



A-580-892  
Investigation  
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April 9, 2018

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

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of Certain  
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from  
the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) determines that certain cold-drawn mechanical tubing of carbon and alloy steel (mechanical tubing) from Korea is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The petitioners in this investigation are ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co., USA, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners). The two mandatory respondents in this investigation are: Sang Shin Ind. Co., Ltd. (Sang Shin) and Yulchon Co., Ltd. (Yulchon). The period of investigation (POI) is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2017.<sup>1</sup> We analyzed the comments submitted by interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the preliminary margin calculations for the respondents in this investigation. We recommend that you approve the positions describe in the “Discussion of the

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<sup>1</sup> See 19 CFR 351.204(b)(1); see also the petitioners’ letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland – Petitions for the Imposition of Antidumping and Countervailing Duties,” dated April 19, 2017 (the petition).



Issues” section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issue 1: Findings at Yulchon’s Verification

Issue 2: Application of Total AFA to Yulchon

## II. BACKGROUND

On November 22, 2017, Commerce published the *Preliminary Determination* for the LTFV investigation of mechanical tubing from Korea, and invited parties’ comments.<sup>2</sup> On October 13, 2017, we issued the Verification Schedule.<sup>3</sup> On November 24, 2017, we issued the Verification Outline.<sup>4</sup> Between December 5 and December 9, 2017, we conducted a sales verification of Yulchon.<sup>5</sup> On February 12, 2018, the petitioners urged Commerce to not conduct a cost verification in light of the contents of the Verification Report. Commerce chose not to conduct a cost verification because it determined that critical information reported in the sales responses was unverifiable and conducting a cost verification would be a waste of Commerce’s limited resources under the circumstances.<sup>6</sup> Between February 21, 2018, and February 28, 2018, we received case and rebuttal briefs from the petitioners and Yulchon.<sup>7</sup> Based on our analysis of the comments received, we have revised the dumping margin for Yulchon from the margin calculated in the *Preliminary Determination*, and have not revised Sang Shin’s assigned margin, and we have revised the all-others rate.

## III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cold-drawn mechanical tubing from Korea. In the *Preliminary Determination*,<sup>8</sup> we set a separate briefing schedule on scope issues for interested parties.<sup>9</sup> Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum.<sup>10</sup> On December 4, 2017, the petitioners

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<sup>2</sup> See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 50375 (November 22, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>3</sup> See Commerce’s October 13, 2017 letter (Verification Schedule).

<sup>4</sup> See Commerce’s November 24, 2017 letter (Verification Outline).

<sup>5</sup> See Memo to the File, “Verification of the Sales Response of Yulchon in the Antidumping Investigation of Cold-Drawn Mechanical Tubing from the Republic of Korea,” dated February 7, 2018 (Verification Report).

<sup>6</sup> See the petitioners’ letter, “Cold-Drawn Mechanical Tubing from the Republic of Korea -Petitioners’ Request to Cancel Yulchon’s Cost Verification,” dated February 12, 2018.

<sup>7</sup> See Yulchon’s February 21, 2018 submission (Yulchon’s Brief), the petitioners’ February 22, 2018 submission (The petitioners’ Brief), Yulchon’s February 28, 2018 submission (Yulchon’s Rebuttal); and the petitioners’ February 28, 2018 submission (The petitioners’ Rebuttal).

<sup>8</sup> See *Preliminary Determination*.

<sup>9</sup> *Id.*, 82 FR 50376. The scope case briefs were due five days after the publication of the preliminary less than fair value determinations for China, Germany, India, Italy, Korea, and Switzerland in the *Federal Register*, and the rebuttal briefs were due three days after the due date for the scope case briefs, *i.e.*, Monday, November 27, 2017 and Thursday, November 30, 2017.

<sup>10</sup> See Memorandum, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People’s Republic of China, and Switzerland: Scope

withdrew a portion of their comments regarding the scope language.<sup>11</sup> Commerce addressed all scope comments in the Final Scope Decision Memorandum.<sup>12</sup> For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

#### **IV. CHANGES SINCE THE PRELIMINARY DETERMINATION**

Based on our review of the record, analysis of the comments from parties, and verification findings, we made certain changes to the margin calculations for Yulchon. Specifically, we made the following changes:

A: Yulchon

As discussed below, we have applied total facts available with adverse inferences (AFA) to Yulchon. Further, we have applied critical circumstances to Yulchon based on AFA

B: All Others

Based on the changes from the preliminary determination as they apply to Yulchon, Commerce has applied a margin of 30.67 percent based on a simple average of the petition margins and is further applying critical circumstances to the Korean exporters/producers within the “all others” rate.

#### **V. USE OF TOTAL ADVERSE FACTS AVAILABLE**

Section 776(a)(1) and 776(a)(2)(A)-(D) of the 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 in a timely manner or in the form or manner requested subject to section 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.<sup>13</sup>

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Comments Decision Memorandum for the Preliminary Determinations,” dated November 15, 2017 (Preliminary Scope Decision Memorandum).

<sup>11</sup> See the petitioners’ letter, “Certain Cold-Drawn Mechanical Tubing from Germany et al. – EN-10305-3,” dated December 4, 2017.

<sup>12</sup> See Memorandum, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People’s Republic of China, and Switzerland: Scope Decision Memorandum for the Final Determinations: Final Scope Decision Memorandum,” dated December 4, 2017 (Final Scope Decision Memorandum).

<sup>13</sup> Under the Trade Preferences Extension Act of 2015, numerous amendments to the antidumping duty (AD) and countervailing duty (CVD) laws were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (*TPEA*). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty*

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

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

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (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.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.<sup>14</sup> In doing so, and under the *TPEA*, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) provides that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the 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>15</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>16</sup>

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*Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*TPEA Application Dates*). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

<sup>14</sup> See section 776(b)(1)(B) of the Act; *TPEA*, section 502(1)(B).

<sup>15</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

<sup>16</sup> See, e.g., *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, 1997) (*Preamble*); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>17</sup> Further, and under the *TPEA*, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new 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. The *TPEA* 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.

#### **A. Application of Total AFA for Sang Shin**

Sang Shin did not respond to Commerce’s AD questionnaire. As a result, in the *Preliminary Determination*, we found that necessary information is not available on the record, that Sang Shin withheld information Commerce requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding.<sup>18</sup> Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we relied upon facts otherwise available to determine Sang Shin’s preliminary dumping margin.<sup>19</sup> In addition, we concluded that Sang Shin failed to cooperate to the best of its ability to comply with our request for information, and in accordance with section 776(b) of the Act and 19 CFR 351.308(a), we used an adverse inference when selecting from among the facts otherwise available.<sup>20</sup> No party commented on our treatment of Sang Shin, and we have continued to apply AFA with respect to this company.

#### **B. Application of Total AFA for Yulchon**

As discussed in Comments 1 and 2 below, Yulchon did not cooperate with respect to certain key aspects. Significantly, it failed to reconcile its reported home market and U.S. sales data during the sales verification of its books and records, and Commerce found other deficiencies at verification. Importantly, Commerce cannot rely on Yulchon’s reported data because they do not tie back to Yulchon’s books and records and, therefore, are unreliable for the purposes of calculating Yulchon’s estimated weighted-average dumping margin. Furthermore, Yulchon’s inability to reconcile its reported data precluded Commerce verifiers from performing essential

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<sup>17</sup> See SAA at 870.

<sup>18</sup> See PDM at “Application of Facts Available.”

<sup>19</sup> *Id.*

<sup>20</sup> See PDM at “Use of Adverse Inference,” citing, for example, *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 AFA when the respondent failed to respond to the questionnaire).



procedures of the verification process.<sup>21</sup> As a result, we find that necessary information is not available on the record, that Yulchon withheld information Commerce requested, that it failed to provide information by the specified deadlines, that it significantly impeded the proceeding, and provided information which could not be verified. Moreover, we find that Yulchon failed to act to the best of its ability in this investigation. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D), and 776(b) of the Act, and as discussed below in Issue 2, Commerce concludes that application of total facts available with an adverse inference is appropriate with respect to Yulchon.

### C. Selection and Corroboration of the AFA Rate

In relying on AFA, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.<sup>22</sup> In selecting an AFA margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the AFA rule, which is to induce respondents to provide Commerce with complete and accurate information in a timely manner.<sup>23</sup> In an investigation, Commerce's general practice with respect to the assignment of a rate as AFA is to assign the higher of the highest dumping margin alleged in the petition or the highest calculate dumping margin of any respondent in the investigation.<sup>24</sup>

Commerce initiated this investigation on May 9, 2017.<sup>25</sup> The highest petition rate is permissible as an AFA rate in this instance because we have not calculated a rate for any participating respondent.<sup>26</sup> In this investigation, the highest dumping margin alleged in the petition is 48.00 percent.<sup>27</sup> Therefore, Commerce has assigned to Sang Shin and Yulchon as AFA the highest margin found in the petition, 48.00 percent.

Because the AFA rate applied to Sang Shin and Yulchon is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable. We have determined that the petition margins are reliable after reviewing and considering the adequacy and accuracy of the information in the petition.<sup>28</sup>

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<sup>21</sup> See *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014) and accompanying Issues and Decision Memorandum at Comment 6 (*Rebar from Mexico*).

<sup>22</sup> See section 776(b)(2) of the Act.

<sup>23</sup> See SAA at 870. See also, e.g., *Notice of Final Determination of Sales at Less than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988, 75990 (December 26, 2012).

<sup>24</sup> See *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 20.

<sup>25</sup> See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 22491 (May 16, 2017) (*Initiation Notice*).

<sup>26</sup> See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Circ. 1990).

<sup>27</sup> See *Initiation Notice*.

<sup>28</sup> See Commerce's "Enforcement and Compliance Office of AD/CVD Operations Antidumping Duty Investigation Initiation Checklist Subject: *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea*," dated May 9, 2017 (Initiation Checklist).

Specifically, we examined evidence supporting the calculations in the petition to determine the probative value of the dumping margins alleged in it for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the alleged dumping margin calculations, *i.e.*, price-to-price and price-to-constructed value (CV).<sup>29</sup> Further, we also examined information from various independent sources provided either in the petition or, at our request, in the supplements to the Petition that corroborate key elements of the price-to-price and price-to-CV calculations used in the petition to derive the dumping margins alleged in the petition.<sup>30</sup>

Based on our examination of the information on the record, as discussed in detail in the Initiation Checklist, we considered, at the time of initiation, the petitioners' price-to-price and price-to-CV calculations to be reliable.<sup>31</sup> Because we subsequently obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the U.S. price or CV calculations provided in the petition, based on our examination of this information, we determine that the dumping margin alleged in the petition is reliable for the purposes of assigning an AFA rate to Sang Shin and Yulchon in this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA margin, 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. Because there are no participating cooperative respondents in this investigation, we relied upon the dumping margin alleged in the Petition, which is the only information regarding the mechanical tubing industry reasonably at Commerce's disposal. Likewise, as we determined in *GOES from China*, in which the only mandatory respondent also received AFA, "there was no need to review any additional documentation outside of what was submitted in the petition considering such sources of information fulfill our requirements for corroboration of secondary information."<sup>32</sup>

Accordingly, we determine that the highest margin alleged in the Petition has probative value, and we have corroborated the AFA rate of 48.00 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that: 1) the rate was considered by Commerce to be reliable in the pre-initiation stage of this investigation and no subsequent

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<sup>29</sup> *Id.*

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

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

<sup>32</sup> See *Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES from China*), and accompanying IDM at 20; see also *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1349 (Fed. Cir. 2016) (stating that "the statute does not require {Commerce} to corroborate corroborating data"); *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with Commerce that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that "[t]he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition").

contrary information suggesting otherwise has been placed on the record; and 2) the rate is relevant to the uncooperative respondents Sang Shin and Yulchon.

## VI. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, Commerce found that critical circumstances existed for Sang Shin, but not for Yulchon, nor for “all other” producers/exporters of mechanical tubing from the Korea based on trade data submitted through November 2017.<sup>33</sup> Because critical circumstances were alleged in this case and because we made a preliminary determination, pursuant to section 735(a)(3) of the Act, and 19 CFR 351.210(c), we hereby make a final determination on the issue of critical circumstances. We have made changes to our preliminary critical circumstances determination with respect to Yulchon and the companies covered under the “all others” rate. We have made no changes to our preliminary critical circumstances determination with respect to Sang Shin.<sup>34</sup>

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

With respect to Yulchon and Sang Shin, we preliminary found and continue to find for this final determination that there is no history of injurious dumping of mechanical tubing from Korea pursuant to section 735(a)(3)(A)(i) of the Act.<sup>35</sup> Because there is no prior history of injurious dumping, we next examine, under section 735(a)(3)(A)(ii) of the Act, whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.<sup>36</sup>

Because Yulchon and Sang Shin were uncooperative, we are assigning, as AFA, a rate of 48.00 percent, the highest margin which could be corroborated to the extent practicable, as noted above. Because the dumping margin for Yulchon and Sang Shin exceeds the threshold sufficient to impute knowledge of dumping, this margin provides a sufficient basis for imputing knowledge

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<sup>33</sup> See *Preliminary Determination*, 82 FR at 55565; see also PDM at 19-23.

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

<sup>35</sup> *Id.*

<sup>36</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413, 17415-416 (March 26, 2012) (*BMRF from Korea*).



of sales of subject merchandise at LTFV by Yulchon and Sang Shin to the importers. Further, since the International Trade Commission (ITC) preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of mechanical tubing from the Korea,<sup>37</sup> Commerce determines that importers knew or should have known that there was likely to be material injury by reason of sales of mechanical tubing at LTFV by Yulchon and Sang Shin.

Accordingly, because the statutory criteria of section 735(a)(3)(A)(ii) of the Act have been satisfied for Yulchon and Sang Shin, we examine whether imports from Yulchon and Sang Shin were massive over a relatively short period, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h). In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.<sup>38</sup>

Commerce’s long-standing practice is to rely on respondent-specific shipment data to determine whether imports were massive in the context of critical circumstances determinations. Where such verified information does not exist because of the respondent’s failure to cooperate to the best of its ability in the course of the investigation, Commerce normally makes an adverse inference that imports were massive during the relevant time period.<sup>39</sup> In response to our shipment questionnaire, Yulchon reported monthly U.S. shipments during the period from October 2016 and October 2017. However, due to the fact that we do not have verifiable shipment data from Yulchon, we must base our massive imports determination on the facts available, pursuant to section 776(a) of the Act. Furthermore, because Yulchon did not participate to the best of its ability in this investigation in accordance with section 776(b) of the Act, we are unable to rely on Yulchon’s unverified shipment data. For further discussion, *see* “Use of Total Adverse Facts Available,” above and “Discussion of the Issues,” below. Similarly, for Sang Shin, because it did not respond to any of our questionnaires, we are finding that we must base our massive imports determination on the facts available, with an adverse inference, in accordance with section 776(a) and (b) of the Act.<sup>40</sup> For further discussion, *see* “Use of Total

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<sup>37</sup> *See Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea, and Switzerland; Determinations*, 82 FR 26812 (June 8, 2017) (ITC Preliminary Determination).

<sup>38</sup> *See* 19 CFR 351.206(h)(2).

<sup>39</sup> *See, e.g., Certain Carbon and Alloy Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017)(CTL Plate from Italy); and *Steel Concrete Reinforcing Bar from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014)(Rebar from Mexico), and accompanying IDM at 6.

<sup>40</sup> *See, e.g., Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108 (January 20, 2016), and accompanying IDM (*Uncoated Paper from Australia*); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin*

Adverse Facts Available,” above. Thus, we have used an adverse inference in applying facts available, and determine that there were massive imports from both Yulchon and Sang Shun over a relatively short period.<sup>41</sup>

Accordingly, based on our determination that there is a reasonable basis to believe or suspect that the importers knew or should have known that Yulchon and Sang Shin were selling mechanical tubing from Korea at less than fair value, that there was likely to be material injury by reason of such imports, and that, as adverse facts available, there have been massive imports of mechanical tubing from Korea over a relatively short period, we determine that critical circumstances exist for imports from Korea of mechanical tubing produced by Yulchon and Sang Shin.

With regard to the non-individually investigated companies receiving the all-others rate, we preliminarily found and continue to find for this final determination that there is no a history of injurious dumping of mechanical tubing from Korea pursuant to section 735(a)(3)(A)(i) of the Act.<sup>42</sup> Because there is no prior history of injurious dumping, we next examine, under section 735(a)(3)(A)(ii) of the Act, whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be material injury by reason of such sales. As noted above, when evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.<sup>43</sup> Commerce has applied a margin of 30.67 percent based on a simple average of the petition margins to the Korean exporters/producers within the “all others” rate, which exceeds the threshold to impute knowledge to the customers or importers that the subject merchandise was being sold at LTFV. Further, since the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of mechanical tubing from the Korea,<sup>44</sup> Commerce determines that importers knew or should have known that there was likely to be material injury by reason of sales of mechanical tubing at LTFV by the Korean exporters/producers within the “all others” rate.

Accordingly, after reviewing the statutory criteria of section 735(a)(3)(A)(ii) of the Act, we examine whether imports from the non-individually examined companies were massive over a relatively short period, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h). Consistent with prior determinations, we did not impute the adverse inferences of massive

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*Thermal Transfer Ribbons from Japan*, 68 FR 71702, 71076-77 (December 22, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 69 FR 11834 (March 12, 2004), and accompanying IDM at Comment 2.

<sup>41</sup> See, e.g., *Uncoated Paper from Australia*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan*, 64 FR 73215, 73220 (December 29, 1999).

<sup>42</sup> See *Preliminary Determination*, 82 FR at 55565; see also PDM at 19-23.

<sup>43</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413, 17415-416 (March 26, 2012) (*BMRF from Korea*).

<sup>44</sup> See *ITC Preliminary Determination*.

imports that we applied to the mandatory respondents to the non-individually examined companies receiving the all-others rate.<sup>45</sup> Rather, Commerce examined data for total imports of the subject merchandise during the comparison period relative to a base period to determine whether or not imports were massive with respect to these companies. Commerce typically determines whether or not to include the month in which a party had reason to believe that a proceeding was likely in the base or comparison period based on whether the event that gave rise to the belief (*i.e.*, the filing of the Petition) occurred in the first half of the month (included in the comparison periods of no less than three months).<sup>46</sup> Moreover, it is Commerce's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.<sup>47</sup> Pursuant to our request for parties to report shipment data from October 2016 through the last day of the month of the publication of the preliminary determination in this investigation (*i.e.*, November 2017), we note the appropriate analysis now considers the five-month comparison period of May 2017 through September 2017.<sup>48</sup> Therefore, we compared the base period of December 2016 through April 2017 to the comparison period of April 2017 through October 2017 to determine whether or not imports of subject merchandise were massive. These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and that the base period have a comparable duration. We relied on U.S. import statistics, as reported by Global Trade Atlas,<sup>49</sup> to determine whether or not there were massive imports of subject merchandise in the comparison period.<sup>50</sup>

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<sup>45</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 PDM (noting that, where mandatory respondents receive AFA, we do not impute "massive imports" to companies receiving the all-others rate), 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); see also *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), unchanged in *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Final Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).

<sup>46</sup> See, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31312.

<sup>47</sup> See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004).

<sup>48</sup> The *Preliminary Determination's* publication date of November 22, 2017, resulted in the Department's prior request for information including shipment data through September 2017.

<sup>49</sup> The petitioners based their "surge" calculation on ITC data. Commerce conducted its own query of GTA data, using the same series of HTSUS subheadings as those used for respondent selection, for the base and comparison periods and confirmed that, to the extent monthly data is available from all three sources, the GTA data, ITC data, and SIMA data are nearly identical.

<sup>50</sup> See Memorandum to the File, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: Critical Circumstances Analysis," dated concurrently with this preliminary determination. Because Sang Shin not report the quantity of their shipments of subject merchandise to the United States during the base and comparison periods, and because Commerce was not able to verify Yulchon's shipment data, Commerce is not able to adjust the U.S. import statistics to exclude the data reflecting shipments made by the mandatory respondents. Therefore, we relied on the total quantity of U.S. imports to conduct its "massive imports" analysis for all other exporters and producers in Korea.

This comparison indicates that there was a 21 percent (*i.e.*, more than 15 percent) increase in imports of subject merchandise during a “relatively short period” of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we find there to be massive imports for all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). Accordingly, we find that there were massive imports of merchandise from all other exporters and producers from Korea and, thus, that critical circumstances exist for all other exporters and producers from Korea.

## VII. DISCUSSION OF THE ISSUES

### Comment 1: Findings at Yulchon’s Verification

#### *Yulchon’s Comments*

- In advance of verification, Yulchon prepared its main documents, which have been generally presented at Commerce verifications in the past. “This is not all the documents, but rather for the verification of sales process and accounting process, because the data related to the company’s purchase, production, sales, collection and related accounting are quite extensive, and if Commerce wants every document of a company, it then must spend hugely more time and go through them all one by one.”<sup>51</sup> On-site verification must be completed in a limited time, therefore, it is necessary to review only key documents, not all data/documents.
- At this verification, however, the verification team repeatedly returned verification packages and delayed the verification for the sole reason that Yulchon’s verification packages did not contain all data/documents of the company. That is not Commerce practice, nor measured or reasonable, or showing wise judgment, and is thus, unlawful.<sup>52</sup> Rather, it is the approach of one bent from the start on failing a company, and is a standard that is impossible for anyone to meet, which is why Commerce does not use that approach “unless it wishes to set up camp at the company and stay indefinitely.”<sup>53</sup> Yulchon invited Commerce verifiers to stay longer to complete the verification, but the verification team declined the invitation, and even wanted to leave early at 3 p.m. on the final day, for what to Yulchon appeared to be personal reasons to meet others.
- The verification team did not understand or appreciate Yulchon’s sales and accounting systems, including how it records the outsourcing cutting processing, and these failures is the main reason that verification was delayed. Many of the Verification Report’s claims are contrary to fact, and discussed below:

#### *Outsourcing the Cutting of Mechanical Tubing*

- The diagram provided by Yulchon which demonstrates the process by which it outsources the cutting of mechanical tubes is an organized summary chart, which was

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<sup>51</sup> See Yulchon’s Brief at 5-6.

<sup>52</sup> See *Micron Technology v. United States*, Fed. Cir. June 30, 1997, No. 96-1181 (*Micron*) (Verification is a spot check of documents, based on judgement, and not a review of all documents of a company. Commerce verifiers must use reasonable judgement in that regard).

<sup>53</sup> See Yulchon’s Brief at 6.

also already explained in the original questionnaire response,<sup>54</sup> supplemental response,<sup>55</sup> and verification exhibit (VE) VE-2.

- Pages 6, 7, and 26 of the Verification Report indicate that the verification was delayed because Yulchon's packages did not include the shipping invoice and processing price list. The shipping invoice to the outsourcing processor was submitted with relevant explanation in a supplemental questionnaire response.<sup>56</sup> The verification team should have been able to easily understand the sales process and accounting flow even though these documents were not yet provided to Commerce in the verification package, although the verifiers instructed Yulchon to include these documents in the verification exhibit. If the verification team had an intention to use time efficiently, they would have taken the verification package at the outset, and requested the additional documents when necessary instead of repeatedly returning the package to Yulchon, bringing verification to an unnecessary and inefficient halt.
- The Verification Report indicates that Yulchon wrongly stated in the original Section A response that Yulchon did not have any price lists, discount or rebate schedules in the POI. The price list discussed in the Verification Report is not a sales document circulated to the processor, which is why Yulchon correctly defined it as an "Initial Agreed Price" in its original Section A response.<sup>57</sup>

#### CONNUM

- By the time of verification, Commerce should have a defined CONNUM and scope, and communicated them to interested parties. The petitioners and relevant ASTM standards indicate the mechanical tubing is heat treated after the cold drawing process. The verification team claims that Yulchon incorrectly did not report heat treatment as part of the CONNUM. As stated in the petitioners' model match comments,<sup>58</sup> heat treatment occurs after the cold drawing process. Also, ASTM and EN standards say that heat treatment for these ASTM/EN grades is after cold drawing.<sup>59</sup> Therefore, Commerce's insistence on pages 15-18 and 26-27 of the Verification Report, that heat treatment is part of the CONNUM structure and not related to before/after cold drawing, is wrong and represents wasted time.
- Moreover, in the *Preliminary Determination*, Commerce changed the scope to exclude mechanical tubing of less than 12 inches (304.8 mm); at verification, however, the verification team stated that the final scope of the investigation will be decided in the final determination. This statement created huge confusion and is not how an

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<sup>54</sup> See Appendix A-8 (Sales Process, Home and U.S. Sales) and narrative for distribution process of Yulchon's July 14, 2017 submission Section A.

<sup>55</sup> See Yulchon's October 23, 2017 BCDSQR. Answer to Question 1 from 19.

<sup>56</sup> See Yulchon's September 26, 2017 Section A Supplemental Response. Question 26 (H.M. sales through outsourcing processor) and Question 26 (U.S. sales through outsourcing processor).

<sup>57</sup> See Verification Report at 6, 7, 9, 25 and 26.

<sup>58</sup> See the petitioners' June 9, 2017 submission at 22 and 23. (Field 3.6 (Heat Treatment): Description - Heat treatments after cold-forming. Narrative - explain your proposed codes for each additional heat treatment and document with reference to national standards for mechanical tubing.)

<sup>59</sup> See ASTM A513: 12.2, which states that the thermal conditions under which tubing may be finished are: NA (Not Annealed) in the as-welded or as-drawn condition; and SRA (Stress Relieved Annealed / N (Normalized or Annealed).



investigation should be done.<sup>60</sup> Page 27 of the Verification Report indicates that Yulchon did not provide any documentation with the selected sales traces to support Yulchon's reported length. That is wrong. Yulchon's documents prove the reported length. For example, the length of the first home market sales trace is 38 mm, which is confirmed at pages 6 (K-1 ERP data), 25 (internal price list), 26 (shipping invoice), and 31 (warehousing documents of purchased product after cutting processing), however, the verification team delayed verification by requesting additional documents, such as those issued by customers. Although Yulchon provided sufficient explanation of length, as well as clarification of the product in its original and supplemental responses, the verification team wasted a huge amount of time on the length issue.

#### *Sales Expenses/Date of Sale*

- Yulchon properly reported the average interest rate on short-term borrowings by using Commerce's long accepted, established methodology – *i.e.*, turnover rate using monthly average borrowings balance and POI total interest expense, and Commerce did not note this was an error at the conclusion of the supplemental questionnaire process. Pages 31-32 of the Verification Report wrongly claims this is an error.
- Even though Yulchon reported two types of warranty expenses, pages 32-33 of the Verification Report wrongly claimed error. As Yulchon had explained, Yulchon does not change the sales amount when it incurs a warranty expense, and instead Yulchon deducted the account receivable. In other words, Yulchon changes the amount the customer is obliged to pay Yulchon without revising the sales amount in the sales sub-ledger. The verification team failed to appreciate that stated fact, and thus, warranty expenses were properly explained and reported.
- Contrary to what was stated on page 30 of the Verification Report, international freight was reported correctly. Verification Exhibit 26 indicates that for commercial invoice YC-161208-DHL, the transaction was delivered through the air (*via* DHL), the vessel is DHL, a DHL airway bill is attached at page 14, and page 17 indicates the loading port (14) is Incheon airport, and page 22 is a copy of original freight invoice. The reported amount per MT exactly ties to the freight invoice.
- Page 12 of the Verification Report indicates that the price changed after shipment for HM sales trace one, and thus, the date of sale is in error for this particular sale. That is not correct. This sales trace shows that long-length product was shipped to an outside cutter in October 2015, was repurchased by Yulchon and sold to the final customer in April 2016. After the purchased product was sold and shipped to that customer, a price adjustment was made in July 2016. Date of sale was correctly reported as April 2016, the date of shipment and price adjustment was properly reported.<sup>61</sup> Commerce's long established and undisputed practice is that date of sale cannot be after date of shipment, so date of shipment is the correct date of sale, as reported. Price adjustments after shipment do not affect date of sale under Commerce practice.

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<sup>60</sup> Indeed, as stated in Yulchon's ministerial error filing after the *Preliminary Determination*, Commerce's change to the scope of the investigation, and then not properly recognizing that in calculating the margin for Yulchon, was the sole reason for an affirmative, and not *de minimis*, margin for Yulchon.

<sup>61</sup> See VE-18, at page 14 (Shipping invoice to outside processor, showing shipping date from Yulchon to that Processors and for further processing to small cut-to-length product. Pages 21-28 is purchase and sales documents of small cut-to-length product. Pages 39-42 are price billing adjustment documents).

### *Accounting*

- Page 22 of the Verification Report indicates that the verification team could not verify the chart of accounts and sales quantity and value due to Yulchon's unpreparedness. That is not true. Yulchon faithfully and promptly answered the requests of the verification team.
- The Boram sales reconciliation was fully prepared at 9:50 am on the third day of verification. Page 22 the Verification Report incorrectly states that it was not prepared by the requested time.
- Page eight of the Verification Report indicates that Yulchon did not provide the raw material inventory movement ledger, nor the product inventory movement ledger despite the verification team's request. That is not correct as it was provided by projecting a beam to an electronic screen. The verification team did not request daily/monthly production reports during the verification.
- Yulchon's Q&V reconciliation package was prepared pursuant to the instruction of the verification outline at the outset of the verification. The package follows the top down approach (from financial statement to individual transaction in Yulchon's K-1 ERP). Yulchon also provided a separate excel worksheet showing the differences between the original response reconciliation, supplemental reconciliation, and post-preliminary reconciliation, which affected certain subaccounts, and billing adjustments by noon on day three of the verification, as requested by the verification team. However, the verification team wrongly refused to hear Yulchon's presentation of the package. Rather, in the third day of verification, the verification team requested the sales ledger of August 2016, but did not verify anything for the Q&V reconciliation package, saying instead that the verification team was busy with something else. Moreover, even though Yulchon explained multiple times that the individual sales data including billing adjustment is kept in K-1 ERP and that the monthly summation numbers are recorded in the accounting system, the verification team wrongly insisted on reconciling billing adjustments to Yulchon's accounting records.<sup>62</sup> Regardless of the verification team's own delayed progress, the completeness test was the only unfinished issue which would have taken a few hours to complete.

### *The Petitioners' Comments*

- At verification, Commerce found Yulchon's sales information unverifiable and, therefore, unusable. As a result, Commerce determined not to proceed with the verification of Yulchon's reported costs. Thus, all the necessary information needed to calculate an accurate dumping margin for Yulchon is missing from the record of this proceeding.<sup>63</sup>
- Yulchon made a conscious decision to affirmatively mislead Commerce by knowingly submitting "screwed up" information, which was unreliable for purposes of calculating the preliminary dumping margin. Verification also made clear that Yulchon made no

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<sup>62</sup> See Page 20: "We also requested that all returns, samples, billing adjustments, etc., reported in the sales reconciliation worksheets needed to be traced through the accounts in Yulchon's general ledger/trail balance and sub-ledgers for each account. We told company officials that we would examine Yulchon's sales reconciliation through its accounting records and not just through the Excel sales reconciliation worksheet that company official provided to us that they said had been extracted from the K-1 ERP system."

<sup>63</sup> *Id.* at 1, 7, and 17.

attempt to comply with Commerce's multiple requests for accurate information and data.<sup>64</sup>

- In addition, the record evidence demonstrates that Yulchon knowingly submitted false and inaccurate information, which was used in calculating Yulchon's preliminary dumping margin. This preliminary margin not only established an artificially low margin for Yulchon, but it also set a low provisional measure deposit cap and the "all others" rate. Yulchon's decision to impede this investigation from the very outset should not be rewarded.<sup>65</sup>
- Based on Yulchon's admission of submitting false information, Commerce should amend the preliminary determination to assign Yulchon a total AFA rate of 48.00 percent and likewise correct the "all others" rate. The amended preliminary determination should be effective as of the date of Commerce's initial preliminary determination (November 22, 2017).<sup>66</sup>

**Commerce's Position:** We disagree with Yulchon. In its case brief, Yulchon repeatedly contends it need not provide "all" of the documents requested by Commerce, and that requesting all documents for a particular verification exhibit wasted time, delayed verification, and violated the Court's ruling in *Micron*, i.e., that verification is a spot check of documents. Contrary to Yulchon's assertions, and consistent with *Micron*, the verification team attempted to conduct a spot check of Yulchon's records because there is a limited time for verification. The cover letter of the Verification Outline makes clear that there is a limited time to conduct verification, which is why it requests that verification packages be made in advance of the verification team's arrival, and that the documents be translated:

To facilitate the verification process, we have described the types of source documents that we will require to support the submitted data. As you are aware, the time available for the verification is limited. Consequently, we ask that the necessary information be gathered by the appropriate personnel prior to the verifiers' arrival. The verifiers will require copies of certain documents for the verification report. Copies of supporting documentation, along with English translations of all pertinent information, should be made prior to the verification.<sup>67</sup>

With regard to preparedness and the limited time available to conduct verification, the cover letter of the Verification Outline states that:

It is the responsibility of the respondent to be fully prepared for this verification. If your client is not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified, which may result in our basing the final determination of this investigation, possibly including information that is adverse to the interests of your client.<sup>68</sup>

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<sup>64</sup> *Id.* at 23.

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

<sup>66</sup> *Id.* at 2, 19, and 20-23

<sup>67</sup> See Verification Outline at the cover letter (emphasis not added).

<sup>68</sup> *Id.*

The Verification Report makes abundantly clear that the verification team, time and again, had to move on to other topics when it was apparent that the verification package they were examining was incomplete. The purpose of moving on to another topic, or verification exhibit, is to advance the verification process efficiently with an aim to completing verification because the time for doing so is limited. In the end, because Yulchon was not prepared for verification, the verification team was unable to verify Yulchon's quantity and value of sales, billing adjustments, certain movement expenses, packing expenses, certain sales traces, the length of mechanical tubes that were outsourced to a cutting processor, or conduct any completeness tests.<sup>69</sup> In addition, we found Yulchon misreported its CONNUMs because it did not properly code for heat treatment.<sup>70</sup> Moreover, we found that Yulchon maintained records and documents not previously reported to Commerce.<sup>71</sup>

Yulchon contends it provided "generally presented" documents and it need not provide "all" documents to the verifiers, and returning verification packages, because the packages did not contain "every document of {the} company," wasted time.<sup>72</sup> At no point did the verifiers attempt to examine "every document" kept by Yulchon. However, in examining key aspects of its sales and accounting processes, the verifiers requested samples of all documents associated with one of those functions in order to understand that function. For example, and as detailed below, the verifiers requested an example of each type of document created when Yulchon made a sale of mechanical tubing. This is consistent with that which was required of Yulchon in the Verification Outline. For example, with respect to "Accounting and Data Systems" the Verification Outline requests that Yulchon "Identify **all** reports (*e.g.*, production, inventory, sales, shipment) generated from the data system in the ordinary course of business."<sup>73</sup> The purpose of this is stated in the Original Questionnaire: "A detailed understanding of your accounting and financial practices will help to ensure an accurate **verification**, and is necessary for {Commerce} to analyze your reporting and allocation of expenses."<sup>74</sup> In another example, with respect to the "Sales Process," the Verification Outline requests that Yulchon provide a general overview of the sales process, distribution processes and document flow.<sup>75</sup> The Verification Outline also specifically requests a diagram showing the paper trail for the recording of these sales, starting from the receipt of an order through final payment and the year-end posting in the financial statements, and asks that Yulchon "[i]dentify each step of the paper trail, **all** entries that would be recorded in the books and ledgers, the name and number of the accounting code, and the name of the ledger, book, or journal in which each such entry is made."<sup>76</sup> The Original Questionnaire asks, for example, for "all sales-related documentation generated in the sales process (including the purchase order, internal and external order

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<sup>69</sup> See Verification Report at 2-3.

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

<sup>71</sup> *Id.*

<sup>72</sup> See Yulchon Brief at 5-6.

<sup>73</sup> *Id.* at 7 (emphasis added).

<sup>74</sup> See Original Questionnaire at A-11 (emphasis not added).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 7 (emphasis added).

confirmation, invoice, and shipping and export documentation).”<sup>77</sup> As noted below, despite several opportunities, Yulchon did not provide documents requested of it.

Regarding Yulchon’s contention that it invited Commerce verifiers to stay longer to complete the verification, but the verifiers declined the invitation, and wanted to leave early at 3 p.m. on the last day for “personal reasons to meet others,” is without merit. The verification ended Saturday, December 9, 2017, as scheduled. The Verification Outline, issued 11 days before the start of verification, stated that verification would be conducted December 5, 2017, through December 9, 2017.<sup>78</sup> Moreover, we find Yulchon’s argument disingenuous considering that Yulchon itself requested that the verification end one day early. The Verification Report states the following:

*Fourth Day*

At 8:30 am, we arrived at the company to start verification and found that no verification packages, sales reconciliation or otherwise, were ready for us to review. At 8:56 am, the president of Yulchon joined us and requested that verification finish at the end of the day, since the next day (the fifth day of verification) was Saturday. The team informed Yulchon’s president that verification was scheduled from Tuesday through Saturday, as agreed by Yulchon’s counsel in the verification schedule letter issued in early November, which is also stipulated in the verification outline. The team informed the president that we might have been able to conclude verification on Friday if the company was better prepared for verification, but because so many verification packages were returned to the company to be properly completed, we would need to come back on Saturday to complete verification, as stipulated in the outline.<sup>79</sup>

We further disagree with Yulchon that Commerce does not understand its sales and accounting systems. Yulchon provided descriptions of its sales and accounting systems in the original and supplemental questionnaire responses.<sup>80</sup> The “Accounting and Data Systems” section of the Verification Report is three pages in length, and the “Sales Process” section is four pages. Yulchon has not identified any specific issue with respect to our description or understanding of these systems.

*Outsourcing the Cutting of Mechanical Tubing*

In its questionnaire responses Yulchon noted that it outsources the cutting of mechanical tubing to other companies.<sup>81</sup> Commerce posed extensive supplemental questions to Yulchon on this

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<sup>77</sup> *Id.* at 9.

<sup>78</sup> See Verification Outline at cover letter.

<sup>79</sup> See Verification Report at 20.

<sup>80</sup> See Yulchon’s July 14, 2017 Section A Questionnaire Response (Yulchon July 14, 2017 AQR); *see also* Yulchon’s August 14, 2017 Sections B, C, D Questionnaire Response (Yulchon August 14, 2017 BCDQR); *see also* Yulchon’s September 26, 2017 Section A Supplemental Questionnaire Response (Yulchon September 26, 2017 ASQR); *see also* Yulchon’s October 23, 2017 Section B, C, D Supplemental Questionnaire Response (Yulchon October 23, 2017 BCDSQR).

<sup>81</sup> See Yulchon July 14, 2017 AQR at 10-11, 15-16, 20-22, and Exhibit A-6.



topic,<sup>82</sup> to which Yulchon responded.<sup>83</sup> The verification team examined the process by which Yulchon outsources the cutting of mechanical tubing at verification, and while in the end the team completed this verification step, Yulchon's unpreparedness and conflicting answers on this subject delayed verification.

On the second day of verification, while reviewing Yulchon's sales and cost flowcharts (which list and describe each document generated, and provide the applicable account number to which the document applies), the verification team additionally requested flowcharts with respect to how Yulchon records sales and purchases of product that is cut by an outside processor.<sup>84</sup> In our request, we noted that example documentation should be provided for each step, and we requested that the applicable accounts be included as well.<sup>85</sup> Yulchon provided this the morning of the third day, and while the flowchart listed the requested account numbers, it did not provide a comprehensive list of the documents generated, such as the processing price list, the shipping invoice to the outsourcing cutting processor invoice, *etc.*, although some of the documents themselves were provided.<sup>86</sup> The verification team returned the flowcharts to Yulchon on five different occasions with a request for Yulchon to include examples of each document generated up through the accounting process (*e.g.*, purchase order, tax invoice, tax invoice detail list, outsourcing related shipping invoices, *etc.*) and to ensure each of the documents were listed in the flow chart.<sup>87</sup>

Throughout the verification Yulchon continued to revise verification packages after questions were posed by the verification team. With regard to the "cutting fee" price list, we note that Yulchon reported the existence of this price list in its supplemental questionnaire response.<sup>88</sup> Although price lists were specifically identified in the Verification Outline as a document Commerce would examine, Yulchon did not include the cutting fee price list in the initial presentation of documents regarding this topic. This is one of many examples where Yulchon's unpreparedness and changing explanations delayed the verification. In another example, on the third day, when discussing the sales process for mechanical tubing cut by an outside processor, Yulchon explained that it has duplicate sales invoices for both the sale to the outsourcing processor, as well as the invoice to the final customer.<sup>89</sup> This information was not included in the original sales flow chart, and based on Yulchon's explanations and our questions regarding sales that were cut by an outside processor, the verification team again returned the incomplete verification package to Yulchon to revise the list of documents for home market sales that underwent outsourced processing.<sup>90</sup> In yet another example, on the fifth day when discussing a sales trace, the verification team discovered there were no payment records for mechanical tubes that were cut by an outside processor, at which point Yulchon admitted that there is no payment,

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<sup>82</sup> See Commerce's September 17, 2017, and October 6, 2017, letters.

<sup>83</sup> See Yulchon September 26, 2017 ASQR; *see also* Yulchon October 23, 2017 BCDSQR.

<sup>84</sup> See Verification Report at 6. This was requested to be completed by for the company, and as such, was not due back to us until the next day.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> See Yulchon's October 23, 2017 submission at Exhibits SBCQ-7-a & b.

<sup>89</sup> See Verification Report at 10-11.

<sup>90</sup> *Id.*

because although this is recorded as a sale and an invoice is issued, shipping documents are used to determine the cutting fee.<sup>91</sup> The manner in which Yulchon records its sales and costs with respect to the outsourcing cutting fee is not at issue; however, changing explanations and an inability to provide all of the documents requested delayed verification.

Yulchon claims the verification team should have accepted this verification exhibit as initially presented. However, to do so would be to accept an incomplete verification exhibit. Using the outsourcing of cutting mechanical tubes as an example, the sales and costs flow charts were continuously updated and additional documents were added over the course of several days. As we noted on pages 11 – 12 of the Verification Report:

In our review of Yulchon’s sales process, we observed multiple inconsistencies with the sales process information reported in Yulchon’s questionnaire responses. We found that Yulchon generates several documents during the sales process that were previously not reported in Yulchon’s initial questionnaire or supplemental questionnaire responses (*e.g.*, production reports, raw material mill certificates, multiple invoices issued during the sales process that include outside cutting processing, *etc.*).<sup>92</sup>

## CONNUM

Yulchon’s arguments on heat treating appear to be based on a misconception that mechanical tubes may only be heat treated after the cold drawing process, and claims that it correctly reported heat treatment based on the petitioners’ model match comments. Yulchon contends that because the petitioners’ model match comments described heat treating as “heat treatments after cold forming,”<sup>93</sup> Commerce adopted this description as a part of its model match criteria. This is inaccurate. Commerce did not adopt the petitioners’ proposed description of this model match characteristic, and did not limit heat treatments to post-cold drawing.<sup>94</sup> In addition, despite the description, the petitioners’ model match comments also allowed for heat treatments before any cold drawing would occur (*e.g.*, post-normalizing, spheroidize annealing, and quenched and tempered).<sup>95</sup> Moreover, despite its protests that heat treatments occur only after cold drawing, at verification Yulchon admitted for the first time that it performs annealing, normalizing and stress relief heat treatments before cold drawing.<sup>96</sup>

Yulchon also argues it correctly reported heat treatment based on a certain ASTM and EN standard. ASTM A513, cited by Yulchon, indicates that heat treatments “may” occur after cold drawing, not that they can only occur after cold drawing.<sup>97</sup> The second standard cited by Yulchon, EN 10305, states that “delivery conditions” may include several types of post-cold drawing heat treatments.<sup>98</sup> We do not find the two standards cited by Yulchon to be conclusive

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<sup>91</sup> *Id.* at 11.

<sup>92</sup> *Id.* at 11-12 (internal citations omitted).

<sup>93</sup> See the petitioners’ June 9, 2017 submission at 19-20.

<sup>94</sup> See Commerce letter, dated July 6, 2017.

<sup>95</sup> See the petitioners’ June 9, 2017 submission at 19-20.

<sup>96</sup> See Verification Report at 15.

<sup>97</sup> See Yulchon’s Case Brief at 11, citing ASTM A513.

<sup>98</sup> *Id.* at 11, citing EN 10305.

that heat treatments can only occur after cold drawing, as one states this process “may” occur and the other states the delivery conditions may include heat treatments. The scope of the investigation includes, but is not limited to, 37 standards, as well as any proprietary or company specific standards not listed.<sup>99</sup> In addition, the scope of the investigation states that covered merchandise “may also be heat treated after cold working,” not that it may only be heat treated after cold drawing.<sup>100</sup> As such, we do not find Yulchon’s citation of the petitioners’ model match comments, or two of the 37 standards which are covered by the scope of this investigation, to be persuasive that Yulchon properly reported heat treatment as part of the CONNUM.

In sum, we find that Yulchon did not properly report its CONNUMs because it did not properly report heat treatment. The Verification Report makes clear that almost all of Yulchon’s merchandise is produced with heat treatments either before or after cold drawing, but it reported heat treatment for only few of its CONNUMs in its home market and U.S. sales databases.<sup>101</sup> In fact, Yulchon performs up to three different kinds of heat treatment on its products: annealing or normalizing, stress relief and post-stress relief.<sup>102</sup> Not only did Yulchon misreport the CONNUMs with respect to heat treatment in its sales databases, Yulchon also reported it only recorded heat treatments in its cost database if the heat treatments occurred after cold drawing.<sup>103</sup> Thus, Yulchon incurred costs for up to three heat treatments, but only reported costs for one heat treatment in its cost database. In sum, we find that the CONNUMs in Yulchon’s sales and cost databases have been misreported because they do not properly include heat treatments.

Yulchon states in its case brief that it was confused by the Preliminary Scope Memo.<sup>104</sup> Indeed, Yulchon appears to blame its confusion on the verification team for noting to Yulchon that the Preliminary Scope Memo accompanying the *Preliminary Determination* was a preliminary decision. The Preliminary Scope Memo specifically states that the decision on the 14 scope exclusion requests made in the various companion mechanical tubing investigations is “preliminary,” and that interested parties may submit case briefs with respect to this memo.<sup>105</sup> Yulchon did not state that the Preliminary Scope Memo caused it any confusion at verification.

Yulchon did not mention the Preliminary Scope Memo as the reason why it was unable to provide a verification package for the “Products Subject to the Scope of the Investigation” section in a timely manner. However, the Verification Report is clear that the verification team returned incomplete iterations of the verification package to Yulchon multiple times. The first time the verification team returned the verification package to Yulchon, it did so because Yulchon did not complete the first step of the “Products Subject to the Scope of the Investigation” section in the Verification Outline, *i.e.*, to provide a list of all products sold during

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<sup>99</sup> See the “Scope of the Investigation” section of the *Federal Register* notice accompanying this memorandum.

<sup>100</sup> *Id.*

<sup>101</sup> See Verification Report at 15.

<sup>102</sup> *Id.* at 18.

<sup>103</sup> *Id.* at 15.

<sup>104</sup> See Memorandum, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Germany, India, the Republic of Korea, the People’s Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determination,” dated November 15, 2017 (Preliminary Scope Memo).

<sup>105</sup> *Id.* at 6.

the POI.<sup>106</sup> The second time, Yulchon did not complete the third step, which required Yulchon to provide original source documents which tie its in-scope products to the CONNUM to help the verification team review the product matching criteria. At this point the verification team informed Yulchon that for each physical characteristic comprising the CONNUM, Yulchon must explain how it measured the code for that physical characteristic and provide examples of raw material mill certificates for the reported product grade.<sup>107</sup> The third time the verification package was returned, Yulchon did not identify the source documents for each of the product characteristics or provide examples of such documents.<sup>108</sup> The fourth time, when attempting to examine the source documentation for the length of mechanical tubing that is cut by an outside processor, Yulchon stated it just receives an email regarding the length of the finished tube after it has been cut.<sup>109</sup> The verification package was returned again and the verification team “requested that company officials find production documents or other source documents to support the reported length.”<sup>110</sup> On the fifth day of verification, the verification team asked Yulchon if it had prepared the source documentation that supports the reported length of its mechanical tubes cut by an outside processor, and Yulchon stated it would look for such documents.<sup>111</sup> Later that same day, company officials stated they did not have any source documentation to support Yulchon’s reported length for mechanical tubes that are cut by an outsourcing processor.<sup>112</sup> The verification team then “asked Yulchon to provide *any* documentation to support the length they reported in the home market that is cut by an outside processor.”<sup>113</sup> Ultimately, Yulchon provided no such information, stating on the fifth day that it did not have any documentation to support the length of subject merchandise cut by an outside processor. At no point during the verification did Yulchon point to the Preliminary Scope Memo as to why it was unable to provide requested source documentation regarding the length of mechanical tubing cut by an outside processor.

#### *Sales Expenses/Date of Sale*

We disagree with Yulchon that it properly reported the interest rates for its U.S. and home market credit expenses in its questionnaire responses. For the U.S. credit expense, at verification the team noted to Yulchon that the original questionnaire instructed it to report a published commercial rate from the POI, if Yulchon did not have short-term borrowings.<sup>114</sup> Because Yulchon proposed a rate from a Korean bank for a fixed one-year rate, which was dated after the POI, and did not have any short term borrowings in U.S. dollars, the team instructed Yulchon to prepare a short-term interest rate package for U.S. sales that was a published commercial rate

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<sup>106</sup> See Verification Report at 13.

<sup>107</sup> *Id.* at 14.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 15. In addition, the verification team reminded company officials that they could not complete verification of the products subject to scope without verifying all physical characteristics, which includes length of the finished mechanical tubing after cutting, to the source documents, as identified in the original verification outline.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 27.

<sup>113</sup> *Id.* (emphasis not added).

<sup>114</sup> See Verification Report at 31.

from the POI.<sup>115</sup> When reviewing the home market credit expense, we found that the documents from the auditor's report regarding short-term borrowings did not match for the Korean and English versions.<sup>116</sup> We returned this package to Yulchon and requested the correct documents. When Yulchon returned the package and we attempted to link the total short-term borrowings for each type/account for December 2016 from the worksheet of short-term borrowings accounts, we observed that the short-term borrowings were listed on the auditor's report as a long-term loan, and subsidiary documents were not included in the verification package.<sup>117</sup> We returned the verification package a second time and noted to Yulchon that we needed to reconcile short-term borrowings and short-term interest expenses beyond the general ledger through each account to the original source documents from each bank account. We reminded Yulchon that all selling expenses and movements expenses needed to be prepared based on the verification outline's instructions with all documents translated and that each item needed to reconcile the expense beyond the general ledger to the original source documents.<sup>118</sup>

The next day, when reviewing the credit expense verification package, we noted several discrepancies. For instance, Yulchon reported a short-term interest rate for a Korean bank for one month, but did not report short-term borrowing from that bank for that month.<sup>119</sup> Yulchon explained that it had a loan from that bank for that month but it did not report this loan in its financial statements.<sup>120</sup> In addition, for another Korean bank, Yulchon reported making interest payments each quarter, but its books and records only indicated sporadic payments.<sup>121</sup> The verification package was returned again for Yulchon to explain these discrepancies.

On the last day of verification Yulchon completed the credit expense verification exhibit and explained the discrepancies noted by the verifiers.<sup>122</sup> The verification of Yulchon's credit expenses is yet another example of Yulchon's unpreparedness slowing down the verification, as Yulchon did not have supporting documentation prepared prior to verification and was not fully prepared for verification, as instructed by the Verification Outline.<sup>123</sup>

Warranty expenses serve as another example of Yulchon not being prepared for verification, and we disagree with Yulchon that its warranty expenses were properly reported. On the third day of verification the team twice asked to review the warranty expense verification package for home market and U.S. sales, but Yulchon stated it would not be ready until the next day.<sup>124</sup> Yulchon did not provide the warranty expense package until the fourth day. The verification team noted two immediate issues with this verification package before returning it to the company: almost all customer names were not translated, Yulchon provided only a customer code for some customers, source documentation was missing, and the total warranty expenses in KRW for both

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

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

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 32, VE-17.

<sup>123</sup> See Verification Outline at the cover letter (emphasis not added).

<sup>124</sup> See Verification Report at 32-33.



home market and U.S sales did not match the warranty expenses incurred and reimbursed in the POI.<sup>125</sup> After some questioning on this last issue, company officials stated that the warranty expenses reported to Commerce during the POI do not match the amount of warranty expenses paid by Yulchon during the POI for its home market and U.S. sales.<sup>126</sup>

Later on the fourth day, the verification team examined the warranty expenses verification package again and found that there are two types of warranty expenses: one for defects found on the final merchandise for which Yulchon reimburses the customer for both home market and U.S. sales; and another for claims made by a customer that involves a problem with the raw material used in the product.<sup>127</sup> In the latter type of warranty expense, Yulchon is reimbursed by the raw material supplier and passes this claim on to the final customer.<sup>128</sup> While Yulchon claims in its questionnaire responses that it reported two types of warranty expenses, this is untrue.<sup>129</sup> In the end, albeit after Yulchon delayed the finalization of this verification exhibit due to its unpreparedness and changing explanations, the verification team successfully used source documents to tie Yulchon's two types of warranty expenses from its warranty expense worksheets to payment to a final customer for a claim, and payment to Yulchon for reimbursement for defects on the raw materials, to accounting records.<sup>130</sup> Yulchon provided argument in its case brief regarding warranty expenses, however in the end these expenses were verified.

Yulchon argues its international freight was reported correctly, because the weight was correct and this sale was shipped via DHL, however, the other terms of sale do not match what Yulchon reported.<sup>131</sup> Therefore, we agree with Yulchon that it correctly reported the air freight carrier and weight, but not the other terms of sale for this particular sales trace.

### *Accounting*

Yulchon argues it is untrue that the verification team was unable to verify the chart of accounts due to its unpreparedness. The verification report states that the verification team completed the verification of Yulchon's chart of accounts. In fact, the Verification Report makes clear that the chart of accounts was prepared by Yulchon in a timely manner, the team requested some changes be made to the chart of accounts, and Yulchon made these changes in a timely manner.<sup>132</sup>

Regarding the Boram sales reconciliation, we disagree with Yulchon's statement that this sales reconciliation was fully prepared at 9:50 am on the third day of verification. The verification team requested this reconciliation be completed by day two, and therefore, it should have been

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> See Yulchon's August 14, 2017 submission at 36 and 82; Yulchon's October 23, 2017 submission at 20-21, and 27.

<sup>130</sup> See VE-16.

<sup>131</sup> See Verification Report at 30, and VE-26.

<sup>132</sup> *Id.* at 5-6; VE-3 & 4.

ready the morning of the third day of verification.<sup>133</sup> However, at the outset of the third day of verification, the verification team “requested to examine the Boram sales reconciliation that we requested {be completed by} the second day. Company officials stated that the Boram sales reconciliation would not be ready until the afternoon.”<sup>134</sup> Later in the day we examined the Boram sales reconciliation and noted no discrepancies.<sup>135</sup> Although the verification team completed verification of the Boram sales reconciliation, the morning of the third day of verification was emblematic of the issues the team faced at verification. The Verification Report states that after requesting the Boram information, which was not ready: “we waited for revised verification packages to review from 9:50 am to 10:25 am but were told that nothing was ready, including the packing package that we requested to review, with Yulchon officials only being intermittently present.”<sup>136</sup>

Another illustrative example of Yulchon’s unpreparedness for verification was the verification of its quantity and value of its sales, which was returned to Yulchon several times during the course of verification, and in the end, was unverifiable. The verification team first examined the sales reconciliation package on the third day, and found that pages were incomplete for each of the general ledger accounts. The verification team then “requested that each general ledger account have all pages for the months during the POI, and then we requested Yulchon trace the values in the general ledger for each account in August 2016 to each subsidiary sub-ledger of each account, and then select a home market sale and U.S. sale for August 2016 from the sales sub-ledgers and tie these to the finished goods inventory ledger, and the sales invoice.”<sup>137</sup> The verification team also reiterated that “all returns, samples, billing adjustments, *etc.*, reported in the sales reconciliation worksheets needed to be traced through the accounts in Yulchon’s general ledger/trial balance and sub-ledgers for each account.”<sup>138</sup> Moreover, the verification team informed Yulchon that it would “examine Yulchon’s sales reconciliation through its accounting records and not just through the Excel sales reconciliation worksheet that company official provided to us that they said had been extracted from the K-1 ERP system.”<sup>139</sup> The verification team returned this verification package to Yulchon and requested to review it the next day once these changes had been made.

The next day, the fourth day of verification, is the day noted above where there were no verification exhibits ready for review at the start of the day, and the president of Yulchon requested that verification end a day early, although the verification team informed him that they “might have been able to conclude verification on Friday if the company was better prepared for verification, but because so many verification packages were returned to the company to be properly completed, we would need to come back on Saturday to complete verification, as

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<sup>133</sup> *Id.* at 22.

<sup>134</sup> *Id.*

<sup>135</sup> *See* VE-25.

<sup>136</sup> *See* Verification Report at 22.

<sup>137</sup> *Id.* at 19-20. On the second the verification team requested that Yulchon include an explanation for the reasons behind the many changes reported in the total volumes and values in Yulchon’s sales reconciliations submitted over the course of the investigation, and for Yulchon to explain these changes starting from the financial statement down to certain accounts. As noted below, this has been an issue throughout this investigation.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

stipulated in the outline.”<sup>140</sup> Later on the fourth day, when Yulchon returned the sales reconciliation package, the verification team discovered that company officials did not revise the sales reconciliation based on the verification outline’s instructions and the additional instructions provided on the second day.<sup>141</sup> Specifically, there continued to be missing general ledger accounts, no subaccounts, and the reasons behind that changing quantities and values was not explained.<sup>142</sup> Regarding the latter, Yulchon attempted to provide a sale by sale basis explanation on a whiteboard, because as Yulchon explained, there were many billing adjustments during the POI.<sup>143</sup> The verification team returned the package again, and reminded Yulchon that this request was made on the second day of verification, thus providing Yulchon two days to complete this task.<sup>144</sup> Nevertheless, the verification team provided Yulchon yet another day to tie the quantity and value numbers from the financial statement, to the changes in the total figures in each sales reconciliation, through the accounting/source records.<sup>145</sup>

On the fifth day of verification Yulchon provided explanations behind the differing quantity and value reconciliations it submitted.<sup>146</sup> However, Yulchon did not provide the tie to the financial statements, and certain subaccounts, that the verification team had requested since the second day of verification.<sup>147</sup> The verification team reminded Yulchon that this was an issue in the *Preliminary Determination*, and was an issue for which we issued a post- *Preliminary Determination* supplemental questionnaire.<sup>148</sup> The verification team then returned this verification package for the third time, and requested that the revised sales reconciliation be ready in the afternoon, as it was the last day of verification.<sup>149</sup> Later on the fifth day Yulchon provided more explanation as to why it submitted differing quantity and value reconciliations, and the verification team examined the sales reconciliation correction worksheet against the Excel worksheet for POI home market and U.S. sales in the sales reconciliation package, examined the numbers to the sales reconciliation package, and the accounting records from the financial statement through to the general ledger and sub-ledger. However, when reviewing the package, the verification team noticed that the figures between the home market and U.S. sales, and the Excel sales listing, did not tie. The sales reconciliation package was returned a fourth time.

At 3:21 pm on the fifth day, the verification team again reviewed the sales reconciliation after Yulchon stated that all changes were made as requested. However, the verification team continued to find that the total values for the sub-ledger accounts had not been tied to the home market reconciliation worksheets, U.S. reconciliations worksheets, and the sales listing download in Excel by customer, market, and product from the accounting system. The verification team informed Yulchon that these steps must be completed before the verification package would be examined again, and returned the package a fifth time. At 3:56 pm, the sales reconciliation

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<sup>140</sup> *Id.* at 20-21.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 21-24.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

package was returned to the verification team, which began to tie the values in certain accounts to the prepared worksheets for home market and U.S. sales, and review selected domestic and U.S. sales, however, this exercise took an hour and was not completed until 5:00 pm on the last day of verification. At the end of verification, the team still had not finished examining this verification package, *i.e.*, tying sales values for certain subaccounts beyond the home market and U.S. sales reconciliation worksheet to the Excel sales listing, tying the total sales values in the sub-ledgers to the finished goods ledger to the total quantity and value of sales listed in the most recently sales databases. In sum, after five attempts the verification team was unable to verify Yulchon's home market and U.S. sales reconciliations, reconcile the total quantity and value of sales reported in Yulchon's home market and U.S. sales databases, and perform completeness checks for domestic, U.S., and third-country sales of subject/non-subject merchandise, or billing adjustments. Due to Yulchon's unpreparedness, at 5:00 pm on the last day of verification, there were many items left unverified besides the sales reconciliations, *e.g.*, billing adjustments, certain movement expenses, packing expenses, certain sales traces, the length of mechanical tubes that were outsourced to a cutting processor, or conduct any completeness tests.<sup>150</sup> It was at this point that the president of Yulchon requested the team stay to finish all outstanding items, but the previously agreed upon time for the sales verification at Yulchon expired.

With respect to the length and timing of verification, Commerce prepared a reasonable verification schedule based on its experience in conducting verifications, and did so in consultation with Yulchon's counsel. Nevertheless, Yulchon was not prepared for verification. Yulchon, as the holder of the information, received the verification outline more than two weeks prior to verification, and did not, prior to verification, alert Commerce that the scope of the verification was unrealistic or otherwise unreasonable, in its view, given the allotted time.<sup>151</sup> As such, Commerce finds no merit in Yulchon's argument that there was not enough time to properly verify Yulchon's responses.

## **Comment 2: Application of Total AFA to Yulchon**

### *The Petitioners' Comments*

- Commerce must apply total AFA in determining the dumping margin for Yulchon, based on its failure to cooperate to the best of its ability in this investigation.<sup>152</sup>
- At verification, Commerce found Yulchon's sales information unverifiable and, therefore, unusable. As a result, Commerce has determined not to proceed with the verification of Yulchon's reported costs. Thus, all the necessary information needed to calculate an accurate dumping margin for Yulchon is missing from the record of this proceeding.<sup>153</sup>
- Yulchon made a conscious decision to affirmatively mislead Commerce by knowingly submitting "screwed up" information, which were unreliable for purposes of calculating the preliminary dumping margin. Verification also made clear that Yulchon made no

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<sup>150</sup> See Verification Report at 2-3.

<sup>151</sup> See *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) (*Italy CORE*) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>152</sup> See The petitioners' Brief at 1-2 and 16.

<sup>153</sup> *Id.* at 1, 7, and 17.

attempt to comply with Commerce's multiple requests for accurate information and data.<sup>154</sup>

- In addition, the record evidence demonstrates that Yulchon knowingly submitted false and inaccurate information, which was used in calculating Yulchon's preliminary dumping margin. This preliminary margin not only established an artificially low margin for Yulchon, but it also set a low provisional measure deposit cap and the "all others" rate. Yulchon's decision to impede this investigation from the very outset should not be rewarded.<sup>155</sup>
- Based on Yulchon's admission of submitting false information, Commerce should amend the preliminary determination to assign Yulchon a total AFA rate of 48.00 percent and likewise correct the "all others" rate. The amended preliminary determination should be effective as of the date of Commerce's initial preliminary determination (November 22, 2017).<sup>156</sup>

**Commerce's Position:** We agree with the petitioners and determine that the application of total facts available with an adverse inference is warranted for the final determination.

Verification was not the first instance during this investigation in which Yulchon had issues with its reported sales quantity and value. Prior to verification, Yulchon revised its reported quantity and value several times.<sup>157</sup> Despite submitting notable changes in the quantity and value for sales several times throughout the investigation, Yulchon did not provide any explanation as to why such revisions were necessary. Not until Commerce requested that Yulchon submit its rationale for the revisions did Yulchon explain its reasoning.<sup>158</sup> However, this explanation also resulted in another revision of its quantity and value.<sup>159</sup> The quantity and value given to Commerce at verification was Yulchon's fourth revised quantity and value in the course of this investigation.

In Comment 1 above, we noted that Commerce released the Verification Schedule and Verification Outline well in advance of verification.<sup>160</sup> The Verification Outline instructed Yulchon to fully prepare for verification, and clearly indicated that Yulchon should gather specific information listed in the outline from the appropriate personnel prior to the verifiers' arrival. Further, in addition to Commerce's original questionnaire requiring that Yulchon reconcile its reported sales to its books and records,<sup>161</sup> the outline specifically requested that Yulchon prepare in advance of the verification the reconciliation of the quantity and value of sales reported in the Sections B and C sales database, and as detailed in Comment 1, the verification team provided Yulchon on specific directions for completing its sales reconciliation.<sup>162</sup> Despite Commerce's detailed and specific questionnaires, instruction in the Verification Outline and by the verification team, Yulchon failed to cooperate by not acting to

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<sup>154</sup> *Id.* at 23.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 2, 19, and 20-23

<sup>157</sup> *See, e.g.*, Yulchon's November 30, 2017, submission at Appendix S5Q-1a.

<sup>158</sup> *See* Verification Report at 19-23.

<sup>159</sup> *Id.*

<sup>160</sup> *See* Verification Schedule; Verification Outline.

<sup>161</sup> *See* Commerce's July 24, 2015 letter.

<sup>162</sup> *See* Verification Outline.



the best of its ability to reply accurately and completely to requests for information regarding the sales of subject merchandise. Specifically, Yulchon's unpreparedness at verification did not allow the verification team to reconcile the quantity and value of Yulchon's reported sales to the company's books and records, which, as described in detail below, is critical to Commerce's analysis of whether the reported information is reliable for use in calculating Yulchon's estimated weighted-average dumping margin. In the end, as stated in the verification report, we were unable to complete verification of Yulchon's sales reconciliation for its home market and U.S. sales from its accounting records to its sales databases, were unable to verify the many changes to Yulchon's sales reconciliations submitted throughout the investigation.<sup>163</sup>

Commerce considers the reconciliation process to be "one of the most important tasks performed" at verification:

It also serves another very important purpose in that it baselines accounting ledgers and worksheets that will be used to verify many other topics. Base lining documents means that verifiers have established the validity of these documents by tying them into the audited financial statements and that other verified topics can be tied into these documents without having to go back to the general ledger. Thus, each of the documents used to reconcile the total quantity and value of reported POI or POR sales back to the financial report can be considered a source document. The exercise requires that verifiers establish to their full satisfaction that the tie-in to the financial statement is complete and accurate. If not, where appropriate, verifiers should continue to reconcile verified topics back to the company's general ledger.<sup>164</sup>

Commerce has previously noted that reconciliations are necessary in order to confirm the completeness and accuracy of the reported information,<sup>165</sup> and Yulchon's failure to facilitate those tests impeded the investigation.

Establishing the completeness and accuracy of a respondent's reported total sales in the home, U.S., and third country markets is a significant element of verification which serves as the foundation of not only the verification but also of the respondent's sales information submitted to Commerce over the course of the investigation.<sup>166</sup> Only with a complete and accurate sales quantity and value for all markets can Commerce be confident that it has a sound foundation on which to accurately perform its analysis, including comparisons of U.S. price with normal value, for the final determination.<sup>167</sup> Because of the inconsistencies in Yulchon's quantity and value, Commerce finds Yulchon's sales data to be unreliable.

In addition, we find that Yulchon's failure to provide accurate, verifiable information concerning its U.S. and home market sales renders its Section B and C responses unreliable. We note that

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<sup>163</sup> See Verification Report at 24.

<sup>164</sup> See AD Manual, Chapter 15, at 33 (2015), available at <http://enforcement.trade.gov/admanual/2015/Chapter%2015%20Verifications.pdf>.

<sup>165</sup> See *Rebar from Mexico* at Comment 6.

<sup>166</sup> See *Italy CORE* at Comment 1.

<sup>167</sup> *Id.*

the CIT has upheld Commerce's decision to reject respondent's data *in toto* when "it is flawed and unverifiable."<sup>168</sup> As in *SAIL*, in which the Court found that the deficiencies to respondent's submissions were "pervasive and persistent,"<sup>169</sup> the problems encountered during the verification of Yulchon were extensive and, as noted above, called the integrity of Yulchon's submissions to Commerce into question.<sup>170</sup> For the reasons explained above, Yulchon failed its home market sales reconciliation; rendering the verification a failure because it casts serious doubt on the reliability of the respondent's reported information. In such instances, Commerce has no assurance that a respondent accurately reported a complete universe of sales in its questionnaire responses or that the correct value of those sales and their adjustments have been properly reported.<sup>171</sup> The Court has affirmed Commerce's determination to apply total facts available in such instances. For instance, in *Universal Polybags*, Commerce was unable to verify several aspects of the company's reporting, including sales traces, conversion factors, reported sales quantities, total shipment rate, billing adjustments, inland freight, brokerage and handling, international freight, marine insurance or indirect selling expenses, and the company had left several important undisclosed changes until the final day of verification, leaving verifiers with no opportunity to verify that information.<sup>172</sup> The Court held that this evidence demonstrated that Commerce "was unable to verify information provided by King Pack, and thus Commerce properly resorted to facts available... Commerce's decision that it could disregard all of King Pac's submissions is supported by substantial evidence and in accordance with the law."<sup>173</sup>

As a result, we find that necessary information is not available on the record, that Yulchon withheld information Commerce requested, that it failed to provide information by the specified deadlines, that it significantly impeded the proceeding, and provided information which could not be verified. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act, we find that application of facts available is warranted. Further, pursuant to section 776(b) of the Act, we find that Yulchon failed to cooperate by not acting to the best of its ability, and thus, adverse inferences are warranted. As noted above, total sales quantity and value, and their reconciliations, are the essential building blocks of the entire verification as well as the information submitted to Commerce over the course of the investigation.<sup>174</sup> The importance of sales reconciliation is clearly stated in Commerce's AD Manual:

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<sup>168</sup> See *Steel Authority of India, Ltd., v. United States*, 149 F. Supp. 2d 921,928 (CIT 2001) (*SAIL*) (citing *Heveafil Sdn. Vhd. V. United States*, 25 CIT 147 (2001)).

<sup>169</sup> See *SAIL*, 149 F. Supp. 2d at 928.

<sup>170</sup> See Verification Report at 2-3, which details the areas of Yulchon's response Commerce was not able to verify.

<sup>171</sup> See *Notice of Final Results and Partial Rescission of Antidumping Administrative Reviews: Heavy Forged Hand Tools from the People's Republic of China*, 65 FR 43290 (July 13, 2000) and accompanying Issues and Decision Memorandum at Comment 2; *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005) (*Magnesium Metal*) and accompanying Issues and Decision Memorandum at Comment 5; see also *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) (*STR*) at Comment 5.

<sup>172</sup> See *Universal Polybag Co., Ltd., v. United States*, 577 F. Supp. 2d 1284 (CIT 2008) (*Universal Polybag*) at 1295.

<sup>173</sup> *Id.*, 577 F. Supp. 2d at 1295-1296.

<sup>174</sup> See AD Manual, Chapter 15 at 33 (2015), available at <http://enforcement.trade.gov/admanual/2015/Chapter%2015%20Verifications.pdf>.

Reconciliation of quantity and value of sales is the transition phase between laying the foundation and the on-going completeness tests. In verifying a respondent's quantitative sales response, this is one of the most important tasks performed.<sup>175</sup>

The guidance the AD Manual provides concerning the importance of the reconciliation process during verification is reflected in Commerce's practice. For example, in *Magnesium Metal*, Commerce resorted to the use of total AFA when the respondent "was not ready or able ... to present its sales reconciliation to Commerce until late" in the verification process.<sup>176</sup> Similarly, in *STR*, Commerce resorted to the use of total AFA when the verifiers were unable to reconcile the U.S. sales database with the respondent's financial statements and accounting records.<sup>177</sup>

Additionally, we disagree with Yulchon that it fully cooperated with Commerce during verification. As noted above, Commerce's verification outline was released to Yulchon eleven days before the commencement of verification and clearly specified what items the verifiers intended to examine during verification. Contrary to Yulchon's claim that it fully cooperated at verification, as discussed further below, we find that Yulchon failed to cooperate by not acting to the best of its ability to comply with various requests for information and to be prepared for verification. Furthermore, in *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that "the statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."<sup>178</sup> The Federal Circuit stated:

Simply put, there is no *mens rea* component to the section 1677e(b) inquiry. Rather, the statute requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information. In preparing a response to an inquiry from Commerce, it is presumed that respondents are familiar with their own records. It is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think through inadvertence, neglect, or otherwise to look beyond the files immediately available.<sup>179</sup>

Additionally, during verification Yulchon failed to substantiate several other of its claims. As noted above, in addition to Yulchon's sales reconciliation (and the billing adjustments that affected the reconciliation), the verification team was unable to verify certain movement expenses, packing expenses, certain sales traces, the length of mechanical tubes that were outsourced to a cutting processor, or conduct any completeness tests.<sup>180</sup> Commerce's inability to verify these Section B and C expenses, as well as sales specific expenses in sales traces, further

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<sup>175</sup> *Id.*

<sup>176</sup> See *Magnesium Metal* at Comment 1.

<sup>177</sup> See *STR* at Comment 5.

<sup>178</sup> See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1378 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>179</sup> *Id.*

<sup>180</sup> See Verification Report at 2-3.

calls into question the accuracy and reliability on Yulchon's sales databases, rendering them unreliable for calculating a margin in this investigation.

In addition, we found Yulchon misreported its CONNUMs because it did not properly code its heat treatments and did not properly report sales of non-prime merchandise.<sup>181</sup> Commerce finds these various inconsistencies found at verification further call into question the reliability of Yulchon's submissions and supports Commerce's finding of a lack of cooperation. While heat treatments were discussed in Comment 1, we make additional observations below.

At verification Commerce found that Yulchon misreported its CONNUMs because it did not properly code its heat treatments. Commerce finds that Yulchon failed to provide accurate CONNUMS with corresponding matches in the sales and cost databases. In the initial questionnaire, Yulchon was instructed to report unique CONNUMs in its sales and cost databases for each sale based on the physical characteristics of the products.<sup>182</sup> As explained in the initial questionnaire, the CONNUM is used by Commerce:

in the calculation of the dumping margin" and that "{i}dential products should be assigned the same control number in each record in every file in which the product is referenced (e.g., products with identical physical characteristics reported in the foreign market sales file and the U.S. market sales file should have the same control number).<sup>183</sup>

The proper reporting of physical characteristics in the CONNUM-hierarchy and matching CONNUMS in Yulchon's home market sales, U.S. sales, and cost databases is pivotal to Commerce's margin calculation. These physical characteristics form the basis of Commerce's model match criteria, which identifies the home markets sales and U.S. sales of either identical or the most similar merchandise as the basis for normal value. The identification of identical or the most similar merchandise is determined with respect to the unique measurable physical characteristics of the merchandise.<sup>184</sup> Without accurate reporting of physical characteristics and matching CONNUMS in Yulchon's databases, Commerce does not have the primary components to perform an accurate, reliable margin calculation for Yulchon.<sup>185</sup>

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<sup>181</sup> *Id.*

<sup>182</sup> See Commerce's July 7, 2017 letter.

<sup>183</sup> See Original Questionnaire at B-6 and B-8.

<sup>184</sup> See, e.g., *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 63 FR 18879, 18880 (April 16, 1998), at Comment 2 ("The creation of a product concordance inherently relies upon the matching of significant physical characteristics."); *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Model Match Comment 1 ("...Commerce focuses its selection of model match characteristics on unique measurable physical characteristics that the product can possess....").

<sup>185</sup> See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 33396 (June 12, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (*Hot-Rolled from Thailand Final Results*); *Xanthan Gum from Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 1 (*Xanthan Gum from Austria Final*).

Moreover, we find that Yulchon's inaccurate information concerning its reporting of sales of second-quality merchandise, further calls into question Yulchon's reported information. At verification, we discovered that Yulchon determines non-prime items are based on length, *i.e.*, that non-prime merchandise is just merchandise at a shorter length than the customer's specification and sometimes mechanical tubes made from older raw materials are sold as non-prime merchandise.<sup>186</sup> Yulchon also stated that damaged (dented or cracked) products would be included in scrap.<sup>187</sup> While in its questionnaire responses Yulchon reported it had non-prime sales, it is clear that Yulchon did not follow the instructions for reporting these sales.<sup>188</sup> Specifically for prime- and second-quality merchandise, Commerce instructs the following:

Indicate whether the merchandise is prime or non-prime (secondary) merchandise. Please describe in detail how non-prime (secondary) merchandise is categorized internally and how it is marketed. Merchandise should not be classified as non-prime merchandise **solely** because it does not meet the specification originally intended.<sup>189</sup>

As Yulchon's explanations at verification are at odds with Commerce's instructions on this type of merchandise, Yulchon did not properly code its sales, calling into further question the reliability of its sales and cost databases.

In conclusion, despite Commerce's detailed and specific questionnaires and instruction in the verification outline, and the questions and instructions at each verification as to what procedures and documentation were necessary to successfully complete the verification process, Yulchon gave insufficient attention to its responsibility to reply accurately and completely to requests for information as described above. Accordingly, Commerce finds that the use of facts otherwise available is warranted with respect to Yulchon pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D), and 776(b) of the Act and that these facts otherwise available should include an adverse inference because of Yulchon failure to cooperate to the best of its ability pursuant to section 776(b) of the Act.

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<sup>186</sup> See Verification Report at 10.

<sup>187</sup> *Id.*

<sup>188</sup> See Yulchon's August 14, 2107 submission at 9.

<sup>189</sup> See Commerce's July 7, 2107 letter (emphasis not added).



## VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the *Federal Register* and inform the ITC of our determination.




\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

4/9/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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