from the record which prevents us from identifying the most appropriate date for Forgital’s U.S. sales.

Regarding Forgital’s assertion that its sales file is fully reconcilable with the company’s accounts,⁷³ the record does not support Forgital’s contention. When Commerce requests a sales reconciliation, we expect a submission that identifies exactly which accounts reconcile with the individual lines in the corresponding financial statements. Although Forgital attempts to demonstrate through piecemeal exhibits that information is on the record allowing for a

⁶⁸ See Forgital’s Case Brief at 10.

⁶⁹ *Id.* at 14.

⁷⁰ *Id.* at 16.

⁷¹ *Id.*

⁷² See Commerce’s Letter to Forgital, dated November 19, 2018 (Initial Questionnaire) at A-9.

⁷³ See Forgital’s Case Brief at 18.

reconciliation of its sales file to the company's financial statements,⁷⁴ the record shows that Forgital failed to provide Commerce with clear and complete reconciliations for its U.S. sales.

As we described in the Preliminary Decision Memorandum, in its Section C questionnaire, Commerce provided Forgital with specific instructions regarding exactly what it needed to provide for its sales reconciliations.⁷⁵ Despite these 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. It added that "an effort to reconcile the total subject merchandise sales value to the general ledger would be an imprecise and useless exercise."⁷⁶ Forgital added that, for this reason, it was "impossible to reconcile the {quantity and value} of subject merchandise reported in the database with the POR general ledger, and it would be futile to try."⁷⁷ Forgital incorrectly asserts that Commerce did not issue a supplemental questionnaire requesting clarification of Forgital's sales reconciliation.⁷⁸ Commerce did in fact issue a Supplemental Questionnaire, in which Commerce again requested this information from Forgital.⁷⁹ However, Forgital reiterated in its Supplemental Response that "there is no possibility to link directly the reported U.S. sales to the general ledger," and it offered several reasons why a sales reconciliation was not possible.⁸⁰ Nevertheless, Forgital argues that its reconciliation tracks *each* sale from the sales database through the general ledger to the financial statement.⁸¹ However, as detailed above, this statement is directly contradicted by Forgital's own responses to the Section C questionnaire and Supplemental Questionnaire.

The reconciliation documentation submitted by Forgital in its Supplemental Response did not provide the requested ties to the company's accounting system or its financial statements covering the review period or other fiscal years;⁸² this necessary information is missing from the record. Thus, since Forgital did not provide the requested sales reconciliations, we are not able to reconcile the reported sales to its accounting system or audited financial statements.

We also find unavailing Forgital's argument that it provided a complete and accurate reconciliation of its production costs. The record shows that Forgital provided conflicting information regarding its COP. We find that this substantial issue is exacerbated by Forgital's failure to cooperate to the best of its ability. For example, in the Section D questionnaire, Forgital was instructed to contact the official in charge if it had questions concerning any part of Section D.⁸³ The Section D questionnaire also includes instructions specifically requesting Commerce be notified in writing *before* preparing the questionnaire response if Forgital had any

⁷⁴ *Id.* at 18-19.

⁷⁵ See Initial Questionnaire at C-4-C-5; Preliminary Decision Memorandum, at 8-9.

⁷⁶ See Section C&D Response at C-2-C-4.

⁷⁷ *Id.* at C-4.

⁷⁸ See Forgital Case Brief at 18.

⁷⁹ See Supplemental Questionnaire at 9-10.

⁸⁰ See Supplemental Response at 14.

⁸¹ See Forgital's Case Brief at 19.

⁸² See Supplemental Response at Exhibits C-18 and C-19.

⁸³ See Initial Questionnaire at D-1.

questions regarding the appropriate cost calculation period for the subject merchandise.⁸⁴ However, Forgital did not contact us for any clarification prior to filing its Sections C & D Responses. Rather than clarify any misunderstandings, Forgital 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.”⁸⁵ Furthermore, Forgital only provided one reconciliation that tied its cost accounting system to a 2017 profit and loss statement.⁸⁶

In the Supplemental Questionnaire, we noted these contradictory and inconsistent responses and directed Forgital to revise its cost reporting following the guidance we provided.⁸⁷ However, one week after Commerce issued its Supplemental Questionnaire, Forgital filed its 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 2016.⁸⁸ Forgital stated that it could “fully prove” the cost reconciliation between its cost accounting system and the financial statements for fiscal year 2015 and fiscal year 2016.⁸⁹ Based on this information, Commerce instructed Forgital to report its COP with regard to the fiscal years 2015 and 2016.⁹⁰ But despite stating in its Request for Clarification that it could reconcile reported costs to its financial statements for fiscal year 2015 and fiscal year 2016, Forgital stated in its Supplemental Response that, for its cost calculation period, it had used the years 2016 and 2017.⁹¹ Forgital now explains this shift in reporting to be the result of its counsel misunderstanding the meaning of the year assigned to each job number.⁹² However, Forgital did not provide this explanation, or any explanation, in its supplemental response regarding its decision to provide data for 2016 and 2017, rather than the requested period of 2015 and 2016. Furthermore, although Forgital stated that it produced no subject merchandise during the POR, a work order in the Supplemental Response appears to indicate that at least some production of subject merchandise did, in fact, occur during the POR.⁹³

Forgital contends that, in its Request for Clarification, it “incorrectly identified a slightly different period” for its cost calculation period.⁹⁴ However, its “slightly different period” is actually a full one-year difference, and it makes for an entirely different reporting period. Because normal value would have to be based on constructed value in this review, as Forgital had no home-market sales, it was critically important for Forgital to report its costs accurately for the correct reporting period. Instead, Forgital identified three different periods for purposes of its cost reporting in its various responses.

⁸⁴ *Id.* at D-2.

⁸⁵ See Section C&D Response at D-5 and D-26.

⁸⁶ *Id.* at Exhibit D-6.

⁸⁷ See Supplemental Questionnaire at 13.

⁸⁸ See Request for Clarification at 2.

⁸⁹ *Id.*

⁹⁰ See Commerce’s Letter to Forgital, dated May 15, 2019 (Letter to Forgital).

⁹¹ See Supplemental Response at 27.

⁹² See Forgital’s Case Brief at 20.

⁹³ See Supplemental Response at Exhibit D-32.

⁹⁴ See Forgital’s Case Brief at 21.

Forgital attempts to show that information found in multiple exhibits on the record allows for a complete cost reconciliation.⁹⁵ However, due to Forgital's conflicting statements concerning the timing of its production of subject merchandise, 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 unable to reconcile its reported costs to its cost or financial accounting systems, given the company's contradictory statements and incomplete cost reconciliations. Therefore, consistent with our *Preliminary Results*, 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.

Regarding Forgital's argument that its descriptions of its affiliates and suppliers are complete and comprehensive, we continue to find that the information submitted by Forgital is insufficient. For example, in our Supplemental Questionnaire, we requested additional information from Forgital regarding several of its affiliated parties discussed in its Section A response.⁹⁶ Our questions sought information necessary to determine whether any of these individuals or companies, or affiliates, are involved in sales or production of subject merchandise.⁹⁷ Instead of providing the requested information, Forgital responded with information that had already been submitted with its initial responses.⁹⁸

While Forgital asserts that it answered our questions related to its affiliated parties,⁹⁹ 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. Specifically, in the Supplemental Questionnaire, we listed the affiliated parties reported by Forgital and asked Forgital to "explain the activities of these affiliated parties, 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."¹⁰⁰ Forgital contends that, in its Supplemental Response, it "unambiguously answered the precise question asked."¹⁰¹ However, in its response, Forgital states that Lucio Zilio, Gaetano Miolo, and Bonato Daniele are legal persons, business partners, and legal representatives.¹⁰² Far from unambiguous, this response more closely resembles a response that identifies a company (*i.e.*, legal entity) as opposed to an individual. Forgital also now states that this information can be found in Exhibits A.7, A.8 and A.30, but Forgital chose not to cite to these documents in its supplemental response and instead relied on its unclear

⁹⁵ *Id.* at 19-22.

⁹⁶ See Supplemental Questionnaire at 4.

⁹⁷ *Id.*

⁹⁸ See Preliminary Decision Memorandum at 12.

⁹⁹ See Forgital's Case Brief at 24.

¹⁰⁰ See Supplemental Questionnaire at 4.

¹⁰¹ See Forgital's Case Brief at 24.

¹⁰² See Supplemental Response at 2.

narrative answer. Similarly, Forgital argues that it “clearly and definitively” stated whether any of its affiliates were involved in the sale or production of subject merchandise.¹⁰³ In its Supplemental Response, Forgital again provided an unclear answer, stating that “except for the affiliates already reported, there are no other companies involved in the sales or production of subject merchandise.”¹⁰⁴ This answer does not contain the specificity necessary to determine whether each affiliated entity listed in the question is or is not involved in the sales or production of subject merchandise. In addition, Forgital points to Exhibit A.13, titled “Sample Sales Offer,” for evidence that none of the listed affiliated companies or individuals is involved in the production or sale of subject merchandise.¹⁰⁵ In its Section A narrative response, Forgital refers to this document package as a “quotation.”¹⁰⁶ The pages of this document referenced by Forgital in its case brief consist of a “list of proposed suppliers & sub-contractors,” with a note at the bottom of this list that states “suppliers & sub-contractors will be listed on individual MPPs,” (manufacturing process plans).¹⁰⁷ Information from this quotation, which is dated before the production of any subject merchandise, does not definitively show whether each affiliated entity listed in our question is or is not involved in the sales or production of subject merchandise. Finally, Forgital states that “Exhibit A.27 shows all of the documents related to the production of the subject merchandise, listing the name of document and the name of the party that produced the document, whether Forgital or external supplier or subcontractor.”¹⁰⁸ Forgital argues that, in Exhibit A.27, “none of the mentioned affiliates appears as a supplier or subcontractor,” which it says demonstrates that these affiliates were not involved in the production or sale of subject merchandise.¹⁰⁹ However, Exhibit A.27, titled “Quality Control Plan,” does not clearly identify the names of *any* named affiliates. In any event, Forgital’s use of the absence of information from a document dated well before the production of subject merchandise as affirmative evidence is not persuasive regarding whether any of the aforementioned affiliates are involved in sale or production of subject merchandise.

Forgital argues that it provided directly responsive information regarding its purchases from its main raw material provider.¹¹⁰ However, in response to our request for information necessary to determine whether there is a close supplier relationship between Forgital and its raw material supplier, Forgital questioned the assumptions behind the request while failing to provide the requested information. Forgital admitted, however, that “the steel used to produce the subject merchandise came from one supplier.”¹¹¹ Although Forgital asserts that it provided “full information” showing that there was not a close supplier relationship,¹¹² Forgital failed to provide information we requested regarding this supplier, including: (1) the percentage sales to Forgital of their total sales; (2) the year the supplier started providing this input/service; (3) the supplier’s cost of production of the input/service; (4) the price the supplier charged other (*i.e.*,

¹⁰³ See Forgital’s Case Brief at 23.

¹⁰⁴ See Supplemental Response at 2.

¹⁰⁵ See Forgital’s Case Brief at 26.

¹⁰⁶ See Section A Response at 29.

¹⁰⁷ *Id.* at Exhibit A.13.

¹⁰⁸ See Forgital’s Case Brief at 26-27.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 29.

¹¹¹ See Supplemental Response at 3.

¹¹² See Forgital’s Case Brief at 27.

unaffiliated) customers for the same input/service, if there were such sales; and (5) the total POR and fiscal year quantity of the input/service in question.¹¹³

Forgital asserts that it submitted the requested information on services it obtained from affiliated parties, but the record does not support its assertion. Forgital maintains that it “provided the essential responsive information in Exhibit D.16” while conceding that it failed to provide certain additional information in the table, which was requested by Commerce.¹¹⁴ The missing additional information Forgital refers to includes information we requested regarding the quantity and value of the processed products for each of the two affiliated tollers and in total for unaffiliated tollers, separately for subject and non-subject merchandise. However, Forgital failed to provide the requested information in Exhibit D.16. 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.”¹¹⁵ Forgital states that Fly S.p.A. was not only not involved in the production of subject merchandise but that it “could not have been involved in subject merchandise.”¹¹⁶ However, given that Forgital failed to separate subject and non-subject products in Exhibit D.16, Commerce cannot identify whether Fly S.p.A.’s machining service related to subject merchandise. Additionally, Forgital previously stated that “Fly S.p.A. is a world-class machine operation for finish machining and assembly,” and that “the company is capable of finish machining large diameter aerospace components, typically ranging between 80 -120 inch diameters.”¹¹⁷ Contrary to Forgital’s assertion otherwise, its description of Fly S.p.A.’s activities suggests that Fly S.p.A. might, in fact, be capable of being involved in the production of subject merchandise.

Forgital obtains metallurgical testing services from an affiliate, RTM Breda. Forgital argues that information on the record regarding RTM Breda demonstrates that the fees charged by RTM Breda to unaffiliated parties are comparable to the fees charged to Forgital for similar services.¹¹⁸ However, the information in Exhibit D.17 does not support Forgital’s claim. A comparison of the prices RTM Breda charged Forgital and its unaffiliated customers for certain codes reveals that, for a large number of these codes, the prices charged to unaffiliated customers were higher.¹¹⁹ Given that, according to Forgital, the cost of the testing services represents a certain percentage of COM, this service is subject to the major input rule. Therefore, to enable 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.¹²⁰ Without this information, we cannot properly perform our major input analysis.

Regarding Forgital’s argument that it provided the direct material input information requested,

¹¹³ See Supplemental Response at 2-4.

¹¹⁴ See Forgital’s Case Brief at 32.

¹¹⁵ See Supplemental Response at 28.

¹¹⁶ See Forgital’s Case Brief at 35.

¹¹⁷ See Section A Response at 11.

¹¹⁸ See Forgital’s Case Brief at 35 and Supplemental Response at 29.

¹¹⁹ See Supplemental Response.

¹²⁰ See Section D Response at 6-7.

we do not find its argument to be accurate. Forgital, in referencing multiple exhibits where information can be found,¹²¹ reveals that it did not prepare separate monthly inventory movement schedules for its two non-interchangeable materials, as instructed.¹²² Similarly, it did not provide the percentage each such input represents of the total cost of manufacturing of the merchandise under consideration, as requested.¹²³ Rather than submitting this information, Forgital's claim that it can be calculated "using information already submitted on the record,"¹²⁴ even assuming *arguendo* that it is correct, would require Commerce to conduct numerous individual calculations and create multiple tables to deduce the requested percentages. Concerning the monthly inventory movement schedule Forgital provided, Forgital's suggestion that Commerce simply misread its submission is incorrect. When reviewing columns with headings of "Entry Raw Materials" and "Exit Raw Materials," one would expect these columns to correspond to the amount of raw materials purchased and consumed, respectively, by the company during a given period. However, according to Forgital, the values in these columns continue to increase each month due to the progressive method with which Forgital calculates its monthly inventory amounts.¹²⁵ Forgital suggests simply applying a formula to its submitted data will result in the expected presentation. However, Forgital's presentation of data using the alternative calculation it suggested results in different quantities and values under the "Stock Inventory" heading of the derived table, which should remain the same as Exhibit D.21.¹²⁶ Furthermore, as Forgital acknowledges,¹²⁷ the schedule provided at Exhibit D.21 was not responsive to Commerce's request because it was not submitted in the form and manner requested by Commerce.

Forgital's contends that it accurately and reasonably reported its scrap cost. However, regarding Forgital's supplemental questionnaire response, we continue to find that Forgital failed to respond directly to each sub-question, skipped over certain questions, and provided explanations that only further confused the issue. Specifically, we note that: (1) Forgital's scrap offset is based on the quantity of scrap sold and the company was unable to provide the information on the quantity of scrap generated;¹²⁸ (2) Forgital failed to include the costs associated with rejected products;¹²⁹ (3) Forgital failed to demonstrate how the values in field SCRAP were calculated;¹³⁰ and (4) there remain unexplained fluctuations in monthly scrap prices.¹³¹ Although Forgital contends that Commerce misunderstood Forgital's reporting of its scrap costs,¹³² Forgital crucially failed to respond to Commerce's questions in the form and manner requested and provided incomplete of unclear information.

Forgital argues that the information submitted on the record could have been verified,¹³³ but

¹²¹ See Forgital's Case Brief at 38.

¹²² See Initial Questionnaire at D-3, question 6.

¹²³ *Id.*

¹²⁴ See Forgital's Case Brief at 38-40.

¹²⁵ *Id.* at 41.

¹²⁶ *Id.* at Br-1.

¹²⁷ *Id.* at 41.

¹²⁸ See Supplemental Response at Exhibits D.19 and D.21.

¹²⁹ See Section D Response at Exhibit D.13 and Supplemental Response at Exhibit D.19.

¹³⁰ See Section D Response at Exhibit D.13 and Supplemental Response at Exhibits D.19 and D.34.

¹³¹ See Supplemental Response at Exhibit D.19.

¹³² See Forgital's Case Brief at 41-45,

¹³³ See Forgital's Case Brief at 18 and 27.

Commerce cannot conduct verification when the record is missing necessary information, and verification is not an opportunity to provide new information.¹³⁴ Forgital stated that some of Commerce's conclusions in the *Preliminary Results* may have been based on a misreading or misunderstanding of the information Forgital has submitted.¹³⁵ However, Commerce disagrees with Forgital that questions regarding its sales and cost data, affiliates and suppliers, direct material inputs, and scrap could have been addressed through verification. Verification is not a forum for Commerce to resolve issues that have not been resolved in questionnaire responses, especially when these issues pertain to the integrity and accuracy of the totality of the data.¹³⁶

Forgital alleges that Commerce impeded its efforts to cooperate in the investigation, first by denying Forgital's extension requests for its supplemental responses, and second, by declining to seek clarification of any remaining issues or missing information.¹³⁷ We disagree. With respect to the first point, Commerce did not deny any of Forgital's extension requests.¹³⁸ While we did not grant Forgital's requests in full, we did afford Forgital partial extensions. Additionally, throughout this segment of the proceeding, Forgital has failed to adhere to deadlines, and has provided Commerce with piecemeal and misleading information (as detailed above). Specifically, Commerce issued an antidumping duty questionnaire to Forgital on November 19, 2018.¹³⁹ Forgital filed a response to Section A of the questionnaire on December 24, 2018, a response which Commerce found to be untimely filed and rejected from the record.¹⁴⁰ Upon Forgital's request, Commerce ultimately granted Forgital another opportunity to file its Section A response, and the company filed a timely response to Section A on March 6, 2019.¹⁴¹

With respect to the second point, Commerce properly identified deficiencies in Forgital's questionnaire responses and sought clarification or requested missing information in its supplemental questionnaire. Forgital takes issue with our phrasing in the Preliminary Decision Memorandum that we "issued multiple questionnaires with respect to Forgital's production and sale of subject merchandise."¹⁴² Forgital argues that our statement suggests that its responses were deficient in multiple *supplemental* questionnaires.¹⁴³ While Forgital is correct that Commerce issued one supplemental questionnaire, our intention was to demonstrate that Forgital's responses to the original *and* supplemental questionnaires were deficient or inconsistent with one another, as discussed above.¹⁴⁴ Forgital alleges that the issuance of one

¹³⁴ See *Özdemir Boru San. ve Tic Ltd. Sti v. United States*, 273 F. Supp. 3d 1225 (CIT 2017) ("The purpose of verification is not to 'continue the information-gathering stage of {Commerce's} investigation.' . . . 'Verification is intended to test the accuracy of data already submitted, rather than to provide a respondent with an opportunity to submit a new response.'") (internal citations omitted).

¹³⁵ See Forgital's Case Brief at 23, 37, and 48.

¹³⁶ See, e.g., *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016) and accompanying Issues and Decision Memorandum at Comment 4.

¹³⁷ See Forgital's Case Brief at 47-53.

¹³⁸ See Commerce's Letters to Forgital, dated May 15, 2019 and May 22, 2019.

¹³⁹ See Initial Questionnaire.

¹⁴⁰ See Commerce's Letter to Forgital, dated February 15, 2019.

¹⁴¹ See Section A Response.

¹⁴² See Preliminary Decision Memorandum at 6.

¹⁴³ See Forgital's Case Brief at 11.

¹⁴⁴ See Supplemental Response at 16-17.

supplemental questionnaire was insufficient,¹⁴⁵ but as Commerce explained in detail in the *Preliminary Results*, the supplemental questionnaire Commerce issued was comprehensive, addressing deficiencies in each of Forgital's Section A, C, and D responses, as well as inconsistent statements between those questionnaires responses.¹⁴⁶ Commerce thereby fulfilled its obligation under section 782(d) of the Act to provide a party with an opportunity to remedy or explain a deficiency in its questionnaire responses. Furthermore, consistent with section 782(c)(1) of the Act, Commerce permitted Forgital to report its COP for fiscal years 2015 and 2016, rather than during the POR. However, Forgital's responses continued to be so incomplete or inconsistent as to serve as a reliable basis for reaching a determination under section 782(e) of the Act. This information is essential to the dumping calculation process. Therefore, we continue to find that, pursuant to sections 776(a)(1) and (2)(A)-(C) of the Act, 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. Therefore, to calculate a dumping margin Commerce must resort to facts available to account for the unsubstantiated and inaccurate information. Further, Commerce continues to conclude that Forgital failed to cooperate by not acting to the best of its ability to comply with requests for information by Commerce. Therefore, Commerce determines that application of an adverse inference to facts otherwise available is warranted under section 776(b) of the Act. As the AFA rate, we will continue to apply a dumping margin of 204.53 percent, the AFA rate selected in the less-than-fair-value investigation.¹⁴⁷

¹⁴⁵ See Forgital's Case Brief at 11-12.

¹⁴⁶ See Preliminary Decision Memorandum at 6-15.

¹⁴⁷ See *Order*, 82 FR at 40138.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree

Disagree

4/14/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance