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Remand
POR 11/01/2009 – 10/31/2010
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Lightweight Thermal Paper from Germany
Papierfabrik August Koehler AG v. United States,
Consol. Court No. 12-00091 (January 15, 2014)

FINAL REMAND REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the "Department") prepared this final remand redetermination (*Remand Redetermination*) pursuant to the remand order of the U.S. Court of International Trade ("CIT" or the "Court") in *Papierfabrik August Koehler AG v. United States*, Consol. Court No. 12-00091 (January 15, 2014) (*Remand Order*). This remand concerns the Department's final results in the second administrative review ("AR2") of lightweight thermal paper ("LWTP") from Germany.[1] The Department requested a voluntary remand so that it could consider whether the Papierfabrik August Koehler AG ("Koehler") misreporting issues that came to light in the subsequent administrative review of LWTP from Germany affected any aspect of the *AR2 Final Results*.[2] In its *Remand Order*, the CIT granted the Department's motion, and remanded the case "for further consideration of the final results of the administrative review at issue in this matter in their entirety, including all claims raised in the case."[3]

On March 31, 2014, we issued a draft remand redetermination (*Draft Remand*) and invited parties to comment. On April 28, 2014, Koehler and petitioner, Appvion, Inc. (Appvion,

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[1] *Lightweight Thermal Paper From Germany: Notice of Final Results of the 2009-2010 Antidumping Duty Administrative Review*, 77 FR 21082 (April 9, 2012), as amended in *Lightweight Thermal Paper From Germany: Notice of Amended Final Results of the 2009-2010 Antidumping Duty Administrative Review*, 77 FR 28851 (May 16, 2012) (*AR2 Final Results*).
[2] *See* Defendant's Consent Motion for a Voluntary Remand, Consol. Ct. No. 12-00091 (January 8, 2014); *see also Home Prods. Intl, Inc. v. United States*, 633 F.3d 1369, 1378 (Fed. Cir. 2011) (*Home Products I*).
[3] *See Remand Order* at 1.

formerly Appleton Papers, Inc.) submitted comments. On May 2, 2014, we rejected Koehler's submission because it contained untimely and unsolicited information. Koehler correctly refiled this submission on May 6, 2014, with the untimely and unsolicited information redacted. On May 13, 2014, Koehler and petitioner submitted rebuttal comments.

As set forth in detail below, in this *Remand Redetermination*, pursuant to the Court's *Remand Order*, we reconsidered the *AR2 Final Results*, taking into account record evidence obtained over the course of the third administrative review ("AR3"),[4] and determined that Koehler intentionally provided fraudulent and incomplete information regarding its home market sales in AR2. As explained below, because we cannot determine whether any other misrepresentations exist on the record with regard to Koehler's full universe of sales, and because we find Koehler's reported data are otherwise unreliable as a result of Koehler's concealment of certain of home market sales data, we are unable to rely upon the data Koehler reported in this segment to calculate a weighted-average dumping margin for Koehler. In light of Koehler's incomplete reporting in AR2, we find that Koehler failed to provide accurate information and sales data required by the Department to evaluate the level of Koehler's dumping. Furthermore, we find that Koehler deliberately provided false information, despite the fact that Koehler and its representatives certified to the accuracy and completeness of such information in response to the Department's initial questionnaire and four supplemental questionnaires issued in AR2. Because, as discussed in detail below, we also find that Koehler did not act to the best of its ability, we are applying total facts otherwise available with an adverse inference ("adverse facts available" or "AFA"), to Koehler in this *Remand Redetermination*. We are applying as AFA an antidumping duty margin of 75.36 percent, which

[4] *See Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 23220 (April 18, 2013) (*AR3 Final Results*).

is the highest rate from the investigation as alleged in the petition and which was applied as the AFA rate in AR3.[5]

Further, because Koehler is receiving total AFA, we are not calculating a rate for Koehler for this period of review ("POR"), and thus it is unnecessary to address the two other issues in the AR2 litigation, the calculation of Koehler's constructed export price ("CEP") profit and Koehler's reporting of certain monthly rebates for its home market sales. Pursuant to the Court's *Remand Order*, we find that these issues are rendered moot by the absence of any calculated rates in this final redetermination.

B. BACKGROUND

On April 9, 2012, the Department published its AR2 final results, in which the Department calculated a weighted-average margin of 3.99 percent for the sole respondent, Koehler, based on the sales data which was submitted and certified by Koehler.[6] On May 16, 2012, the Department published the amended AR2 final results, in which the rate for Koehler was changed to 4.33 percent.[7] Both Koehler and petitioner challenged the *AR2 Final Results* in the CIT.[8]

While the AR2 litigation was pending, new information regarding Koehler's unreported home market sales in AR3 called into question the integrity of the *AR2 Final Results*. Specifically, in the AR3 proceeding petitioner alleged that Koehler had engaged in a transshipment scheme to conceal certain otherwise reportable home market sales. Koehler

[5] *See Notice of Initiation of Antidumping Duty Investigations; Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China*, 72 FR 62430, 62434 (November 5, 2007) (*Initiation of Investigation*); *AR3 Final Results*, 78 FR at 23221, and accompanying Issues and Decision Memorandum at Comments 1 and 2.
[6] *See Lightweight Thermal Paper From Germany: Notice of Final Results of the 2009-2010 Antidumping Duty Administrative Review*, 77 FR 21082 (April 9, 2012).
[7] *See Lightweight Thermal Paper From Germany: Notice of Amended Final Results of the 2009-2010 Antidumping Duty Administrative Review*, 77 FR 28851 (May 16, 2012) (*AR2 Final Results*).
[8] *See* Consol. Court. No. 12-00091.

acknowledged that these allegations were correct, and sought to submit its previously omitted home market sales, which the Department rejected. Koehler also acknowledged that this scheme affected its home market sales reporting in AR2. Based on this record evidence, the Department found that Koehler engaged in a transshipment scheme in which Koehler intentionally concealed certain otherwise reportable home market sales transactions.[9] As a result, the Department applied total AFA and assigned Koehler a rate of 75.36 percent.[10]

In light of its findings in AR3 and Koehler's admission that it failed to report certain home market sales in the AR2 proceeding, the Department sought a voluntary remand in the instant case to reconsider the *AR2 Final Results* consistent with the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit's") decision in *Home Products I*.[11] On January 15, 2014, the Court issued its *Remand Order* for the Department to reconsider the *AR2 Final Results* in their entirety.[12]

In February 2014, Koehler attempted to submit information on the remand record, however the Department rejected this submission as unsolicited new factual information.[13]

On March 31, 2014, the Department released its *Draft Remand* to parties.[14] Concurrent with this release, the Department reopened the AR2 record and placed documentation obtained over the course of the third administrative review of this proceeding on the record of this

[9] *See AR3 Final Results*.
[10] *Id.*
[11] The Department initially sought a voluntary remand on May 30, 2013, and submitted a proposed remand order. *See* Defendant's Partial Consent Motion for a Voluntary Remand, Consol. Ct. No. 12-00091 (May 30, 2013). However, all parties in the litigation did not agree to the language set forth in the proposed draft remand order. On January 8, 2014, the Department re-filed its request for a voluntary remand with amended language in the proposed remand order which was agreed upon by all parties. *See* Defendant's Consent Motion for a Voluntary Remand, Consol. Ct. No. 12-00091 (January 8, 2014).
[12] *See* Remand Order, at 1.
[13] *See* Letter to Koehler (February 18, 2014) (rejecting Koehler's February 11, 2014 submission). The Department subsequently rejected a letter from petitioner in response to Koehler's submission. *See* Letter to Petitioner (February 24, 2014) (rejecting Petitioner's February, 18, 2014 submission).
[14] *See* Draft Results of Redetermination in the Antidumping Duty Administrative Review of Lightweight Thermal Paper from Germany; 11/01/2009 – 10/31/2010 (March 31, 2014) (*Draft Remand*).

segment.[15] As a result of this newly discovered information, the Department determined it appropriate to apply total AFA to Koehler, and assigned Koehler a rate of 75.36 percent, which is the highest rate from the investigation as alleged in the petition.[16]

The Department also invited parties to comment on the *Draft Remand*, and submit limited new factual information, stating:

> Interested parties that wish to submit new factual information specifically related to the rate being applied and the corroboration of this rate may do so in their initial comments on the draft results. Interested parties may also submit factual information to rebut, clarify, or correct factual information contained in another party's initial comments on the draft results. There will be no further opportunity for parties to submit new factual information, *i.e.*, no surrebuttal. In addition, the Department will not accept any information that could be considered responsive to the Department's initial questionnaire or supplemental questionnaires from the underlying 2009-2010 administrative review proceeding, including additional sales data for the period of review.[17]

On April 28, 2014, Koehler and petitioner submitted comments.[18] On May 2, 2014, we rejected Koehler's submission because it contained untimely and unsolicited information.[19] Koehler correctly refiled this submission on May 6, 2014 with the untimely and unsolicited information redacted.[20] On May 13, 2014, Koehler and petitioner submitted rebuttal comments.[21] On May 14, 2014, the European Commission submitted a letter commenting on this proceeding.[22] On June 2, 2014, petitioner submitted a letter commenting on the European Commission letter.[23] The Department met with Koehler to discuss its comments on June 3,

[15] *See* Memo to the File from James Terpstra, Senior International Trade Analyst, Office III "Placing Documents on the Record of the Second Antidumping Duty Administrative Review of Lightweight Thermal Paper from Germany, 11/01/2009 – 10/31/2010", dated concurrently with the *Draft Remand*. The attachment to this memo lists the 23 documents that were transferred from the AR3 record.
[16] *See Draft Remand*.
[17] *See Draft Remand* Cover Letter.
[18] *See* Koehler's April 28 Comments (rejected and retained); Petitioner's April 28 Comments.
[19] *See* Letter to Koehler dated May 2, 2014.
[20] *See* Koehler's Re-filed April 28 Comments.
[21] *See* Koehler's May 13 Rebuttal Comments; Petitioner's May 13 Rebuttal Comments.
[22] *See* Letter from the European Commission to the Department, dated May 14, 2014.
[23] *See* Petitioner's Letter, dated June 2, 2014.

2014.[24] On June 5, 2014, the Department rejected a letter filed by Koehler on June 4, 2014, where it provided new information it claimed was requested by the Department at the June 3, 2014, *Ex Parte* meeting.[25] The Department also spoke with representatives of the European Commission, who were advocating on behalf of Koehler, on June 11, 2014.[26]

C. THE DEPARTMENT'S AUTHORITY TO RECONSIDER THE FINAL RESULTS

The Department has the inherent authority to cleanse its proceedings of potential fraud.[27] Where new evidence indicating possible fraud or misrepresentation comes to light after the completion of a proceeding, the Department may consider whether that information affected its determination.[28] In such circumstances, the Department may reopen and supplement the record with additional evidence as it deems necessary.[29] In this case, new evidence came to light during the subsequent AR3 proceeding indicating that Koehler made misrepresentations with respect to its reporting of home market sales during AR2. Based on this newly discovered evidence, the Department finds it appropriate to reconsider the final results of AR2 to determine whether and how this evidence affects its findings. In addition, the Department finds it appropriate to reopen the record of the AR2 proceeding for the limited purpose of supplementing the record with relevant evidence from the AR3 record.

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[24] *See Ex Parte* Memo to File, dated June 3, 2014.
[25] *See* Letter to Koehler, dated June 5, 2014 (rejecting Koehler's June 4, 2014, Submission).
[26] *See Ex Parte* Memo to File, dated June 11, 2014.
[27] *See Tokyo Kikai Seisakusho Ltd. v. United States*, 529 F.3d 1352, 1360-61 (Fed. Cir. 2008) (*Tokyo Kikai*) (citing *Elkem Metals, Inc. v. United States*, 193 F. Supp. 2d 1314, 1321 (CIT 2002)).
[28] *See Home Products I*, 633 F.3d at 1378.
[29] *See Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1277 (Fed. Cir. 2012) ("We have carved out a small number of exceptions when we *allow* supplementation of an agency record. For example, one exception is to *allow* a remand to supplement the record when 'the original record was tainted by fraud.'") (*citing Home Products I*, 633 F.3d at 1379) (emphasis added)); *Home Products I*, 633 F.3d at 1381 ("{W}e express no opinion as to whether Commerce must exercise its authority to reopen; nor do we mandate a finding of fraud. In deciding whether the proceeding should be reopened, Commerce may appropriately consider the interests in finality, the extent of the inaccuracies in the second administrative review, whether fraud existed in the second administrative review, the strength of the evidence of fraud, the level of materiality, and other appropriate factors. . . . If Commerce decides not to reopen, that decision may in turn be reviewed by the Trade Court and, if necessary, by our court.").

D. FINAL REMAND REDETERMINATION

1. Analysis of Evidence

a. AR3 Allegations and Koehler's Response

On May 18, 2012, in the context of AR3, petitioner made allegations regarding Koehler's home market sales (Petitioner's May 18 Letter). Specifically, petitioner alleged that "Koehler has been engaged in a scheme to defraud the Department by intentionally concealing certain otherwise reportable home market transactions."[30] Petitioner described, in detail, certain schemes by which Koehler sold "48 gram thermal paper that it knows is destined for consumption in Germany through various intermediaries in third-countries" in order to manipulate its dumping margin.[31] Petitioner's allegations were based on an affidavit from a confidential source ("Source 1") which provided detailed information and outlined the nature of the fraudulent activities allegedly undertaken by Koehler. The affidavit stated that: "These sales also were likely transshipped back to [[ ]] facilities in Germany. Again, it is Source 1's understanding that Koehler engages in these transshipments in order to avoid reporting the transactions as sales to Germany in response to the U.S. antidumping case."[32] Petitioner also asserted in its allegation that Koehler is using this scheme to artificially manipulate prices attributable to those sales of 48 gram paper shipped directly to its German customers.[33] Lastly, Petitioner stated that there was a clear and compelling need to withhold certain double-bracketed information in the affidavit which related to the identity of a source of information.[34]

[30] *See* Petitioner's Submission of New Factual Information (FIS), dated May 18, 2012, at 2.
[31] *Id*., at 2-3 and Exhibit 1 at 1-3.
[32] *Id*., at Exhibit 1 at 3. The Department notes that this quote is sourced from the Administrative Protective Order (APO) Version of the document, which was filed in the Department's IA Access system under barcode number: 3076187.
[33] *Id*., at 2-3; *see also* Petitioner's Initial Comments And Rebuttal Information Regarding Koehler' s Supplemental Sales Response, dated July 9, 2012, at 8.
[34] *See* Petitioner's FIS, dated May 18, 2012, at 2-3.

On June 27, 2012, Koehler submitted its supplemental questionnaire response in AR3 (June 27 SQR) to the Department, including a revised home market sales database. At this time, Koehler also provided a response to petitioner's May 18 allegations. Specifically, Koehler stated that:

> {T}he undersigned counsel conducted an investigation of Petitioner's allegations regarding the concealment of certain Koehler home market transactions. As a result of that investigation, Koehler can confirm that certain sales of 48-gram lightweight thermal paper (LWTP), which were [
>
>].[35]

Koehler also described information obtained from Koehler personnel who were involved in or aware of these transactions regarding the nature and scope of the sales at issue:

> One of Koehler's customers in Europe for LWTP is a company known as [
>
>].
>
> At the time of shipment from Koehler's plant in Kehl, Germany to [

[35] *See* Koehler's June 27 SQR at 1. The public version of this business proprietary document was resubmitted by Koehler on October 10, 2012; we continue to refer to the original filing date of June 27, 2012, for this document.

]. Around the same time that the [

] sales. It appears that those Koehler personnel who [

].

As Koehler personnel were made aware from the beginning of the antidumping proceedings in 2007, a sale must be reported as a home market sale, even though it is physically shipped to a location outside the home market, if, at the time of sale, the manufacturer knew that the product was ultimately destined for its home market. As a result of our investigation, Koehler [

]. Accordingly, Koehler is now submitting the attached revised sales listing, which includes all such sales [ ].[36]

[36] *See* Koehler's June 27 SQR at 1-4.

Thus, in Koehler's June 27 SQR submitted in AR3, Koehler confirmed certain business proprietary details of the transshipment scheme alleged by petitioner, and attempted to submit a revised home market sales database with the previously omitted home market sales, which was ultimately rejected by the Department.[37] In subsequent submissions, Koehler publicly acknowledged that the transshipment scheme began during the period covered by the previous administrative review, *i.e.*, November 1, 2009, through October 31, 2010 (AR2),[38] and that the public portions of petitioner's allegations were "substantially correct."[39] In addition, in Koehler's AR3 case brief, it publicly revealed many of the details regarding its transshipment scheme which it had initially treated as proprietary.[40]

b. Summary of AR3 Findings

In the *AR3 Preliminary Results*, the Department applied total AFA in determining Koehler's dumping margin as a result of Koehler's conduct in the transshipment scheme.[41] Specifically, the Department stated:

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[37] *Id.*, at pages 1-4 and Exhibit S1-27. On July 5, 2012, the Department rejected Koehler's revised home market sales database included with its June 27, 2012, questionnaire response because it constituted untimely filed new factual information which was unsolicited by the Department. *See* Rejection of Koehler's Factual Information Submission, dated July 5, 2012. The Department requested that Koehler re-file both the public and proprietary versions of its June 27 submission without this information. *Id.* Koehler complied with this request on August 2, 2012, and October 10, 2012.

[38] *See* Koehler's Letter titled, "Response to Petitioner's Letter of July 9, 2012," dated July 19, 2012, at page 2 fn 1 (Koehler's July 19 Letter); *see also AR3 Final Results*, and accompanying Issues and Decision Memorandum at 10-11.

[39] *See* Koehler's Letter titled, "Response To {Petitioner's} Letter of July 24, 2012," dated July 31, 2012 (Koehler's July 31 Letter), at page 5 ("Although Koehler initially had good reason to be skeptical of {petitioner's} allegations, given the many unfounded and eventually disproven contentions {petitioner} has advanced in these proceedings, as soon as Koehler was able to investigate and confirm that [ ] it acknowledged that the public portions of {petitioner's} May 18 allegations were substantially correct.")

[40] *See, e.g.*, Koehler's AR3 Case Brief at 8 ("How could Koehler have provided a 'complete and accurate response' concerning the 'allegations contained in Petitioner's May 18 letter' without submitting the additional home market sales that Koehler omitted from its initial Section B questionnaire response?"); *see also AR3 Final Results*, and accompanying Issues and Decision Memorandum at 2, which discusses publicly the alleged timing of when Koehler's transshipments began in AR2.

[41] *See Lightweight Thermal Paper From Germany; Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73615 (December 11, 2012) (*AR3 Preliminary Results*); *see also* Memorandum entitled "*Lightweight Thermal Paper from Germany: Preliminary Results of Antidumping Duty Administrative Review: Application of Total Adverse Facts Available to Koehler*" (AR3 AFA Memo).

> First, Koehler withheld the requisite information that would have allowed the Department to calculate an accurate dumping margin. Based on Petitioner's allegations and Koehler's acknowledgment of those allegations, we find that Koehler concealed certain otherwise reportable home market sales transactions, thus undermining the credibility and reliability of Koehler's data overall. Second, Koehler failed to provide such information in the manner requested. Moreover, Koehler did not notify the Department that {it} was unable to submit the information requested in the requested form and manner, and within the required time period. Instead, in response to Petitioner's allegations, Koehler attempted to revise its home market sales database. Third, based on this record evidence, we find that Koehler deliberately engaged in a scheme to manipulate its home market prices through its inaccurate reporting of home market sales transactions, thus significantly impeding the Department's ability to conduct the instant review. As a result of Koehler's conduct, the Department finds that it cannot rely upon any of Koehler's submitted information to calculate an accurate dumping margin, due to Koehler's material omission of this essential sales data.[42]

In selecting a rate to apply to Koehler, the Department relied on the highest margin stated in the notice of initiation of the antidumping duty investigation of LWTP from Germany, which was 75.36 percent.[43] To corroborate this rate, the Department examined the range of Koehler's transaction-specific margins from AR2, which had been placed on the AR3 record, and determined that the 75.36 percent petition rate fell within the range, including Koehler's highest transaction-specific margin.[44] The Department maintained these findings and its application of a 75.36 percent total AFA rate to Koehler in the *AR3 Final Results*.[45]

In addition, the Department summarized the effect of Koehler's transshipment scheme on the AR2 proceeding:

> Koehler had been aware of the deficiency in its own reporting from the time it embarked on the transshipment scheme during AR2. Thus, Koehler's home market sales reporting in AR2 was incomplete and inaccurate in the same manner as it was in this review. As in this review, Koehler intentionally provided incomplete and inaccurate information in response to the Department's detailed and very specific AR2 questionnaire. Moreover, Koehler continued to misrepresent its home market sales reporting in response to the Department's

[42] *AR3 Preliminary Results*, and accompanying Decision Memorandum at 9.
[43] *Id.*, at 14 (citing *Initiation of Investigation*, 72 FR at 62434).
[44] *See AR3 Preliminary Results*, and accompanying Decision Memorandum at 13-14.
[45] *See AR3 Final Results*.

AR2 supplemental questionnaires that included specific questions concerning home market sales. *See, e.g.*, Koehler's discussion concerning the identification of the proper sales to report as home market sales at pages 23 – 25 of its June 6, 2011, supplemental questionnaire response; Koehler's responses to questions concerning the identification of German sales and reconciliation of its home market sales database at pages 8 - 10 of its August 17, 2011, supplemental questionnaire response; and Koehler's responses to additional questions concerning the proper identification of home market sales at pages 1 -2 of its September 24, 2011, supplemental questionnaire response.[46]

c. Summary of AR2 Findings in Light of the Newly-Discovered Evidence in AR3

In AR2, Koehler was issued an initial questionnaire[47] and submitted its initial response to Section A on February 23, 2011, and Sections B-C on March 2, 2011, which included its home market and U.S. sales databases ("koehhm01.sas7bdat" and "koehus01.sas7bdat").[48] The Department subsequently issued four supplemental questionnaires in which Koehler submitted its responses on June 6, 2011, August 19, 2011, October 24, 2011, and November 11, 2011, respectively.[49] Thus, Koehler was provided with ample opportunity to provide an accurate accounting of its sales data and correct deficiencies in the five questionnaire responses, where necessary. Furthermore, Koehler and its counsel certified to the accuracy and completeness of the aforementioned five questionnaire responses.[50]

In light of the newly-discovered evidence in AR3, we find that the AR2 proceeding has been tainted by Koehler's transshipment scheme in the same way as the AR3 proceeding. In

[46] *Id.* and accompanying Issues and Decision Memorandum at 10-11 (internal footnotes omitted). These AR2 documents had been placed on the record of the AR3 proceeding.
[47] *See* the Department's initial Section A-C questionnaire issued to Koehler on January 3, 2011.
[48] *See* Koehler's Section A-C Questionnaire Response, dated February 23, 2011 and Section B-C response, dated March 2, 2011. Koehler's sales databases were subsequently revised in its supplemental response, dated June 6, 2011 (see databases titled, "koehhm02.sas7bdat" and koehus02.sas7bdat").
[49] *See* Koehler's Section A-C Supplemental Questionnaire responses, dated June 6, 2011, August 19, 2011, October 24, 2011, and November 11, 2011, respectively.
[50] Specifically, in its respective questionnaire responses, Koehler certified to the accuracy of its response stating, "(1) I have read the attached submission, and (2) the information contained in this submission, to the best of my knowledge, is complete and accurate." Further, Koehler's representative also certified the respective responses stating, "(1) I have read the attached submission, and (2) based on the information made available to me by Koehler, I have no reason to believe that this submission contains any material misrepresentation or omission of fact." *See, e.g.*, Koehler's Section A-C Supplemental Questionnaire responses, dated November 11, 2011, at pages 5-6.

addition, we reach the same findings and conclusions with respect to Koehler's transshipment scheme in AR2 as we did in AR3.[51] In particular, as a result of petitioner's allegations and Koehler's acknowledgement of those allegations, we find that Koehler engaged in an elaborate scheme to conceal certain otherwise reportable home market sales from the Department that would impact its normal value and, thus, contribute to an improper reduction of its dumping duties in AR2.[52] Koehler stated that its transshipment scheme began during AR2 and affected its reporting of AR2 sales.[53] Thus, Koehler provided an incomplete sales response and sales database to the Department. Accordingly, Koehler knowingly submitted inaccurate and incomplete sales data which are essential for the Department to calculate a dumping margin for Koehler's in the AR2 proceeding.

2. Determination of Total Adverse Facts Available

For this *Remand Redetermination,* in accordance with section 776 of the Tariff Act of 1930, as amended (the Act), we determine that the use of AFA for Koehler's margin is warranted. We are applying as AFA the petition rate of 75.36 percent.

a. Statutory Framework

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a

[51] *See AR3 Final Results,* and accompanying Issues and Decision Memorandum at 6-14; *see also* AR3 AFA Memo at 7-16.
[52] *Id.*; *see also* Petitioner's FIS, dated May 18, 2012, at 2-3 and Exhibit 1.
[53] *See* Koehler's July 19 Letter at page 2 fn 1; *see also* AR3 AFA Memo at 13; *AR3 Final Results,* and accompanying Issues and Decision Memorandum at 2.

proceeding, or (D) provides such information but the information cannot be verified as provided in section 782(i).

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission . . ., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[54]

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

b. Use of Facts Otherwise Available

Pursuant to section 776(a)(2)(A) of the Act, we find that Koehler withheld information that has been requested by the Department by failing to report all of its home market sales of subject merchandise during the POR. On January 3, 2011, the Department's initial questionnaire requested that Koehler provide the following:

1. Quantity and Value of Sales
   (a) State the total quantity and value of the merchandise under review that you sold during the period of review (POR) in (or to):

[54] *See also* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, Vol. 1 at 870 (1994).

(2) the home market…

…(i) In your response to section B and section C, provide a complete package of documents and worksheets demonstrating how you identified the sales you reported to the Department in your quantity and value chart and in your comparison market and U.S. market sales databases and reconciling the reported sales to the total sales listed in your general ledger. Include a copy of all computer programs used to separate the reported sales from your total sales and to calculate expenses…[55]

…II. Computer File of Foreign Market Sales

(A) Sales Reporting

…Report all sales of the foreign like product, whether or not you consider particular merchandise to be that which is most appropriately compared to your sales of the subject merchandise...[56]

On February 23, 2011, Koehler provided its section A response to the Department's initial questionnaire, and its sections B and C response on March 2, 2011. As noted above, Koehler and its counsel certified to the accuracy and completeness of Koehler's questionnaire responses.[57] However, based on petitioner's allegations and Koehler's acknowledgment of those allegations in AR3, including Koehler's acknowledgement that the transshipment scheme affected its AR2 sales reporting,[58] we find that Koehler withheld information requested by the Department.

In particular, we find Koehler withheld complete and accurate information regarding its total quantity and value of sales requested in the Section A Questionnaire, and certain otherwise reportable home market sales transactions, as requested in the Section B Questionnaire.[59]

[55] *See* the Department's initial questionnaire, dated January 3, 2011, Section A, at pages A-1 and A-3.
[56] *See id.*, Section B at page B-1.
[57] *See* the Company and Representative Certifications submitted in Koehler's Section A Questionnaire Response, dated February 23, 2011, at 6-7.
[58] *See* Petitioner's FIS, dated May 18, 2012, at 1-3 and Exhibit 1; *see also* Koehler's July 19 Letter at page 2 fn 1; AR3 AFA Memo at 13; *AR3 Final Results*, and accompanying Issues and Decision Memorandum at 2.
[59] *See* Koehler's Section A-C Questionnaire Response, dated February 23, 2011 and Section B-C response, dated March 2, 2011; *see also* Koehler's sales home market sales database titled, "koehhm02.sas7bdat," submitted in its supplemental response, dated June 6, 2011.

Accordingly, pursuant to section 776(a)(2)(A) of the Act, we find that Koehler withheld information regarding its total home market sales, the specific details of such sales, and its transshipment activities in AR2. Additionally, because Koehler withheld certain home market sales information, we find that certain necessary information is not available on the record within the meaning of section 776(a)(1) of the Act.

Pursuant to section 776(a)(2)(C) of the Act, based on petitioner's allegations and Koehler's acknowledgement of those allegations in AR3, including Koehler's acknowledgment that it engaged in a transshipment scheme during the AR2 POR and that such scheme affected its AR2 sales reporting,[60] we find that Koehler intentionally concealed certain otherwise reportable home market transactions, and thereby significantly impeded the review. Such actions undermine the integrity of the antidumping duty administrative review process and impede our ability to conduct the administrative review, pursuant to section 751 of the Act. Despite the Department's detailed and very specific questionnaire, we find that Koehler intentionally concealed otherwise reportable home market sales transactions, thus, failing to fulfill its obligation to reply accurately and completely to the Department's request for Koehler's home market sales, which serve as the essential basis for calculating a dumping margin.

As AR2 represents Koehler's third time as a mandatory respondent in this proceeding, the company was fully aware of its statutory duties in this regard. Koehler previously participated in the less-than-fair-value investigation (LTFV), AR1, and the instant AR2. Koehler is well aware that the Department examines home market sales in detail and that it requires accurate and reliable responses to all requests for information. In fact, Koehler stated in its June 27 SQR, at 3 in AR3, that "{a}s Koehler personnel were made aware from the beginning of the antidumping

[60] *See* Petitioner's FIS, dated May 18, 2012, at 1-3 and Exhibit 1; *see* also Koehler's July 19 Letter at page 2 fn 1; AR3 AFA Memo at 13; *AR3 Final Results*, and accompanying Issues and Decision Memorandum at 2.

proceedings in 2007, a sale must be reported as a home market sale, even though it is physically shipped to a location outside the home market, if, at the time of sale, the manufacturer knew that the product was ultimately destined for its home market. As a result of our investigation, Koehler [

].”[61] Koehler reported that other sales of the KT 48 product were [

], and not initially reported by Koehler in its initial home market sales data.[62] Moreover, Koehler stated that “[

].[63] Therefore, based on these activities taken by Koehler, we find that Koehler’s coordinated acts to manipulate its home market prices through its concealment of otherwise reportable home market sales transactions significantly impeded the Department’s ability to conduct the instant review.

c. Remedy of Deficiencies

The Department applies facts otherwise available pursuant to section 776(a) of the Act and subject to section 782(d) of the Act, which provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. As stated above, Koehler engaged in a transshipment scheme which concealed certain otherwise reportable home market sales during the AR2 review. This scheme was not revealed until petitioner raised

[61] *See* Koehler’s June 27 SQR, at 3-4.
[62] *See id*., at 3.
[63] *See id*.

its allegations in AR3 that "…Koehler has been engaged in a scheme to defraud the Department by intentionally concealing certain otherwise reportable home market transactions,"[64] and Koehler's subsequent acknowledgement that "the public portions of {petitioner's} May 18 allegations were substantially correct."[65] Furthermore, the unreported home market sales resulted from Koehler's intentional concealment of otherwise reportable home market sales. In light of these facts, we find that it is not practicable or appropriate during this remand proceeding to provide Koehler with the opportunity to remedy the deficiency of its reporting. Furthermore, if we were to allow Koehler to provide information which it intentionally concealed, only after another party brought the issue to our attention, it would allow a party to game the system and not provide truthful information when it is required to do so.

d. Koehler's Failure to Act to the Best of its Ability and Use of Adverse Inferences

In accordance with section 776(b) of the Act, the Department determines that Koehler failed to act to the best of its ability to comply with our request for information. In examining whether an interested party cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the interested party has hindered the calculation of accurate dumping margins.[66] Compliance with the "best of its ability" standard is determined by assessing whether the interested party has put forth its maximum best effort to provide the Department with full and complete answers to all inquiries in a review.[67] To conclude that a party has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the

[64] *See* Petitioner's FIS, dated May 18, 2012, at 2.
[65] *See* Koehler's July 31 Letter at page 5.
[66] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335, 20337 (April 19, 2010).
[67] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

Department has examined certain factors, including: (1) that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules and regulations; and (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to respond fully is the result of the respondent's lack of cooperation in either (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.[68] In addition, "{w}hile intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element."[69]

The Department finds that Koehler failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Based on petitioner's allegations and Koehler's acknowledgment of those allegations, the Department finds that Koehler engaged in a fraudulent transshipment scheme, deliberately concealed essential information, and failed to report all of its home market transactions. As a result of Koehler's conduct, the Department finds Koehler demonstrated a failure to cooperate to the best of its ability. Thus, as stated above, we find that application of total facts available with an adverse inference is warranted.

e. Total Facts Available

The Department determines to use total facts otherwise available with an adverse inference in making its determination in this review, AR2, because the Department finds that it is not possible to reach any reliable conclusions based on Koehler's data.

Based on petitioner's allegations and Koehler's acknowledgement of those allegations, we find that Koehler deliberately engaged in a scheme to manipulate its home market prices

[68] *See id.*, 337 F.3d at 1382-83.
[69] *See id.*, 337 F.3d at 1383.

through its concealment of otherwise reportable home market sales transactions. Pursuant to this scheme, Koehler failed to report certain home market sales, thus undermining the credibility and reliability of Koehler's data overall. Because we find Koehler's withholding of these home market sales to be a significant omission, the Department cannot rely upon any of Koehler's submitted information to calculate a dumping margin reflective of Koehler's level of dumping.

Additionally, we determine that Koehler's pattern of concealment regarding its transshipments, combined with the fact that Koehler and its counsel certified to the accuracy of responses despite such schemes, further significantly undermines the credibility and reliability of Koehler's data overall. Finally, because Koehler withheld information relating to certain home market sales during the AR2 POR, it is not possible to determine normal value using information on the record of this review and, therefore, the Department is unable to perform comparisons to U.S. prices. The Department's practice in such situations is to apply total AFA to the relevant respondent.[70] In addition, the CIT has also recognized that the Department may infer that a respondent who deliberately provides fraudulent information until it is confronted with contradictory evidence "exhibits behavior suggestive of a general willingness and ability to deceive and cover up the deception until exposure becomes absolutely necessary."[71]

For these reasons, we determine that total AFA is warranted in this instance.

[70] *See, e.g.*, *Hand Trucks and Certain Parts Thereof from the People's Republic of China; Final Results of 2005-2006 Administrative Review*, 73 FR 43684 (July 28, 2008) (*Hand Trucks*) and accompanying Issues and Decision Memorandum at Comment 1.

[71] *See Jiangsu Changbao Steel Tube Co. v. United States*, 884 F. Supp. 2d 1295, 1306 (CIT 2012) (*Jiangsu Changbao*); *see also Tianjin Magnesium Int'l Co. v. United States*, 844 F. Supp. 2d 1342, 1348 (CIT 2012) (*Tianjin I*)(holding that the Department erred in not applying total AFA to a company that provided false documentation). On remand, the Department's determination to apply total AFA was upheld, and this determination was ultimately affirmed by the Federal Circuit. *See Tianjin Magnesium Int'l v. United States*, 878 F. Supp. 2d, 1351, 1352-53 (CIT 2012) (*Tianjin II*), *aff'd*, 2014 U.S. App. LEXIS 2679 (Fed. Cir. February 5, 2014) (non-precedential).

3. Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record.

When selecting an adverse rate from among the possible sources of information, the Department seeks a rate that is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[72] This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[73] For that reason, the Department's practice is to assign to respondents who fail to cooperate with the Department the highest rate on the record of the proceeding, *i.e.*, the higher of the highest margin contained in the petition or the highest margin calculated for any party in the LTFV investigation or in any administrative review of a specific order.[74]

Consistent with the Department's practice and the purposes of section 776(b) of the Act, as AFA, we are applying 75.36 percent, the highest rate on the record of this proceeding, derived from information provided in the petition, to exports by Koehler.[75] The Department determines

[72] *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).
[73] SAA at 890; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *see also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997).
[74] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064, 40066 (July 14, 2006) (*Ball Bearings Final*); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000) (*Cold-Rolled Flat-Rolled Steel*), and accompanying Issues and Decision Memorandum at the "Facts Available" section.
[75] *See Initiation of Investigation*, 72 FR at 62434.

that this information is the most appropriate, from the available sources, to effectuate the purposes of AFA.

4. Corroboration of AFA Rate

Section 776(b) of the Act provides that as facts otherwise available with an adverse inference the Department may rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 of the Act (or section 753 of the Act for countervailing duty cases), or any other information on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority shall, to the extent practicable, corroborate that information from independent sources that are reasonably available at its disposal. Secondary information, as described in the SAA, is the "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise."[76] The regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[77] The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.[78] As stated in *Tapered Roller Bearings*,[79] to corroborate secondary information,

[76] *See* SAA at 870.
[77] *See* 19 CFR 351.308(d).
[78] *See* SAA at 870.

the Department will, to the extent practicable, examine the reliability and relevance of the information used.

As stated above, it is the Department's normal practice to apply as AFA to respondents who fail to cooperate with the Department the higher of the highest margin contained in the petition or the highest margin determined for any party in the LTFV investigation or in any administrative review of a specific order.[80] Pursuant to the Department's practice, the Department is using the petition rate of 75.36 percent, as stated in the *Initiation of Investigation*. In order to corroborate this petition rate, the Department examined the transaction-specific margins calculated for Koehler in this review, AR2.[81] We find that the petition rate of 75.36 percent is reliable and relevant in light of Koehler's highest transaction-specific margin calculated during AR2, 144.63 percent.[82] The 75.36 rate is relevant and reliable because it falls within the range of transaction-specific margins the Department calculated based on Koehler's reported data, with the highest transaction-specific margin being 144.63 percent. Furthermore, although we find the AR2 record unreliable for purposes of calculating Koehler's weighted-average dumping margin, we find Koehler's highest transaction-specific margin calculated in AR2 to be appropriate for purposes of corroborating the AFA rate from the petition for several reasons. Specifically, the rate is based on Koehler's own data and is therefore, reflective of

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

[80] *See e.g.*, *Ball Bearings Final*, 71 FR at 40066; *Cold-Rolled Flat-Rolled Steel*, 65 FR 34660, and accompanying Issues and Decision Memorandum at the "Facts Available" section.

[81] *See also AR3 Final Results.*

[82] *See* Calculation Memorandum for the Final Results, dated April 5, 2012, at Appendix I (calculated as UMARGIN of [ ] divided by USNETPRI of [ ]); *see also* Petitioner's FIS, dated May 18, 2012, at Exhibit 35. We note that this figure was bracketed in the underlying review, however, Koehler publicly revealed this figure in its comments on the *Draft Remand*. Therefore, we will no longer bracket this figure.

Koehler's commercial business practices in this segment of the proceeding. In addition, the product sold for the highest transaction-specific margin is based on a product [ ] by Koehler and there is no information on the record that demonstrates that the sale underlying this margin is aberrant.

In this review, we find that our corroboration exercise was conservative. Specifically, although Koehler's highest transaction-specific margin from this review was 144.63 percent, had Koehler properly disclosed its concealed sales, it is likely that there could have been additional transaction-specific margins at or above the level of the AFA rate being applied. The Department reached this finding in AR3, drawing on petitioner's analysis that:

> …the impact {of the concealed home market sales} would have been enormous for certain margins at the transaction-specific level. In this regard, we note that Koehler's scheme involved the concealment of its highest-priced sales of the matching 48-gram product. Had those sales been reported during the second review, many more U.S. sales (*i.e.*, those matching to the concealed sales)[83] surely would have had margins exceeding the 75.36% petition rate. Commerce's use in its corroboration analysis of the second review calculations - without the fraudulently omitted transshipped sales - was thus extremely conservative…. The fact that Koehler, even after concealing its highest-priced matching sales, still had a second review margin exceeding the 75.36% petition rate is highly significant, and demonstrates that the petition rate is relevant to Koehler's actual experience.[84]

Pursuant to this analysis, the Department found:

> While we cannot say definitively what the transaction-specific margins would have been had Koehler submitted a full and complete home market sales database in AR2, it is reasonable to assume according to the petitioner's analysis of the available information that the overall margin, and thus the transaction-specific margins, would have been higher. The presumptive purpose of Koehler's

[83] The 48-gram product was "the product matching to virtually all U.S. sales" in the second review period. *Lightweight Thermal Paper From Germany: Notice of Final Results of the 2009-2010 Antidumping Duty Administrative Review*, 77 FR 21082 (April 9, 2012), and accompanying Issues and Decision Memorandum at 7. According to Koehler, it sold only 48-gram paper to the United States after the initial investigation. *See* Koehler's AR3 Case Brief at 50.

[84] *See AR3 Final Results*, and accompanying Issues and Decision Memorandum at 19-20 (quoting Petitioner's AR3 Rebuttal Brief at 29-30) (original footnotes omitted).

> transshipment scheme was, after all, to conceal certain home market sales that, if reported, would have led to the calculation of a higher margin.[85]

In light of this finding, and knowing that the underlying home market sales data are incomplete due to Koehler's omission of certain home market sales pursuant to its transshipment scheme, which reportedly began during this review, and our finding that Koehler intended to conceal these sales from the Department, which would affect our calculation of Koehler's dumping margin, our corroboration of the AFA rate using the highest transaction-specific margin calculated from data that Koehler actually reported to the Department is conservative.

As the 75.36 percent rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act and 19 CFR 351.308(d). Therefore, we assign this AFA rate to exports of the subject merchandise by Koehler.

E. INTERESTED PARTY COMMENTS

Issue 1: Rejection of New Factual Information

As noted above, concurrent with the release of the *Draft Remand*, the Department reopened the AR2 record and placed documentation obtained over the course of AR3 on the record of this segment. The Department also invited parties to submit comments on the *Draft Remand*, and provided parties an opportunity to "submit new factual information specifically related to the rate being applied and the corroboration of this rate."[86] However, the Department stated that it "will not accept any information that could be considered responsive to the Department's initial questionnaire or supplemental questionnaires from the underlying 2009-

[85] *See AR3 Final Results,* and accompanying Issues and Decision Memorandum at 20 (citing Petitioner's AR3 Rebuttal Brief at 29-31 (original footnotes omitted).
[86] *See Draft Remand* Cover Letter.

2010 administrative review proceeding, including additional sales data for the period of review."[87]

In its April 28, 2014 comments, Koehler submitted several pieces of new factual information, including, *inter alia*, Koehler's previously omitted sales, new discount information for a previously reported sale, and a SAS programming code which incorporated the aforementioned omitted sales data.[88] In its comments, Koehler provided arguments and references pertaining to this information, in particular, 1) the volume of the omitted sales that were required to be reported in its AR2 sales reporting, 2) the margins that would be calculated using the omitted sales, 3) a revised discount amount for a previously reported sale that would result in a lower transaction-specific margin.[89]

In support of this submission of information, Koehler argued that such information complied with the Department's request to provide information related to the total AFA rate selected by the Department and corroboration of that rate.[90] According to Koehler, the Department is required to consider evidence that both supports its decision and "fairly detracts from the substantiality of the evidence."[91] Therefore, Koehler argued that the Department must accept and consider factual information that responds to the new reasoning in the *Draft Remand*.[92]

[87] *See id.*
[88] *See* Letter to Koehler dated May 2, 2014, at 1 – 2 (summarizing and rejecting Koehler's April 28, 2014, Comments); *see also* Koehler's April 28, 2014, Comments at Attachments 2, 3, and 6 (rejected and retained).
[89] *See* Letter to Koehler dated May 2, 2014, at 1 – 2 (summarizing and rejecting Koehler's April 28 Comments); *see generally* Koehler's April 28, 2014, Comments (rejected and retained).
[90] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 39-40; *see also* Koehler's April 28, 2014, Comments at 39-40 (rejected and retained).
[91] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 40 (quoting *Gallant Ocean (Thail.) Co. v. United States*, 602 F. 3d. 1319, 1323 (Fed. Cir. 2010) (*Gallant Ocean*)); *see also* Koehler's April 28, 2014, Comments at 40 (rejected and retained).
[92] *See id.*

On April 29, 2014, petitioner objected to this new factual information, arguing that the new factual information fell outside the scope of the Department's instructions regarding limited new factual information, in particular, the Department's instruction that it would not accept information which could be considered responsive to the original questionnaire in the underlying review.[93] On April 30, 2014, Koehler responded to petitioner's letter, urging the Department to accept its information, and stating that "{a}t no point does Koehler provide information intended to be responsive to the Department's questionnaires."[94]

On May 1, 2014, petitioner responded to Koehler's letter, arguing that: "{R}egardless of Koehler's intent, the new information clearly would have been responsive to the Department's initial questionnaire, which solicited information about (1) all home market sales of the subject merchandise, and (2) early payment discounts for all U.S. sales. The challenged information is untimely, because it was solicited during the underlying review but was not provided within the applicable time limits."[95]

On May 2, 2014, the Department rejected the above-mentioned information, finding that such information "should have been provided in response to the Department's initial questionnaire and supplemental questionnaires, and thus the Department will not accept this information or any argument pertaining to such information in this remand proceeding."[96]

On May 6, 2014, Koehler resubmitted its April 28 Comments in accordance with the Department's instruction. In its resubmitted comments, Koehler argues that the Department improperly rejected certain new factual information in its original comments. In support of this argument, Koehler states that both the regulations and previous CIT decisions recognize the need

[93] *See* Petitioner's April 28, 2014, letter at 1 – 2.
[94] *See* Koehler's April 30, 2014, letter at 1 – 2.
[95] *See* Petitioner's May 1, 2014, letter at 1 – 2.
[96] *See* Letter to Koehler dated May 2, 2014, at 1 – 2.

to allow a party to rebut factual information placed on the record, even where the Department is the party adding the information.[97] In addition, Koehler argues that the Department has effectively negated its previous instruction that it would accept new factual information related to the AFA rate and corroboration, by rejecting all information that could be considered responsive to the previous questionnaires.[98] Koehler reiterates that it does not seek to admit its missing sales information for the purpose of "fixing" its prior questionnaire response, but rather to demonstrate that these sales were not material.[99] Lastly, Koehler argues that the Department improperly rejected information pertaining to the transaction underlying the corroboration analysis.

In its May 13, 2014, rebuttal comments, petitioner reiterates the statements it made in its previous letters and argues that because the Department had already provided an explanation for rejecting Koehler's new factual information, it did not need to address the issue in the final remand.[100]

Department's Position

We disagree with Koehler. As an initial matter, we note that in revisiting the *AR2 Final Results* and reopening the AR2 record, the Department must consider the record in its entirety, including any information submitted during the original AR2 proceeding and the remand proceeding as one whole record. As noted above, in the *Draft Remand*, the Department placed information obtained in AR3 on the AR2 record which demonstrated that Koehler had engaged in a transshipment scheme which affected its AR2 sales reporting. The Department then invited

[97] *See* Cover Letter accompanying Koehler's Re-submitted April 28 Comments (May 6, 2014) at 2 (citing 19 CFR 351.301(c)(4) (2013); *Wuhu Fenglian Co., Ltd. v. United States*, 836 F. Supp. 2d 1398 (CIT 2012); *Crawfish Processors Alliance v. United States*, 343 F. Supp. 2d 1242, 1261 (CIT 2004)).
[98] *See id.*, at 2-3.
[99] *See id.*, at 3.
[100] *See* Petitioner's May 13 Rebuttal Comments at 1 fn 1.

parties to submit comments on the *Draft Remand*, as well as provide limited new factual information "specifically related to the rate being applied and the corroboration of this rate."[101] However, because it was reopening the AR2 record, the Department indicated that it "will not accept any information that could be considered responsive to the Department's initial questionnaire or supplemental questionnaires from the underlying 2009-2010 administrative review proceeding, including additional sales data for the period of review."[102]

Koehler's April 28, 2014, submission contained this additional sales data, as well as other information regarding the 144.63 percent transaction-specific margin that it should have submitted in its questionnaire responses. Koehler does not deny that this information "could be considered responsive" to the Department's questionnaires, nor does it deny that this information should have been submitted in response to those questionnaires. Rather, Koehler argues that it proffers this information not for the purpose of responding to the Department's questionnaires, but to demonstrate that the Department improperly applied total AFA and failed to corroborate its rate.[103] However, we agree with petitioner that Koehler's "intent" for submitting the factual information which was rejected is an insufficient basis to overcome our explicit instructions that information that "could be considered responsive" to the Department's questionnaires in AR2 would not be accepted.

In considering the record as a whole, we note that the Department is bound by the statutory requirements in section 782(e) of the Act, which provides that:

> (e) *Use of certain information*. In reaching a determination under section 703, 705, 733, 735, 751, or 753 the administering authority and the Commission 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 or the Commission, if--

[101] *See Draft Remand* Cover Letter.
[102] *See id.*
[103] *See* Cover Letter accompanying Koehler's Re-submitted April 28 Comments (May 6, 2014) at 2-3.

> (1) the information is submitted by the deadline established for its submission,
> (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 in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and
> (5) the information can be used without undue difficulties.

Here, the information Koehler provided was submitted well after the deadline for responding to the Department's initial and supplemental questionnaires, and, moreover, we find that Koehler failed to act to the best of its ability in providing this information. Thus, the Department was not required under section 782(e) of the Act to consider the information and properly rejected this information.

Furthermore, we disagree with Koehler that the regulations and previous CIT decisions require that we accept this information. The circumstances of this remand proceeding are unique and nothing in the regulations or the CIT decisions cited by Koehler require us to accept the information that we rejected. As noted above, the Department requested a voluntary remand to reconsider its *AR2 Final Results* in light of new evidence that Koehler had engaged in a transshipment scheme to conceal certain otherwise reportable home market sales. In our *Draft Remand*, we reopened the AR2 record to include relevant information from AR3. Given these unique circumstances, the Department carefully identified topics in the *Draft Remand* for which parties could submit factual information, and explicitly identified information that could not be submitted, *i.e.*, information that should have been provided in response to the Department's initial questionnaires during the original proceeding, including specifically, additional sales data for the period of review. Thus, this remand proceeding was not an opportunity for Koehler to

submit information that it had initially concealed or failed to report in its questionnaire responses.

The cases cited by Koehler are inapplicable to this situation. In *Wuhu Fenglian*, the CIT held that the Department improperly rejected comments in response to data sourced from U.S. Customs and Border Protection that the Department had placed on the record during a new shipper review.[104] In *Crawfish Processors Alliance*, the CIT held that the Department improperly rejected new factual information submitted in response to the Department's verification report at issue in an administrative review.[105] Neither of these cases applies to the instant situation in which the Department allowed parties to submit limited new factual information during the course of a remand, and would not allow a respondent to supplement or correct its original questionnaire responses. We find that the Department's action in this case is further supported by the CIT's holding in *Since Hardware*, a similar case in which the court upheld the Department's determination not to reopen the record on remand and permit a respondent to submit additional information: "Since Hardware had the chance to place truthful information on the record during the underlying review. The company's decision to provide fraudulent information, and thus not to cooperate fully with the Department during the review, ended that opportunity."[106]

In any event, even assuming *arguendo* that parties must be permitted to rebut new factual information which the Department places on the record of a reopened proceeding involving fraudulent conduct, we find that Koehler's new factual information (specifically, its missing sales data), is not intended to rebut any of the factual information from AR3 that the Department placed on the record, but rather, is meant to rebut the conclusions that the Department drew from

[104] *See Wuhu Fenglian Co., Ltd. v. United States*, 836 F. Supp. 2d at 1401-1405.
[105] *See Crawfish Processors Alliance v. United States*, 343 F. Supp. 2d at 1261.
[106] *Since Hardware (Guangzhou) Co. v. United States*, 2013 Ct. Intl. Trade LEXIS 78, *11 (May 31, 2013).

that information in the *Draft Remand*. While we allowed Koehler an opportunity to comment on the *Draft Remand*, we find that we owe Koehler no further opportunity to supplement the record.

Lastly, Koehler's argument that we improperly rejected information pertaining to the transaction underlying the corroboration analysis is also without merit. During the underlying proceeding, we disclosed the dumping calculations in both the preliminary and final results, and provided parties opportunities to comment.[107] Koehler did not allege any calculation errors in the underlying proceedings and, thus, did not avail itself of the comment opportunities that the Department's regulations provide interested parties to address such topics.[108] Therefore, we find Koehler's attempt to raise such comments in the context of this remand proceeding is inappropriate and untimely.

Issue 2: The Materiality Needed to Revisit Final Results

In its comments, Koehler argues that the fraud exception to the rule of finality applies only when there is *prima facie* evidence of fraud that had a material effect on the results of the underlying review.[109] Koehler also argues that "{w}hatever the reason for the omission of certain home market sales data in AR2, the omission of a small fraction of Koehler's home market sales did not have a material effect on the AR2 results."[110] In support of this argument, Koehler points to a statement that it made in AR3, which was placed on the record of this review by the Department, that "{o}nly [ ] issued during the last five weeks of the period of review ("POR") were omitted from Koehler's home market sales data in AR2."[111] Koehler states that these sales constitute less than [ ] of its total

[107] *See AR2 Final Results* Margin Output (April 9, 2012).
[108] *See* 19 CFR 351.224 (providing procedures for the correction of ministerial errors).
[109] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 6-7 (citing *Home Products I*, 663 F. 3d at 1380-81).
[110] *See id.*, at 7.
[111] See *id.*, at 8 (citing Koehler's July 19 Letter at page 2 fn 1).

AR2 home market sales.[112] Thus, Koehler argues that although a specific standard for materiality has not been established in this context, the Department should find that the omission of this small set of home market sales would not have altered Koehler's dumping margins in AR2.[113]

Next, Koehler argues that even if the facts at issue satisfy the materiality standard, the Department must consider the totality of the circumstances surrounding the alleged fraud in determining whether to revisit the *AR2 Final Results*. For instance, Koehler argues that "for approximately [ ] of POR2, a small group of Koehler employees—without the knowledge or approval of senior management, and in violation of Koehler's policies– misclassified a small handful of home-market sales, which led to those sales being omitted from Koehler's home-market data submission."[114] Koehler also states that although this information came to light during AR3, after conducting an internal investigation Koehler voluntarily disclosed the AR2 omitted sales to the Department and agreed to a remand to determine the effect of this omission on the *AR2 Final Results*.[115] In addition, Koehler argues that it took several actions to correct these issues, including reporting the omitted sales.[116] Thus, Koehler argues that in light of these circumstances, "{a}ltering the final results of the review in the manner suggested by the draft remand results would unlawfully punish Koehler by subjecting the company to an AFA rate that…bears no relationship to Koehler's business reality," and "risks

[112] *See id.*
[113] *See id.*, at 10-13. Koehler draws its conclusions based on a recalculation of its dumping margin incorporating an adjustment for certain home market rebates which it argues it must be entitled to in light of the CIT's holding in the AR1 litigation. *See id.*, at 10-11. The remainder of Koehler's argument is heavily redacted, as the Department rejected arguments and references pertaining to 1) the volume of the omitted sales that were required to be reported in Koehler's AR2 sales reporting, and 2) the margins that would be calculated using the omitted sales. *See id.*, at 11-13.
[114] See *id.*, at 14-15.
[115] *See id.*, at 15.
[116] *See id.*, at 15-16 (listing the propriety details of these actions).

deterring other parties from cooperating fully with the Department in circumstances where employee misconduct comes to light."[117]

In its rebuttal comments, petitioner argues that Koehler misrepresents the appropriate standard for the Department to address fraud. According to petitioner, in *Home Products I*, the case cited by Koehler, the standard articulated related to the question of whether the CIT abuses its discretion in failing to issue a remand when there is *prima facie* evidence that the agency proceedings were tainted by material fraud.[118] By contrast, petitioner argues that the issue in this case is not whether or not to issue the remand—which has already been done—but rather, whether Commerce may appropriately exercise its "inherent authority to reopen a case to consider new evidence that its proceedings were tainted by fraud."[119] Petitioner argues that because Commerce has this authority to protect the integrity of its own proceedings, it may cleanse its proceedings of fraud and should reject Koehler's materiality arguments.[120]

In addition, petitioner argues that Koehler's fraud was obviously material because it undermined the reliability of its entire questionnaire response. In support of this argument, petitioner cites the Department's own statements regarding the reliability of a respondent's questionnaire responses, as well as two CIT cases also involving the reliability of a respondent's entire questionnaire response after a party has purposefully concealed information from the Department.[121] Like in those two cases, according to petitioner, "it is reasonable to infer 'a general willingness and ability to deceive' by Koehler 'which implicates the reliability of that respondent's remaining representations.'"[122] Petitioner also argues that the Department should

[117] See *id.*, at 16.
[118] *See* Petitioner's May 13 Rebuttal Comments at 2-3 (citing *Home Products I*, 633 F.3d at 1375-78).
[119] *See id.*, at 2 (citing *Home Products I*, 633 F.3d at 1377).
[120] *See id.*, at 3.
[121] *See id.*, at 4 (*citing Jiangsu Changbao*, 884 F. Supp. 2d at 1306 and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 925 F. Supp. 2d 1315, 1322 (CIT 2013) (*Ad Hoc Shrimp*).
[122] *See id.*, at 4-5 (quoting *Jiangsu Changbao*, 884 F. Supp. 2d at 1306).

continue to reach the same conclusions that it did in the *Draft Remand* regarding the reliability of Koehler's information, and should disregard Koehler's self-serving assertions that the omission of its home market sales was limited in terms of number and affected time period.[123] Petitioner states that even if the Department were to accept Koehler at its word regarding these omitted sales, this still would not render the omission immaterial because the purpose of Koehler's transshipment scheme was to conceal high-priced sales matching its U.S. sales.[124]

Next, petitioner argues that the circumstances surrounding Koehler's fraud do not warrant a different finding from the *Draft Remand*. Petitioner states that the Department should disregard Koehler's self-serving assertions that the transshipment scheme was conducted by a small group of low-level employees without the knowledge of senior management, which is contradicted by the Department's previous findings in AR3.[125] In addition, petitioner argues that the Department already addressed Koehler's arguments in AR3, finding that Koehler as an interested party failed to cooperate and its after-the-fact remedial measures did not alter the Department's findings.[126]

Lastly, petitioner argues that Koehler is incorrect in stating that it did not have any awareness of the transshipment scheme until AR3 in light of the fact that petitioner raised similar issues with Koehler's reporting in the underlying AR2.[127]

Department's Position

We disagree with Koehler. As an initial matter, the Department "has inherent authority to reopen a case to consider new evidence that its proceedings were tainted by fraud."[128] This is

[123] *See id*., at 5-7.
[124] *See id*., at 8
[125] *See id*., at 8-10
[126] *See id.*, at 10-11.
[127] *See id.*, at 12-14 (summarizing petitioner's previous allegation).
[128] *See Home Products I*, 633 F.3d at 1377; *Tokyo Kikai*, 529 F.3d at 1360-61 (citing *Elkem Metals, Inc. v. United States*, 193 F. Supp. 2d 1314, 1321 (CIT 2002)).

the standard that the Department applied in determining whether to reopen the *AR2 Final Results*. Thus, to the extent Koehler argues that the Department must make an affirmative showing that the alleged fraud had a "material" effect on the *AR2 Final Results* to warrant reconsideration, we agree with petitioner that this is the incorrect standard for the Department to apply in this remand proceeding. We note that in *Home Products I*, the court held that:

> where a party brings to light clear and convincing new evidence sufficient to make a prima facie case that the agency proceedings under review were tainted by material fraud, the Trade Court abuses its discretion when it declines to order a remand to require the agency to reconsider its decision in light of the new evidence.

Thus, to the extent materiality is necessary, it was determined when the Court granted the request for remand. We agree with petitioner that at this point, the court has already agreed with the Department that there is sufficient evidence of fraud to warrant a "remand to require the agency to reconsider its decision in light of the new evidence." The Department is now in a position to exercise its "inherent authority to cleanse its proceedings of fraud," and it has done so in this *Remand Redetermination*.

In any event, as discussed above in our *Remand Redetermination* at pages 19-20, we find that the transshipment scheme perpetrated by Koehler undermined the reliability and integrity of the entire AR2 proceeding. As discussed above, we find that Koehler intentionally engaged in a fraudulent transshipment scheme to conceal certain home market sales. Koehler argues that there were only a handful of sales that affected its AR2 reporting. However, Koehler and its counsel also certified in AR2 throughout multiple questionnaire responses that Koehler had provided a complete and accurate home market sales database at that time. Therefore, we find that we cannot give much credence to Koehler's self-serving statements in this remand proceeding regarding an alleged limited effect of the transshipment scheme on its AR2 reporting.

Furthermore, we note that although Koehler "volunteered" information about its AR2 reporting, it only did so well after the *AR2 Final Results* were issued, and only as a direct result of petitioner's allegations regarding Koehler's transshipments in AR3. This leads us to believe that these alleged small number of missing sales are not necessarily the only unreliable information in Koehler's questionnaire response. Although Koehler continues to argue that the transshipment scheme had a limited effect on its AR2 reporting, we find that just as we cannot trust the veracity of Koehler's underlying questionnaire responses, we similarly cannot trust Koehler's self-serving statements in this proceeding. Koehler's actions reflect misrepresentations, the extent of which we cannot accurately identify.

Furthermore, with respect to Koehler's arguments that the transshipment scheme was undertaken by "a small group of Koehler employees—without the knowledge or approval of senior management," we reach the same conclusions as we did in AR3:

> The Department finds the distinctions and this particular information referenced by Koehler are not germane to our finding. To the contrary, to maintain the integrity of our trade enforcement laws, the legal process of antidumping duty administrative reviews, and to ensure the accuracy of the Department's margin calculations, we consider Koehler as one single entity for reporting purposes. Therefore, Koehler's questionnaire responses should accurately and transparently reflect its true sales and accounting records for each and every sale, regardless of the [ ] responsible for [ ]. Moreover, Koehler is responsible for the actions of its entire company, especially any actions that may have an effect on its reporting to the Department. Therefore, we find that the burden is on Koehler to have internal monitoring measures and procedures in place to ensure that the aforementioned activities do not occur.[129]

With respect to Koehler's arguments regarding certain remedial measures, we also reiterate our conclusions from AR3:

> Although Koehler took certain measures after the allegation was made by Petitioner and acknowledged by Koehler, we do not find that such actions taken

[129] *See* AR3 AFA Memo at 14.

> by Koehler restore our confidence in the reliability of its home market sales data submitted for this review . . . ..[130]

Issue 3: The Application of Total AFA

Koehler argues that because of the limited extent of its omissions, the application of total AFA is inappropriate. Koehler cites *Mannesmannrohen-Werke v. United States*, where the CIT found that where the errors involved were *de minimis*, the Department's decision to apply AFA was not supported by substantial evidence on the record.[131] Koehler also argues that several cases demonstrate that disregarding all of Koehler's data would be unlawful, as AFA should be used only to "fill in the gaps" where information is unavailable or otherwise deficient.[132] Koehler cites *Ferro Union, Inc., v. United States*, where, on remand, despite the "deliberate" failure to report three resellers, which affected the reliability of the home market sales database, the Department concluded that the bulk of respondent's questionnaire response was useable.[133] Koehler also cites *Tianjin Mach. Imp. & Exp. Corp. v. United States*, where the CIT held that "the use of AFA resulting from the fraudulent invoicing scheme may taint TMC's pricing information, but cannot be used as an excuse to disregard unrelated information."[134]

Koehler also relies on the *Gerber Food* cases, in which the CIT rejected the Department's use of total AFA for a respondent that purposefully mislead the Department regarding an export agency agreement, finding that the Department may use AFA regarding the missing information,

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[130] *See AR3 Final Results* and accompanying Issues and Decision Memorandum at 13 (quoting AR3 AFA Memo at 15-16).
[131] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 17-18 (citing 77 F. Supp. 2d 1302, 1313-1314 (CIT 1999) (*Mannesmannrohen-Werke*).
[132] *See id.*, at 18-19.
[133] *See id.*, at 19-20 (citing *Ferro Union, Inc. v. United States*, 74 F. Supp. 2d 1289, 1292-93 (CIT 1999) (*Ferro Union*)).
[134] *See id.*, at 20 (quoting *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 752 F. Supp. 2d 1336, 1344 (CIT 2011) (*Tianjin Magnesium*)).

but not information that is otherwise not missing or deficient.[135] Thus, Koehler argues that the application of AFA is unlawful because of the small number of omitted home market sales. In addition, Koehler argues that the Department's application of total AFA (as opposed to partial AFA) is unlawful and punitive because the Department would be discarding U.S. and home market sales that Koehler properly and timely reported.

In its rebuttal comments, petitioner argues that Koehler fails to rebut any of the Department's findings under the applicable AFA statute, and instead points to cases in which no adverse inferences or partial adverse inferences were used and that are not applicable to the instant case. Petitioner disagrees with Koehler that *Jiangsu Changbao* and *Tianjin I* are inapposite, because those cases dealt with similar situations in which the respondent purposefully defrauded the Department.[136] Petitioner again explains that there is no evidence to support Koehler's self-serving assertions regarding the small number of omitted sales and the limited impact on the dumping margin. Petitioner argues that the cases cite by Koehler are inapplicable because none of those cases involved a major fraud or other intentional misconduct undermining the reliability of a respondent's entire questionnaire response.[137] Petitioner points to several recent cases in which the CIT has upheld the Department's determination to find a respondent's entire questionnaire response unreliable in the face of such intentional misconduct.[138]

Department's Position

We continue to find that application of total AFA is appropriate. As stated above in the *Remand Redetermination* at pages 19-20:

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[135] *See id.*, at 21-23 (citing *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270, 1287-88 (CIT 2005) (*Gerber Food I*) and *Gerber Food (Yunnan) Co., Ltd. v. United States*, 491 F. Supp. 2d 1326 (CIT 2007) (*Gerber Food II*).
[136] *See* Petitioner's May 13 Rebuttal Comments at 15-16 (citing *Jiangsu Changbao*, 884 F. Supp. 2d at 1306 and *Tianjin I*, 844 F. Supp. 2d at 1345).
[137] *See id.*, at 16-18.
[138] *See id.*, at 17-18.

> Based on petitioner's allegations and Koehler's acknowledgement of those allegations, we find that Koehler deliberately engaged in a scheme to manipulate its home market prices through its concealment of otherwise reportable home market sales transactions. Pursuant to this scheme, Koehler failed to report certain home market sales, thus undermining the credibility and reliability of Koehler's data overall. Because we find Koehler's actions to be a material omission, the Department cannot rely upon any of Koehler's submitted information to calculate a dumping margin reflective of Koehler's level of dumping.
>
> Additionally, we determine that Koehler's pattern of concealment regarding its transshipments, combined with the fact that Koehler and its counsel certified to the accuracy of responses despite such schemes, further significantly undermines the credibility and reliability of Koehler's data overall. Finally, because Koehler withheld information relating to certain home market sales during the AR2 POR, it is not possible to determine normal value using information on the record of this review and, therefore, the Department is unable to perform comparisons to U.S. prices. The Department's practice in such situations is to apply total AFA to the relevant respondent.[139] In addition, the CIT has also recognized that the Department may infer that a respondent who deliberately provides fraudulent information until it is confronted with contradictory evidence "exhibits behavior suggestive of a general willingness and ability to deceive and cover up the deception until exposure becomes absolutely necessary."[140]

We agree with petitioner that Koehler has failed to raise any issue with the Department's AFA findings under section 776 of the Act. We also agree with petitioner that the court has repeatedly upheld use of total AFA in similar situations in which the respondent has misled or withheld information from the Department until it is faced with contradictory evidence, in cases such as *Jiangsu Changbao*, *Tianjin I* and *Ad Hoc Shrimp*.[141] Therefore, the cases cited by Koehler, such as *Ferro Union* and the *Gerber Food* cases, are not on point because none of those cases dealt with the instant situation in which a party engaged in a transshipment scheme to conceal certain home market sales, only to reveal that information after being caught by another party in a later proceeding. We also find Koehler's reference to *Mannesmannrohen-Werke*

[139] *See, e.g.*, *Hand Trucks* and accompanying Issues and Decision Memorandum at Comment 1.
[140] *See Jiangsu Changbao*, 884 F. Supp. 2d at 1306; *see also Tianjin I*, 844 F. Supp. 2d at 1348.
[141] *See Jiangsu Changbao*, 884 F. Supp. 2d at 1306; *Tianjin I*, 844 F. Supp. 2d at 1348; *Ad Hoc Shrimp*, 925 F. Supp. 2d at 1322.

inapplicable because there is no evidence to support Koehler's contention that the "errors" at issue had a *de minimis* effect on the final results. As stated above, although Koehler argues that the transshipment scheme had a limited effect on its AR2 reporting, we cannot trust Koehler's self-serving statements in this proceeding.

In any event, although it is not possible to directly compare the factual record across all proceedings involving the use of AFA, as discussed above under Issue 2, it is clear that our inability to rely on Koehler's information is not limited to its claim of a small amount of unreported sales; rather, Koehler's actions cause us to be unable to rely on all of its reported information. In addition, the fact that Koehler identified a small number of unreported sales only after petitioner raised its allegations leads us to believe that this is not necessarily the only unreliable information in Koehler's questionnaire response. Thus, we find that Koehler's actions reflect misrepresentations, the extent of which we cannot accurately identify.

Issue 4: The AFA Rate

In its comments, Koehler argues that the Department selected an unlawful AFA rate. Koehler argues that although the AFA rate is meant to provide an incentive to cooperate, the Department is "not to impose punitive, aberrational, or uncorroborated margins"[142] According to Koehler, the application of the AFA rate of 75.36 percent is unlawful because A) the Department relies on a discredited and unreliable petition rate that bears no relationship to Koehler's actual commercial reality, and B) the Department applied an impermissibly punitive rate.[143]

Koehler asserts that the Department is required "to show some relationship between the AFA rate and the actual dumping margin"[144] and must demonstrate that the rate is "a reasonable

[142] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 26 (quoting *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Circ. 2000) (*F.lli De Cecco*)).
[143] *See id.*, at pages 26-29 and 35-37. We address Koehler's arguments regarding corroboration under the next issue.
[144] *See id.*, at 26 (quoting *Gallant Ocean*, 602 F. 3d at 1325).

estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance."[145] Koehler argues that the 75.36 percent rate is significantly above the actual rates established for Koehler in the investigation—more than eleven times the margin calculated using Koehler's actual data.[146] According to Koehler, the Federal Circuit has rejected as "unreasonably high" a petition-based rate that was ten times higher than the highest calculated margin for a respondent.[147] In addition, Koehler claims that the 75.36 percent petition rate has been discredited by the Department's investigation and subsequent reviews and bears no relationship to Koehler's actual commercial situation.

Koehler next argues that petition rates are inherently unreliable because they are unverified rates.[148] Koehler cites Federal Circuit precedent which has found a petition rate to be unreliable in the face of a verified margin in an investigation.[149] Koehler also argues that the 75.36 percent petition rate at issue cannot be used because it was based on data from a different company, Mitsubishi, and not Koehler.[150] Koehler states that the Department cannot apply AFA to one company based on data from another company, where such information has not been verified, and argues that the CIT rejected the notion that the AFA rate need be relevant only to the general industry in question.[151] In addition, Koehler argues that the petition rate was based on constructed-value (CV) methodology that has not been used for any transaction of the AR2 proceeding.[152] Koehler acknowledges that the 75.36 petition rate does rely on certain Koehler-specific information, however, Koehler claims that "{t}his smattering of data, coupled with the

[145] *See id.*, at 26-27 (quoting *F.lli De Cecco*, 216 F.3d at 1032).
[146] *See id.*, at 27.
[147] *See id.* (citing *Gallant Ocean*, 602 F.3d at 1324-25).
[148] *See id.*, at 28 (citing SAA at 870).
[149] *See id*. (citing *F.lli De Cecco*, 216 F.3d at 1032-33).
[150] *See id.* (citing Attachment 1, which is a selection from the petition).
[151] *See id.* (citing *Shandong Huarong Gen. Grp. Corp. v. United States*, 29 C.I.T. 1227, 1232 (2005) (*Shandong Huarong*)).
[152] *See id.*, at 29 (citing Attachment 4, which is the *Initiation of Investigation*, 72 FR 62430).

fact that the margin itself utilizes a fundamentally different dumping calculation methodology than the Department has ever used for Koehler, renders the petition rate inaccurate."[153] Lastly, Koehler argues that the 75.36 percent rate is impermissibly punitive and would have no deterrent effect.[154]

In its rebuttal comments, petitioner argues that the Department's selection of the petition rate as the AFA rate is permissible pursuant to section 776(b)(1) of the Act. Petitioner argues that so long as a petition rate is corroborated, it is not discredited or unreliable even though it may be higher than a respondent's actual calculated rate.[155] Petitioner also argues that the Department should reject Koehler's arguments that the petition rate cannot be used because it is based on Mitsubishi's information and is derived using a different comparison methodology. The petitioner argues that the Department should reject these arguments as it did in AR3, because the petition rate is based in part on Koehler's specific information, and even if it was not, the Department may still use a rate based on an entirely different respondent's information.[156] Likewise, there is no precedent that requires an AFA rate be based on a respondent's particular comparison methodology, and as long as the AFA rate is corroborated, it can be used.[157] Lastly, petitioner argues that the petition rate is not punitive, and will meet, not undermine, the goal of the AFA provisions.[158]

Department's Position

We disagree with Koehler. As stated above in the *Remand Redetermination* at pages 20-21, we continue to find it appropriate to use the 75.36 percent rate derived from the petition as

[153] *See id.*, at 29 fn 107.
[154] *See id.*, at 35-37.
[155] *See* Petitioner's May 13 Rebuttal Comments at 19-20 (citing *Hubscher Ribbon Corp. v. United States*, 942 F. Supp. 2d 1375, 1378 (CIT 2013) (*Hubscher*) and *KYD, Inc. v. United States*, 613 F. Supp. 2d 1371, 1379 (CIT 2009) (*KYD I*), *aff'd*, 607 F.3d 760, 764 (Fed. Cir. 2010) (*KYD II*).
[156] *See id.*, at 21-22.
[157] *See id.*, at 22.
[158] *See id.*, at 32-36.

AFA in accordance with section 776(b)(1) of the Act and 19 CFR 351.308(c), which explicitly authorize the Department to rely on information in the petition in selecting an AFA rate. Furthermore, as discussed under the next issue, we may appropriately use this rate because it is reliable and relevant to Koehler, and therefore is corroborated to the extent practicable pursuant to section 776(c) of the Act. In addition, the use of the petition rate in this instance is consistent with the Department's practice of selecting the higher of either the highest rate from the petition or the highest calculated margin on the record of the proceeding.[159] We note that Koehler has been the only respondent in the history of this proceeding. Thus, consistent with our well-established practice, and in accordance with the statute and the regulations, the Department selected the 75.36 percent rate because it is higher than the highest margin calculated for any respondent in any segment of this proceeding (*i.e.*, the 6.50 percent rate from the LTFV investigation). Therefore, we find that the 75.36 petition rate ensures that Koehler "does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[160]

With respect to Koehler's argument that the petition rate has been discredited and is inherently unreliable, the fact that we've calculated lower rates than the highest rate in the petition does not "discredit" the petition rate, which has been corroborated as discussed below. Further, we note that the only limitation on using secondary information, such as a petition rate, is that the rate be corroborated to the extent practicable, which the Department has done in this instance. Thus, there is no limitation preventing the Department from selecting the petition rate merely because that rate is higher than Koehler's actual calculated rate in the investigation. In this regard, we find Koehler's citations to *F.lli De Cecco* and *Gallant Ocean* unavailing, because

[159] *See, e.g., Ball Bearings Final,* 71 FR at 40066; *Cold-Rolled Flat-Rolled Steel*, 65 FR 34660, and accompanying Issues and Decision Memorandum at the "Facts Available" section.
[160] *See* SAA at 870.

in those cases, the petition rates at issue were deemed to be uncorroborated.[161] However, those cases still recognized that as an initial matter, "the statute explicitly allows for use of 'the petition' to determine relevant facts when a respondent does not cooperate."[162] Importantly, courts have upheld the Department's determination to rely on a petition rate, even in instances where that rate is several times higher than a calculated rate, so long as that rate is corroborated.[163]

Next, we disagree with Koehler's arguments that we may not rely on the petition rate because 1) it is based on Mitsubishi's information, and 2) is derived using a price-to-constructed value (CV) methodology, and thus is unrepresentative of Koehler's commercial experience. As we stated in AR3:

> {T}his argument is irrelevant in determining the AFA rate, as there is nothing in the statute or regulations that requires this type of company-specific analysis in applying an AFA rate, nor has the Department ever disqualified a rate for application to a respondent as an AFA rate solely on the basis of the type of price comparison upon which it is based. We find no precedent to support Koehler's contention that the type of price comparison is a relevant factor in considering whether an AFA margin has probative value. Moreover, as the petitioner points out, the CV in the petition relies on Koehler-specific information and, therefore, the 75.36 percent rate reflects at least in part Koehler's own experience.[164]

On this last point, we note that Koehler acknowledges that the petition rate is based at least in part on Koehler specific information (*i.e.*, average factory overhead, SG&A, and financial expense rates), yet claims that "this smattering of data" renders the petition rate

[161] *See F.lli De Cecco*, 216 F.3d at 1032; *Gallant Ocean*, 602 F.3d at 1324-25.
[162] *F.lli De Cecco*, 216 F.3d at 1032 (citing section 776(b) of the Act); *see also Gallant Ocean*, 602 F.3d at 1323 ("Commerce can select from a list of secondary sources as a basis for its adverse inferences against uncooperative parties." (citing section 776(b) of the Act)).
[163] *See Hubscher*, 942 F. Supp. 2d at 1378 (distinguishing *Gallant Ocean* and sustaining the Department's AFA rate based on a corroborated petition rate higher than rates calculated for cooperative respondents); *KYD I*, 613 F. Supp. 2d at 1379 (sustaining use of a corroborated petition rate 43 times higher than the "all others" rate calculated in the investigation and rejecting a claim that the petition rate was "discredited").
[164] *See AR3 Final Results*, and accompanying Issues and Decision Memorandum at 20-21.

inaccurate.[165] We continue to disagree with Koehler. As noted above, there is no limitation that the AFA rate be based on the uncooperative respondent's own information, and in fact, the statutory scheme expressly contemplates that secondary information will be used in assigning an AFA rate.[166] In addition, courts have upheld the Department's practice of selecting the highest margin in the history of the proceeding—which may be higher than other margins calculated for a particular respondent.[167] Thus, because we have corroborated the petition rate to the extent practicable, we continue to find it appropriate to rely on this rate as AFA.

For this same reason, we disagree with Koehler that the 75.36 percent petition rate is too high and is impermissibly punitive. In addition, we reiterate our statements from AR3:

> The Department's longstanding practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." The Department's practice also ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.
>
> By definition, a rate based on inferences adverse to Koehler will normally be higher than the other rates in the proceeding which were calculated without an adverse inference, in order to serve as a deterrent to non-compliance. Such an AFA rate may well be uncomfortably high for a respondent, as it appears to be for Koehler in this case, but the high level, in and by itself, does not make the rate punitive.[168]

As the Federal Circuit recognized, "an AFA dumping margin determined in accordance with the statutory requirements is not a punitive measure, and the limitations applicable

[165] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 29 fn 107.
[166] *See* section 776(b) and (c) of the Act.
[167] *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190-91 (Fed. Cir. 1990) (*Rhone Poulenc*) (upholding Commerce's reliance on investigation rate significantly higher than rates from intervening reviews); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (*Ta Chen*) ("In cases in which the respondent fails to provide Commerce with the most recent pricing data, it is within Commerce's discretion to presume that the highest prior margin reflects the current margins." (citing *Rhone Poulenc*)). We find Koehler's reference to *Shandong Huarong* inapplicable, because in that case the court found that the selected AFA rate based on another respondent's information was not relevant to the uncooperative respondents. *See Shandong Huarong*, 29 C.I.T. at 1232.
[168] *See AR3 Final Results* and accompanying Issues and Decision Memorandum at 21 (internal footnotes omitted).

to punitive damages assessments therefore have no pertinence to duties imposed based on lawfully derived margins such as the margin at issue in this case."[169]

Issue 5: Corroboration of the AFA Rate

In its comments, Koehler challenges the Department's corroboration of the 75.36 percent rate by comparing it to the highest transaction-specific margin of 144.63 percent. Koehler argues that this margin is not valid, and is otherwise not reliable because it is the only transaction-specific margin above 75.36 percent.[170] According to Koehler:

> The "corroboration" constituted the sale of approximately one single jumbo roll and represented roughly [ ] percent of Koehler's total sales based on the number of transactions. Stated differently, on a quantity basis, that single transaction accounted for [ ] percent of total U.S. volume and, therefore, [ ] percent of Koehler's quantity was sold well below the Department's 75.36 percent selected AFA rate.[171]

Thus, Koehler argues that this margin is not reliable and relevant or reflective of Koehler's commercial practice. In support, Koehler argues that the Federal Circuit rejected a similar corroboration methodology in *Gallant Ocean*, where the court held that the Department failed to corroborate the AFA rate when "Commerce used a very small percentage of the mandatory respondents' transaction as corroborative evidence even though most transaction during the period of review had significantly lower dumping margins."[172]

Koehler next argues that it is inconsistent for the Department to base corroboration on Koehler's transaction-specific margin from AR2, while at the same time deeming all of Koehler's reported information in AR2 unreliable. Koehler argues that the Department cannot claim that the transaction-specific margin has "probative" value while rejecting the underlying

[169] *See KYD II*, 607 F.3d at 768.
[170] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 30-31. We note that certain of Koehler's arguments regarding the validity of this margin have been rejected by the Department as untimely filed new factual information, and thus are redacted from Koehler's re-submitted comments. *See* Letter to Koehler dated May 2, 2014.
[171] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 32 (internal footnotes omitted).
[172] *See id.*, at 32 (quoting *Gallant Ocean*, 602 F.3d at 1324).

information from which this margin is derived.[173] Lastly, Koehler argues that the Department's statement that "if Koehler properly disclosed its concealed sales, it is likely that there could have been additional transaction-specific margins at or above the level of the AFA rate being applied" is based on pure speculation, and does not amount to reliable evidence.[174]

In its rebuttal comments, petitioner argues that the Department adequately corroborated the 75.36 percent petition rate in the *Draft Remand*. Petitioner argues that there is no evidence to support Koehler's assertion that the 144.63 percent highest transaction-specific margin is aberrational.[175] Petitioner reiterates the Department's findings from AR3 that a margin is not aberrational merely because it is based on a small quantity and low net price, and argues that Koehler provides no other evidence demonstrating this sale is aberrational, *i.e.*, extraordinary in the context of the AR2 database.[176] In addition, petitioner argues that the fact that the next highest margin is [ ] lower does not render the 144.63 percent margin aberrational,[177] and points to the Department's explanation in the review underlying *AVISMA* that"{t}he record indicates that having sales transactions with low quantity alone does not indicate that the sale is unusual or aberrational."[178]

Next, petitioner argues that the Department's conclusion in the *Draft Remand* that Koehler likely concealed its higher-priced sales, and thus the corroboration exercise was

[173] *See id.*, at 33-34.
[174] *See id.*, at 34 (quoting *Draft Remand* at 23).
[175] *See* Petitioner's May 13 Rebuttal Comments at 23 and fn 97 ("Koehler … claims that this transaction represents only '[ ] percent of total U.S. volume.'…Koehler is wrong by two orders of magnitude. This sale was for [ ] kilograms, which equates to [ ] percent of the [ ] kilograms sold to the United States." (internal citations omitted)); *see also id.*, at 24 fn 100 ("Although Koehler claims that this sale involves only a 'single jumbo roll,'…this is not unusual, and there are many other sales with similar quantities. The sale at issue involved a quantity of [ ] kilograms. Koehler reported [ ] U.S. sales with quantities ranging between [ ] and [ ] kilograms." (internal citations omitted)).
[176] *See id.*, at 23-24.
[177] *See id.*, at 24 (citing *PSC VSMPO-AVISMA Corp. v. United States*, 755 F. Supp. 2d 1330, 1338 and fn 10 (CIT 2011) (*AVISMA*), *aff'd*, 498 Fed. App'x 995 (Fed. Cir. 2013)).
[178] *See id.*, at 25 (citing *Magnesium Metal from the Russian Federation*, 74 Fed. Reg. 39919 (Aug. 10, 2009) (*Magnesium Metal*) and accompanying Issues and Decision Memorandum at 14).

conservative, is a reasonable inference based on the record.[179] Furthermore, petitioner rebuts Koehler's argument that the Department acted inconsistently in accepting the highest transaction-specific margin for corroboration while rejecting Koehler's reported data:

> There is no "inconsistency." The questionnaire responses cannot be used to calculate a weighted-average margin, because Koehler concealed those sales that would have generated the highest rates…In this unique situation, it is perfectly reasonable—and conservative—to rely (for corroboration purposes) on the highest margin sale that was reported, even if one cannot rely (for weighted-average margin calculation purposes) on the full database.[180]

Petitioner also argues that, contrary to Koehler's argument, *Gallant Ocean* does not undermine the Department's corroboration analysis. According to petitioner, *Gallant Ocean* was a case where the Department tried to corroborate a petition rate for application to Gallant Ocean, using transaction margins for different exporters; unlike this case where the corroboration margin at issue is based on Koehler's own data.[181] Furthermore, petitioner argues that *Gallant Ocean* involved over a dozen respondents giving Commerce abundant resources from which to calculate a reasonable AFA rate; unlike this case where Koehler's data is the only available information.[182] Lastly, petitioner notes that *Gallant Ocean* was not a fraud case, but rather, involved a small exporter who failed to timely file a quantity and value response (rather than a full antidumping questionnaire); unlike like Koehler, who was required to provide a complete questionnaire response.[183] Therefore, petitioner argues that the Department's corroboration analysis was reasonable in light of the limited information available and was not based on mere speculation.[184]

[179] *See id.*, at 25-27 (citing *Rhone Poulenc*, 899 F.2d at 1190).
[180] *See id.*, at 27-28 (internal footnotes omitted).
[181] *See id.*, at 28-29 (citing *Gallant* Ocean, 602 F. 3d at 1322).
[182] *See id.*, at 29 (citing *Gallant Ocean*, 602 F.3d at 1324-25).
[183] *See id*., at 30 (citing *Gallant Ocean*, 602 F.3d at 1322).
[184] *See id.*, at 29-32.

Department's Position

As stated above in the *Remand Redetermination* at pages 21-25, we continue to find that the 75.36 percent petition rate is corroborated to the extent practicable. As an initial matter, we note that we appropriately determined that the 75.36 percent petition rate fell within the range of Koehler's transaction-specific margins, and thus we disagree with Koehler that the Department "cherry-picked" a single margin. In any event, we disagree with Koehler that the 144.63 percent highest transaction-specific margin cannot be used for purposes of corroboration.

For instance, we find that Koehler has not demonstrated that the sale underlying this margin is aberrational. In accordance with the Department's practice, a low quantity sale with a high price is not necessarily aberrational, absent some other evidence demonstrating that the terms of sale or product is otherwise extraordinary given the database at issue.[185] Therefore, we agree with petitioner that Koehler has failed to demonstrate that this sale is aberrational.[186] Furthermore, the Federal Circuit has upheld the Department's use of data that is "reflective of some, albeit a small portion, of [ ] actual sales," including data representing a single sale, so long as the data is corroborated.[187] For that reason, we agree with petitioner that Koehler's reliance on *Gallant Ocean* is misplaced, given the distinct factual differences between that case and the instant one.[188]

Next, we disagree with Koehler that the Department may not consider Koehler's highest transaction-specific margin for purposes of corroboration, while reaching the conclusion that all of Koehler's information is otherwise unreliable for purposes of calculating an antidumping duty

[185] *See Magnesium Metal*, 74 FR 39919, and accompanying Issues and Decision Memorandum at 14.
[186] *See* Petitioner's May 13 Rebuttal Comments at 24 fn 100 (pointing to record evidence which demonstrates that the sale at issue is not aberrational compared to other sales in Koehler's database).
[187] *PAM, S.p.A. v. United States*, 582 F.3d 1336, 1340 (Fed. Cir. 2009) (quoting *Ta Chen*, 298 F.3d at 1339). The CIT has recently affirmed this practice. *See Hubscher Ribbon Corp. v. United States*, Ct. No. 13-00071, Slip Op. 14-43 (CIT April 15, 2014).
[188] *See* Petitioner's May 13 Rebuttal Comments at 28-32 (citing *Gallant Ocean*, 602 F.3d at 1332-35).

margin. The statute requires that the Department conduct its corroboration exercise "to the extent practicable," by relying on "information from independent sources that are reasonably at {its} disposal."[189] The applicable regulation also provides that "{c}orroborate means that the Secretary will examine whether the secondary information to be used has probative value," *i.e.*, is reliable and relevant to the respondent in question.[190] In this remand proceeding, the sources at our disposal to corroborate the petition margin are limited, in that the only available information is Koehler's own data on the record of this proceeding, which has been found otherwise unreliable. As stated in the *Remand Redetermination* at page 23:

> Furthermore, although we find the AR2 record unreliable for purposes of calculating Koehler's weighted-average dumping margin, we find Koehler's highest transaction-specific margin calculated in AR2 to be appropriate for purposes of corroborating the AFA rate from the petition for several reasons. Specifically, the rate is based on Koehler's own data and is therefore, reflective of Koehler's commercial business practices in this segment of the proceeding. In addition, the product sold for the highest transaction-specific margin is based on a product [ ] by Koehler and there is no information on the record that demonstrates that this rate is aberrant.

Given these unique circumstances, we find that relying on Koehler's transaction-specific margins in this instance fulfills the statutory requirement that we corroborate to the extent practicable, based on information reasonably at our disposal.

Lastly, we disagree with Koehler that our conclusion that the corroboration exercise was conservative equates to a finding based on mere speculation. As stated above in the *Remand Redetermination* at pages 23-24, there is compelling evidence that the purpose of Koehler's transshipment scheme was to conceal sales that would lead to a higher dumping margin. We

[189] *See* section 776(c) of the Act.
[190] *See* 19 CFR 351.308(d).

agree with petitioner that this is a "common sense inference" that the Department is entitled to make when a respondent purposefully withholds information as was done by Koehler in AR2.[191]

Issue 6: Remaining Issues in the Underlying Litigation

In its comments, Koehler argues that because the application of total AFA would be unlawful, the Department must consider Koehler's claim in the underlying AR2 litigation regarding its home market rebates. Koehler argues that, pursuant to the court's opinion in the LWTP AR1 litigation (Ct. No. 11-00147), the Department must make an adjustment for Koehler's home market rebate.[192]

In rebuttal, petitioner argues that the Department is not required to address the rebate issue if it continues to apply total AFA to Koehler.[193]

Department's Position

We agree with petitioner. In applying total AFA, the Department is rejecting Koehler's questionnaire response in its entirety, thus treatment of Koehler's home market rebate is irrelevant. For this same reason, we find there is no reason to address petitioner's claim in the underlying litigation regarding the calculation of Koehler's CEP Profit, because we did not rely on any of Koehler's calculations in applying total AFA.

F. CONCLUSION

In accordance with the Court's *Remand Order*, we reconsidered our final results in the second administrative review of this proceeding in light of the discovery of additional evidence that suggested our original determination may have been based on false or incomplete information. Accordingly, we reexamined the record in conjunction with documentation obtained over the course of AR3 and determined that Koehler provided incomplete and

[191] *See* Petitioner's May 13 Rebuttal Comments at 26-27 (citing *Rhone Poulenc*, 899 F.2d at 1190).
[192] *See* Koehler's Re-submitted April 28 Comments (May 6, 2014) at 38-39.
[193] *See* Petitioner's May 13 Rebuttal Comments at 36-37.

misleading information on the record of this review. As a result, we find that we are unable to rely upon any of Koehler's submitted information in this review to calculate a dumping margin. Therefore, for this *Remand Redetermination* pursuant to the Court's *Remand Order*, we are applying 75.36 percent, as total AFA to Koehler.

Accordingly, as the final results of this review are no longer based on Koehler's submitted data, it is unnecessary to revisit the issues regarding CEP profit and Koehler's reporting of certain monthly rebates for its home market sales.

Lynn Fischer Fox
Deputy Assistant Secretary
for Policy and Negotiations

6/16/2014
Date