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

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Investigation
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August 14, 2015

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

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation on boltless steel shelving units prepackaged for sale ("boltless shelving units") from the People's Republic of China ("PRC"). As a result of our analysis, we made changes to the Preliminary Determination.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On April 1, 2015, the Department of Commerce ("Department") published its Preliminary Determination in the less than fair value ("LTFV") investigation of boltless shelving units from the PRC and on April 17, 2015, we published an Amended Preliminary Determination and postponement of the final determination. In the Preliminary Determination, we noted that we received an untimely filed Separate Rate Application ("SRA") from Ningbo Shuntong Metal Products Co., Ltd., ("Shuntong") which we rejected as untimely and removed from the record.[2] Subsequently, Shuntong filed a letter after the Preliminary Determination, requesting the Department reconsider this determination.[3] As we stated in the Preliminary Determination,

[1] See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 80 FR 17409 (April 1, 2015) ("Preliminary Determination") and accompanying Decision Memorandum ("Preliminary Decision Memo"); see also Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 21207 (April 17, 2015) ("Amended Preliminary Determination").
[2] See Preliminary Decision Memo at page 2, footnote 10.
[3] See Letter to the Secretary of Commerce from Shuntong re: Preliminary Decision of Separate Rate Status (March 27, 2015).

Shuntong did not file a timely SRA. Shuntong requested the Department to reconsider our rejection of its untimely SRA because it failed to notice the Department's letter of November 19, 2014, rejecting Shuntong's original SRA for certain bracketing errors, in time to refile its submission by the deadline for bracketing corrections. Shuntong argues that when it did notice the Department's rejection letter in late December 2014, it refiled its SRA with the bracketing corrections. 19 CFR 351.302(c) states that an untimely filed extension request will not be considered unless the party demonstrates that an "extraordinary circumstance" exists. The regulation further provides that an "extraordinary circumstance" is an unexpected event that: (1) could not have been prevented if reasonable measures had been taken; and (2) precludes a party or its representative from timely filing an extension request through all reasonable means.[4] We find that Shuntong's request to reconsider our rejection of its untimely SRA does not demonstrate an extraordinary circumstance as defined by 19 CFR 351.302(c)(2). Furthermore, our regulations state that "in no case will the official record include any document that the Secretary rejects as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under §351.204(d) (see §351.302(d))."[5] Thus, for the final determination, we continue to find that Shuntong's SRA was untimely, and thus is not eligible for separate rate consideration.

Between May 4, 2015, and May 15, 2015, the Department verified the information submitted by Nanjing Topsun Racking Manufacturing Co., Ltd. ("Topsun") and Zhongda United Holding Group Co., Ltd. ("Zhongda United")[6] for use in the final determination. We issued our verification reports on June 4, 2014, and June 5, 2015.[7] We issued a revised verification report for Topsun on August 3, 2015 to correct for certain inadvertent errors.[8]

On June 16, 2015, Edsal Manufacturing Company, Inc. ("Petitioner"), Topsun, Zhongda United,

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[4] See 19 CFR 351.302(c)(2).
[5] See 19 CFR 351.104(2)(iii).
[6] Zhongda United, Jiaxing Zhongda Import & Export Co., Ltd. ("Zhongda IE"), and Jiaxing Zhongda Metalwork Co., Ltd. ("Zhongda Metalwork") (collectively, "Zhongda") submitted questionnaire responses on behalf of both companies based on the contention that the entities are affiliated. See Memorandum to the File from through Catherine Bertrand, Program Manager, Office V, from Kabir Archuletta, Senior International Trade Analyst, Office V "Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination of Affiliation/Single Entity Treatment for Zhongda United Holding Group Co., Ltd., Jiaxing Zhongda Import & Export Co., Ltd., and Jiaxing Zhongda Metalwork Co., Ltd." (March 24, 2015) ("Zhongda Affiliation Memo").
[7] See the Department's two memoranda regarding: "Verification of the Sales and Factors Response of Topsun Racking Manufacturing Co., Ltd. ("Topsun") in the Antidumping Duty Less Than Fair Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China," (June 4, 2015) ("Topsun Verification Report") and "Verification of the Sales and Factors Responses of Zhongda United Holding Group Co., Ltd., in the Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China." (June 5, 2015) ("Zhongda Verification Report").
[8] See Memorandum to the File from Irene Gorelik, Senior Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Verification of the Sales and Factors Response of Topsun Racking Manufacturing Co., Ltd. ('Topsun') in the Antidumping Duty Less Than Fair Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China ('PRC')." (August 3, 2015) ("Revised Topsun Verification Report"); see also Letter to Topsun from Catherine Bertrand, Program Manager, Office V "Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Public Treatment of Information Previously Bracketed as Proprietary." (July 27, 2015); Letter to Topsun from Catherine Bertrand, Program Manager, Office V "Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Public Treatment of Information Previously Bracketed as Proprietary." (July 30, 2015).

JS Products Inc. ("JS Products"), and Costco Wholesale Corporation ("Costco"), each submitted a case brief. On June 17, 2015, Topsun filed a letter,[9] requesting the Department reject Petitioner's case brief.[10] Topsun alleged that Petitioner ignored the provisions of 19 CFR 351.306(c), which require the submitting party to identify, contiguously with each item of business proprietary information ("BPI"), the person that originally submitted the item. The Department declined to reject Petitioner's case brief, stating that after an examination of the case brief, we noted that "while Topsun's cite to 19 CFR 351.306(c) is correct, we disagree that any BPI is in danger of being compromised, based on the general layout of the case brief. Moreover, we note that the pages referenced as containing BPI are sufficiently contiguous such that the BPI of the relevant interested party is clear and identifiable."[11]

On June 24, 2015, Petitioner, Topsun, Zhongda United, and Whirlpool Corporation, ("Whirlpool"), submitted rebuttal briefs. On July 14, 2015, we rejected Topsun's rebuttal brief because it contained new argument contrary to 19 CFR 351.309(d)(2), and allowed Topsun to refile its rebuttal brief without the new argument. On July 16, 2015, Topsun refiled its rebuttal brief. Also on July 16, 2015, Topsun filed a letter requesting the Department to reconsider its June 19, 2015, decision to not reject Petitioner's case brief.[12] Topsun's July 16, 2015, letter contained the identical arguments presented in its June 17, 2015, letter, wherein Topsun requested the Department to reject Petitioner's case brief due to certain bracketing of business proprietary information. As we noted in our June 19, 2015, letter to Topsun, the Department disagrees that any BPI in Petitioner's case brief is in danger of compromise, based on the general layout of the case brief. Thus, we continue to decline Topsun's request to reject Petitioner's case brief.

Finally, because all interested parties that filed hearing requests subsequently withdrew those requests, we did not hold a public hearing.[13] We note that on August 5, 2015, Topsun submitted a letter rescinding its withdrawal of the request for a hearing, arguing that a hearing was necessary to address comments from any other interested party on the Topsun Revised Verification Report.[14] We do not find it necessary to hold a public hearing. Because it withdrew its hearing request, Topsun did not make a hearing request within 30 days as required under the Department's regulations.[15] Furthermore, Topsun's purported basis for changing its mind and now requiring a hearing – to address comments from other interested parties on the Topsun

[9] See Letter to the Secretary of Commerce from Topsun, "Case Brief of Petitioner's Bracketing Concerns" (June 17, 2015).
[10] See Petitioner's Case Brief (June 17, 2015) ("Petitioner's Case Brief").
[11] See Letter to Topsun from Catherine Bertrand, Program Manager, Office V "Nanjing Topsun Racking Manufacturing Co., Ltd.'s ('Topsun') Request to Reject Edsal Manufacturing Co., Inc.'s ('Petitioner') Case Brief" (June 19, 2015).
[12] See Letter to the Secretary of Commerce from Topsun "Boltless Steel Shelving from the People's Republic of China (A-570-018); Request to Reject Case Brief of Petitioner" (July 16, 2015).
[13] See Letter to the Secretary of Commerce from Zhongda "Boltless Steel Shelving from China" (July 8, 2015); Letter to the Secretary of Commerce from Topsun "Boltless Steel Shelving from the People's Republic of China (A-570-018); Withdrawal of Request for a Hearing" (June 29, 2015); Letter to the Secretary of Commerce from Meridian Co. , Ltd., and Zhejiang Limai Metal Products Co. Ltd. "Withdrawal of Request for Hearing: Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China (A-570-018)" (July 1, 2015).
[14] See Letter to the Secretary of Commerce from Topsun "Boltless Steel Shelving from the People's Republic of China (A-570-018); Comments Pursuant to Department Memorandum of August 3, 2015" (August 5, 2015).
[15] See 19 CFR 351.310(c).

Revised Verification Report— did not occur. That is, no other interested party commented on the Topsun Revised Verification Report.

III. SCOPE OF THE INVESTIGATION

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks ("boltless steel shelving"). The term "prepackaged for sale" means that, at a minimum, the steel vertical supports (i.e., uprights and posts) and steel horizontal supports (i.e., beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (e.g., two posts). The term "boltless" refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by this investigation may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term "deck" refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor;[16]

[16] The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion.

- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States ("HTSUS") statistical subheadings 9403.20.0018, 9403.20.0020, 9403.20.0025, and 9403.20.0026, but may also enter through HTSUS 9403.10.0040. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on the Department's verifications of Zhongda and Topsun, we have made changes from the Preliminary Determination. With respect to Zhongda, we applied facts available, pursuant to section 776(a) of the Tariff Act of 1930, as amended ("Act"), to two of Zhongda's incorrectly calculated factors of production ("FOP"), as discussed in Zhongda's final analysis memorandum.[17]

With respect to Topsun, we have determined to apply total adverse facts available ("AFA"), pursuant to sections 776(a) and (b) of the Act, as discussed in section V below.

V. USE OF ADVERSE FACTS AVAILABLE

In the Preliminary Determination, we determined that the PRC-wide entity includes Nanjing Lixuan Logistics Equipment Co., Ltd. because it refused to respond to the Department's quantity and value ("Q&V") questionnaire.[18] Further, we determined that the record indicates that there are other PRC exporters and/or producers of the merchandise under consideration during the POI that did not respond to the Department's requests for information. Specifically, the Department did not receive timely responses to its Q&V questionnaire from 15 PRC exporters and/or producers of merchandise under consideration that were named in the Petition.[19] Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status,

[17] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Kabir Archuletta, Analyst, Office V "Final Analysis Memo for Zhongda United Holding Group Co., Ltd." dated concurrently with this memorandum.

[18] See Preliminary Decision Memo at 23; see also Memo to the File from Kabir Archuletta, Senior International Trade Analyst, Office V "Quantity and Value Response Tracking" (October 3, 2014) at Attachments I and II.

[19] Id. The companies to whom Q&V questionnaires were issued that did not timely respond are: Dalian Huameilong Metal Products Co., Ltd; Dongguan Yuan Er Sheng Machinery Source Hardware Co., Ltd.; Dong Rong Metal Products Co. Ltd.; Global Storage Equipment Manufacturer Limited; Guangdong Guanyu Metal Products Company Limited; Intradin (Shanghai) Import & Export Co., Ltd.; Jinhua Development District Hongfa Tool, LTD; Kunshan Jisheng Metal & Plastic Co., Ltd; Nanjing Huade Warehousing Equipment Manufacturing Co. Ltd (formerly known as Nanjing Huade Shelving Co. Ltd.); Nanjing Whitney Metal Products Co., Ltd; Nanjing Yodoly Logistics Equipments Manufacturing Co. , Ltd.; Ningbo Decko Metal Products Trade Co., Ltd.; Ningbo Haifa Metal Works Co., Ltd. (Ningbo Lianfa Metal Works Co., Ltd.); Ningbo HaiFa Office Equipment Co., Ltd.; Ningbo TLT Metal Products Co., Ltd.

and these companies have not provided any information to the contrary since the Preliminary Determination, the Department continues to consider them to be part of the PRC-wide entity, which is subject to the AFA rate.

Topsun

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or an interested party withholds information requested by the Department; fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.[20] In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA") explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[21] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[22] It is the Department's practice to consider, in employing adverse inferences, the extent to which a party

[20] See also 19 CFR 351.308(a); see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002).
[21] See H.R. Doc. 103-316, Vol. 1 (1994) at 870; see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007).
[22] See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("Nippon Steel"); see also Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000); Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27340 (May 19, 1997) ("Preamble").

may benefit from its own lack of cooperation.[23]

The Department conducted a verification of Topsun from May 11, 2015 through May 15, 2015. On April 28, 2015, 13 days prior to the start of verification, the Department issued a verification outline to Topsun, detailing all of our intended procedures and required documents necessary to conduct the verification.[24] The Verification Outline stated that "the time available for the verification is limited. Consequently, we ask that the necessary information be gathered by the appropriate personnel prior to the verifiers' arrival."[25] The Verification Outline also stated that "copies of supporting documentation, along with English translations of all pertinent information, should be made **prior** to the verification."[26] Most importantly, the Verification Outline stated that:

> If your client is not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified, which may result in our basing the results of this administrative review on the facts available, possibly including information that is adverse to the interests of your client…. Please note that verification is not intended to be an opportunity for submission of new factual information. New information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.[27]

First, at the outset, Topsun was ill-prepared for verification, with numerous daily delays caused by incomplete verification packages, untranslated documents, poorly managed tally of documents for verification exhibits, and instances of a key company official not being present while Department officials toured the production facility.[28]

Second, as detailed in the Topsun Revised Verification Report, Topsun officials, for the first time during the proceeding, stated that during the POI, some merchandise it sold was produced by an affiliated producer of boltless shelving units.[29] Because Topsun never reported the information

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

[24] See Letter to Topsun, from Catherine Bertrand, Program Manager, Office V "Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China ('PRC'): Verification Outline" (April 28, 2015) ("Verification Outline").

[25] Id., at 1.

[26] Id.

[27] Id., at 2.

[28] See Topsun Revised Verification Report at page 20-21; see also Memorandum to the File, from Irene Gorelik, Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Application of Adverse Facts Available to Nanjing Topsun Racking Manufacturing Co., Ltd." dated concurrently with this memorandum. ("Topsun AFA Memo") at 3-6.

[29] See Revised Topsun Verification Report and Topsun AFA Memo.

regarding this affiliated producer prior to verification, the Department was denied the opportunity to consider this information and pose any necessary supplemental questions prior to verification. The Department also was unable to rely on Topsun's reported separate rate information because Topsun's failure to report an affiliated producer, as required by the de facto separate rates test, casts doubt on the veracity of the separate rate information reported by Topsun prior to verification based on the information Topsun revealed at verification.[30]

Third, in attempting to verify Topsun's reconciliation of its FOPs to its financial statements, Topsun revealed for the first time that a key figure in the reconciliation process, the Cost of Goods Sold ("COGS") value, is not based on any supporting source documents or sub-ledgers.[31] While Topsun noted that the COGS value in its unaudited financial statements matches the COGS value in its Finished Goods General Ledger, we do not consider this "reconciled," as neither figure has any underlying documentary support with the result that we cannot conclude that the reported FOPs are based on Topsun's actual financial books and records. In PRC Hangers 2015, the Department recently applied total AFA to a respondent, stating that:

> the Department's FOP reconciliation requests a three-step reconciliation. Step one is to reconcile the cost of goods sold ("COGS") to the financial statements. Step two is to reconcile the COGS to the cost of manufacture ("COM"). Step three is to reconcile the COM to per-unit consumption. While Ningbo Dasheng appeared to satisfy step one, there was no link between step one and step two, because the COGS identified in step one was different from the COGS identified in step two, and in step three, Ningbo Dasheng's wire rod consumption did not reconcile to its sub-ledger.[32]

In this investigation, Topsun failed to satisfy the threshold issue, "Step One: reconcile COGS to financial statement," because there is no support for this value on the record.[33] As such, Topsun did not satisfy the three-step FOP reconciliation. Topsun did not act to the best of its ability to provide the Department with verifiable data within its exclusive control.[34] As the CIT noted, "a reasonable and responsible foreign producer would have known that it must keep and maintain documents such as factory-out slips, production notices, and production subledgers…" and the respondent's "efforts to avoid producing the requested documents demonstrates…" resulted in the application of total AFA.[35] Moreover, Topsun's lack of preparedness generated significant delay, preventing the Department from fully verifying the information submitted by Topsun and demonstrated the degree of the company's lack of cooperation despite the clearly listed

[30] Id., for the specific details.
[31] See Revised Topsun Verification Report at 19.
[32] See Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012–2013, 80 FR 13332 (March 13, 2015) ("PRC Hangers 2015") and accompanying Issues and Decision Memorandum at Comment 1. The Department assigned total AFA to this respondent for its failure to reconcile COGS to its financial statements.
[33] See Topsun Revised Verification Report and Topsun AFA Memo for the business proprietary discussion regarding the statements made by company officials regarding the COGS value.
[34] See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941, 15943 (March 22, 2011).
[35] See Qingdao Taifa Group Co. v. United States, 637 F. Supp. 2d 1231, 1239 (CIT 2009).

requirements in the Verification Outline.[36]

In Nippon Steel, the Court of Appeals for the Federal Circuit ("CAFC") noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[37] Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[38] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[39]

Thus, based on the Department's findings at Topsun's on-site verification, we determine that Topsun is not eligible for a separate rate because it failed to report specific information requested for separate rate eligibility, the need for which the Department first discovered at verification.[40] Because Topsun's failed to report an affiliated producer in its separate rate response until it was discovered at verification, the Department had no opportunity to examine the information regarding that affiliate prior to verification or to subsequently verify the information.[41] Moreover, based on sections 776(a)(1)(A), 776(a)(2)(A), (B), (C), and (D) of the Act, the PRC-wide entity, now including Topsun, withheld information that has been requested, failed to provide information within the deadlines established, significantly impeded the proceeding due to a significant lack of preparation for the on-site verification, and provided information that cannot be verified.[42] Consistent with our practice, the Department determines, pursuant to sections 776(a)(1) and (a)(2)(A)-(D) of the Act, to use facts otherwise available to determine the rate for the PRC-wide entity, including Topsun.[43] Furthermore, pursuant to section 776(b) of the Act, we determine to apply an adverse inference because the PRC-wide entity, including Topsun, has not cooperated to the best of its ability.

AFA Rate for the PRC-wide Entity

In order to induce the respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the initiation; or (b) the highest calculated rate for any respondent

[36] See Topsun Revised Verification Report and Topsun AFA Memo.
[37] See Nippon Steel, 337 F.3d 1373, 1383 (Fed. Cir. 2003).
[38] Id., at 1382.
[39] Id.
[40] See Topsun AFA Memo for a discussion of this specific separate rate information that was absent from the record.
[41] Id.
[42] Id., for a detailed discussion.
[43] See, e.g., Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013) and Preliminary Decision Memorandum, unchanged in Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) ("Plywood 2013").

in the investigation.[44] In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. The CIT has held that "the Department's practice of applying the highest previously determined overall rate to an uncooperative respondent as AFA is based on the presumption that such a rate is inherently adverse. This practice is longstanding, frequently used, and has been held, in most circumstances, to be lawful."[45]

In the Preliminary Determination, we determined that the highest CONNUM-specific margin of 112.68[46] percent demonstrated that the petition margin of 211 percent had no probative value.[47] We, therefore, determined that the 211 percent rate has not been corroborated and, instead, used the highest calculated CONNUM-specific margin of 112.68 percent as the AFA rate applied to the PRC-wide entity.[48] Absent the highest CONNUM-specific margin of 112.68 percent from Topsun's calculated data, the highest CONNUM-specific margin on the record is 51.81 percent based on Zhongda's calculated data; however, because Topsun's preliminary dumping margin of 85.26 percent is higher than the 51.81 percent rate, this rate is insufficient to induce cooperation. Therefore, the Department has determined to continue to assign the PRC-entity which now includes Topsun the rate of 112.68 percent. As discussed above, such a rate would ensure that Topsun does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Consistent with our practice, the Department selected Topsun's highest CONNUM-specific margin, as AFA, because this rate is higher than the other rates in this investigation and

[44] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 65 FR 5510, 5518 (February 4, 2000) (the Department applied the initiation margin as AFA); Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China, 71 FR 16116, 16118-19 (March 30, 2006).

[45] See Mueller Comercial de Mexico v. United States, 807 F. Supp. 2d 1361, 1371 (CIT 2011).

[46] While the Preliminary Decision Memo stated that the AFA rate was 108.53 percent, this statement was an inadvertent error. The Federal Register notice for the Preliminary Determination stated the correct AFA rate of 112.68 percent, the highest calculated CONNUM-specific margin.

[47] See Preliminary Decision Memo at 25-26. See also Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Josh Startup, International Trade Analyst, Office V "Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Analysis Memo for Nanjing Topsun Racking Manufacturing Co., Ltd." (March 24, 2015) ("Topsun Prelim Analysis Memo") at Attachment II: Output.

[48] See, e.g., Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77FR 46044, 46050-51 (August 2, 2012); see also High Pressure Steel Cylinders From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 76 FR 77964, 77970-71 (December 15, 2011), unchanged in High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 26739, 26742 (May 7, 2012) ("PRC Steel Cylinders 2012").

therefore, sufficiently adverse to serve the purposes of facts available.[49] Furthermore, there is no need to corroborate the selected margin because it is based on information submitted by Topsun in the course of this investigation, i.e., it is not secondary information.[50]

VI. Discussion of the Issues

General Issues

Comment 1: Surrogate Country

Petitioner's Case Brief:

- For the final determination, the Department should select Indonesia as the surrogate country and use Indonesian surrogate values because they represent the most complete and best quality data on the record and because Indonesia remains reasonably comparable to the PRC based on per-capita GNI.
- The Indonesian data are specific, contemporaneous, and of higher quality, particularly the surrogate financial statements of PT Lion Metal Works, which is the only company for which data exist on the record that can reasonably be considered a producer of comparable merchandise.
- While the Department has removed Indonesia from the list of surrogate countries (SC) based on changes in the GNI rates between 2012 and 2013, it may still rely on Indonesia as an appropriate surrogate here. The list of countries provided by the Department is not intended to be exhaustive. Indonesia was originally held out to parties as a primary surrogate and withdrawn only after the deadline to submit surrogate values had passed.
- The Department established the original list of surrogates based on the information available at the time, including 2012 GNI data. Additionally, 2013 GNI data did not change so drastically as to rule out using Indonesia, as the difference between Indonesian 2012 GNI and 2013 GNI is only 160 U.S. dollars. Indonesia's GNI is only slightly below the band

[49] See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 29167 (June 19, 2009) and accompanying Issues and Decision Memorandum at Comment 2; Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913, 4915 (January 28, 2009); Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514, 14516 (March 31, 2009); Stainless Steel Bar from India: Final Results of Antidumping Duty New Shipper Review, 72 FR 72671 (December 21, 2007) (the Department was unable to verify respondent's home market sales data and as a result assigned to the respondent, as total AFA, its dumping margin from the preliminary results of review because the Department found that this rate was higher than the other rates in the proceeding and therefore, sufficiently adverse to serve the purposes of facts available); Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652 (June 24, 2008) and accompanying Issues and Decision Memorandum at 1 (the Department applied total AFA to a respondent because its information could not be verified and assigned the respondent its preliminary dumping margin, which was the highest rate in the investigation).

[50] See 19 CFR 351.308(c) and (d) and section 776(c) of the Act. See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46794 (August 6, 2015) ("Section 502 provides that, in making AD and CVD determinations on the basis of the facts available, the Department is not required to corroborate, in certain circumstances, the information employed, to make certain estimates or demonstrations concerning that information, or to address certain claims regarding the 'alleged commercial reality' of non-cooperating parties).

established by the other countries on the list.

- The Department has never provided specific floors or ceilings upon which to assess at what point a potential surrogate's GNI is too low or too high vis-à-vis the NME country.
- Even if the Department declines to make Indonesia the primary surrogate country, it should nevertheless revise its calculations to base surrogate overhead, selling, general and administrative expenses ("SG&A"), and profit on the 2013 financial statements of PT Lion Metal instead of the Bulgarian company Alcomet.
- The record shows that PT Lion Metal is a producer of steel shelving like the subject merchandise while Alcomet, the Bulgarian company selected as a surrogate, is an aluminum extruder and roller and does not produce subject merchandise or even comparable items. Accordingly, the Department should resort to the financial data of Indonesian metal shelving producer PT Lion Metal as the best available surrogate for overhead, SG&A expenses and profit even if Indonesia is rejected as the primary SC.
- Zhongda's claim that the PT Lion Metal financial statements are flawed because of alleged distortions in "short-term salary advances" is meritless. Zhongda does not cite to any precedent for disqualifying financial data due to salary advances to employees. Short-term salary advances are not extraordinary and should not be deemed distortive, particularly when they represent a tiny fraction of the overall economic activity of the company.
- While the Department prefers to use values from a single SC, it has recognized that data from an alternative country can be the most appropriate in the primary SC in some circumstances.
- In PRC Photovoltaic Cells Prelim[51], the Department selected Thailand as the primary SC, yet selected an Indonesian company as the basis for surrogate financial ratios because the company was more reliable and representative compared to the Thai surrogate companies on the record.
- In PRC Steel Cylinders[52], the Department selected Ukraine as the primary SC, but resorted to Thailand as secondary SC for financial ratios. In the preliminary determination of that case, where the Department used India as the secondary SC, the Department stated that "in exceptional circumstances, the Department may be required to include surrogate value information from a country which is not as economically comparable as those countries on the Surrogate Country List when the only data available on the record of the proceeding is from such a country."

Zhongda's Rebuttal:

- The Department correctly selected Bulgaria as the SC because: (1) Bulgaria is economically comparable to the PRC; (2) Bulgaria is a significant producer of subject merchandise; and, (3) Bulgaria's surrogate value data are of superior quality than the other available sources on the record. The Department should continue to use all surrogate values from Bulgaria.
- Petitioner's proposal to use Indonesia surrogate values violates the statute and Department precedent.
- The Department found that Indonesia is not at a comparable level of economic development to the PRC. The Department's precedent and practice is to value all FOPs from a single

[51] See Petitioner's Case Brief at 7-8, citing to Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013, 80 FR 1021 (January 8, 2015) and accompanying Preliminary Decision Memorandum at 33 ("PRC Photovoltaic Cells Prelim").
[52] See Petitioner's Case Brief at 8, citing to PRC Steel Cylinders 2012 at Comment 2.

surrogate country. Based on the statute and information on record, the Department properly selected Bulgaria as the SC and valued all FOPs using Bulgarian SV data.

- The secondary SC used in both cases Petitioner cited are countries that were on the Department's SC list as at comparable levels of economic development to the PRC as of the time of the particular review period in those cases.
- In the final of PRC Steel Cylinders, the Department revised its determination regarding using India as the secondary SC because India was no longer at a level of economic development comparable to China. Thus, the Department selected Thailand as a secondary SC, which was on the SC list, unlike Indonesia here.
- In the cases cited by Petitioner, the Department had to rely on a secondary SC for surrogate values because those values for the primary SC were not on the record. In PRC Steel Cylinders, the record did not contain financial statements for the primary SC, Ukraine. Thus, the Department selected surrogate financial statements from the secondary SC, Thailand, which were on the record.
- The PT Lion Metal financial statements from Indonesia contain significant flaws, which impact overhead, SG&A and profit ratios in unknown amounts. Since the effect of the errors is unknown, one has no way to evaluate how much the financial ratios calculated from such financial statements are distorted, much less how to correct them. Nor does Petitioner give an approach to resolve such distortion. Such financial statements are not a reliable source to calculate the surrogate financial ratios in the final determination.

Topsun's Rebuttal:

- Petitioner did not provide comments proposing the selection of Indonesia as a SC at the appropriate time in the proceeding.
- Because Petitioner did not file any comments advocating the selection of Indonesia, Topsun was precluded from filing any rebuttal factual information as such rebuttal factual information can only be filed in rebuttal to an actual submission. Any later in time comments or information by Topsun on Indonesia would have been untimely. As such, using Indonesia where no party had an opportunity to provide rebuttal factual information as to the appropriateness of using Indonesia, would be fundamentally unfair.
- Petitioner was aware of the proper 2013 GNI data early in the proceeding when Topsun placed it on record. Petitioner thus had this information well before any deadline for supplying comment, but did not do so.
- Petitioner's Case Brief shows that, based on the 2013 GNI data, Indonesia is at a GNI of 55 percent of that of China, while the next lowest country is that of Ukraine, which is at a GNI of 60 percent of that of China.[53] Petitioner has presented no argument beyond an assertion that the Department is wrong in support of its position that a GNI of 55 percent is economically comparable nor cited to any other Department decisions in which the Department, using 2013 GNI data, found that Indonesia was economically comparable to the PRC.
- Petitioner misconstrues the circumstances in the PRC Photovoltaic Cells Prelim by drawing a GNI comparability parallel to the publication date of a proceeding. While the Department may have published a determination in 2015, the Department's decision as to economic comparability is based on the period covered by the review or the investigation, not the date

[53] See Topsun's Rebuttal Brief (resubmitted) at 7, citing to Petitioner's Case Brief.

of the publication of the decision.

- While the determination may have been published in 2015, the Department's decision as to economic comparability is based on the period covered by the review or investigation, not the date of the publication of the decision. Based on 2012 GNI data, Indonesia was still economically comparable to the PRC. When the Department decided to use an Indonesian surrogate financial statements even though Thailand was the primary SC, the Department was still using data from an economically comparable nation, unlike here.
- Petitioner also noted that the use of data from a country which is not economically comparable is an "exceptional circumstance" which only occurs where such data is the only data available on the record of the proceeding. However, Petitioner did not explain how the circumstances of this case are exceptional, as in the two cases to which Petitioner cited.
- Petitioner should have explained why the Indonesian financial statements is the only available data of record in this proceeding. Rather, Petitioner only focused on the differences between one financial statements from an economically comparable country and a financial statements from another country which is not economically comparable.
- Topsun placed on the record, the financial statements of BSI, a South African company that cuts, slits, bends and drills steel — operations similar to those under taken by producers of boltless steel shelving.
- The record contains South African data including financial statements for a company which processes steel.
- Petitioner has not explained why a company that engages in the processing of steel is dissimilar to the production of boltless steel shelving — which is made by processing of steel. Petitioner has the burden of establishing all of its arguments when it is arguing the existence of an "exceptional circumstance".
- If the Department were to vary from the use of Bulgarian data, it should not use data from a country which is not economically comparable to the PRC and for which no parties were able to file "adverse information" as to the selection of Indonesia where data of a country which is economically comparable to the PRC is of record.[54]

Department's Position:

Economic Comparability

The Department disagrees with Petitioner regarding our selection of Bulgaria as the primary surrogate country. In the Preliminary Determination, we stated that, "given the judicial precedent on this matter, and the record evidence of more contemporaneous GNI data on the record, the Department preliminarily determines that Bulgaria, Ecuador, Romania, South Africa, Thailand, and Ukraine are countries that are at the same level of economic development as the PRC based on 2013 GNI data."[55] Further, the Department has previously applied this practice in Furniture 2010, where we "relied on the most recent GNI per capita data available for this proceeding at the time that economic comparability was determined for this case."[56] Thus, our selection of Bulgaria as the primary surrogate country is consistent with both Department and

[54] Id., at 10.
[55] See Preliminary Decision Memo at 17.
[56] See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 34.

judicial precedent. Our selection of Bulgaria is also consistent with section 773(c)(4) of the Act because, based on the 2013 GNI data, Bulgaria has been determined to be at the same level of economic development as the PRC.[57] As we stated in the Preliminary Determination, unless it is determined that none of these countries in the updated 2013 GNI data are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons, we will rely on data from one of these countries.[58] Because Bulgaria fulfilled our surrogate country selection criteria, based on the 2013 GNI data that is more contemporaneous to the POI[59], there was no need to resort to countries that may be at a less comparable level of economic development, such as Indonesia.

We disagree with respect to Petitioner's argument that Indonesia is an appropriate choice because its 2013 GNI is only slightly below the band established by the other countries on the list. Because the 2013 GNI data resulted in a revised SC list of countries at the same level of economic development to the PRC, the relative economic comparability of Indonesia would only be relevant if the record did not contain any useable or reliable data from a country at the same level of economic development. Further, we disagree with Petitioner's argument that the Department has never provided specific floors or ceilings upon which to assess at what point a potential surrogate's GNI is too low or too high vis-à-vis the NME subject country. Our consistent practice is to consider countries on the SC list as being at the same level of economic development.[60] Again, because we determined that Bulgaria satisfies our surrogate country selection criteria and it is a country on the SC list based on 2013 GNI data, we did not have a need to seek any data from any secondary surrogate country.

Financial Statements

We decline Petitioner's suggestion to use an Indonesian surrogate company's financial statements in the event that we continue to select Bulgaria as the surrogate country. We continue

[57] See Letter to the Secretary of Commerce from Zhongda "Antidumping Investigation of Boltless Steel Shelving Units Prepackaged for Sale, from China, Zhongda" ("Zhongda Rebuttal SV Comments") (January 20, 2015) at Exhibit RSV-2; Letter to the Secretary of Commerce from Topsun "Surrogate Value Data Submission of Nanjing Topsun Racking Manufacturing Co., Ltd." (February 23, 2015) ("Topsun Additional SV Information") at Exhibit S2V-2.

[58] See Preliminary Decision Memo at 17; see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011–2012, 79 FR 31298 (June 2, 2014) and accompanying Issues and Decision Memorandum at Comment 1 ("unless we find that all of the countries determined to be at the same level of economic development as the PRC are not significant producers of comparable merchandise, are not reliable sources of publicly-available SV data, are not suitable for use based on other reasons, or we find that another country not on the surrogate country list is at a comparable level of economic development and is an appropriate surrogate, we will rely on data from one of these countries.").

[59] See Dupont Teijin Films v. United States, 931 F. Supp. 2d 1297, 1300 (CIT 2013) ("Dupont Teijin") ("Because Commerce did not provide a reasoned explanation for disregarding the 2009 GNI data and because the 2009 GNI data indicated that India and the PRC were not economically comparable during the POR, the court concluded that Commerce's selection of India as the surrogate country was not supported by substantial evidence." (citing Dupont Teijin Films v. United States, 896 F. Supp. 2d 1302, 1309 (CIT 2013)); see also Dupont Teijin Films v. United States, 997 F. Supp. 2d 1338 (CIT 2014).

[60] See, e.g., Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 18816 (April 8, 2015) ("Steel Nails 2012") and accompanying Issues and Decision Memorandum at Comment 1A.

to follow our findings from the Preliminary Determination, that "it is appropriate to follow our preference for valuing all factors in a single surrogate country, pursuant to 19 CFR 351.408(c)(2), and find that, in this instance, the Alcomet statements represent the best available information for calculating surrogate financial ratios of a producer of sufficiently comparable merchandise."[61]

We disagree with Petitioner's argument that PT Lion Metal's, Indonesian financial statements, are more appropriate surrogate financial statements. As discussed above, because we determined that Bulgaria satisfies the statutory criteria for surrogate country selection, the record contains usable Bulgarian data to calculate normal value, and the Department's preference to value all factors from a single surrogate country, we do not find it necessary to rely on the Indonesian financial statements. Petitioner's reliance on PRC Photovoltaic Cells, is inapposite here because in PRC Photovoltaic Cells, both countries from which the Department used surrogate values (Thailand and Indonesia) were a part of the SC list and considered at the same level of economic development as the PRC using GNI data specific to that segment, notwithstanding the date of publication.[62] That is not the case here. Here, Petitioner suggests that under an "exceptional circumstance" reasoning, the Department ought to use financial statements from a country that is not considered to be at the same level of economic development as the PRC. However, the "exceptional circumstances" from PRC Steel Cylinders was used only when the only data available on the record of the proceeding was from a country not on the SC list. Such a circumstance does not apply here because Bulgaria, the primary surrogate country, provides the surrogate data required to calculate the normal value.

Furthermore, we disagree with Petitioner's argument that the Indonesian financial statements are more appropriate because the company produces merchandise identical to subject merchandise. When selecting financial statements for purposes of calculating financial ratios, the Department's policy is to use data from market economy ("ME") surrogate companies based on the "specificity, contemporaneity, and quality of the data."[63] In accordance with 19 CFR 351.408(c)(2) and (4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the primary surrogate country to value manufacturing overhead, general expenses, and profit.[64] Although the regulation does not define what constitutes "comparable merchandise," it is the Department's practice to, where appropriate, apply a three-prong test that considers: (a) physical characteristics; (b) end uses; and (c) production process.[65] Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to

[61] See Preliminary Decision Memo at 18-19.
[62] See PRC Photovoltaic Cells Prelim at 33.
[63] See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013, 80 FR 4542 (January 28, 2015) and accompanying Issues and Decision Memorandum in Comment 1; Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.
[64] See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163 (November 25, 2014) ("Carbon 2014") and accompanying Issues and Decision Memorandum at Comment 5.
[65] See, e.g., Certain Woven Electric Blankets from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 38459 (July 2, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

the NME producer's production experience.[66] However, the Department is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."[67] The Bulgarian financial statements are for a producer of comparable merchandise because the company is a fabricator of products made from metal, including certain products that undergo a coating process, which is similar to the merchandise under consideration.[68] Thus, we are using the financial statements of a company that produces a comparable coated metal product from a country determined to be at the same level of economic development, which we find to be preferable to using financial statements from a country we have determined to be less comparable in terms of economic development.

As such, we continue to find that the Bulgarian (Alcomet's) financial statements are useable and reliable to calculate surrogate financial ratios. Petitioner has not demonstrated that the Alcomet financial statements are unusable, unreliable, or otherwise distortive. Thus, for the final determination, we will continue to select Bulgaria as the primary surrogate country and rely on Alcomet's financial statements to calculate surrogate financial ratios.

Finally, with respect to Topsun's statement that the South African company, BSi Steel, is a producer of comparable merchandise, the Department stated in the Preliminary Determination that "the BSi Steel financial statements do not break out the company's expenses such that accurate financial ratios may be calculated."[69] As Topsun has not demonstrated that accurate financial ratios may be calculated from BSi Steel's financial statements, we continue to find that the financial statements unusable for the same reasons articulated in the Preliminary Determination.

Comment 2: Whether Whirlpool's Products are Within the Scope

A. Whirlpool's Incomplete Units

Petitioner's Comments:

- For the Preliminary Determination, Whirlpool requested that the Department rule on whether certain shipping scenarios would result in the products being removed from the scope of the order of this investigation.
- The Department's regulations state that a party requesting a scope ruling must demonstrate that it has taken steps toward importing the merchandise subject to the scope request and, at the time of Whirlpool's request, it was not yet importing units from which either the posts or the beams had been intentionally omitted from the box.
- There is no record evidence to suggest that Whirlpool has at any time engaged in any supply chain arrangement that involved leaving out either the posts or beams from otherwise

[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 (April 19, 2010) ("OCTG 2010") and accompanying Issues and Decision Memorandum at Comment 13.
[67] See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).
[68] See Letter to the Secretary of Commerce from Zhongda regarding surrogate value comments (January 12, 2015) ("Zhongda SV Comments") at SV-4.
[69] Id.

complete prepackaged boltless steel shelving. As a purely theoretical scenario, it is not appropriate for a scope ruling under 19 CFR 351.305(d).

- The Department should reverse its preliminary determination that imports missing a post or beam would be excluded from the scope of the investigation.
- The prepackaging of all but one component piece in a retail box does not meet the definition of the excluded bulk-packed parts or components.
- The pre-bundling in China of one set of parts to add to a finished prepackaged shelving unit also produced in China does not remove the product from the scope intended by Petitioner.
- Whirlpool's focuses on the phrase "at a minimum" in the scope language describing "prepackaged for sale" that was added at the Department's request to contrast bulk-packed parts used in "made to order shelving systems," which are excluded from the order.
- The products subject to this exclusion are bulk-packed parts like those for "made to order shelving systems" and are made from bulk parts aggregated and packaged by a distributor or material handling firm to create an entire unique shelving system rather than an individual shelving unit.
- The sentence of the scope defining merchandise under consideration to have "at a minimum" all of the parts necessary to complete a shelving unit in the box must be viewed in the context of Petitioner's desire to include shelving units prepackaged for off-the-shelf retail sale and parts being used to produce shelving systems.
- To qualify for the exclusion of bulk-packed parts, the parts must be imported in a manner that would allow use in a made to order system. A retail sale box containing nearly all of the parts necessary to produce a finished unit cannot be used in a made-to-order system because the parts would have to be unboxed, wasting the retail packaging and requiring additional labor.
- To the extent that Whirlpool has identified the phrase "at a minimum," as language that may be used to circumvent the scope, Petitioner requests that the Department remove that phrase from the scope or provide other clarifying language to make clear that intentional omission from the shelving unit would not remove the pre-wrapped bundle or the rest of the prepackaged shelving unit from the scope.[70]
- If the Department affirms its preliminary determination that imports of shelving units that do not contain all of the necessary components to assemble a completed unit are not covered by the scope, the Department should still find these products subject to the scope as products completed or assembled in the United States using a process that is minor or insignificant.
- Whirlpool's "assembly" amounts to packing bundles in a box, which requires minimal investment and no research and development.
- Whirlpool has made clear that it has changed its sourcing patterns solely to avoid the AD duty investigation while still purchasing all components from its Chinese supplier.
- The Department should conclude that prepackaged shelving units imported without either posts or beams for later combination with separately imported posts and beams is a circumvention of the scope of the investigation and that any incomplete units and parts imported separately for assembling completed units in the United States would be included within the scope of the order.
- If the Department does not undertake this analysis it should expressly state in the final

[70] Citing to AMS Assocs. v. United States, 881F.Supp. 2d 1374, 1380 (CIT 2012), affirmed 737 F.3d 1338 (Fed. Cir. 2013) ("AMS Associates").

determination that it is not reaching a determination as to whether incomplete units and missing parts may still be brought within the scope of any order under the anti-circumvention provisions.

Whirlpool's Rebuttal Comments:

- The Department correctly observed that the plain language of the scope excluded prepackaged shelving that does not contain all of the necessary posts and beams/braces.
- The Department has explained in that any merchandise "in production" is eligible for a scope inquiry,[71] regardless of whether any entries have been made.
- There is no question that the merchandise described by Whirlpool is in production and does not concern a purely hypothetical product.
- Whether posts or beams are later combined with other parts in the United States is not relevant to the issue of whether Whirlpool has taken steps towards importing the merchandise entered without one of the essential components of merchandise under consideration.
- The Department has stated that in the absence of an actual entry of merchandise covered by the scope inquiry, "the Department will work with the importer to determine if other documentary evidence exists that will sufficient to confirm the importer's status as an interested party."[72]
- The Department accepted Whirlpool's scope clarification request, issued a preliminary scope determination and a supplemental questionnaire to solicit further information and accepted Whirlpool's response without further supplemental questions.
- If the Department was not satisfied that Whirlpool had met the requirements of 19 CFR 351.305(d) for submitting a scope request or it would have taken steps to work with Whirlpool to determine if other documentary evidence exists to confirm its eligibility.
- The exclusions for bulk-packed parts and made-to-order shelving systems are irrelevant in construing the term "prepackaged for sale," and there is no indication that those exclusions were intended to inform the meaning of "prepackaged for sale" or the treatment of boltless steel shelving units that do not contain both posts and beams.
- Petitioner's pre-initiation comments reinforce the fact that units that do not contain either posts or beams are excluded from the scope.
- Petitioner's comments and the scope make clear that in-scope merchandise is packaged with all of the pieces necessary to assemble a completed shelving unit ready for ultimate purchase by the end-user.
- Although Petitioner now requests that the Department remove the phrase "at a minimum" from the scope's definition of "prepackaged for sale" the Department should not revise the scope language at this late stage of the proceeding.
- The Department may not expand the scope of the orders to cover products specifically excluded or render scope language inutile.[73]
- Petitioner seeks to have the Department change the scope language to include products that

[71] Citing to Antidumping and Countervailing Duty Proceedings: Document Submission Procedures: APO Procedures, 73 FR 3634, 3639 (Jan. 22, 2008) ("APO Procedures").
[72] Id.
[73] Citing to Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1089 (Fed. Cir. 2002); Eckstrom Indus., Inc. v. United States, 254 F.3d 1068, 1076 (Fed. Cir. 2001).

have been explicitly excluded and does so too late in the proceeding, given that the ITC's preliminary investigation was based on the existing scope, as is the final phase investigation.
- Petitioner cites to AMS Associates to support its request, but the Department did not change scope language in that case or otherwise discuss its authority to do so.
- Even if the Department has the authority to revise the scope at this stage, removal of the phrase "at a minimum" still results in a scope that makes clear that both the posts and beams are necessary to assemble a complete shelving unit in order to be considered "prepackaged for sale."
- The anti-circumvention provision cited by Petitioner is not relevant to a scope inquiry during the LTFV investigation and only covers merchandise subject to an order.
- The CAFC confirmed in Wheatland that the Department cannot change the scope to include merchandise that is "expressly and unambiguously excluded" from an order,[74] and the Preliminary Determination makes clear that the plain language of the scope expressly excludes shelving without either the horizontal or vertical supports.

Department's Position:

The Department agrees with Whirlpool that packages of shelving units that do not contain "the steel vertical supports (i.e., uprights and posts) and steel horizontal supports (i.e., beams, braces) necessary to assemble a completed shelving unit"[75] are not covered by the scope of the order of these investigations. As an initial matter, we note that 19 CFR 351.305(d), which requires that any party seeking a scope inquiry present evidence that it has taken steps towards importing the merchandise subject to the scope inquiry, does not apply in this instance because Whirlpool is not seeking a scope inquiry. Indeed, the Department rejected and removed from the record Whirlpool's initial filing that specifically requested a scope ruling under 19 CFR 321.225(c), noting that it is not possible for the Department to issue rulings under 19 CFR 321.225(c) because that regulation is specific to whether a product is within the scope of an order or a suspended investigation, neither of which applies at this time.[76] Accordingly, Whirlpool refiled its comments as a scope clarification request without reference to 19 CFR 321.225(c).[77] Thus, Petitioner's concern regarding Whirlpool's eligibility to request such clarification at this time[78] is unfounded.

The scope of this investigation clearly states that:

> "The term 'prepackaged for sale' means that, at a minimum, the steel vertical supports (i.e., uprights and posts) and steel horizontal supports (i.e., beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user."[79]

[74] Citing to Wheatland Tube Company v. United States, 161 F.3d 1365, 1370 (Fed. Cir. 1998).
[75] See "Scope of the Investigation" section, above.
[76] See Letter to Whirlpool from Catherine Bertrand, Program Manager, Office V "Scope Ruling Request" (February 23, 2015).
[77] See Letter to the Secretary of Commerce from Whirlpool "Submission of Factual Information and Request for Scope Clarification" (March 2, 2015).
[78] See Petitioner's Case Brief at 17-18.
[79] See Scope of the Investigation section.

When asked to clarify the meaning of "packaged together for ultimate purchase by the end-user" Petitioner replied that this language means "that the boltless steel shelving has been prepackaged for purchase in 'as is' condition, ready for assembly by the end-user and is not packaged-to-order."[80] Removal of the phrase "at a minimum" from the scope language, as suggested by Petitioner,[81] would not substantially alter the meaning of the scope such that the covered products would no longer need to include all of the components necessary to assemble a completed shelving unit. Although Petitioner requested that the Department make clear in the final determination that intentional omission of one element of the unit would not result in removal of the product from the scope of the investigation,[82] Petitioner has not suggested any additional scope language that would result in an enforceable scope that precludes an incomplete shelving unit from being excluded from the scope. Absent clarifying language, the plain language of the scope is clear in the requirement that all components necessary to assemble a completed shelving unit be packaged together for purchase by the end-user.

Although Petitioner argues that importing one element of the shelving unit separately from an otherwise completed and boxed unit does not meet the definition of the excluded bulk-packed parts or components,[83] an exclusion addressed in more detail below, Petitioner has not explained how a container full of a single component (i.e., post or beam) can be distinguished from the bulk-packed parts or components subject to the scope exclusion. Such a distinction would require that the Department define in the scope and U.S. Customs and Border Protection ("CBP") be cognizant at the time of entry that a container of individual component pieces are destined for units already prepackaged for sale but for the omission of a single component. Such a distinction would be unenforceable and Petitioner has not proposed revising the title of this investigation to "parts thereof," "complete or incomplete" or something along similar lines.

Accordingly, we continue to find that imports of prepackaged shelving units that do not contain "the steel vertical supports (i.e., uprights and posts) and steel horizontal supports (i.e., beams, braces) necessary to assemble a completed shelving unit" as required by the plain language of the scope, are not covered by the scope of these investigations.[84] Further, we do not find that removal of the phrase "at a minimum" from the scope description of "prepackaged for sale" would substantially alter the meaning of the scope and, as such, we are not revising the language of the scope of these investigations for this final determination.

The Department shares Petitioner's concern that prepackaged shelving units imported without either posts or beams for later combination with separately imported posts and beams present a circumvention concern that could warrant further examination within the context of Section 781 of the Act, governing merchandise completed or assembled in the United States. However, as noted by Whirlpool, Section 781 of the Act expressly applies to merchandise sold in the United States that is of the same class or kind as any other merchandise that is the subject of, inter alia, an antidumping duty order.[85] Accordingly, the Department cautions that shipments of partially

[80] See Letter to the Secretary of Commerce from Petitioner "Response to Supplemental Questions Concerning General and Injury Section of the Petition" (September 4, 2014) ("Petitioner General Issues Response") at 6.
[81] See Petitioner Case Brief at 25-26.
[82] Id., at 20.
[83] Id., at 20-25.
[84] See "Scope of the Investigation" section, above.
[85] See section 781(a)(1)(a)(i) of the Act.

packaged shelving units imported from the PRC that are completed in the United States from components produced in the PRC via a process that is minor or insignificant as described in section 781(a) of the Act, may be the subject of further investigation should an order be imposed at the conclusion of these investigations.

B. Whirlpool's Pre-wrapped Bundles

Petitioner's Comments:

- In the Preliminary Determination, the Department found that pre-wrapped bundles of beams, posts, and wire decks shipped separately fall under the exclusion for bulk-packed parts and components.
- The imported products described by Whirlpool are in fact partially packaged, pre-wrapped bundles, designed for easy assembly in a package at Whirlpool's U.S. facility.
- Such pre-wrapped bundles are not bulk-shipped parts or components as described in the exclusion language of the scope, which must also be able to be used in made-to-order systems.
- To be bulk-packaged parts and components, no prepackaging or bundling should have occurred, and the pre-bundling in China limits the use of these parts solely for the purpose of creating merchandise under consideration in the United States.
- The Department should find that these pre-bundled parts do not meet the parts and components exclusion.
- Even if the Department finds Whirlpool's bundles of partially packaged parts would be nominally outside the scope, these products may still be brought within the scope if the products are found to be completed or assembled in the United States using a process that is minor or insignificant.
- Because Whirlpool is selling shelving units of the same class or kind that is the subject of this investigation, where the components are imported from China, the value of the components imported from China is a significant portion of the total value of the product and the process of completion in the United States is minor, the factors set forth in Section 781 of the Act are satisfied.
- The record shows Whirlpool changed its sourcing patterns solely to avoid the AD investigation while still purchasing all components from its Chinese supplier, which is a licensee of Whirlpool that produces all parts under the control of Whirlpool and imports of the parts have increased since the case was filed.
- The Department should conclude that importation of partially packaged, pre-bundled groupings of parts made to be boxed into merchandise under consideration is a circumvention of the investigation under Section 781(a) of the Act.

Whirlpool's Comments:

- The Department reached the preliminary determination that pre-wrapped bundles of bulk-shipped beams and pre-wrapped bundles of bulk-shipped posts and wire decks are not included in the scope based on the plain language of the scope, which provides that "bulk-packed parts or components of boltless steel shelving units" are "{s}pecifically excluded from the scope."
- In the pre-initiation stage of this investigation Petitioner confirmed that packages of bulk-shipped parts that do not include "all of the pieces necessary to build a completed shelving

unit" are excluded from the scope.

- There is nothing in the scope language that states that bulk parts cannot be "prepackaged" or that bulk-packed parts must be used in other products explicitly excluded from the scope (i.e., made-to-order systems) and Petitioner did not suggest as much in its pre-initiation comments.
- The key feature of such excluded merchandise is that it does not contain all of the pieces necessary to build a completed shelving unit.
- The fact that bulk-packed parts may later be incorporated in boltless steel shelving units (made-to-order or otherwise) does not remove them from the exclusion for bulk-packed parts.
- The imported pre-wrapped bundles do not contain all of the pieces necessary to build a completed shelving unit and are not in-scope units "prepackaged for sale."
- The Department should continue to find that the plain scope language, as further described in Petitioner's comments, exclude (i) pre-wrapped bundles of bulk-shipped horizontal support beams, with no vertical supports and wire decking in the same shipping container; and (ii) pre-wrapped bundles of bulk-shipped vertical supports and wire decking, with no horizontal support beams in the same shipping container.
- The provisions concerning merchandise assembled in the United States can only be invoked after an order has issued and the anti-circumvention provisions cannot be applied to include merchandise that has already been explicitly excluded.

Department Position:

In the Preliminary Determination, the Department agreed that the imports described by Whirlpool are not included in the scope of these investigations because the minimum requirements necessary to assemble a unit are not packaged together for ultimate purchase by the end-user, as required by the scope.[86] For this final determination, the Department finds that the imports described by Whirlpool fall under the express exclusion enumerated in the scope for bulk-packed parts or components.

As noted in the Preliminary Determination, Petitioner specifically addressed bulk-packed parts and component pieces in the pre-initiation phase of these investigations.[87] Petitioner described components of boltless steel shelving units as "the individual beams, braces, posts, decks and other pieces that make up parts of boltless steel shelving when sold individually or in bulk" and noted that such components that are not "prepackaged for sale as complete boltless steel shelving or as add-on kits are not covered by the proposed scope."[88] Petitioner further noted that "the packaging of individual components or the packaging together in bulk of components (i.e. posts, beams or other components packaged together in large quantities) removes the product from the scope."[89]

Petitioner now argues that its initial description of bulk-packed parts and components should be narrowed by characterizing Whirlpool's imports as "partially packaged," pre-wrapped bundles

[86] See Preliminary Determination at 11-12.
[87] Id.
[88] See Petitioner General Issues Response at 12.
[89] Id.

that do not fall under the scope exclusion for bulk-shipped parts or components.[90] Petitioner argues that in order to meet the bulk-packaged requirement, the parts cannot be prepackaged.[91] However, Petitioner itself described the products subject to the bulk-packed parts exclusion as being "packaged according to the distributor or customer's order for individual pieces" and claimed that the "packaging together in bulk of components . . . removes the product from the scope."[92] Thus, Petitioner acknowledges that some packaging is integral to the products described in the bulk-packed parts exclusion. Indeed, Whirlpool's bulk method of shipment does not appear to be unusual to the industry, as Department verifiers observed on the tour of Zhongda's facility "beams in groups of 10 with plastic wrap on the ends according to the customer's specifications being prepared for bulk shipment."[93] Petitioner has not reconciled its current contention that Whirlpool's "partially packaged" components are not subject to the bulk-packed parts exclusion with its prior statements that components subject to this exclusion are in fact "packaged according to the distributor or customer's order for individual pieces."

Petitioner conflates the bulk-packed parts exclusion with the separate and distinct exclusion for made-to-order shelving systems in arguing that the bulk-packed parts exclusion is applicable only to parts used in made-to-order shelving systems.[94] This claim stands in stark contrast to the scope language, which expressly lists two separate exclusions for bulk-packed parts and made-to-order shelving systems, and also to Petitioner's own statements. Throughout its pre-initiation comments, Petitioner discussed these two exclusions separately and did not link them in the manner it now attempts. Specifically, it stated that in addition to the fact that "{b}ulk packed parts and components and made to order commercial shelving units are not prepackaged as individual units for sale to the end users," they are "packaged according to the distributor or customer's **order for individual pieces, bulk components or for the shelving system** designed for the customer."[95]

Although Petitioner argues that "partially packaged" pre-wrapped bundles can only be used in merchandise meeting the scope of these investigations because the prepackaging would have to be removed to be used for other purposes,[96] Petitioner ignores the fact that some amount of packaging is inevitable on international shipments of goods such as the components in question. It is conceivable that a bulk shipment of component pieces without any packaging whatsoever risks damage to steel components and blemishes to powder coated surfaces. We also note that Petitioner's attempt to link bulk-packed shipments of components with an intended use after importation raises enforceability issues the Petitioner has not addressed and it is unclear how Petitioner would have CBP determine at the border whether a bulk-packed, with an inevitable amount of packaging, was destined for packaging in a retail box, for a made-to-order shelving system, or for an entirely different type of product (e.g., wall-mounted shelving units that are expressly excluded by the scope).

[90] See Petitioner Brief at 32.
[91] Id.
[92] See Petitioner General Issues Response at 12.
[93] See Zhongda Verification Report at 10.
[94] See Petitioner Brief at 32-35.
[95] See Petitioner General Issues Response at 12-13 (emphasis added).
[96] See Petitioner Brief at 35.

For the foregoing reasons, the Department continues to find for this final determination, that Whirlpool's imports from the PRC of 1) pre-wrapped bundles of bulk-shipped horizontal support beams, with no vertical supports and wire decking in the same shipping container; and 2) pre-wrapped bundles of bulk-shipped vertical supports and wire decking, with no horizontal support beams in the same shipping container, are not covered by the scope of these investigations. However, in the event that an order is imposed at the conclusion of these investigations, the Department may consider the distinction between "packing" used to prepare the goods for shipment to the United States and "packaging," such as the material that would allow component pieces to be easily placed in a box for retail sale, and how those factors affect whether or not the pieces may be considered "bulk" under the bulk-packed parts exclusion.

Comment 3: Whether Costco's Products are Within the Scope

Costco's Case Brief:

- The Department should confirm that the 10 remaining products described by Costco in this proceeding are outside the scope of this investigation.
- The Department was correct in determining that eight of the 10 items Costco described were outside of the scope of this investigation. The Department should confirm that all 10 products are outside of the scope based on additional detailed information placed on the record.[97]

Petitioner's Rebuttal Comments:

- The Department should not confirm that all 10 of the remaining products are outside of the scope, because Costco did not provide any additional arguments in their case brief and Department regulations require that case briefs include all arguments.[98]

Department's Position:

As noted in the Preliminary Determination, we required additional information to determine whether products contained in Costco's Additional Scope Comments[99] fell within the scope of the investigation.[100] In response to the Department's letter,[101] Costco filed additional information supporting its contention that certain products should not be within the scope of this investigation.[102] Additionally, Costco withdrew its request for a scope clarification on the "Metal Shelving Unit with Bins."[103] For the remaining products, Costco provided specification sheets demonstrating that each of the products was made primarily from steel.[104] Further Costco provided information demonstrating that its "Household Shoe Rack – 9 Tier" uses bolts to connect the horizontal poles to the vertical supports.[105]

[97] See Letter from Costco re: "Response to March 30, 2015 Scope Letter" (April 6, 2015).
[98] See 19 C.F.R. 351.309(c)(2).
[99] See Letter from Costco re: "Further Comments on the Scope" (December 19, 2014).
[100] See Preliminary Determination and accompanying Preliminary Decision Memorandum at 5-9.
[101] See Letter to Costco re: "Comments on Scope of Investigation" (March 30, 2015).
[102] See Letter from Costco re: "Response to March 30, 2015 Scope Letter" (April 6, 2015).
[103] Id., at 3.
[104] Id., at Exhibits 1 through 9.
[105] Id., at 2 and Exhibit 2.

Based on the information Costco provided, we determine that the "Household Shoe Rack – 9 Tier" is excluded from the scope of this investigation because bolts are required for its assembly, and are not merely incidental to the design of the rack. With respect to the "Mesh Wire Drawer Systems" identified in its April 6, 2015, letter, Costco provided documents showing that for one of the "Mesh Wire Drawer Systems," the horizontal supports are welded to the vertical supports and do not lock together to form the frame of the unit.[106] Similarly, Costco demonstrated that the other "Mesh Wire Drawer System" utilizes welded vertical and horizontal supports, in addition to the use of bolts to secure the frame to hold the baskets.[107] Therefore, we determine that both "Mesh Wire Drawer Systems" are excluded from the scope because they do not "lock" together as described in the language of the scope. Additionally, we continue to determine that the other products in Costco's Additional Scope Comments are outside of the scope of this investigation, with the exception of the "Metal Shelving Unit with Bins" for which Costco withdrew its scope clarification request.

Further, we disagree with Petitioner regarding the consideration of additional information for the scope determinations described above. The Department solicited additional post-Preliminary Determination information from Costco regarding certain products, for the purpose of making additional scope determinations for the final determination. Thus, the Department is addressing those additional comments from April 6, 2015, in addition to comments from Costco's case brief, for the final determination.

Surrogate Value Issues

Comment 4: Freight Weight Basis

Topsun's Case Brief:

- The ten-ton cargo weight basis that the Department applied is inaccurate and does not reflect the cargo weight tied to the selected freight value. Rather, this ten-ton weight represents a cargo weight for another country and another freight value.
- The cargo weight should have been 21,727 kilograms ("kg"), or more than double that of the freight weight used in the calculation. The net impact of this is a significant overstatement of the freight rate used in both the surrogate value calculations and for valuing the freight costs in the sales database.
- The Department should recalculate the freight rate and apply the correct freight factor to all calculations.
- The Department should make a similar adjustment for brokerage and handling to the extent that the brokerage and handling charge was also applied to the wrong weight.

Zhongda's Case Brief:

- Ten tons is not an appropriate cargo weight for a 20-foot container in Bulgaria. Instead, the Department should use 21,727 kg as the cargo weight for a 20-foot container.
- The Department has used this 21,727 kg measurement as the denominator in previous cases, and it is appropriate in this instance.

[106] Id., at 2-3 and Exhibit 3.
[107] Id., at 3 and Exhibit 3.

Petitioner's Rebuttal Brief:

- The Department should reject Topsun's and Zhongda's argument because the Department's methodology for adjusting surrogate transportation and handling charges is well-established, the Department recently affirmed that it relies on a 10-ton denominator when using the Doing Business publications because that is the methodology used in all Doing Business reports.[108]
- The Department's calculation considers a number of components to arrive at a per-unit value. Even if the record were to support an interested party's representations as to its actual experience, the surrogate value analysis should not be selectively deconstructed and revised to incorporate assumptions that one party considers more favorable.
- The Department has also stated that using the weight applied in the Doing Business publication is important because "the SV calculation must be internally consistent with the original data's reporting basis."[109]

Department's Position:

The Department disagrees with Topsun and Zhongda regarding the proper denominator for the calculation of brokerage and handling expenses. Our determination regarding the appropriate brokerage and handling denominator has been consistently applied in proceedings such as Furniture 2011[110], Tires 2012[111], Vietnam Shrimp 2013[112], Nails 2013[113], Carbon 2014[114], Wood Flooring 2014[115], Steel Threaded Rod 2014[116], Nails 2015[117]. This long-standing, consistent practice is reasonable and based on the reliability of the source (i.e., Doing Business) and its consistency across different countries that are surveyed for the collection of Doing Business data. We find that the consistency in which the surveyed participants (of multiple countries such as Bangladesh, India and the Philippines, etc.) are requested to report brokerage and handling

[108] See Petitioner's Rebuttal Brief (June 25, 2015) at page 2, citing to: Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part, 80 FR 34893 (June 18, 2015) and accompanying Issues and Decision Memorandum at Comments 15 and 17.
[109] See Petitioner's Rebuttal Brief dated June 25, 2015, at page 3.
[110] See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011) ("Furniture 2011") and accompanying Issues and Decision Memorandum at Comment 6.
[111] See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2009-2010Antidumping Duty Administrative Review and Final Rescission, in Part, 77 FR14495 (March 12, 2012) ("Tires 2012"), and accompanying Issues and Decision Memorandum at Comment 11.
[112] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 56211 (September 12, 2013) ("Vietnam Shrimp 2013") and accompanying Issues and Decision Memorandum at Comment 5.
[113] See Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 March 18, 2013 ("Nails 2013") and accompanying Issues and Decision Memorandum at Comment 3R.
[114] See Carbon 2014 at Comment 12.
[115] See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) ("Wood Flooring 2014") and accompanying Issues and Decision Memorandum at Comment 4.
[116] See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71743 (December 3, 2014) ("Steel Threaded Rod 2014") and accompanying Issues and Decision Memorandum at Comment 5.
[117] See Steel Nails 2012 and accompanying Issues and Decision Memorandum at Comment 5.

expenses for a traded product transported in a dry-cargo, 20-foot full container assuming the container weighs 10 tons (i.e., 10,000 kg), renders this source as usable and accurate.[118]

In short, the Department had inadvertently departed from the stated and consistent practice (e.g., Vietnam Shrimp 2012[119]). However, we explained the oversight in subsequent proceedings (i.e., Vietnam Shrimp 2013). Our determination in Vietnam Shrimp 2012 was inconsistent with prior proceedings and not applied in subsequent proceedings. We note that the Department's subsequent determination with respect to the brokerage and handling denominator in Vietnam Shrimp 2013 was consistent with our practice. Thus, as we stated in numerous proceedings, we will continue to use a 10,000 kg denominator for movement expenses. In past cases when we have used Doing Business as the source for valuing movement expenses, we have recognized that Doing Business reports a standard 10,000 kilogram container weight. The methodology employed in reporting prices between Doing Business in Bangladesh, India, Indonesia and the Philippines are the same, and as such, we believe that using the 10,000 kg denominator is consistent and reasonable. As noted earlier, Doing Business, the source that we are using for valuing movement expenses, compiles and reports the expense data on a 10,000 kg container weight basis; as such, altering the weight denominator would distort the reported per volume expenses, which we have consistently applied in all the above-cited cases.[120] Our determination is based on a standard calculation from a source used in many other proceedings.[121]

Topsun argues that the Department ought to apply its specific container weight of 21,727 kilograms as the denominator. However, consistent with our practice, we decline to adjust the denominator based on respondents' experience.[122] We disagree that the denominator for this SV should be based on Topsun's experience because this 10,000 kg weight is part of the methodology used by Doing Business in calculating the freight cost. The cost of the shipments obtained by Doing Business reflects the cost of a 10,000 kg container and that "changing only the weight of the container results in a meaningless unit value."[123] And, as we stated in prior proceedings, "mixing different sources of data within the ratio calculation would add inconsistency to the calculation, which would yield a distorted result."[124] Therefore, for the final determination, we continue to use the 10,000 kg denominator for calculating movement expenses for Zhongda. As explained above in Section V, we have determined to apply total AFA to

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[118] See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012, 79 FR 51954 (September 2, 2014) and accompanying Issues and Decision Memorandum at Comment 8.
[119] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 77 FR 55800 (September 11, 2012) ("Vietnam Shrimp 2012").
[120] See Memorandum to the File from Josh Startup, International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Surrogate Values for the Preliminary Determination" (March 24, 2015) ("Prelim SV Memo") at 7 and Attachment 10.
[121] See, e.g., Plywood 2013 at Comment 11; See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (November 5, 2013) ("Steel Threaded Rod 2013") and accompanying Issues and Decision Memorandum
[122] See Steel Threaded Rod 2013 at Comment 6, where we stated that we "should continue to use the weight of 10 MT for a standard container because this is the weight reported in the Doing Business publication and the SV calculation must be internally consistent with the original data's reporting methodology."
[123] Id.
[124] Id.

Topsun, thus there will be no revisions to Topsun's data used in the Preliminary Determination to calculate its preliminary margin.

Comment 5: Steel Strip Surrogate Value

Zhongda's Case Brief:

- In the Preliminary Determination the Department used Harmonized System ("HS") code 721119, which is specific to steel strip of a width less than 600 mm, but Zhongda reported in its questionnaire responses consumption of steel strip less than and greater than 600 mm.
- The width of steel strip used by Zhongda was confirmed by Department verifiers at the verification plant tour and in verification exhibits.
- The Department should use the average values of imports under HS codes of steel strip less than 600 mm wide (721119) and greater than 600 mm wide (720839) for the final determination to correctly value the actual steel strip used by Zhongda.

Petitioner's Rebuttal Brief:

- The surrogate value for steel strip used in the Preliminary Determination was suggested by Zhongda and Zhongda has not cited to record evidence of a value for steel strip classified under HS code 720839.
- In its case brief Zhongda has alleged for the first time that it produced merchandise under consideration from steel that is more than 600 mm in width. Accordingly, this new factual information should be ignored by the Department.
- The production process described by Zhongda in its questionnaire responses and viewed by the Department at verification did not include a steel slitting operation.
- Because there are no costs reported by Zhongda associated with steel slitting in its responses, all steel that comes out of inventory must be of a width that can be used to produce a post or beam and any steel of a width greater than 600 mm must be for production of merchandise not under consideration.
- Zhongda's reference to a single warehouse slip in a verification exhibit to support the proposition that it purchased any steel strip of 600 mm or more does not establish that such steel strip was used in the production of merchandise under consideration nor that it was used in any significant quantity that would warrant expanding the HS category used as the surrogate value.

Department's Position:

We disagree with Zhongda that a simple average of the import values of steel strip with widths less than and greater than 600 mm would be a more appropriate surrogate value for Zhongda's steel strip consumption than the surrogate value used in the Preliminary Determination.[125] Zhongda cites to the verification report and Verification Exhibit 36 to support its contention that Department verifiers confirmed Zhongda's use of steel strip of widths less than and greater than 600 mm.[126] However, the page of the verification report cited to by Zhongda states that "{o}n this {plant} tour, we observed the following production workshops and processes: steel strip inventory, steel strip stamping and forming lines, welding stations, powder coating line, packing

[125] See Prelim SV Memo.
[126] See Zhongda Case Brief (June 16, 2014) ("Zhongda Case Brief") at 6-7.

stations, and finished goods inventory."[127] Department verifiers did not observe, and Zhongda officials did not attempt to direct verifiers to, a steel slitting operation or steel slitting workshop. Indeed, Zhongda stated in its Section D questionnaire response that its production process begins with "rolling the post and beam using steel strip."[128] Given the absence of any reference to a slitting operation in Zhongda's initial questionnaire response, the Department asked Zhongda in a supplemental questionnaire if it purchased steel coil and paid for slitting services. Zhongda responded that it "does not purchase and pay for slitting services"[129] without stating whether it conducted any slitting operations at its facility.

Zhongda also points to page 26 of Verification Exhibit 36 which contains a warehouse-out slip that lists in the "specification" column "A3 steel strip" of "150.5/172.8/610 (mm)" to support the contention that Zhongda used steel strip of widths greater than 600 mm.[130] However, Zhongda did not clarify in its case brief, or present an explanation to analysts at verification, as to what the other numbers in the "specification" column represent. Further, it is unclear why there are three distinct dimensions listed in the warehouse-out slip specifically cited to by Zhongda, any of which, at face value, could conceivably represent a width. Neither the narrative in the verification report nor the numbers in the "specification" column of the warehouse-out slips demonstrate that Zhongda consumed steel strip of a width greater than 600 mm and used such steel strip in the production of merchandise under consideration.

As noted by Petitioner,[131] the mere fact that Zhongda may have purchased or had inventory of steel strip of widths greater than 600 mm does not definitively demonstrate that such inputs were used in the production of merchandise under consideration. Indeed, Zhongda's operations encompass more than just the production of merchandise under consideration and it is conceivable that its other operations consume materials not used in the production of boltless steel shelving units.[132] Accordingly, Zhongda has not shown where the record demonstrates consumption of steel strip greater than 600 mm in the production of merchandise under consideration or which of its products require steel strip of such specification. Moreover, it was Zhongda's responsibility to describe its FOP in adequate detail and time to permit thorough consideration of accurate surrogate valuation; however, it did not do so.

Finally, even assuming for argument's sake that the Department were to agree that Zhongda consumed steel strip of widths greater than 600 mm in the production of merchandise under consideration during the POI, no party in this investigation has placed surrogate value data for HS code 72083900, steel strip of width greater than 600 mm, suggesting this size was not used in

[127] See Zhongda Verification Report at 9.
[128] See Letter to the Secretary of Commerce from Zhongda "Section D Questionnaire Response" (December 29, 2014) ("Zhongda SDQR") at 3.
[129] See Letter to the Secretary of Commerce from Zhongda "Section D supplemental questionnaire" (February 9, 2015) at 1-2.
[130] We note that while this information is treated as business proprietary information in Verification Exhibit 36, Zhongda publicly stated this data in its case brief. See Zhongda Case Brief at 7.
[131] See Petitioner Rebuttal Brief (June 25, 2015) at 10.
[132] See, e.g., Zhongda SDQR at 5 ("The products Zhongda Metalwork produced include: Steel shelving, component of steel shelving unit, garbage can, garbage processor, chemical packing and warm air blower plate."); Letter to the Secretary of Commerce from Zhongda "Section D supplemental questionnaire" (February 9, 2015) ("Zhongda SuppD") at 5 ("Chemical packing produced by Zhongda Metalwork is those steel products used in the chemical industry.").

the production of the merchandise under consideration. In its initial comments on surrogate values, Zhongda advocated for both HS code 72111900 and HS code 72083900 but only placed surrogate value data for HS code 72111900 on the record.[133] Further, although Topsun placed on the record the HS schedule details of Bulgaria, that schedule does not list a description of HS code 72083900.[134] Thus, the only information for HS code 72083900 is from Zhongda's own submissions, which do not contain any documentation supporting the description.[135]

For the foregoing reasons, the Department finds that the record does not support valuation of Zhongda's consumption of steel strip in widths greater than 600 mm and in any case the record contains no data by which to calculate an average with the surrogate value used in the Preliminary Determination. Accordingly, we are continuing to value steel strip in this final determination using the surrogate value used at the Preliminary Determination, HS code 72111900.

Comment 6: Wire Deck Surrogate Value

Zhongda's Case Brief:

- The HS code used by the Department in the Preliminary Determination (731431) is for wire deck "Plated or coated with zinc."
- Zhongda reported in its questionnaire responses that it purchased both coated and uncoated wire decks, and also reported the diameter of the wire and specifications of the wire decks, including the mesh size.
- The specifications of wire decks used in the production of merchandise under consideration were confirmed with Department analysts at the verification plant tour and in Verification Exhibit 21, detailing the physical characteristics of the merchandise under consideration.
- The Department should use HS code 73142090 (Grill, Netting And Fencing, Welded At The Intersection, Having A Mesh Size Of >= 100 CM², Of Iron Or Steel Wire, The Constituent Material Of Which Having A Maximum Cross-Sectional Dimension Of >= 3 Mm (Other Than Of Ribbed Wire)) to value the wire deck used by Zhongda for the final determination because it matches the wire diameter and mesh size of the input used by Zhongda and it is more specific to Zhongda's production input.

Petitioner's Rebuttal Brief:

- Zhongda itself proposed using HS code 731431 as the appropriate basis by which to value its wire decks and has not cited to record evidence for a value based on Bulgarian HS code 73142090. Accordingly, its argument amounts to new factual information and should be rejected.
- Zhongda has not presented any information demonstrating how many uncoated decks it purchased or whether any went into the production of merchandise under consideration.
- Zhongda's burden of building a record supporting its claim to have purchased and used

[133] See Zhongda SV Comments at Exhibits SV-1a and 1b.
[134] See Letter to the Secretary of Commerce from Topsun "Surrogate Value Data Submission of Nanjing Topsun Racking Manufacturing Co., Ltd." (February 23, 2015) ("Topsun Pre-Prelim SV Comments") at Exhibit S2V-1 (describing HS codes 72083500 and 72084100 but nothing in between).
[135] See Letter to the Secretary of Commerce from Zhongda regarding additional surrogate values (February 23, 2015) ("Zhongda Pre-Prelim SV Comments") at Exhibit SV2-1; Zhongda SV Comments at Exhibit SV-1a.

uncoated wire decks in the production of merchandise under consideration has not been met and the Department, therefore, does not have the means to determine whether weight averaging HS codes representing imports of coated and uncoated decks would be distortive.

Department's Position:

The Department disagrees with Zhongda that we should use HS code 73142090 to value its consumption of wire decks for this final determination. It was Zhongda's responsibility to describe its FOP in adequate detail and time to permit thorough consideration of accurate surrogate valuation; however, it did not do so. As noted by Petitioner, Zhongda itself proposed using HS code 731431 to value Zhongda's wire deck consumption for the Preliminary Determination.[136] Although Zhongda first suggested using HS code 73142090 to value wire decks in its pre-prelim surrogate value comments, Zhongda neglected to include any data in its submission by which to value wire decks using this HS code.[137] Subsequent to the Preliminary Determination, parties were afforded the opportunity to comment on the surrogate value data placed on the record by the Department for the Preliminary Determination,[138] which included surrogate value data for wire decks valued using HS code 731431.[139] Zhongda did not take this opportunity to place surrogate value data for valuing wire decks under HS code 73142090. Accordingly, the record does not contain any data with which to value Zhongda's wire deck consumption using HS code 73142090. Therefore, the Department is making no change to its Preliminary Determination with respect to the valuation of Zhongda's wire decks using HS code 731431.

Comment 7: Carton Surrogate Value

Zhongda's Case Brief:

- The HS code used by the Department in the Preliminary Determination (481910) is for finished carton box, not the paper board used by Zhongda to assemble into its cartons.
- Zhongda reported in its surrogate value comments, and Department analysts confirmed at verification, that it purchased paper board to assemble into cartons for packing merchandise under consideration.
- The Department should use HS code 480810 (corrugated paper and paperboard, whether or not perforated) as the surrogate value for the paperboard used by Zhongda in the final determination.

Petitioner's Rebuttal Brief:

- Zhongda's claims are not supported by its questionnaire responses.
- Zhongda describes the material in HS code 4808.10 as covering paper board, not the type of corrugated cardboard that goes into making cartons used Zhongda.
- Paperboard is different than cardboard and is not a suitable surrogate value for cartons or for the cardboard used to produce cartons.

[136] See Zhongda SV Comments at Exhibit SV-1a.
[137] See Zhongda Pre-Prelim SV Comments at Exhibit SV2-1.
[138] See Memo to the File from Josh Startup, International Trade Analyst, Office V "Deadline to Comment on Preliminary Determination Surrogate Values" (April 6, 2015).
[139] See Prelim SV Memo at 4.

Department's Position:

We agree with Zhongda that its cartons should be valued using HS code 480810. At Zhongda's verification, Department analysts observed construction of cartons using glue from flat sheets of cardboard that were cut and printed.[140] Further, Zhongda argued in its pre-prelim surrogate value comments that we should value its cartons using "paper board (for making carton)" under HS code 480810.[141] Although Petitioner argues that the material in HS code 480810 is for paperboard rather than the corrugated cardboard used by Zhongda to make cartons, we note that the description of the HS code used in the Preliminary Determination, HS code 481910, is "Cartons, boxes and cases, of corrugated paper or paperboard" while the description of HS code 480810 is "Corrugated paper and paperboard, whether or not perforated."[142] Thus, Petitioner's objection to the inclusion of paperboard in the description of HS code 480810 is not persuasive because both HS codes at issue contain paperboard in the description. Accordingly, for this final determination, the Department is valuing the cartons that Zhongda constructs at its facility using the HS code for corrugated paper, HS code 480810.

Comment 8: Surrogate Financial Ratios

A. Other Income/Expense

Zhongda's Case Brief:

- The "Other Income" and "Other Expense" items listed in the Alcomet financial statements have nothing to do with the sale of the produced product or general operations of the company.
- The Department's practice is to exclude items not related to the general operations or sale of the product from the surrogate financial ratio calculation.
- The Department should move "other income" and "other expense" to the "profit & profit adjustment" column in order to remove profit from other operations from the total profit and to result in a surrogate profit ratio from general operations.
- For the Preliminary Determination, the Department incorrectly adjusts the "Sales of Material" item under "Other Income" to the "Raw Material & Energy" column of the Alcomet financial statements to reduce the cost of material and energy in sale cost, while also adjusting the other items under "Other Income" and "Other Expense" to the "SG&A and Interest" column.

Petitioner's Rebuttal Brief:

- There is no support for Zhongda's speculation as to the nature of Alcomet's "other expenses" and these expenses were properly treated in the Preliminary Determination.

Department's Position:

The Department disagrees with Zhongda that the "Other Income" and "Other Expense" line items in Alcomet's financial statements should be moved to the "Profit & Profit Adjustment"

[140] See Zhongda Verification Report at 25.
[141] See Zhongda Pre-Prelim SV Comments at Exhibit SV2-1.
[142] See Topsun Pre-Prelim SV Comments at Exhibit S2V-1.

column of the financial ratios calculation. We note that Zhongda has not provided any citations to administrative or judicial precedent in support of its arguments, nor did Zhongda cite to any information on the record or in the Alcomet statement that would provide any clarification as to the nature of the "Other Income" and "Other Expense" line items or whether they are part of the normal operations of the company. The Department's general practice is to treat other income as related to the general operations of the company and, therefore, include other income as an offset to SG&A expenses.[143] The exception is when the reported information and the information in the surrogate financial statements indicate otherwise, if, for example, the income has been reported as an FOP, the income relates to a separate line of business, or the income relates to the disposal of non-routine assets.[144] After reviewing the surrogate financial statements, we have not found any information in Alcomet's financial statements or other record information to indicate that the "Other Income" and "Other Expense" line items are not related to the general operations of the company. Indeed, the detailed breakdown of Alcomet's other income and other expenses demonstrates that Alcomet earned similar revenues and incurred similar expenses in the year ended December 31, 2012, suggesting that these revenues and expenses are part of the general, ongoing operations of the company.[145]

However, we agree with Zhongda that the "Other Income" line item identified as "Sales of Material" should not be an offset to raw materials, as it was categorized in the Preliminary Determination.[146] As explained above, the Department's general practice is to treat other income items as an offset to SG&A expenses. Therefore, for the final determination, the Department will treat other income, including "Sales of Material" and other expenses as an adjustment under SG&A expenses in accordance with our general practice.[147]

B. Commission/Advertisement

Zhongda's Case Brief:

- The Department's practice is to exclude from the calculated SG&A ratio movement expenses that are separately reported in the respondent's Section C sales database to avoid double counting.
- The Department should exclude from the surrogate financial ratio calculation "sales commission" and "advertisement expenses" reported in Alcomet's financial statements under "distribution expense" because there are separate fields for these expenses in the Section C database, both of which Zhongda reported were not applicable.
- Failure to exclude these two items would result in double counting of movement expenses,

[143] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 9.
[144] See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 18; Furniture 2011 at Comment 19.
[145] See Zhongda SV Comments at SV-4, p. 53.
[146] See Prelim SV Memo at Attachment 11 (financial ratios calculation for Alcomet).
[147] See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Surrogate Values for the Final Determination" (August 14, 2015) ("Final SV Memo").

which are separately reported in Zhongda's Section C sales database.

No other interested party commented in this issue.

Department's Position:

We disagree with Zhongda that the "Sales Commissions" and "Advertisement Expenses" items recorded under the "Distribution Expenses" category in Alcomet's financial statements should be excluded from the calculation of the surrogate SG&A ratio.[148] It is the Department's practice to include sales commissions and advertising expenses in the surrogate SG&A calculation regardless of whether the respondent incurred such expenses on its sales of subject merchandise because sales commissions and advertising expenses are standard selling expenses.[149] Further, the Department has stated that whether or not a PRC producer had sales commissions is irrelevant to the Department's surrogate SG&A calculation, because the Department does not tailor surrogate financial ratios to match the particular circumstances in the NME country.[150] The Department's practice in this regard has been upheld by the CIT,[151] and Zhongda has provided no citations to administrative or judicial precedent in support of its arguments that would suggest otherwise. Accordingly, we are not revising our classification of "Advertisement Expenses" and "Sales Commissions" in the calculation of surrogate financial ratios for this final determination.[152]

Company-Specific Issues

Topsun

Comment 9: Standards for Department Determinations

A. Consistent Disposition of New Factual Information Submissions

Topsun's Case Brief:

- The Department must not act in an arbitrary and capricious fashion by making determinations which are contrary to actions made in other reviews and investigations.
- The Department must ensure that it is not acting in such a fashion, even if the contrary decision is not directly reflected in a Federal Register notice or a related Issues and Decision Memorandum. For example, if the Department has made a decision as to the method for valuing a factor of production, it cannot apply a contrary method of valuing the same factor of production in another matter.

[148] See Zhongda Brief at 11-12.
[149] See Honey from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews, 70 FR 9271 (February 25, 2005) ("Honey Anhui NSR") and accompanying Issues and Decision Memorandum at Comment 3; Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum at Comment 13.
[150] See Honey Anhui NSR and accompanying Issues and Decision Memorandum at Comment 3.
[151] See Final Results of Redetermination Pursuant to Court Remand, affirmed by Shanghai Eswell Enter Co., Ltd. v. United States, 32 C.I.T. 1233, Slip Op. 08-124 (CIT 2008).
[152] See Final SV Memo.

- The Department should be presumed to have complete knowledge of its own determinations and decisions and must explain any determination which varies from its prior practices — particularly where the apparent variation is called to the attention of the Department.
- To the extent that the regulations for the submission of new factual information do not permit the submission of rebuttal factual information demonstrating the inconsistency of a Department determination because all such information is due prior to the Department's inconsistent determination is both contrary to the statute and the U.S. Constitution.
- The Department cannot be allowed to avoid the submission of information showing that the Department's determination is arbitrary and capricious as it varies from prior Department determinations by delaying its determination until it is too late for parties to submit such information. Such action deprives a party of its fundamental due process right to address allegations made against it, and to the extent that the regulations preclude such response, they do not pass constitutional muster.

No other interested party commented in this issue.

Department's Position:

Topsun did not make any specific arguments for this issue vis-a-vis the information on the record or the Preliminary Determination. Rather, Topsun raised a general argument with respect to the Department's statutory, regulatory, and precedential requirements for making determinations.[153] More specifically, in making this general argument, Topsun did not "call{} to the attention of the Department"[154] any aspect of the Preliminary Determination that varied from past practice and, as such, there is no apparent basis on which to analyze, or respond to, Topsun's argument. The Department's obligations regarding this investigation are clearly identified in the Act (see, e.g., sections 735(d) and 777(i)(1) of the Act). This determination is issued and published in accordance with the Act.

B. Rejection of New Information

Topsun's Case Brief:

- The Department cannot reject any citations to either Federal Register notices or the related Issues and Decisions Memoranda as "New Factual Information."
- Federal Register notices and the related Issues and Decisions memoranda fall under the 4th provision under 19 CFR 351.105, which is not described as "factual information."

Petitioner's Rebuttal Brief:

- Regarding allowing citations to administrative decisions in other proceedings and taking notice of determinations and actions in such proceedings, Topsun has not in its case brief provided details on how these comments relate to the Preliminary Determination.
- Petitioner can only comment that the Department normally allows such citations and takes due notice of its determinations and actions in such proceedings as they apply to legal and policy issues.

[153] See Topsun's Case Brief at Section II.C, pages 4-5.
[154] Id., at 4.

- Topsun has not put forth a specific objection relating to the Department's treatment of citations to prior precedent. In any event, the Department's use of a 10-ton denominator to calculate freight and handling charges is both consistent with the record facts and with the Department's published determinations.

Department's Position:

Topsun did not make any specific arguments for this issue vis-a-vis the information on the record or the Preliminary Determination. Rather, Topsun appears to argue that citations to prior determinations within Federal Register notices and the accompanying Decision Memoranda cannot be considered new information and rejected from case briefs. We note that the Department adheres to the definition of factual information, as defined in the Department's regulations and described in the Definition of Factual Information.[155] Petitioner is correct that the Department allows citations to prior determinations. The Department has also allowed interested parties to incorporate the Department's publicly available statements or memoranda to support arguments that the Department's actions are inconsistent with past practice, and has not considered such references to be new factual information.[156]

Petitioner is also correct that Topsun has not identified in its case brief how this specific argument is relevant to the findings in our Preliminary Determination or other facts on the record. As Topsun makes no actual arguments within its case brief regarding "new information," rejected or not, the Department has no basis from which to analyze Topsun's argument. With respect to Petitioner's comment regarding the freight denominator, the Department addressed that issue separately in Comment 2 above.

Comment 10: Whether Topsun's Due Process Was Violated

Topsun's Case Brief:

- The Department's regulations and the notice discussing this regulation (19 CFR 351.102) state that parties may not file rebuttal factual information to verification exhibits and verification reports. The stated logic is that this is not new "factual information" as it is the data of a party and reflects previous information submitted.[157]
- The Department's verification report makes a number of factual statements which Topsun believes are either incomplete or inaccurate. Topsun is not, however, able to identify for the record and rebut these statements by providing rebuttal facts.
- Whether or not the information is "unable to verify" the rebuttal information cannot preclude the submission of information. To do so would turn the verification report into an un-refutable statement of facts — a standard of deference not even offered to the highest decisions of U.S. Federal Courts. This is the *sine qua non* of a Star Chamber procedure.
- Constitutional due process requires that a party be given the right to place its own facts on

[155] See Final Rule: Definition of Factual Information and Time Limits for Submission of Factual Information, 78 FR 21246 (April 10, 2013) ("Definition of Factual Information")
[156] See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3c, footnote 51.
[157] See Topsun's Case Brief (June 16, 2015), at page 9, citing to Definition of Factual Information, 78 FR at 21250.

the record and to provide argument. The Department's regulations deprive a party of the right to put its own facts on the record — such facts are expressly not allowed to be placed on record, and deprive a party of an effective right to provide argument as any claim that the Department's report is inaccurate or incomplete necessarily entails citations to "new facts" which show that the report is inaccurate or incomplete. Any attempt to make such argument will result in the rejection of the brief and the non-consideration of the argument.[158]

- In the Preliminary Determination, the Department stated for the first time that it would not use the FOPs provided by Topsun from its unrelated tollers in the calculation of margin. This decision was contrary to Department practice. The date of the preliminary determination was also the first time that parties were put on notice that an alternate method of valuing Topsun's factor of production for wire decks might be necessary. The regulations, which do not permit Topsun to provide surrogate value information, the need for which is not apparent until after the deadline for the submission of such information, violates Topsun's due process rights.

Petitioner's Rebuttal Comments:

- Topsun argues that it should be allowed to provide factual rebuttal to statements in the verification report that it believes are "incomplete or inaccurate."
- Topsun does not identify those statements it believes to be inaccurate or incomplete.
- The Department's regulations do not permit parties to provide unsolicited new factual information once the record is closed. 19 CFR 351.301(c). Administrative proceedings must be governed by reasonable boundaries that allow predictability, finality and fairness to all parties.
- Allowing Topsun a chance to rebut "factual information" from its own verification would be a virtual carte blanche to submit any new information it desired. Such an exception would swallow the rule and undermine the Department's regulatory deadlines.
- Topsun also claims that its inability to provide factual rebuttal to alleged errors in the verification report is a violation of its due process rights under the 5th Amendment.
- Such claims should be rejected because due process rights owed to participants in an antidumping duty proceeding are those provided in the statute and regulations.
- Topsun had more than adequate opportunity to provide information for the record under those rules.
- The CIT found "{w}here a right to be heard exists, due process requires that right be accommodated at a meaningful time and in a meaningful manner."[159]
- Topsun had more than adequate opportunity to provide all of the necessary facts to make its case. In addition to multiple deficiency questionnaire responses, Topsun had the opportunity at verification to provide complete and accurate records to support its submitted costs and prices.
- Instead, Topsun failed to properly prepare for verification, delayed the Department's verifiers and repeatedly failed to provide in a timely fashion business records requested by the Department at verification. Responsibility for any deficiency in the record evidence falls on

[158] Id., at 10, citing to the 5th Amendment of the Constitution.
[159] See Petitioner's Rebuttal Brief (June 25, 2015), at page 6, citing to Barnhart v. United States Treasury Dep't., 588 F. Supp 2d. 1432, 1438 (CIT 1984); Sichuan Changhong Electric Co. v. United States, 466 F. Supp.2d 1323, 1328 (CIT 2006); Mid Continent Nail Com, v. United States, 712 F. Supp. 2d 1370, 1375 (CIT 2010).

Topsun.

- At the time of the fully-extended deadline, the Department was statutorily required to issue its Preliminary Determination and rule on whether and how it would use all submitted information from all parties.
- Topsun was on notice as to the deadlines for submitting both its questionnaire responses and other factual information and these deadlines were the same for all parties.
- Topsun and all interested parties also have equal opportunities to file case and rebuttal briefs to comment on the Preliminary Determination. Accordingly, the Department should decline to find that Topsun was provided inadequate due process rights in this case.

Department's Position:

We disagree with Topsun, and find that the Department's regulation under 19 CFR 351.102 regarding the submission of factual information did not violate Topsun's due process rights under the Fifth Amendment of the U.S. Constitution. Rather, we have conducted this proceeding pursuant to the Act and otherwise in accordance with law, providing parties with ample opportunity to comment and participate throughout the proceeding.

Further, in Definition of Factual Information, the Department clearly states that:

> documents that are retained by the Department and designated as verification exhibits in the verification report serve only to support statements in the respondents' questionnaire responses and the Department's verification report; therefore, parties may not submit factual information to rebut, clarify, or correct verification exhibits and verification reports.[160]

Thus, Topsun is not permitted to rebut its verification report with new information. This is consistent with the Department's Preamble, in which the Department declined to adopt a proposal that would permit interested parties to submit factual information to rebut, clarify, or correct factual information in the Department's verification report because "the Department is unable to verify post-verification submissions of new factual information."[161]

The inability to file rebuttal factual information in response to a verification report does not mean a party is without a meaningful opportunity to respond to the Department's factual findings in a verification report. The Definition of Factual Information allows interested parties to "comment on the results of verification in case briefs filed pursuant to 19 CFR 351.309, drawing on factual information already on the record."[162] Despite this ability to comment under 19 CFR 351.309, Topsun did not make any specific arguments about any purported factual inaccuracies in the verification report and instead made non-specific claims that the verification report makes

[160] See Definition of Factual Information, 78 FR at 21250-20251.
[161] See Preamble, 62 FR at 27332.
[162] Id., at 20251.

a "number of factual statements which Topsun believes are either incomplete or inaccurate."[163] The Department has not precluded Topsun from filing arguments regarding the results of its verification. Thus, we do not find that Topsun's ability to respond to the Department's verification report as defined by our regulations was inadequate.

We disagree with Topsun's argument that "the Department's regulations deprive a party of the right to put its own facts on the record — such facts are expressly not allowed to be placed on record, and deprive a party of an effective right to provide argument as any claim that the Department's report is inaccurate or incomplete necessarily entails citations to "new facts" which show that the report is inaccurate or incomplete."[164] While it is true that a party does not normally have an ability to place factual information on the record to rebut a verification report, as outlined above, a party can defend itself by placing argument on the record. To the extent Topsun had made a specific argument that the Department had misunderstood the facts gathered at verification, the Department would have carefully analyzed that argument and considered what action, if any to take in response. Nothing in the Department's regulations would prevent the Department from soliciting information in response to an argument presented in briefs. However, here, where faced with generalized arguments that didn't point to any specific factual inaccuracies in the verification report, Topsun clearly has failed to provide the Department with any reason to take further action.

The Department notes that it issued numerous supplemental questionnaires to Topsun during the course of the investigation; thus, in any one of those supplemental responses, Topsun was able to correct or supplement information that was not previously reported. It is a respondent's obligation to create an accurate record.[165] Topsun had ample opportunity during this investigation to put its own facts on the record, including such facts identified as findings in the verification report.[166] Specifically, Topsun had ample opportunity to report water and welding wire consumption, but it did not do so. In addition, Topsun had ample opportunity to explain its anomalous domestic sales, but it did not do so.[167] Topsun also had ample opportunity to explain, prior to verification, why its COGS in the financial statements were ultimately not reconciled, despite reporting to the contrary.[168] Thus, on its face, Topsun's argument that the Department has violated Topsun's due process to "put its own facts on the record" is unsupported.

Finally, Topsun argues that the date of the Preliminary Determination was the first time that parties were put on notice that an alternate method of valuing Topsun's factor of production for

[163] See Topsun's Case Brief (June 16, 2015); in this regard, we note that after acknowledging that it omitted certifications required by the regulations, Topsun certified that the information contained within the submitted verification exhibits were accurate and complete demonstrating that Topsun believes that, at least that evidence gathered at verification, is accurate. See Topsun's Submission of Verification Exhibits, (May 20, 2015); the Department's letter to Topsun (June 2, 2015); and Topsun's Certifications for Verification Exhibits (June 4, 2015).
[164] See Topsun's Case Brief (June 16, 2015), at page 9.
[165] See Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002).
[166] See Revised Topsun Verification Report at 2.
[167] Id., at 2-3, 12, 14. The nature of the Department's findings regarding Topsun's domestic sales is business proprietary information, and is further discussed in Topsun's AFA Memo. Further, while domestic sales are not part of the Department's analysis, the nature of Topsun's domestic sales vis-a-vis the accounting records are highly irregular, as discussed in the Revised Topsun Verification Report.
[168] See, e.g., the Department's supplemental questionnaire (February 13, 2015), where the Department requested additional information regarding Topsun's cost reconciliation.

wire decks might be necessary. Topsun argues that the Department's regulations, which do not permit it to provide surrogate value information after the issuance of the Preliminary Determination, violates Topsun's due process rights because it was not aware that it had the need to provide additional surrogate value information until after the submission deadline. In the Preliminary Determination, the Department rejected Topsun's proposed valuation methodology and, instead, applied facts otherwise available by applying a surrogate value to Topsun's finished wire decks.[169] It should have been apparent to Topsun that the Department had repeated questions regarding the facts pertaining to Topsun's proposed valuation methodology, posing significant doubt that the Department would accept Topsun's methodology without alteration. Topsun should have been aware that the Department would not use its proposed valuation methodology. The Department's supplemental questionnaire to Topsun, dated February 13, 2015, contained numerous questions regarding Topsun's toller arrangements and Topsun's finished wire decks. Topsun subsequently reported that its tollers were "unwilling and unable to complete Section D and the reconciliation appendix."[170] In circumstances such as these, the Department's practice has been consistent. For example, in Electrodes 2014, the Department stated that "the Fangda Group reported to us that it was unable to obtain the requested information from 12 of the {toller} companies. As a result, we lack necessary FOP data and the application of 'facts otherwise available' is warranted."[171] Moreover, in Electrodes 2014, we addressed the respondents' uncooperative tollers in the preliminary results of that review and did not provide interested parties advanced notice of our determination.[172]

Finally, the cover letter of our February 13, 2015, supplemental questionnaire, states that:

> upon receipt of a response that is still incomplete or deficient, the Department will not issue an additional deficiency questionnaire. If you do not cooperate by acting to the best of your ability to comply with the Department's request for information, the Department may use information that is adverse to your interest in conducting its analysis.[173]

Thus, the Department provided notification to interested parties that the Department may make use of facts otherwise available, with potential adverse inferences, when responses are deficient. No further notification to parties of our intended preliminary or final determinations is required or necessary.

[169] See Preliminary Decision Memo at 23-24.
[170] See Topsun's Supplemental Questionnaire Response (March 6, 2015), at 10.
[171] See Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 57508 (September 25, 2014) ("Electrodes 2014") and accompanying Issues and Decision Memorandum at Comment 6.
[172] See Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2012-2013, 79 FR 15944 (March 24, 2014) and accompanying Preliminary Decision Memorandum at 23-24.
[173] See the Department's supplemental questionnaire (February 13, 2015).

Comment 11: Whether to Assign an Adverse Inference to Topsun's Cost of Goods Sold

Petitioner's Case Brief:

- At verification, the Department noted discrepancies and irreconcilable differences between Topsun's cost of goods sold ("COGS") as recorded in its finished goods ledger versus the COGS recorded in the income statement.[174]
- Given the unreliability of Topsun's finished goods ledger and the reconciling items required to validate the cost of manufacture vis-a-vis the audited COGS, the Department should not rely on the COGS as reported by Topsun.
- Where information cannot be verified, the statute permits the Department to rely on the best information available. 19 U.S.C. § 1677e(a)(2)(D).
- The Department should apply the best information available to adjust Topsun's reported cost items, including materials, labor and energy. Specifically, Topsun's reported FOP quantities should be adjusted based on the ratio of the difference between Calculated Cost of Manufacture ("COM"), adjusted for beginning and ending finished goods inventory balances.
- Because this relies on Topsun's own adjusted Calculated COM, making such an adjustment to COM does not constitute an adverse inference.

Topsun's Rebuttal Brief:

- Topsun notes that Petitioner has not argued for the application of total adverse facts to Topsun, but rather has focused on two separate and distinct issues. Accordingly, Topsun submits that it would therefore be inappropriate for the Department to apply total adverse facts to it.
- As discussed in Topsun's Verification Report, certain circumstances resulted in an inability to tie the monetary values to the COGS in the financial statements. However, in a non-market economy case, the key analysis is not the value of the materials and the financial cost of goods sold, it is the FOP and the amount of consumption.
- In this matter, the FOP and the amount of consumption have been tied to the financial statements through the COM sub-ledger and to the inventory records that demonstrate consumption. The verification report shows that Topsun's FOP, which were based on consumption and tied to the COM sub-ledger, were properly calculated.
- Petitioner's proposed adjustment would tie Topsun's information to the specific information found by the Department to be incorrect due to reasons unrelated to the antidumping duty investigation, and would ignore the FOP found by the Department to be correct and tied to the financial documents of Topsun.

Department's Position:

The Department disagrees with both Topsun's and Petitioner's arguments and finds that total AFA is appropriate in this case. First, we disagree with Topsun that it is inappropriate to assign total AFA to Topsun simply because Petitioner did not argue for application of total AFA. The decision to apply total AFA is based on the record evidence, which includes, for example, the complete absence of timely, sufficiently complete, or verifiable information on the record as well

[174] See Petitioner's Case Brief (June 16, 2015), at page 13, citing to Topsun's Verification Report at pages 2, 19.

as an interested party's failure to cooperate to the best of its ability.[175] The agreement or disagreement of interested parties is not required under the Act. In this case, the Department finds that Topsun has not provided any sufficiently complete or reliable information because Topsun failed to report an affiliated producer, impeded the Department's verification process by lack of preparedness, did not provide source documents requested for verification, and did not reconcile its financial statements.

We also disagree with Topsun's argument that its FOP were properly calculated and, as result, at least its FOPs can be used to calculate a dumping margin. First, at verification, the Department observed that Topsun failed to report FOPs, including water, used to produce merchandise under consideration,[176] which contradicts Topsun's questionnaire response where it reported that it did not consume water during the POI.[177]

The Department was unable to reconcile Topsun's COGS, which is recorded in the same journal as Cost of Manufacture ("COM") (i.e., the Finished Goods General Ledger).[178] The Department considers certain FOP as raw materials and therefore, the cost of these materials must be included in the COM.[179] Because COGS should reconcile to COM value, but did not, Topsun's records of raw material movement (based on quantity) with no reconciled values to COM demonstrate an incomplete record of material consumption.[180] In addition, with respect to the issue that the source of the COGS is unsubstantiated, Topsun's domestic sales have no associated cost in the accounting records, demonstrating that Topsun's reported costs are unreliable and incomplete.[181] We disagree with Topsun's argument that the key analysis in an NME case is not the value of the materials and the financial cost of goods sold, it is the FOP and the amount of consumption. The cost reconciliation is an integral part of the Department's examination of a respondent, which is why we: 1) require respondents to complete a cost reconciliation in the standard NME questionnaire and 2) include the cost reconciliation in the Verification Outline. Topsun also failed to report an affiliated producer of boltless shelving units. While Topsun officials stated that the domestic sales are for products that do not meet the scope of the investigation, given the extensive nature of the scope and the limited exclusions from the scope and our inability to verify this information, there is no evidence on the domestic sales documents that these domestic sales were for out-of-scope shelving units.[182] Moreover, Topsun stated that it booked these domestic sales in its accounting records but did not record the corresponding cost for these sales.[183] Thus, the COGS, which should include the cost of all sales, omits the cost for the domestic sales. Thus, as a whole, Topsun's financial statements are unreliable. Moreover, because Topsun failed to provide the Department with this information, the Department was precluded from making more in-depth inquiries as to the unreported affiliate's production and/or

[175] See sections 776 and 782(e) of the Act.
[176] See Revised Verification Report at 21 and Topsun AFA Memo at 4.
[177] See Topsun's Supplemental Response (January 29, 2015) at page 11.
[178] See Topsun Verification Report at 2 and 19.
[179] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 10.
[180] See Revised Topsun Verification Report at 2 and 19; see also Topsun AFA Memo.
[181] See Topsun AFA Memo.
[182] See Revised Topsun Verification Report at 15 and Verification Exhibit 14 at pages 3-7.
[183] Id., at 2.

sales practices, analyzing the appropriateness of collapsing it with Topsun, and verifying this producer. Consequently, without this information about the unreported affiliate, the Department cannot determine whether it has sufficient sales and factor databases from which to calculate an accurate dumping margin for the entity under investigation. Consistent with our practice, this unreported and unverifiable information warrants application of total AFA.[184]

In addition, the Department's decision to apply total AFA is based on incomplete information in Topsun's separate rate application. As noted above and in Topsun's Verification Report, Topsun reported, for the first time, at verification that is has an affiliated producer of boltless shelving units.[185] As we determined in POS Cookware,[186] because we have been unable to fully analyze Topsun's corporate structure due to an unreported affiliated producer of boltless shelving units, Topsun's responses for separate rate eligibility are unreliable.

The Department's SRA and Section A questionnaire require applicants/respondents to report all affiliates, as defined by section 771(33) of the Act, which Topsun failed to do. Thus, because Topsun failed to report accurate separate rate eligibility information, it is no longer eligible for a separate rate and is now part of the PRC-wide entity.

Taken together, the lack of preparedness at verification, failure to report FOP, incomplete and unverifiable cost data and incomplete separate rate application demonstrate that the Department does not have any sufficiently complete or verifiable information on the record which it can use for Topsun which is now part of the PRC-wide entity.

Further the Department finds that Topsun failed to act to the best of its ability in providing complete and verifiable information. As described above in Section "V. USE OF ADVERSE FACTS AVAILABLE" based on section 776(a)(1)(A), 776(a)(2)(A)(C), and (D) of the Act, the PRC-wide entity, now including Topsun, withheld information that has been requested, failed to provide information within the deadlines established, impeded the proceeding due to severe lack of preparation for the on-site verification, and provided information that cannot be verified by its failure to provide a source for the COGS value, which is the basis of the cost of all reported sales and from which all underlying consumption data should, but did not, reconcile via COM.[187] Consistent with our practice, the Department determines, pursuant to sections 776(a)(1)(A) and 776(a)(2)(A)-(D) of the Act, to use facts otherwise available to determine the rate for the PRC-wide entity, including Topsun. Furthermore, pursuant to section 776(b) of the Act, we determine to apply an adverse inference because the PRC-wide entity, including Topsun, has not cooperated to the best of its ability. For all these reasons, the Department finds that total AFA is warranted for Topsun which is now part of the PRC-wide entity.

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[184] See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 FR 2049 (January 14, 2009) and accompanying Issues and Decision Memorandum at Comment 3 (where the Department applied total AFA to Fangda for failure to report data for an affiliated producer among other things).
[185] See Revised Topsun Verification Report at 3.
[186] See Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 24641 (April 26, 2006), where respondent Watex withheld specifically requested information concerning the existence of an affiliate.
[187] See Topsun AFA Memo at 9.

Comment 12: Differential Pricing

Topsun's Case Brief:

- While the Department did not, in the Preliminary Determination, apply an alternative calculation method, based on the differential pricing analysis, the Department's determination that Topsun's export sales confirm "the existence of a pattern of EP's for comparable merchandise that differ significantly among purchasers, regions or time periods" is absurd.
- During the POI, Topsun had sales of a limited number of products to a single U.S. customer. During the POI the price did not change for any individual product (and for each individual CONNUM). In sum, the price to the purchasers did not change, the prices to the regions did not change, and the price did not change over the entire POI.
- Any methodology which produces a contrary result to such facts is fatally defective.

Petitioner's Rebuttal Comments:

- The Department should reject Topsun's challenge to the well-established method of assessing whether and to what extent differential pricing exists and make no changes from the Preliminary Determination regarding its differential pricing methodology.
- As Topsun notes, the Department found that 76.9 percent of Topsun's sales differed among purchasers, regions or time periods. While Topsun claims that there were no such differences, it provides no discussion of record evidence to back up its claim.
- Topsun provides no analysis of how the Department's analysis is in error.
- The differential pricing analysis has been used in numerous proceedings and the Department has determined that this test is reasonable and is in accordance with the requirements of the statute. There is no basis on which to base any change in the Preliminary Determination.

Department's Position:

The Department has determined to apply total AFA to the PRC-wide entity, including Topsun. The use of a differential pricing analysis is not appropriate under these circumstances because we are not calculating a margin for Topsun for the final determination, but applying the highest rate on the record as AFA to the PRC-wide entity, which now includes Topsun. Because we are no longer comparing weighted-average NVs to weighted-average EPs for Topsun for the final determination, there is no basis to conduct the differential pricing test. Thus, Topsun's argument regarding the differential pricing analysis used in the Preliminary Determination is irrelevant to our final determination.

Comment 13: Treatment of Topsun's Wire Decks

Topsun's Case Brief:

- In the Preliminary Results, the Department did not use Topsun's FOP for the wire deck component it produced.
- Topsun purchased the wire rod, drew the rod to wire, cut the wire to length, formed the wire into grids and welded the grids, which were then further processed by an unrelated company which applied a galvanized coating to the grid.
- Topsun obtained from these unrelated suppliers their FOP and supplied these factors to the

Department. However, the unrelated suppliers were unwilling to complete a full Section D response. As a result, the Department applied adverse inferences to Topsun for the failure of the unrelated third party toller to provide the full Section D response.

- This determination is contrary to long-standing Department practice with respect to the application of adverse facts for the lack of cooperation of an unrelated supplier and more specifically, contrary to Department practice in which it states that it will use FOP if provided by an unrelated toller.[188]
- The Department should apply neutral facts available for the final results with respect to the wire decks because the tollers were not an interested party.
- The Department's determination was arbitrary and contrary to the statute, which states that the Department may only make adverse inferences for interested parties.
- Because these tollers are not interested parties, they were under no legal obligation to participate and the inferences being taken are not adverse to the toller, they are adverse to Topsun.[189] Topsun fully cooperated with the Department on this issue.
- There is no allegation that Topsun had information about the FOP for plating in its possession which it failed to provide. Topsun went to its tollers on more than one occasion and obtained from them information that these tollers were not required to provide.
- As the Department has already stated that the import values for wire decks represent "adverse facts", such facts cannot be selected as neutral facts when the Department corrects this clear legal error.
- The Department has multiple sources for neutral facts, including determinations in multiple reviews and investigations in which plating was involved. Thus, the Department should, if it improperly decides not to use the FOP of the unrelated tollers, use this other information as neutral facts.
- The Department elected not verify any of Topsun's own FOP for wire decking; thus, it cannot use its decision not to verify these FOP as a basis for refusing to use this information. Any Department preliminary determination must be subject to challenge and the Department cannot avoid any challenge to such a determination by taking an administrative action which would preclude such usage.
- The decision to apply adverse facts and not use the provided FOP is contrary to the Department's practice. In Wire Decking from the PRC, the Department applied facts available for the missing FOP from the galvanizing toller but did not apply adverse facts available to the respondent for the failure of the galvanizing toller to provide missing FOP.[190]
- The Department should follow its practice as stated in Wire Decking from the PRC and reverse its preliminary adverse determination regarding wire decks.
- The Department should also review calculation memoranda from other administrative reviews and investigations to ascertain whether or not the Department's application of adverse facts available for wire decks where the unrelated third party provided its FOP.
- The Department should examine the record of this investigation to ascertain the answers to these questions and whether the Department's preliminary decision in this case is inconsistent with that decision in Wire Decking from the PRC.

[188] See Topsun's Case Brief (June 16, 2015) at pages 6-7, citing to Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32905 (June 10, 2010) and accompanying Issues and Decision Memorandum ("Wire Decking from the PRC").
[189] Id., at 6, citing to SKF USA, Inc. v. United States, 675 F. Supp. 2d 1264, 1276 (CIT 2009).
[190] Id., at 7, citing to Wire Decking from the PRC.

- The Department cannot make inconsistent decisions by refusing to examine prior precedent and then make a decision contrary to precedent after it is too late for parties to demonstrate the inconsistent decisions.

Petitioner's Case Brief:

- The Department should continue to assign a surrogate value to Topsun's completed wire rather than values based on deck inputs.
- The Department should continue to conclude that Topsun purchased wire decks and reject Topsun's claims of toll production of wire decks. Topsun's original explanations of its supposed tolling or in-house production were contradictory, incomplete and unclear.[191]
- Topsun failed to reconcile tolling costs to the financial statements of the alleged tollers and appears to have failed to include in its reported costs any transactions with its tollers. These discrepancies demonstrate that Topsun did not product its own decks or have them toll-produced and that its reported costs do not reflect all costs associated with wire deck production or purchases.
- Topsun's Exhibit SD-33 provides a "Main Material" report that indicates stocks of steel plate, pipe , angle steel , pipe, u-steel, flat iron, cold-rolled steel and hot-rolled steel, but no wire decks.
- There appears to be no indication of either "wire decks' or deck-related costs anywhere in the reconciliations to Topsun's financial statements. The Main Materials Report balance and withdrawal figures (Exhibit SD-33) also do not reconcile with the handwritten "Main operating cost" for the "General Ledger" for 2014 (Exhibit SD-35), which in turn also does not reconcile with the figures for "Main Materials" withdrawn of reported in Exhibit SD-33.
- The amounts listed as the "stock out" amount in the "Topsun Jan Report" of main materials submitted in Exhibit SD-36 does not reconcile with any of the figures in these reports or with the amounts reported in Exhibit SD-45 as the stock out amount under "Warehouse Records."[192]
- Although Exhibit SD-37 appears to report purchases of steel wire rod from, there is no indication of how the information in this exhibit - for example, "stock out" amount for January - reconciles to Topsun's financial statements. Presumably, Topsun had to record the costs for materials or services related to buying or producing wire decks used in the production of subject merchandise, but the record provides no indication that any such costs were recorded.[193]
- At verification, Topsun was unable to reconcile its data or to otherwise remedy any of these deficiencies.[194] Based on these discrepancies, the Department correctly assigned a surrogate value to completed "wire decks" as an intermediate input product rather than using the wire, wire rod or galvanizing FOP provided by Topsun. this

Topsun's Rebuttal Comments:

- Topsun notes that Petitioner has not argued for the application of total adverse facts to Topsun, but rather has focused on two separate issues. Accordingly, Topsun submits that it would be inappropriate for the Department to apply total adverse facts to it.

[191] See Petitioner's Case Brief (June 16, 2015) at page 12, citing to Topsun's February 13, 2015, comments at 2-3.
[192] Id., at 12-13, citing to Topsun's February 13, 2015, comments at pages 2-3.
[193] Id., at 13, citing to Topsun's February 13, 2015, comments at page 3.
[194] Id., at 13, citing to Topsun Verification Report at 12.

- Petitioner's statement that "the Department should continue to conclude that Topsun purchased wire decks" is incorrect.
- The issue was not whether or not Topsun produced Wire Decks, but rather whether the FOP for the galvanization process undertaken by Topsun's {sic} could be used as these unrelated tollers had not provided a full Section D response.
- As reported in the verification report, the Department visited (although it did not go in) Topsun's wire deck production facility.
- Petitioner states that Topsun's main material report provided as Exhibit SD-33 does not list wire deck. Topsun believes that this reference is intended to be Exhibits SD-36 and 37. The non-inclusion of wire decks in this list is not remarkable. Exhibit SD-10 also does not list beams, pillars, or posts — the completed components which go together to form a shelving unit. Rather, it lists raw materials maintained in the primary facility used in the production of racks. Wire Rod, the material used to make the wire decks, is listed in Exhibit SD-37 and is found in the cost of materials sub-ledger. The consumption is supported by the inventory records.
- While Petitioner alleged that certain figures did not tie to the reported main operating cost, the Department stated that "the Finished Goods G/L "Debit" column, reported by company officials as actual values, was traced down to Cost of Manufacture ("COM") G/L, and the associated G/Ls for the buildup of COM (i.e., COM sub-ledger, Materials G/L, Overhead G/L, Overhead sub-ledger)."[195] Therefore, consumption and FOP of the main materials, including the steel wire rod are tied to the cost of materials sub-ledger and the warehouse records.
- Petitioner alleges that there is no information as to how the stock out of the wire rod ties to the financial statements. This is simply incorrect because Exhibit VE-25 {of Topsun's Verification Report} provides the reconciliation to the financial statements, which is not undermined by the Department's choice not to examine wire rod at verification.
- The Department should reject Petitioner's claim and calculate a value based on the wire decks from the FOP submitted by Topsun.

Department's Position:

The Department disagrees with Petitioner's suggestion to continue to value finished wire decks with a surrogate value, because we have determined to assign total AFA to Topsun, and will not be calculating an individual final margin. Further, we disagree with Topsun's argument that the Department ought to use the FOPs reported for wire deck production. As Topsun was unable to provide toller information with respect to the FOPs used to produce the wire decks, the Department made the appropriate preliminary determination regarding the treatment of Topsun's wire decks, consistent with Electrodes 2014, wherein we applied facts otherwise available.[196]

We also disagree with Topsun regarding its assertion that the Department verified wire decks. The Department issued the Verification Outline to Topsun on April 28, 2015. The Verification Outline did not state or suggest that the Department intended to verify any portion of the record involving the production of wire decks. Thus, despite Topsun's arguments regarding what

[195] See Topsun's Rebuttal Brief (June 25, 2015, refiled July 16, 2015) at page 12, citing to Topsun Verification Report.
[196] See Electrodes 2014 at Comment 6.

documents the Department reviewed at verification, the Department, in accordance with its Verification Outline, did not review or verify any wire deck-related documentation. Topsun argues that references to verification exhibits where wire rod is listed implies that the Department examined and verified wire rod. Topsun's argument, however, is unsupported by the verification report itself. The Department did not examine or verify wire rod. Rather, any reference to wire rod in the verification exhibits are a circumstantial function of examining other materials for verification purposes. In other words, because the Department did not examine or verify any wire rod documentation, we are unable to confirm whether wire rod purchases or consumption reconciled to the accounting records. The Department has addressed Topsun's failure to reconcile its cost in section V above and in the Topsun AFA Memo. Thus, all arguments for this issue with respect to the accounting records already have been addressed.

In any case, the Department has not applied total AFA to Topsun because of uncooperative tollers. Rather, our AFA determination with respect to Topsun, as discussed in Section V and Comment 11 above, and in the Topsun AFA Memo, is because Topsun failed to provide complete or verifiable information and failed to cooperate to the best of its ability.

Zhongda

Comment 14: Byproduct Offset

Zhongda's Case Brief:

- In the Preliminary Determination the Department capped the surrogate value for Zhongda's downstream byproducts (i.e., weight bag and steel pendant) at the surrogate value of steel strip.
- In Multilayered Wood Flooring and Citric Acid, the Department enumerated a distinction between surrogate value selection for scrap versus further processed byproduct and noted that downstream byproducts involve the cost of inputs as well as overhead costs associated with processing those inputs.[197]
- Production of Zhongda's downstream byproducts involves scrap from steel strip but also labor, energy, overhead and packing material (for the weight bag).
- In the final determination, the Department should not cap the surrogate value for weight bag and steel pendant at the price of steel strip because the value of these byproducts includes the value of the inputs and the overhead costs associated with processing them.

Petitioner's Rebuttal Comments:

- The Department's practice of limiting the value of scrap/byproduct as it did in the Preliminary Determination is well-established and should continue to be followed in this case.
- Zhongda has not provided sufficient separate information on all of the material and processing inputs that would permit the Department to determine that an uncapped offset

[197] See Zhongda's Case Brief, citing to Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 24 (citing to Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) ("Citric Acid LTFV"), and accompanying Issues and Decision Memorandum at Comment 7).

would be appropriate and not distortive.

Department's Position:

We disagree with Zhongda that the surrogate value for Zhongda's weight bag and steel pendant byproducts should not be capped. Zhongda points to the Department's decision in Citric Acid LTFV, where the Department valued a hi-protein corn scrap with a surrogate value higher than that of some of the inputs, to support its contention that its weight bags and steel pendants are the result of a process that includes not only steel strip as an input, but also "labor, energy, overhead cost and packing material (the bag for the weight bag)."[198] In its initial Section D questionnaire response, Zhongda described the byproducts in question as "valuable waste generated from the production of the subject merchandise" and that the "inputs for the weight bag and steel pendant, i.e., labor and utilities, has already included in the ones reported for the merchandise under consideration."[199] Zhongda explained that the production process for weight bags and steel pendants is first to collect, clean, and polish the steel scrap that is punched out of the steel strip used to produce merchandise under consideration.[200] For the weight bag, Zhongda stated that the scrap is then "weighed and packed in a bag with an appointed weight for sale," and for the steel pendant, the scrap is then "connected one by one to make all kinds of steel pendant for sale."[201] Zhongda described the cleaning and polishing process for scrap as "a rolling barrel with iron sands inside as polishing agents" and noted that the "iron sand is cycling used,"[202] which we understand to indicate that the "iron sand" is continuously recycled for this process.

The production process described by Zhongda stands in contrast to the decision cited to by Zhongda in Citric Acid LTFV in two important ways. First, the high-protein corn byproduct at issue in Citric Acid LTFV was "generated as a result of the liquefaction process, which includes not only corn as an input, but corn enzyme, sodium carbonate, sodium hydroxide, and steam" and, as a result, the Department determined that the surrogate value for the by-product "carries these inputs and the overhead costs associated with processing them."[203] The Department further noted that the resultant byproduct had a higher level of protein than the corn input and, therefore, could result in a higher price for the former.[204] Thus, a key reason that the Department did not select a lower value surrogate value for the byproduct offset in Citric Acid LTFV was because the byproduct required a substantial production process with numerous additional inputs that transformed the primary input into a higher value product. In contrast, the further processing performed by Zhongda amounts to the cleaning of steel strip scraps that are then either placed in a bag or connected together. Second, while the Department in Citric Acid LTFV noted that the surrogate value for the high-protein corn byproduct includes a component for the overhead costs associated with the further processing of the byproduct production process, Zhongda has stated that the additional costs associated with its byproduct production, i.e., utilities and labor, are included in the amounts allocated to the merchandise under consideration

[198] See Zhongda Case Brief at 14-16.
[199] See Zhongda SDQR at 15.
[200] Id., at 17-18.
[201] Id., at 18.
[202] See Zhongda SuppD at 14.
[203] See Citric Acid LTFV and accompany Issues and Decision Memorandum at Comment 7.
[204] Id.

and are "not allocated to the by-product again."[205] Thus, to account for additional expenses, such as labor and utilities, in the surrogate value for Zhongda's weight bag and steel pendants would be double counting those factors already allocated by Zhongda across the merchandise under consideration.

We note that in the Preliminary Determination, the Department capped the value of Zhongda's weight bag and pendant byproducts at the value of steel strip, the primary input, rather than the value of steel scrap, from which these byproducts were produced.[206] Thus, the valuation of Zhongda's byproduct includes a degree of upward adjustment from the value of the actual scrap input.

Finally, the Department notes that the description of the HS code suggested by Zhongda for valuation of the steel scrap included in its weight bag and steel pendant byproducts (HS code 83024900) is "Base Metal Mountings, Fittings And Similar Articles (Excl. Locks With Keys, Clasps And Frames With Clasps Incorporating Locks, Hinges, Castors And Mountings And Fittings Suitable For Buildings, Motor Vehicles Or Furniture)."[207] Even assuming for argument's sake that the Department were to determine that the valuation of Zhongda's byproducts should not be capped at the value of the primary input, steel strip, the further processing described by Zhongda (i.e., rolling scrap in a barrel) does not transform the steel scrap into a product similar to a mounting, fitting, or similar article, that should be valued at an order of magnitude higher than the value of the input from which the scrap was obtained.[208] Therefore, absent a more appropriate surrogate value for the scrap contained in Zhongda's weight bag and steel pendants, the Department continues to find that the surrogate value for the primary input, steel strip, is the best available information on the record by which to value the scrap in Zhongda's weight bag and steel pendants. Accordingly, the Department is not revising its valuation of Zhongda's weight bag and steel pendant byproduct for this final determination.

Comment 15: Value-Added Tax ("VAT") Adjustment

Zhongda's Case Brief:

- In the Preliminary Determination, the Department reduced Zhongda's U.S. sale price by two percent for unrefunded VAT.
- Zhongda established in its submissions that Zhongda does not pay VAT on export and neither Zhongda United nor Zhongda IE incurs any VAT associated with purchased inputs.
- Although Zhongda Metalwork paid VAT on inputs it was fully reimbursed from Zhongda United or Zhongda IE. Thus, there is no support for the Department to reduce any unrefunded VAT from Zhongda's sale price.
- At the request of the Department, Zhongda calculated the difference between the VAT amount paid by Zhongda United and Zhongda IE to Zhongda Metalwork and the VAT refund

[205] See Zhongda SDQR at 17.
[206] See Prelim SV Memo at 6-7; Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Analysis Memo for Zhongda United Holding Group Co., Ltd." (March 24, 2015) ("Zhongda Prelim Analysis Memo") at 6-7.
[207] See Zhongda Pre-Prelim SV Comments at Exhibit SV2-1.
[208] See Prelim SV Memo at 6-7; Zhongda Prelim Analysis Memo at 6 ("We note that the surrogate value for the primary input, steel strip, used in this preliminary determination is 0.59 Euros/kg and the surrogate value suggested by Zhongda to value the steel scrap used in its weight bag and steel pendant byproducts is 5.04 Euros/kg.").

(15 percent) received by Zhongda United and Zhongda IE.
- The Department should not reduce Zhongda's U.S. sales price for any purported unrefunded VAT by more than the difference calculated by Zhongda.

Petitioner's Rebuttal Comments:
- Zhongda admits that Zhongda Metalwork pays VAT on inputs for merchandise under consideration and the VAT is included in the transfer price between Zhongda affiliates.
- Zhongda obtains a refund in an amount that is less than the amount of VAT incurred.
- The Department's VAT adjustment in the Preliminary Determination is consistent with its longstanding practice and should be continued for the final determination.

Department's Position:

The Department disagrees with Zhongda's contention that Zhongda's sale price should not be reduced by the amount of irrecoverable VAT and that the Department should use Zhongda's own calculation of its irrecoverable VAT. Zhongda has conceded that its affiliated producer Zhongda Metalwork, which we found to be part of a single entity with Zhongda,[209] paid 17 percent VAT on inputs to produce merchandise under consideration and gets full reimbursement of that VAT by Zhongda,[210] and that the VAT recovery rate on exports of merchandise under consideration is 15 percent.[211]

In a typical VAT system, companies making export sales do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[212] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports may not be refunded.[213] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained in Methodological Change that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[214]

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[209] See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination of Affiliation/Single Entity Treatment for Zhongda United Holding Group Co., Ltd., Jiaxing Zhongda Import & Export Co., Ltd., Jiaxing Zhongda Metalwork Co., Ltd." (March 24, 2015).
[210] See Letter to the Secretary of Commerce from Zhongda "Section C Questionnaire Response" (December 19, 2014) ("Zhongda SCQR") at 32-34.
[211] See Zhongda SCQR at 35; Letter to the Secretary of Commerce from Zhongda "Supplemental Section A&C questionnaire" (March 10, 2015) ("Zhongda SuppAC") at 12 and Exhibit S2C-7a.
[212] See, e.g., explanations in Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6; Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481, 36483 (June 19, 2012) ("Methodological Change").
[213] See Zhongda SCQR at 32-35; Methodological Change, 77 FR at 36483.
[214] See Methodological Change, 77 FR at 36483.

Zhongda's calculation of its irrecoverable VAT rate is based on the difference between 17 percent of its purchase price from Zhongda Metalwork and 15 percent of the free on board ("FOB") value of the exports.[215] However, the Department explained in the Preliminary Determination that the PRC regulations governing VAT tax submitted by Zhongda indicate that the tax base for the VAT recovery rate for production enterprises should be based on the FOB value of the exported goods, and the tax base for the VAT recovery rate for foreign trade enterprises should be based on the transfer price of the exported goods.[216] In this case, the latter scenario should apply to Zhongda's exporting entities, i.e., a recovery rate based on the transfer price of the exported goods, which Zhongda stated is a price "set to best benefit the Zhongda Group - e.g., to minimize the tax burden."[217] However, Zhongda's calculation is based on an altogether different price, the FOB price of goods exported. In the Preliminary Determination, the Department stated that "given the apparent inconsistencies between Zhongda's reported irrecoverable VAT calculation and the PRC regulations governing VAT refunds, we are preliminarily following our standard practice of deducting from U.S. FOB price the difference between the standard VAT levy and the VAT refund rate reported by Zhongda (i.e., two percent)."[218]

Accordingly, because Zhongda has neglected to address the concerns noted by the Department in the Preliminary Determination, we are continuing to deduct an amount equal to the difference between the standard VAT levy and the VAT refund rate reported by Zhongda, in accordance with our standard practice, for this final determination.

Comment 16: Whether AD/CVD Remedies are Duplicative

Zhongda's Case Brief:

- In the Preliminary Determination, the Department did not adjust the AD cash deposit rate for duplicative AD and CVD remedies.
- Zhongda was not a respondent in the companion CVD investigation and the Department denied Zhongda's request to be selected as a voluntary respondent.
- Application of the "All Others" CVD rate based on the rates calculated for the mandatory respondents in that case to Zhongda included a component for electricity and hot-rolled steel subsidies, of which Zhongda reported in its AD responses that it received no benefit.
- The Department's preliminary CVD finding that Chinese electricity and steel strip suppliers/industry received a government subsidy is a decision based on the business proprietary information of third parties and outside of the control of Zhongda.
- In Zhongda's double remedy questionnaire response, Zhongda stated that it does not believe it benefited from the alleged subsidy programs but that if any subsidy is determined from those programs, they did affect the cost of manufacturing of Zhongda's merchandise under consideration.
- If the Department incorrectly holds that Zhongda benefited from any such subsidies it must

[215] See Zhongda SuppAC at 12-13.
[216] See Preliminary Decision Memo at 28, fn 189 (citing to Zhongda SCQR at 35 and Zhongda SuppC at Exhibit SC-11.).
[217] See Letter to the Secretary of Commerce from Zhongda "Double remedy Questionnaire Response" (January 9, 2015) ("Zhongda Domestic Subsidies Response") at 9.
[218] See Preliminary Decision Memo at 28, fn 189.

make an AD adjustment to avoid double remedies.

Petitioner's Rebuttal Comments:

- Zhongda has claimed not to benefit from the subsidies in question, and assignment of the all others rate in the companion CVD case does not change that.
- Because Zhongda has claimed that it does not benefit from the subsidies in question, it has not demonstrated the requisite cost-to-price linkage between the relevant subsidy and the prices charged for merchandise under consideration.
- Assignment of the "all others" CVD rate is irrelevant to determining the pass-through effect of the subsidies.

Department's Position:

The Department disagrees with Zhongda that a domestic subsidy pass-through adjustment to Zhongda's AD rate is appropriate for this final determination. As an initial matter, we note that the Department has explained that the effect of domestic subsidies upon export prices depends upon many factors (e.g., the supply and demand for the product on the world market, and the exporting countries' share of the world market) and that domestic subsidies do not automatically reduce export prices.[219] Even in cases where a clear statutory basis for granting a price adjustment exists, the burden to establish entitlement to that adjustment is on the party seeking the adjustment, which has access to the necessary information.[220]

Zhongda's comments specifically address the portion of the Preliminary Determination concerning an adjustment under section 777A(f).[221] In applying section 777A(f) of the Act, the Department examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[222] For a subsidy meeting these criteria, the statute requires the Department to reduce the AD duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap. Zhongda argues that because a CVD rate was applied to Zhongda as a component of the "All Others" rate, an adjustment must be made to the AD rate.[223] Zhongda itself has stated it "did not apply for or benefit from… any of the programs {in the concurrent CVD proceeding}."[224] Thus, the facts on the record affirmatively demonstrate that Zhongda did not receive any of the investigated subsidies. As a result, the facts contradict that the Department should provide Zhongda with a domestic subsidy pass-through adjustment. In this regard, and as explained in the Preliminary Determination, "{i}n conducting the analysis, the Department has not concluded that concurrent application of

[219] See, e.g., OCTG 2010 at Comment 7.
[220] Id., citing to SAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 829.
[221] See Zhongda Case Brief at 18.
[222] See sections 777A(f)(1)(A)-(C) of the Act.
[223] See Zhongda Case Brief at 18-23.
[224] See Zhongda Domestic Subsidy Response at 12.

NME ADs and CVDs necessarily and automatically results in overlapping remedies."[225] For all these reasons, the statutory criteria for a so-called "double remedies" offset have not been met with respect to whether a countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period. Accordingly, we continue to find for this final determination that an adjustment under Section 777A(f) of the Act is inappropriate for Zhongda.

JS Products

Comment 17: Separate Rate

JS Products Case Brief:

- JS Products timely submitted the necessary supporting documentation to demonstrate that it was an exporter of the merchandise under investigation produced by Zhejiang Limai Metal Products Co. Ltd.
- The record confirms that JS Products is an unaffiliated exporter of merchandise produced by Zhejiang Limai Metal Products Co. Ltd., and thus is eligible for a unique producer/exporter combination rate in accordance with Department practice and Policy Bulletin 05.1.
- The Department should alter its Preliminary Determination and list JS Products as eligible for a separate rate with a unique producer/exporter combination of Zhejiang Limai Metal Products/JS Products Inc.

Petitioner Rebuttal Comments:

- The Department should not grant JS Products a separate rate because a separate rate can only be granted to an exporter that has properly applied for a separate rate and successfully demonstrated its freedom from government control. JS Products made no such application.

Department's Position:

The Department agrees with Petitioner and is not departing from its preliminary determination that JS Products is not eligible for a separate combination rate in this investigation. In the Preliminary Determination, the Department stated that "because JS Products did not submit a separate rate application by the deadline stated in the Initiation Notice, JS Products is not eligible for a separate rate in this investigation."[226] JS Products argues that because it was an exporter of merchandise under consideration produced by a separate rate applicant in this investigation, Zhejiang Limai Metal Products Co., Ltd., it is eligible for a separate rate.[227] However, JS Products misinterprets the Department's requirements for demonstrating eligibility for a separate rate in both practice and stated policy. Policy Bulletin 05.1 clearly states as the first listed condition for demonstrating separate rate eligibility that the "Department will not consider applications that remain incomplete by the deadline date."[228] JS Products never submitted a

[225] See Preliminary Determination.
[226] See Preliminary Decision Memo at 22.
[227] See JS Products Case Brief at 3.
[228] See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) available online at http://enforcement.trade.gov/policy/bull05-1.pdf.

separate rate application on the record of this investigation and the Department has no knowledge of JS Products' corporate structure, affiliations, ownership, pricing or suppliers of merchandise under consideration, which are just a few of the necessary components of a separate rate application.[229] Nor did JS Products submit a quantity and value questionnaire response, which is also a requirement for firms seeking a separate rate in an investigation.[230]

Accordingly, because JS Product failed to submit a separate rate application by the deadline stated in the Initiation Notice, i.e., November 21, 2014, and because JS Products has not presented any new argument in its case brief that would warrant reconsideration of the Department's decision in the Preliminary Determination, we continue to find JS Products ineligible for a separate rate in this investigation.

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margin in the Federal Register.

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

August 14, 2015

(Date)

[229] See, e.g., "Separate Rate Application" available online at http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/prc-sr-app-20150323.pdf.

[230] Id. ("if your firm is participating in an investigation, your firm must also respond to the Department's quantity and value {} questionnaire.")