



A-475-832
Investigation
Public Document
E&C/V: JEH/SSP

May 24, 2016

MEMORANDUM TO: Paul Piquado
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 Less-Than-Fair-Value Investigation of Certain Corrosion-
Resistant Steel Products from Italy

I. SUMMARY

The Department of Commerce (“the Department”) determines that certain corrosion-resistant steel products (“corrosion-resistant steel”) from Italy are being, or are likely to be, sold in the United States at less-than-fair-value (“LTFV”), as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification,¹ we made certain changes to the margin

¹ See Memorandum to the File, through Paul Walker, Program Manager, Office V, from Julia Hancock and Susan Pulongbarit, Senior International Trade Analysts, and Omar Qureshi, International Trade Analyst, “Verification of Home Market Sales of Arvedi in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy,” (March 29, 2016) (“Arvedi’s Home Market Sales Report”); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Susan Pulongbarit and Julia Hancock, Senior International Trade Analysts, and Omar Qureshi, International Trade Analyst, “Verification of Home Market Sales of Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy,” (April 8, 2016) (“Marcegaglia’s Home Market Sales Report”); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Susan Pulongbarit and Julia Hancock, Senior International Trade Analysts, “Verification of U.S. Sales of Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy,” (April 7, 2016) (“Marcegaglia’s CEP Sales Report”); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from Christopher Zimpo and James Balog, Accountants, “Verification of the Cost of Production and Constructed Value Data Submitted by Arvedi in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy” (April 7, 2016) (“Arvedi’s Cost Report”); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, “Verification of the Cost of Production and Constructed Value Data Submitted by Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy” (April 12, 2016) (“Marcegaglia’s Cost Report”); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, “Verification of the Further Manufacturing Data Submitted by Marcegaglia in the Antidumping Duty Investigation



calculations for one of the mandatory respondents, Acciaieria Arvedi SPA (“Arvedi”). However, for the other mandatory respondent, Marcegaglia SpA (“Marcegaglia”), we find that necessary information was not on the record, and that Marcegaglia withheld information, failed to provide information in the form and manner requested subject to sections 782(c)(1) and (e), significantly impeded the proceeding and provided information that could not be verified.² Additionally, we find that Marcegaglia failed to cooperate by not acting to the best of its ability to comply with requests for information, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act. As such, we are determining the final estimated weighted-average dumping margin for Marcegaglia based on total adverse facts available (“AFA”). The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On January 4, 2016, the Department published the *Preliminary Determination* of this LTFV investigation.³

Between January and April 2016, the Department received supplemental questionnaire responses and revised data from Arvedi and Marcegaglia. Additionally, between January and March 2016, the Department verified the sales and cost data reported by Arvedi and Marcegaglia, respectively, pursuant to section 782(i) of the Act.

Between April 19, and April 20, 2016, Petitioners⁴ submitted timely, properly filed case briefs, pursuant to our regulations.⁵ Between April 25, and April 28, 2016, Arvedi, and Petitioners submitted timely, properly filed rebuttal briefs, pursuant to our regulations.⁶ Additionally, on April 27, 2016, Marcegaglia submitted a timely, properly filed case brief, pursuant to our regulations.⁷ Moreover, on May 2, 2016, Marcegaglia submitted a timely, properly filed rebuttal brief, pursuant to our regulations.⁸

of Certain Corrosion-Resistant Steel Products from Italy” (April 12, 2016) (“Marcegaglia’s Further Manufacturing Report”).

² See sections 776(a)(1) and (a)(2)(A), (B), (C), and (D) of the Act.

³ See *Certain Corrosion-Resistant Steel Products from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 69 (January 4, 2016) (“*Preliminary Determination*”) and accompanying Decision Memorandum.

⁴ United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc., (collectively “Petitioners”).

⁵ See Letter to the Secretary of Commerce from Petitioners “Case Brief Submitted on behalf of Petitioners: Brief on Arvedi,” (April 19, 2016) (“Petitioners’ Case Brief on Arvedi”); Letter to the Secretary of Commerce from Petitioners “Case Brief Submitted on Behalf of Petitioners: Brief on Marcegaglia,” (April 20, 2016) (“Petitioners’ Case Brief on Marcegaglia”).

⁶ See Letter to the Secretary of Commerce from Petitioners “Rebuttal Brief on Marcegaglia Submitted on behalf of Petitioners,” (April 28, 2016) (“Petitioners’ Rebuttal Brief on Marcegaglia”); Letter to the Secretary of Commerce from Arvedi “Arvedi’s Rebuttal Brief,” (April 25, 2016) (“Arvedi’s Rebuttal Brief”); Letter to the Secretary of Commerce from Marcegaglia, “Marcegaglia’s Rebuttal Brief,” (April 28, 2016) (“Marcegaglia’s Rebuttal Brief”).

⁷ See Letter to the Secretary of Commerce from Marcegaglia, “Revised Case Brief of Marcegaglia,” (April 27, 2016) (“Marcegaglia’s Revised Case Brief”). We note that this is a refiled and redacted case brief. See Letter to Marcegaglia from Paul Walker, Program Manager, Office V, Re: Corrosion-Resistant Steel Products from Italy: Rejection of New Factual Information, (April 26, 2016); Letter to the Secretary of Commerce from Marcegaglia,

Additionally, on May 3, 2016, the Department held a public hearing on this LTFV investigation.

Subsequent to the *Preliminary Determination*, the Department received comments regarding the scope of the investigation. On February 9, 2016, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc. (collectively “Baosteel”) submitted scope comments on the Department’s preliminary scope determination regarding its prior requested scope exclusion for certain hot dipped galvanized steel products.⁹ On February 16, 2016, Petitioners submitted their scope rebuttal in support of the Department’s preliminary scope decision.¹⁰ On March 29, 2016, the Department rejected an improper filing of scope exclusion request by a Wisconsin-based importer, AmeriLux International Co., Ltd. (“AmeriLux International”) and filed our rejection letter and e-mail correspondence memo on the record of this investigation.¹¹ Based on the reasons provided in the rejection letter, the Department is not considering the AmeriLux International’s comments for the final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum, which is incorporated by and hereby adopted by this final determination.¹²

III. PERIOD OF INVESTIGATION

The period of investigation (“POI”) is April 1, 2014, through March 31, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2015.¹³

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

We made changes from the *Preliminary Determination*, as discussed below, and as described in the Arvedi Analysis Memorandum.¹⁴ Included among those changes, with respect to

“Corrosion-Resistant Steel Products from Italy: Objection to the Department’s Rejection of Marcegaglia’s Case Brief,” (April 27, 2016).

⁸ *See* Letter to the Secretary of Commerce from Marcegaglia, “Revised Rebuttal Brief of Marcegaglia,” (May 2, 2016) (“Marcegaglia’s Revised Rebuttal Brief”). We note that this is a refiled and redacted rebuttal brief. *See* Letter to Marcegaglia from Paul Walker, Program Manager, Office V, Re: Corrosion-Resistant Steel Products from Italy: Rejection of New Factual Information in Rebuttal Brief, (April 29, 2016).

⁹ *See* Letter from Baosteel, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Post Preliminary Comments on Scope,” (February 9, 2016). *See also* *Scope Correction Notice*.

¹⁰ *See* Letter from Petitioners, entitled, “Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Petitioners’ Scope Rebuttal Brief,” (February 16, 2016) (“Petitioners’ Scope Rebuttal”).

¹¹ *See* Letter to AmeriLux International, “Antidumping and Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea and Taiwan: Rejection of AmeriLux International’s November 30, 2015, Scope Exclusion Request,” (March 29, 2016). *See also* Memorandum to the File, “Email Correspondence Regarding Scope Exclusion,” filed concurrently with the rejection letter.

¹² *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations,” dated concurrently with this notice (“Final Scope Decision Memorandum”).

¹³ *See* 19 CFR 351.204(b)(1).

Marcegaglia, we applied total AFA, pursuant to sections 776(a)(1) and (2) and 776(b) of the Act.¹⁵ With regards to Arvedi, we are making the following changes for this final determination:

1. The Department used the revised home market sales, U.S. sales, and cost of production (“COP”) data based on minor corrections from verification.¹⁶
2. The Department finds that Arvedi withheld information and failed to provide information in the manner requested by the Department regarding the reporting of physical characteristic information for its sales of non-prime merchandise in the home market, and failed to cooperate by not acting to the best of its ability to comply with the Department’s request for information. Due to this, as partial AFA, the Department excluded Arvedi’s sales of non-prime merchandise in the calculation of normal value. Additionally, because the failure to report the requested information affected the Department’s ability to properly analyze Arvedi’s home market sales to affiliated customers, the Department is applying partial AFA to Arvedi’s sales of prime merchandise to affiliated customers. Due to Arvedi’s non-cooperation with respect to home market sales of non-prime merchandise, the Department is missing downstream sales and further processing cost information for Arvedi’s home market sales of prime merchandise to affiliated customers. Accordingly, as partial AFA the Department is using the highest net unit price of Arvedi’s home market sales of prime merchandise to unaffiliated customers.¹⁷
3. The Department deducted the packing cost listed as a separate item on Arvedi’s commercial invoice issued to the customer for its U.S. sales from the reported gross unit price in its U.S. sales data.¹⁸
4. For Arvedi’s extraordinary charges, the Department revised these charges, included in general and administrative (“G&A”) expenses, to exclude prior-period adjustments.¹⁹
5. The Department recalculated Arvedi’s indirect selling expenses to include bad debt expenses.²⁰
6. The Department revised the insurance proceeds offset related to indirect damages to exclude the portion of the contribution margin, which resulted in a change to the fixed overhead (“FOH”) expense rate.²¹
7. For Arvedi’s cost of manufacturing (“COM”), the Department revised the transactions disregarded adjustment for purchases from affiliated suppliers based on minor corrections submitted at the cost verification.²²

¹⁴ See Memorandum to the File from Julia Hancock, Senior Case Analyst, through Paul Walker, Program Manager, Subject; Calculations Performed for Acciaieria Arvedi SPA (“Arvedi”) for the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy, (May 24, 2016) (“Arvedi Final Analysis Memo”), dated concurrently with this memorandum.

¹⁵ See Comment 1, below.

¹⁶ See Arvedi Final Analysis Memo.

¹⁷ For further discussion, please see the Department’s Position at Comment 3.

¹⁸ For further discussion, please see the Department’s Position at Comment 4.

¹⁹ For further discussion, please see the Department’s Position at Comment 8B.

²⁰ For further discussion, please see the Department’s Position at Comment 5C.

²¹ For further discussion, please see the Department’s Position at Comment 5F.

²² For further discussion, please see the Department’s Position at Comment 8.

8. For Arvedi's FOH rate, the Department revised this FOH rate to exclude the selling and G&A expenses from the variable cost of manufacture denominator used in the FOH rate calculation.²³
9. For Arvedi's financial expense rate, the Department revised the ratio because Arvedi did not demonstrate that some of the interest income offset was from short-term sources. Additionally, Arvedi's COM denominator includes G&A and packing expenses. Thus, the Department deducted G&A and packing expenses when the Department calculated the revised financial expense rate for Arvedi.²⁴

V. APPLICATION OF TOTAL ADVERSE FACTS AVAILABLE WITH REGARD TO MARCEGAGLIA

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, 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.

As discussed in Comment 1 below, Marcegaglia failed to reconcile its reported home market and U.S. sales data during the sales verifications to its books and records, and the Department found other deficiencies at verification. Importantly, the Department cannot rely on Marcegaglia's reported data because they do not tie back to Marcegaglia's books and records and, therefore, are unreliable for the purposes of calculating Marcegaglia's estimated weighted-average dumping margin. Furthermore, Marcegaglia's inability to reconcile its reported data precluded the Department's verifiers from performing essential procedures that form the backbone of the Department's verification process.²⁵ As a result, and as discussed below in Comment 1, the Department concludes that application of total facts available with an adverse inference is appropriate with respect to Marcegaglia, pursuant to sections 776(a)(1),(2)(A)-(D), and 776(b) of the Act.

VI. SELECTION OF MARCEGAGLIA'S AFA RATE AND CORROBORATION

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the antidumping ("AD") and countervailing duty law, including amendments to section 776(b) and 776(c) of the

²³ For further discussion, please *see* the Department's Position at Comment 8.

²⁴ For further discussion, please *see* the Department's Position at Comment 8.

²⁵ *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014) and accompanying Issues and Decision Memorandum at Comment 6 ("*Steel Concrete Reinforcing Bar from Mexico Final Determination*").

Act and the addition of section 776(d) of the Act.²⁶ These amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.²⁷

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Department's request for information.²⁸ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.²⁹

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.³⁰ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.³¹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning subject merchandise.³²

Finally, section 776(d) of the Act also makes clear that when selecting information as AFA, the Department is not required to estimate what the weighted-average dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the information used as AFA reflects an "alleged commercial reality" of the interested party.³³

In an investigation, the Department's general practice with respect to the assignment of a rate as AFA is to assign the higher of the highest dumping margin alleged in the petition or the highest calculate dumping margin of any respondent in the investigation.³⁴ In this investigation, the

²⁶ See TPEA. The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

²⁷ *Id.*, at 46794-5. The 2015 amendments may be found at: <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

²⁸ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

²⁹ See 19 CFR 351.308(c).

³⁰ See 19 CFR 351.308(d).

³¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

³² See SAA, at 870; 19 CFR 351.308(d).

³³ See section 776(d)(3) of the Act; TPEA, section 502(3).

³⁴ See *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 20.

dumping margins alleged in the petition range from 119.68 to 126.75 percent.³⁵ When we compared the highest dumping margin alleged in the petition with the estimated weighted-average dumping margin, 12.63 percent, calculated for Arvedi in this final determination, we find that the petition rate of 126.75 percent should be considered as a potential AFA rate. When we compare the highest petition rate to the range of transaction-specific dumping margins for the cooperating mandatory respondent, we find that this highest petition dumping margin is significantly higher than the range of Arvedi's transaction-specific dumping margins. Furthermore, other information on the record does not corroborate, pursuant to section 776(c) of the Act, the secondary information contained in the petition which is the basis for the highest petition rate. Therefore, we are unable to corroborate the highest dumping margin alleged in the petition.³⁶

While the highest petition rate is permissible as an adverse rate in some instances, it is not appropriate to use this rate here because the Department is unable to corroborate this rate.³⁷ Therefore, based on record evidence, the Department has assigned to Marcegaglia as AFA the highest transaction-specific margin, 92.12 percent, of the cooperating company, Arvedi. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.³⁸ The transaction underlying this dumping margin is neither unusual in terms of transaction quantities nor otherwise atypical.³⁹

VII. AFFIRMATIVE FINDING OF CRITICAL CIRCUMSTANCES, IN PART

On July 23, 2015, Petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise.⁴⁰ On November 5, 2015, the Department issued its preliminary critical circumstances determination.⁴¹ Pursuant to this determination, the Department

³⁵ See *Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228, 37233 (June 30, 2015) ("Initiation Notice"); Supplement to the Italy AD Petition, (June 12, 2015) at Exhibit Supp VIII-12; Petition for the Imposition of Antidumping Duties on Imports of Certain Corrosion-Resistant Steel Products from Italy, (June 3, 2015) ("Petition") Volume VIII.

³⁶ See *Monosodium Glutamate from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 26408 (May 8, 2014), and accompanying Preliminary Decision Memorandum at "Corroboration" section (unchanged in *Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014)).

³⁷ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990).

³⁸ See section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information).

³⁹ See *Silica Bricks and Shapes from the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination*, 78 FR 37203 (June 20, 2013), and accompanying Preliminary Decision Memorandum at Comment 3.

⁴⁰ See Letter from Petitioners, "Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Critical Circumstances Allegations," (July 23, 2015).

⁴¹ See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) ("Preliminary Determinations of Critical Circumstances").

determined that critical circumstances did not exist for imports of subject merchandise from Arvedi, Marcegaglia, and “all-other” producers or exporters from Italy.⁴²

We received no comments from interested parties regarding the *Preliminary Determinations of Critical Circumstances*. With respect to Arvedi and the Italian firms subject to the all others’ rate, the facts remain unchanged from the *Preliminary Determination*; therefore, for this final determination, we continue to find that critical circumstances do not exist for Arvedi and the Italian firms subject to the all others’ rate for the same reasons explained in the *Preliminary Determinations of Critical Circumstances*. However, we have re-examined our *Preliminary Determinations of Critical Circumstances* because of our application of total AFA to Marcegaglia for this final determination.

Section 735(a)(3) of the Act provides that where critical circumstances have been alleged under section 733(e) of the Act, the Department will determine whether (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its normal value and that there would be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the “relatively short period” of time may be considered “massive.”

19 CFR 351.206(i) defines “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date on which the petition is filed) and ending at least three months later (*i.e.*, the comparison period). The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

As explained in the *Preliminary Determinations of Critical Circumstances*, the Department previously has not imposed an AD order on the merchandise under consideration from Italy and the Department is not aware of any AD orders on corrosion-resistant steel from Italy in another country.⁴³ Therefore, we find no history of injurious dumping of the subject merchandise. *See* sections 733(e)(1)(A)(i) and 735(a)(3)(A)(i) of the Act.⁴⁴

Turning to sections 733(e)(1)(A)(ii) and 735(a)(3)(A)(ii) of the Act, the Department normally considers estimated weighted-average dumping margins of 25 percent or more for export price sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.⁴⁵ Concerning Marcegaglia, as noted above, it has been assigned a dumping margin based

⁴² *Id.*

⁴³ *Id.*, 80 FR at 68506.

⁴⁴ *Id.*

⁴⁵ *See, e.g., Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's*

on AFA of 92.12 percent. This rate exceeds the quantitative thresholds established by the Department for purposes of determining whether imputed knowledge of dumping exists. Further, consistent with the Department's practice,⁴⁶ since the U.S. International Trade Commission ("ITC") preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of corrosion-resistant steel from Italy, the Department determines that importers knew or should have known that there was likely to be material injury by reason of sales of corrosion-resistant steel at LTFV by Marcegaglia.⁴⁷ Accordingly, we determine that the criteria under section 735(a)(3)(A)(ii) of the Act have been met. Further, because we lack the necessary reliable shipment data from Marcegaglia,⁴⁸ we determine that, pursuant to sections 776(a) and (b) of the Act, Marcegaglia shipped corrosion-resistant steel products in "massive" quantities during the comparison period thereby fulfilling the criteria under section 735(a)(3)(B) of the Act and 19 CFR 351.206(i). Therefore, for this final determination, we determine that critical circumstances exist with regard to Marcegaglia.

VII. LIST OF COMMENTS

- Comment 1: Application of Total Adverse Facts Available ("AFA") to Marcegaglia
 - A. Misclassified Export Price ("EP") Sales
- Comment 2: Corporate Name Change of Marcegaglia
- Comment 3: Application of Adverse Facts Available ("AFA") to Arvedi's Non-Prime Sales
- Comment 4: Application of AFA to Arvedi's Packing Revenue
- Comment 5: Treatment of Arvedi's Cost of Manufacturing ("COM")
 - A. Other Operating Costs
 - B. Net Extraordinary Charges
 - C. Bad Debt Expenses
 - D. Offset of Electricity Sales to COM
 - E. Adjust Variable Manufacturing Cost Based on Sales Quantities
 - F. Disallow Insurance Claim as "Indirect Damages" As An Offset to Fixed Overhead Costs
- Comment 6: Programming Errors in Arvedi's Margin Program
 - A. Net U.S. Price Variable
 - B. Marine Insurance
- Comment 7: Revised U.S. Sales Data for Arvedi
- Comment 8: Adjustments to Arvedi's Cost Data Based on Verification

Republic of China, 70 FR 5606, 5607 (February 3, 2005) (unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9307 (February 24, 2005)).

⁴⁶ See, e.g., *Certain Uncoated Paper From Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108 (January 20, 2016) and accompanying Issues and Decision Memorandum at VI.

⁴⁷ See *Certain Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan, Investigation Nos. 701-TA-534-538 and 731-TA-1274-1278 (Preliminary)*, 80 FR 44151 (July 24, 2015).

⁴⁸ For further discussion, please see the Department's Position at Comment 1.

VIII. DISCUSSION OF COMMENTS

Comment 1: Application of Total Adverse Facts Available (“AFA”) to Marcegaglia

Petitioners’ Comments:

- The Department should apply total AFA to Marcegaglia for the final determination because Marcegaglia withheld information requested, failed to provide requested information by the deadline for submission, significantly impeded the investigation and provided data that could not be verified.⁴⁹
- Specifically, as a result of Marcegaglia’s non-cooperation, the Department was unable to verify home market freight, U.S. inland freight, or packing expenses.⁵⁰
- During the home market verification, Marcegaglia did not reconcile the quantity and value of sales made to countries other than the United States and Italy.⁵¹ Further, Marcegaglia’s inconsistent treatment of scrap in its sales reconciliations contributed to the fact that the quantity and value did not reconcile to Marcegaglia’s books and records.⁵²
- Marcegaglia did not provide supporting documentation with respect to certain sales traces and date of sale.⁵³
- Marcegaglia USA’s monthly sales revenues are not reliable and should be rejected in favor of total AFA.⁵⁴
- The fact that Marcegaglia USA has not paid Marcegaglia for purchases of galvanized steel calls into question whether such transactions represent non-arm’s length transactions and *de facto* sales at less than fair value.⁵⁵
- Marcegaglia inconsistently applied its tubing yield factor when calculating movement and selling expenses; thus further calling into question the reliability of Marcegaglia’s data.⁵⁶
- The claim that Marcegaglia did not know why the industry standard conversion factor was not used in its SAP system is reflective of the fact that the company did not know and understand its own record, further supporting the Department’s authority to apply an adverse inference.⁵⁷
- The Department was unable to complete verification for Marcegaglia because Marcegaglia was not prepared despite having the verification agenda prior to verification.
- Marcegaglia’s further manufacturing data was significantly understated because it failed to account for costs related to cutting processes.⁵⁸
- Marcegaglia’s attempt to correct the unreported cutting costs as a minor correction at verification, as well as depreciation expenses, was inappropriate because these corrections

⁴⁹ See Petitioner’s Rebuttal Brief on Marcegaglia at 1.

⁵⁰ See Petitioner’s Case Brief at 15-16.

⁵¹ *Id.* at 16.

⁵² *Id.* at 21.

⁵³ *Id.* at 16-17.

⁵⁴ *Id.* at 17-18.

⁵⁵ *Id.* at 18.

⁵⁶ *Id.* at 24.

⁵⁷ See Petitioner’s Rebuttal Brief on Marcegaglia at 4-5.

⁵⁸ See Petitioners’ Case Brief on Marcegaglia at 8.

were not minor, and they constituted new factual information presented long after Department deadlines.⁵⁹

- Marcegaglia’s methodology to correct the unreported cutting costs in its minor correction was flawed and resulted in significantly understating the cutting costs. The denominator used to determine the additional per-unit cutting costs should be the quantity of galvanized products that passed through the cutting cost centers and not the total production quantity of galvanized products.⁶⁰
- At verification, the Department discovered significant additional costs that Marcegaglia failed to include in its reported further manufacturing costs.⁶¹
- When all of these errors are corrected along with corrections needed to Marcegaglia USA’s general and administrative expense ratio, the increase to the reported further manufacturing expenses would be even more significant.⁶²
- By withholding information and failing to provide information by established deadlines, Marcegaglia has impeded this investigation. Due to the late submission of previously requested cost data, the Department cannot determine if it has the full and complete further manufacturing costs, and the record data demonstrates that it does not.⁶³
- Marcegaglia’s conduct was uncooperative beginning before the *Preliminary Determination*, and it succeeded in wrongly obtaining a negative preliminary determination. As a result, the Department was improperly prevented from imposing provisional measures to the material injury of the domestic industry. Those remedial duties cannot be recovered, and this is directly attributable to Marcegaglia’s failure to completely and accurately report its sales and cost data.⁶⁴
- The burden of preparing a complete and accurate record falls squarely on the respondent, and Marcegaglia failed to satisfy these requirements.⁶⁵
- A respondent has the responsibility to be familiar with its own records and to conduct a prompt, careful and comprehensive review of those records which Marcegaglia failed to do.⁶⁶
- It is the respondent’s responsibility to provide complete and accurate data, and the Department should not be required to reconstruct the record.⁶⁷
- The Department’s findings at verification, together with the minor corrections untimely submitted by Marcegaglia, render Marcegaglia’s further manufacturing data on the record entirely unusable.⁶⁸
- There were irregularities in Marcegaglia’s supporting documentation because materials costs and total costs of goods sold in its accounting records were incompatible. Marcegaglia’s explanation that these anomalies were due to a glitch in its computerized accounting system

⁵⁹ *Id.*, at 8 and 10.

⁶⁰ *Id.*, at 13-14.

⁶¹ *Id.*, at 8-9.

⁶² See Petitioners’ Case Brief on Marcegaglia at 9.

⁶³ *Id.*, at 13.

⁶⁴ *Id.*, at 9-10.

⁶⁵ *Id.*, at 10.

⁶⁶ *Id.*, at 10 and 12-13.

⁶⁷ *Id.*, at 10.

⁶⁸ *Id.*, at 10.

is unpersuasive because Marcegaglia USA also reported two significantly different totals for sales revenue.⁶⁹

- Marcegaglia initially withheld the section E response and provided the further manufacturing data in piecemeal fashion long after Department deadlines. This demonstrates Marcegaglia's failure to cooperate to the best of its ability.⁷⁰
- An adverse inference is warranted where a company fails to cooperate to the best of its ability, where information on the record remains deficient and where a respondent fails to take reasonable steps to keep and maintain records. Marcegaglia failed in these responsibilities, and the Department can have no faith in its reported further manufacturing costs.⁷¹

Marcegaglia's Comments:

- Marcegaglia fully cooperated with the Department during the home market verification. The Department's request to see original payment documents for the payment of expenses and the amount of time that had passed since the transactions took place was the cause for delays.⁷²
- The Department should not apply AFA because of the difficulties Marcegaglia experienced in retrieving certain original documents since the majority of Marcegaglia's responses were fully verified.⁷³
- Petitioner wrongly contends that Marcegaglia did not pass the completeness test as part of the quantity and value reconciliation, with respect to third country sales.⁷⁴
- Marcegaglia USA's monthly revenues are accurate in that they are recorded on a cumulative, year-to-date sales revenue basis.⁷⁵
- The fact that Marcegaglia USA has not paid Marcegaglia for galvanized steel does not affect the estimated weighted-average dumping margin.⁷⁶
- The record does not contain evidence that Marcegaglia USA sold secondary merchandise.⁷⁷
- Marcegaglia was transparent regarding sales reported as EP sales but invoiced by Marcegaglia USA.⁷⁸
- Marcegaglia timely submitted the response for Section E after the Department requested it.⁷⁹
- In the process of preparing for verification, Marcegaglia realized that some of the subject merchandise underwent additional off-line cutting at four sawing cost centers. Therefore, Marcegaglia presented the additional processing costs incurred at these cost centers as a minor correction to its previously reported costs. These additional costs were verified by the Department and reconciled to Marcegaglia's books and records.⁸⁰

⁶⁹ *Id.*, at 11-12.

⁷⁰ See Petitioners' Case Brief on Marcegaglia at 6-7 and 10-12.

⁷¹ *Id.*, at 12-13.

⁷² See Marcegaglia's Rebuttal Brief at 13.

⁷³ *Id.*

⁷⁴ *Id.* at 14.

⁷⁵ *Id.* at 15.

⁷⁶ *Id.* at 17.

⁷⁷ *Id.*

⁷⁸ *Id.* at 18-21.

⁷⁹ See Marcegaglia's Revised Rebuttal Brief at 5-6.

⁸⁰ *Id.* at 6-7.

- Further manufacturing costs is only one of many adjustments to U.S. price in the LTFV analysis and, in total, further manufacturing represents a relatively small cost relative to the value of the underlying hot-dipped galvanized strip. The relatively large percentage increase to the further manufacturing costs resulting from this correction should not disqualify it as a minor correction.⁸¹
- The correction for additional cutting saw costs that were previously overlooked by Marcegaglia USA in no way undermines the credibility or validity of its reported further processing costs.⁸²
- Marcegaglia properly calculated the additional per-unit cutting costs by allocating the total additional cutting costs over the total production quantity of the reported galvanized products. The methodology proposed by the petitioners would wrongly assign nearly four times more cutting costs to the subject galvanized products than were actually incurred in the off-line cutting cost centers.⁸³
- With one exception, Marcegaglia disagrees that the cost centers identified by the Department at verification should be included in the further manufacturing costs of galvanized products. Two of the cost centers relate to the production of non-subject merchandise, and the costs for the remaining cost center at most could be considered for inclusion in general and administrative expenses.⁸⁴
- Marcegaglia contends that it properly calculated the further manufacturing G&A expense ratio because it followed the express instructions for doing so in the Department's questionnaire.⁸⁵

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

As background, we provide the following information. The Department released its verification outline to Marcegaglia on January 14, 2016, 18 days before the commencement of verification on February 1, 2016.⁸⁶ The outline instructed Marcegaglia to fully prepare for verification, and clearly indicated that Marcegaglia should gather specific information listed in the outline from the appropriate personnel prior to the verifiers' arrival. Further, in addition to the Department's original questionnaire requiring that Marcegaglia reconcile its reported sales to its books and records,⁸⁷ the outline specifically requested that Marcegaglia prepare in advance of the verification the reconciliation of the quantity and value of sales reported in the Sections B and C sales database.⁸⁸

⁸¹ *Id.* at 7-9.

⁸² *Id.* at 9.

⁸³ *Id.* at 9-11 and 26.

⁸⁴ *Id.* at 11-12.

⁸⁵ *Id.* at 12-13.

⁸⁶ See Letter to Marcegaglia, from the Department, regarding "Antidumping Duty Investigation on Certain Corrosion-Resistant Steel Products from Italy: Verification of Home Market and U.S. Sales," dated January 14, 2016 ("Marcegaglia EP Outline").

⁸⁷ See Letter from the Department, to Marcegaglia, dated July 24, 2015 ("Marcegaglia Original Questionnaire") at A-3.

⁸⁸ See Marcegaglia EP Outline.

Despite the Department's detailed and specific questionnaires and instruction in the verification outline, Marcegaglia failed to cooperate by not acting to the best of its ability to reply accurately and completely to requests for information regarding the sales of subject merchandise. Specifically, Marcegaglia failed to reconcile the quantity and value of its reported sales to the company's books and records, which, as described in detail below, is critical to the Department's analysis of whether the reported information is reliable for use in calculating Marcegaglia's estimated weighted-average dumping margin. Additionally, due to its lack of preparedness, Marcegaglia significantly impeded the Department's verification, rendering the Department unable to verify the accuracy and completeness of the information in Marcegaglia's responses as detailed in the verification outline. Moreover, as discussed in further detail below, the Department found multiple instances of inconsistencies and deficiencies including issues affecting date of sale, second-quality merchandise, and gross unit price.

First, at verification Marcegaglia failed to reconcile the sales data which it reported to the Department with the sales information it maintains in its own books and records. The Department's verification outline listed specific instructions as to what information Marcegaglia was expected to provide at verification with respect to its quantity and value reconciliation:

*Beginning with your sales system/journal, review the reconciliation worksheets and programs that tie the sales system/journal to the general ledger and into the financial statements sales total. Then tie the sales system to the quantity and value totals reported in the most up-to-date submissions of your home and U.S. market databases.*⁸⁹

Despite these clear instructions, Marcegaglia did not reconcile its reported sales quantity and value to the quantity and value it maintained in its books and records (*i.e.*, an Oracle accounting system). As described in the Department's verification report, Marcegaglia first presented a reconciliation worksheet demonstrating the step-by-step process by which Marcegaglia's total sales quantity and value reconciled to the reported U.S. and home market sales of merchandise under consideration.⁹⁰ When examining the supporting documentation for all sales made by Marcegaglia as part of its home market sales reconciliation, the Department found that Marcegaglia treated its sales of non-steel scrap differently when calculating its total sales quantity versus when calculating its total sales value.⁹¹ The Department observed that in order to tie the value for total sales of finished goods as listed in the reconciliation worksheet to the Oracle system, Marcegaglia subtracted the sales of raw materials, steel scrap, and non-steel scrap from Oracle's totals sales value.⁹² However, the Department discovered that when performing the same exercise of subtracting the quantity of sales for raw materials, steel scrap, and non-steel

⁸⁹ See Letter to Marcegaglia, from the Department, regarding "Antidumping Duty Investigation on Certain Corrosion-Resistant Steel Products from Italy: Verification of Home Market and U.S. Sales," dated January 14, 2016 ("Marcegaglia EP Outline").

⁹⁰ See Memorandum to the File, through Paul Walker, Program Manager, from Susan Pulongbarit, Senior International Trade Analyst, Julia Hancock Senior International Trade Analyst, Omar Qureshi, International Trade Analyst, regarding "Antidumping Duty Investigation on Certain Corrosion-Resistant Steel Products from Italy: Verification of Marcegaglia S.p.A.," dated April 8, 2016 ("Marcegaglia EP Verification Report") at 19 and Exhibit 19.

⁹¹ *Id.* at 2, 20-21.

⁹² *Id.* at 20-21.

scrap from the Oracle system's total sales quantity, the total quantity did not tie to the reported quantity for finished goods as provided by Marcegaglia in its reconciliation worksheet.⁹³ Instead, we found that the reported quantity only accounted for subtracting the quantity of raw material sales and steel scrap sales, but not the quantity of non-steel scrap sales.⁹⁴ As a result, the quantity for total sales was not calculated on the same basis as the value for total sales and the Department was unable to tie the home market and U.S. sales Q&V data reported on the record to what was provided in the reconciliation package at verification.

Furthermore, when testing the accuracy of Marcegaglia's quantity and value reconciliation, the Department found that the quantity and value for Marcegaglia's sales to countries other than the United States and Italy did not reconcile.⁹⁵ In its explanation of third-country sales, Marcegaglia explained that this value was calculated by subtracting the sales value for Italy and the United States from the total sales value from the Oracle system, net the sales of raw materials, steel scrap, and non-steel scrap listed above. When the Department requested supporting documentation to verify this information, however, the quantity and value from Marcegaglia's records did not tie to the documentation it was supposed to support.⁹⁶ The Department has previously noted that such tests are necessary in order to confirm the completeness and accuracy of the reported information,⁹⁷ and Marcegaglia's failure to facilitate those tests impeded the investigation. The Department considers the reconciliation process to be "one of the most important tasks performed" at verification:

It also serves another very important purpose in that it baselines accounting ledgers and worksheets that will be used to verify many other topics. Baseline documents means that verifiers have established the validity of these documents by tying them into the audited financial statements and that other verified topics can be tied into these documents without having to go back to the general ledger. Thus, each of the documents used to reconcile the total quantity and value of reported POI or POR sales back to the financial report can be considered a source document. The exercise requires that verifiers establish to their full satisfaction that the tie-in to the financial statement is complete and accurate. If not, where appropriate, verifiers should continue to reconcile verified topics back to the company's general ledger.⁹⁸

Further, verification was not the first instance during this investigation in which Marcegaglia had issues with its sales quantity and value to all countries. Prior to verification, Marcegaglia revised its reported quantity and value several times.⁹⁹ Despite submitting notable changes in the

⁹³ *Id.* at 21.

⁹⁴ *Id.*

⁹⁵ See Marcegaglia EP Verification Report at 3.

⁹⁶ *Id.* at 25.

⁹⁷ See *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 14, 2014) ("*Rebar from Mexico*") and accompanying Issues and Decision Memorandum at Comment 6.

⁹⁸ See AD Manual, Chapter 15, at 33 (2015), available at <http://enforcement.trade.gov/admanual/2015/Chapter%2015%20Verifications.pdf>.

⁹⁹ See Letter from Marcegaglia, to the Department, regarding "Corrosion Resistant Steel Products from Italy, Antidumping Investigation, Case No. A-475-832: Notification of Difficult in Responding to Questionnaire and

quantity and value for sales several times throughout the investigation, Marcegaglia did not provide any explanation as to why such revisions were necessary. Not until the Department requested that Marcegaglia submit its rationale for the revisions did Marcegaglia explain its reasoning.¹⁰⁰ However, this explanation also resulted in another revision of its quantity and value.¹⁰¹ Upon the start of verification, Marcegaglia once again provided another revision to its quantity and value in its list of minor corrections¹⁰² that, as discussed above, did not reconcile. The quantity and value given to the Department at verification was Marcegaglia's fourth revised quantity and value in the course of this investigation.

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

As such, we agree with Petitioners that Marcegaglia's inability to reconcile its home market sales quantity and value calls into question the reliability of Marcegaglia's U.S. sales data for subject merchandise, and also sales of the foreign like product purchased by companies located in third country markets to ascertain that these sales were also properly reported as third-country sales.¹⁰³ Because Marcegaglia did not reconcile its quantity and value for sales of finished goods, the validity of the information reported with respect to sales data is called into question. Therefore, while Marcegaglia contends that the Department spent significant time reviewing such sales,¹⁰⁴ we find that they are unreliable as the data upon which they are based are not supported by Marcegaglia's own books and records.

In addition, we find that Marcegaglia's failure to provide accurate, verifiable information concerning its U.S. and home market sales renders its entire response unreliable. We note that the U.S. Court of International Trade ("Court") has upheld the Department's decision to reject respondent's data *in toto* when "it is flawed and unverifiable."¹⁰⁵ As in *SAIL*, in which the Court

Request for Limited Reporting Requirement," dated August 20, 2015; Letter from Marcegaglia, to the Department, regarding "Corrosion-Resistant Steel Products from Italy, Case No. A-475-832: Section A Questionnaire Response," dated September 8, 2015 ("Marcegaglia Section A") at Exhibit A-1; Letter from Marcegaglia, to the Department, regarding "Corrosion-Resistant Steel Products from Italy, Case No. A-475-832: Sections B-D Questionnaire Response, dated October 6, 2015 ("Marcegaglia Sections BCD") at Exhibit A-21; and Letter from Marcegaglia, to the Department, regarding "Corrosion-Resistant Steel Products from Italy, Case No. A-475-832: Second Supplemental Sections B and C Questionnaire Response," dated December 2, 2015 ("Marcegaglia Supplemental BC") at Exhibit A-47.

¹⁰⁰ See Letter from the Department, to Marcegaglia, dated October 30, 2015.

¹⁰¹ See Marcegaglia Supplemental BC at 1-3 and Exhibit A-47.

¹⁰² See Marcegaglia EP Verification Report at 2-4 and Verification Exhibit 3.

¹⁰³ *Id.* at 2-3 and 18-25.

¹⁰⁴ *Id.*

¹⁰⁵ See *Steel Authority of India, Ltd., v. United States*, 149 F. Supp. 2d 921,928 (CIT 2001) ("*SAIL*") (citing *Heveafil Sdn. Vhd. V. United States*, 25 CIT 147 (2001)).

found that the deficiencies to respondent's submissions were "pervasive and persistent,"¹⁰⁶ the problems encountered during the verification of Marcegaglia were extensive and, as noted above, called the integrity of Marcegaglia's submissions to the Department into question.¹⁰⁷ For the reasons explained above, Marcegaglia failed its home market sales reconciliation; rendering the verification a failure because it casts serious doubt on the reliability of the respondent's reported information. In such instances, the Department has no assurance that a respondent accurately reported a complete universe of sales in its questionnaire responses or that the correct value of those sales and their adjustments have been properly reported.¹⁰⁸ The Court has affirmed the Department's determination to apply total facts available in such instances. For instance, in *Universal Polybags*, the Department was unable to verify several aspects of the company's reporting, including sales traces, conversion factors, reported sales quantities, total shipment rate, billing adjustments, inland freight, brokerage and handling, international freight, marine insurance or indirect selling expenses, and the company had left several important undisclosed changes until the final day of verification, leaving verifiers with no opportunity to verify that information.¹⁰⁹ The Court held that this evidence demonstrated that the Department "was unable to verify information provided by King Pack, and thus Commerce properly resorted to facts available... Commerce's decision that it could disregard all of King Pac's submissions is supported by substantial evidence and in accordance with the law."¹¹⁰

Accordingly, the Department finds that it must rely on the use of facts otherwise available with respect to Marcegaglia pursuant to sections 776(a)(2)(C) and (D) of the Act. Further, pursuant to section 776(b) of the Act, we find that Marcegaglia failed to cooperate by not acting to the best of its ability, and thus, adverse inferences are warranted. As noted above, total sales quantity and value, and their reconciliations, are the essential building blocks of the entire verification as well as the information submitted to the Department over the course of the investigation.¹¹¹ The importance of sales reconciliation is clearly stated in the Department's AD Manual:

*Reconciliation of quantity and value of sales is the transition phase between laying the foundation and the on-going completeness tests. In verifying a respondent's quantitative sales response, this is one of the most important tasks performed.*¹¹²

¹⁰⁶ See *SAIL*, 149 F. Supp. 2d at 928.

¹⁰⁷ See Marcegaglia EP Verification Report at 2-3, which details the areas of Marcegaglia's response that the Department was not able to verify.

¹⁰⁸ See *Notice of Final Results and Partial Rescission (sic) of Antidumping Administrative Reviews: Heavy Forged Hand Tools from the People's Republic of China*, 65 FR 43290 (July 13, 2000) and accompanying Issues and Decision Memorandum at Comment 2; *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005) ("*Magnesium from China*") and accompanying Issues and Decision Memorandum at Comment 5; see also *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) ("*Steel Threaded Rod from China*") at Comment 5.

¹⁰⁹ See *Universal Polybag Co., Ltd., v. United States*, 577 F. Supp. 2d 1284 (Ct. Int'l Trade 2008) ("*Universal Polybag*") at 1295.

¹¹⁰ *Id.*, 577 F. Supp. 2d at 1295-1296.

¹¹¹ See AD Manual, Chapter 15 at 33 (2015), available at <http://enforcement.trade.gov/admanual/2015/Chapter%2015%20Verifications.pdf>.

¹¹² *Id.*

The guidance the AD Manual provides concerning the importance of the reconciliation process during verification is reflected in the Department's practice. For example, in *Magnesium from China*, the Department resorted to the use of total AFA when the respondent "was not ready or able ... to present its sales reconciliation to the Department until late" in the verification process.¹¹³ Similarly, in *Steel Threaded Rod from China*, the Department resorted to the use of total AFA when the verifiers were unable to reconcile the U.S. sales database with the respondent's financial statements and accounting records.¹¹⁴

Additionally, we disagree with Marcegaglia that it fully cooperated with the Department during verification. As noted above, the Department's verification outline was released to Marcegaglia eighteen days before the commencement of verification and clearly specified what items the verifiers intended to examine during verification. Contrary to Marcegaglia's claim that it fully cooperated,¹¹⁵ as discussed further below, we find that Marcegaglia failed to cooperate by not acting to the best of its ability to comply with various requests for information and to be prepared for verification. Furthermore, in *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") held that "the statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."¹¹⁶ The Federal Circuit stated,

Simply put, there is no *mens rea* component to the section 1677e(b) inquiry. Rather, the statute requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information. In preparing a response to an inquiry from Commerce, it is presumed that respondents are familiar with their own records. It is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think through inadvertence, neglect, or otherwise to look beyond the files immediately available.¹¹⁷

Next, while Marcegaglia contends that it had to prepare for four verifications¹¹⁸ and asserts that it fully cooperated with the Department's sales verification despite not being able to complete the verification process for certain selling expense adjustments because of time constraints,¹¹⁹ we disagree. With respect to the allotted time for verification, the Department prepared a reasonable verification schedule based on its experience in conducting verifications, and did so in consultation with Marcegaglia's counsel. Nevertheless, Marcegaglia was not prepared for verification. To provide just one example, Marcegaglia's sales traces as originally presented to the Department¹²⁰ at verification did not include payment documentation despite being a required in the Department's verification outline. In fact, on the fourth day of the five-day

¹¹³ See *Magnesium from China* and accompanying Issues and Decision Memorandum at Comment 1.

¹¹⁴ See *Steel Threaded Rod from China* and accompanying Issues and Decision Memorandum at Comment 5.

¹¹⁵ See Marcegaglia Case Brief at 20-21.

¹¹⁶ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1378 (Fed. Cir. 2003) ("*Nippon Steel*").

¹¹⁷ *Id.*

¹¹⁸ See Marcegaglia Revised Case Brief at 21.

¹¹⁹ See Marcegaglia's Revised Rebuttal Brief at 13.

¹²⁰ See Marcegaglia EP Verification Report at 28.

verification, several selling expense adjustments, sales traces, and carried-over items from the first three days of verification, were not ready to be verified; thus leaving the Department with no items to review until the fifth day.¹²¹ Although Marcegaglia contends that the Department repeatedly requested to see original payment documentation,¹²² the Department notes this is required information that Marcegaglia should have had readily available as this requirement was clearly specified in the Department's verification outline.¹²³ Moreover, Marcegaglia did not prepare the sales trace packages and packages related to certain selling expenses¹²⁴ that were included in the verification outline as items that should be ready for the Department.¹²⁵ Marcegaglia, as the holder of the information, received the verification outline more than two weeks prior to verification, and did not, prior to verification, alert the Department that the scope of the verification was unrealistic or otherwise unreasonable, in its view, given the allotted time. As such, the Department finds no merit in Marcegaglia's argument that there was not enough time to properly verify Marcegaglia's responses.

Additionally, during verification Marcegaglia failed to substantiate several other of its claims. The Department notes below the various inconsistencies found at verification that further call into question the reliability of Marcegaglia's submissions and supports the Department's finding of a lack of cooperation.

At verification the Department found that certain of Marcegaglia's home market sales included discounts that were not reported in Marcegaglia's home market sales data.¹²⁶ The Department's questionnaire clearly states:

*Report the information requested concerning the quantity sold and the price per unit paid in each sale transaction. All price adjustments granted, including discounts and rebates should be reported in these fields. The gross unit price less price adjustments should equal the net amount of revenue received from the sale.*¹²⁷

The questionnaire further instructs:

*Report the unit price as it appears on the invoice for sales shipped and invoiced in whole or in part. To report portions of sales not shipped, provide the agreed unit sale price for the quantity that will be shipped to complete the order. This value should be the gross unit price. Discounts and rebates should be reported separately in fields numbered 19.n and 20.n, respectively.*¹²⁸

¹²¹ *Id.* at 2.

¹²² See Marcegaglia Revised Case Brief at 20.

¹²³ See Marcegaglia EP Outline.

¹²⁴ See Marcegaglia EP Verification Report at 2.

¹²⁵ See Marcegaglia EP Outline.

¹²⁶ See Marcegaglia EP Verification Report at Verification Exhibits 5 and 22.

¹²⁷ See Letter from the Department, to Marcegaglia, date July 24, 2015 ("Marcegaglia Original Questionnaire") at B-12.

¹²⁸ See Marcegaglia Original Questionnaire at B-14.

Although Marcegaglia reported the sales price net of the discount in its home market sales data, the Department finds that Marcegaglia did not cooperate fully with the instructions in the original questionnaire. First, Marcegaglia did not report this discount in a separate field as instructed above. Second, the reported gross unit price is incorrect in that it is, as admitted by Marcegaglia in its case brief, a home market price net of the discount found at verification.¹²⁹ Moreover, the Department disagrees with the relevancy of Marcegaglia's argument that its "on-invoice discount" is reflected in the reported sales invoice.¹³⁰ The issue with respect to this discovery is based on the fact that Marcegaglia did not report the discount and improperly reported its proper gross unit price. Marcegaglia's home market sales data reflects an inaccurate gross unit price and does not include the unreported discount,¹³¹ which further contributed to the Department's finding that Marcegaglia's home market sales data is inaccurate and unreliable.

With respect to Marcegaglia's claim that it correctly reported its product weights for tubes further manufactured in the United States, we disagree. As discussed in the Marcegaglia CEP Verification Report, the Department found that the conversion factor used in practice by Marcegaglia to convert price per piece of tube into a price per pound was different from the conversion factor it purported to use in its books and records, the latter of which was the basis of Marcegaglia's questionnaire response.¹³² Moreover, Marcegaglia could not explain the reason for this discrepancy.¹³³ Additionally, while we agree with Marcegaglia that it instructed the Department to apply the tubing yield factor to the U.S. gross unit price and U.S.-based selling expenses,¹³⁴ the fact that the converted gross unit price is inaccurate still leads to an inaccurate U.S. market sales database.

Prior to verification of its home market sales, Marcegaglia stated that it "had a number of sales that were invoiced during the POI, but shipped prior to the POI" and "consistent with the Department's practice that the date of sale cannot be later than the shipment date, Marcegaglia has reported shipment date as the date of sale, meaning they are sales outside of the POI."¹³⁵ At verification, the Department inquired as to the circumstances by which sales are shipped prior to invoicing.¹³⁶ Marcegaglia stated that in some instances, upon customer request, it will delay the issuance of an invoice.¹³⁷ However, when the Department requested documentation to verify that such a request was made by at least one of Marcegaglia's customers, Marcegaglia did not

¹²⁹ See Marcegaglia Revised Case Brief at 17.

¹³⁰ *Id.*

¹³¹ See Marcegaglia EP Verification Report at 3.

¹³² See Memorandum to the File, from Susan Pulongbarit, Senior International Trade Analyst, regarding "Antidumping Duty Investigation on Certain Corrosion-Resistant Steel Products from Italy: Verification of Marcegaglia U.S.A.," dated April 7, 2016 ("Marcegaglia CEP Verification Report") at 3, 12, and Verification Exhibit 2.

¹³³ *Id.* at 12.

¹³⁴ See Marcegaglia Revised Case Brief at 7-9.

¹³⁵ See Letter from Marcegaglia, to the Department, regarding "Corrosion-Resistant Steel Products from Italy, Case No. A-475-832: Supplemental Sections B and C Questionnaire Response," dated November 16, 2015 ("Marcegaglia Supplemental B&C") at 5.

¹³⁶ See Marcegaglia EP Verification Report at 13.

¹³⁷ *Id.*

provide this information despite several follow up requests by the Department throughout verification.¹³⁸

In addition, we find that Marcegaglia failed to provide accurate information concerning its reporting of home market sales of second-quality merchandise. Despite Marcegaglia's argument that no evidence was found showing sales of second-quality galvanized material,¹³⁹ we disagree. At verification, we discovered that Marcegaglia USA maintained records of galvanized products sold as galvanized steel scrap, as listed on the invoice.¹⁴⁰ Moreover, the fact that Marcegaglia did not report that it records the production of second-quality galvanized material is in opposition to its own claims.¹⁴¹ Specifically for prime- and second-quality merchandise, the Department instructs the following:

*Indicate whether the merchandise is prime or non-prime (secondary) merchandise. Please describe in detail how secondary merchandise is categorized internally and marketed.*¹⁴²

Despite these instructions, Marcegaglia did not provide information with respect to how it categorized second-quality merchandise internally, merely stating that "Marcegaglia provides the prime code in accordance with the instructions above."¹⁴³ At verification, however, the Department found that documentation in the form of Marcegaglia's Production Control Database included listings for the production of second-quality merchandise from galvanized material.¹⁴⁴

Further, while Marcegaglia argues that it is prohibited from selling second-quality galvanized merchandise due to proprietary agreements with its customers,¹⁴⁵ Marcegaglia provided no evidence of these agreements. Despite several attempts by the Department to obtain an executed non-disclosure agreement between Marcegaglia and any of its customers at verification, Marcegaglia failed to provide this information.¹⁴⁶

With respect to Marcegaglia's claims that it properly excluded late payment fees from its reported home market sales data, we disagree. In its responses to the Department, Marcegaglia stated that it "does not collect any late fees."¹⁴⁷ However, at verification, the Department found that Marcegaglia did, in fact, have late payment fees on home market sales, which we noted carried a balance for the POI.¹⁴⁸

¹³⁸ *Id.* at 14.

¹³⁹ See Marcegaglia Revised Case Brief at as 12.

¹⁴⁰ See Marcegaglia CEP Verification Report at 7 note 1 and Verification Exhibit 11 (Part 2).

¹⁴¹ See Letter from the Department, to Interested Parties, regarding Product Characteristics for the Antidumping Investigation of Certain Corrosion-Resistant Steel Products from Italy," dated August 4, 2015.

¹⁴² *Id.*

¹⁴³ See Letter from Marcegaglia, to the Department, Section C Questionnaire Response, dated October 6, 2015, ("Marcegaglia Section C") at 9.

¹⁴⁴ See Marcegaglia CEP Verification Report at Verification Exhibit 8.

¹⁴⁵ See Marcegaglia Revised Case Brief at 10-11.

¹⁴⁶ See Marcegaglia CEP Verification Report at 2-3, 7, and Verification Exhibit 7.

¹⁴⁷ See Marcegaglia Section B at 33.

¹⁴⁸ See Marcegaglia EP Verification Report at 3, 6-7, and Exhibit 5.

Further, although the Department agrees with Marcegaglia's claim that it did correct a previous statement indicating that it did not have the quantity of sales returns in one of its submissions,¹⁴⁹ the Department could not verify this information because Marcegaglia failed to have this information available. As discussed in the verification report, the Department requested that Marcegaglia demonstrate how it booked the quantity of sales returns in their books and records.¹⁵⁰ However, the Department did not receive this information prior to the conclusion of the verification.¹⁵¹

With respect to those sales originally categorized as EP sales but invoiced through Marcegaglia's U.S. affiliate, Marcegaglia USA, we agree with Petitioner that we cannot rely on the sales data for these U.S. sales. Although at the verification in Italy, Marcegaglia stated that these sales were shipped directly to its customer by Marcegaglia¹⁵², we found at the U.S. verification, that Marcegaglia misreported inland freight since the merchandise was not delivered directly to the customer, but picked up by the customer at the port.¹⁵³ Additionally, Marcegaglia asserted at verification that the sales negotiations took place between the customer and Marcegaglia in Italy.¹⁵⁴ However, when the Department requested to see evidence of these negotiations Marcegaglia provided none of the requested documentation by the end of verification.¹⁵⁵

On the other hand, at verification, the Department found that Marcegaglia USA had not paid Marcegaglia for its purchases of galvanized steel. We disagree with Marcegaglia's claim that the details and terms of intra-company transaction between Marcegaglia and its U.S. subsidiary on CEP transactions are irrelevant. Although the dumping analysis does not include payment transfers in its calculation, given the totality of the circumstances, and Marcegaglia's previous claims that sales made by Marcegaglia but invoiced through Marcegaglia USA are EP sales, the Department finds that, in this instance, the party to which payment was made is, in fact, relevant. Specifically, it further calls into question the reliability of Marcegaglia's initial claim¹⁵⁶ that such sales are EP sales since remittance of payment to an affiliate or respondent has previously factored into whether U.S. sale prices were determined to be based on CEP or EP.¹⁵⁷

However, we disagree with Petitioners' argument that the fact that Marcegaglia USA had not paid for purchases of galvanized steel calls into question whether such transactions represent non-arm's length transactions or "*de facto* sales." The Department's analysis of transactions between a respondent and its U.S. affiliate do not take into consideration whether the

¹⁴⁹ See Marcegaglia Revised Case Brief at 18-19.

¹⁵⁰ See Marcegaglia EP Verification Report at 36-37.

¹⁵¹ *Id.*

¹⁵² *Id.* at 23-24.

¹⁵³ See Marcegaglia CEP Verification Report at 3.

¹⁵⁴ See Marcegaglia EP Verification Report at 23-24.

¹⁵⁵ *Id.*

¹⁵⁶ In its Revised Case Brief, Marcegaglia revises its claim that sales invoiced through Marcegaglia USA are EP sales. Instead, they agree that those sales invoiced by Marcegaglia should be treated as CEP sales. See Marcegaglia Revised Case Brief at 19, note 51.

¹⁵⁷ See *Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*, 81 FR 13336 (March 14, 2016) and accompanying Issues and Decision Memorandum at Comment 1 citing *Corus Staal BV v. United States*, 502 F. 3d 1376 (CAFC 2007).

transactions are made at arm's length. With respect to whether these transactions are *de facto* sales, Petitioners have not defined what a "*de facto* sale" entails.

With respect to Petitioners' concerns regarding Marcegaglia USA's books and records, we disagree. Petitioners assert that the monthly sales revenues can differ by as much as ten times between the general ledger summary and trial balance.¹⁵⁸ However, Marcegaglia USA's trial balance totals are cumulative, year to date sales revenues. As a result, we do not find that this aspect of Marcegaglia's books and records contributes to the Department's determination of Marcegaglia's verification failure.

Finally, despite clear instructions to do so, Marcegaglia did not maintain its original certifications of accuracy.¹⁵⁹ The verification outline states:

*Please have available for inspection by the verification team the original versions of all certifications of accuracy you have filed under {the Department's} new requirements.*¹⁶⁰

Pursuant to 19 CFR 351.303(g), the certifying party must maintain the original, signed certification for a period of five years from the date of filing the submission to which the certification applies. At verification, Marcegaglia did not provide its original certifications of accuracy and stated that only electronic versions of the certifications of accuracy were maintained by the company. As a result, the Department was not able to view Marcegaglia's original certifications as required.¹⁶¹

While Petitioners commented on Marcegaglia's reporting of further manufacturing data, these arguments are rendered moot in light of the Department's decision that the sales data reported to the Department are unreliable and cannot serve as the basis for calculating an estimated weighted average dumping margin for Marcegaglia. Accordingly, the Department has not addressed these arguments.

We note that parties provided comments on Marcegaglia's further manufacturing costs, freight revenue, conversion factor for constructed export price ("CEP") sales, general and administrative expenses, interest expense, price adjustments, and certain programming errors. However, as the Department is applying total AFA to Marcegaglia, these issues are rendered moot.

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

¹⁵⁸ See Petitioners Marcegaglia Case Brief at 17-18.

¹⁵⁹ See Marcegaglia EP Verification Report at 46.

¹⁶⁰ See Marcegaglia EP Outline.

¹⁶¹ See Marcegaglia EP Verification Report at 46.

an adverse inference because of Marcegaglia failure to cooperate to the best of its ability pursuant to section 776(b) of the Act.

Comment 2: Corporate Name Change of Marcegaglia

Marcegaglia's Comments:

- Following the POI, the Marcegaglia Group underwent a corporate reorganization, resulting in the operations for hot-dipped galvanized steel, previously a part of Marcegaglia S.p.A., to be re-located to Marcegaglia Carbon Steel, S.p.A. Accordingly, for the final determination, the estimated weighted-average dumping margin and cash deposit requirements should be applicable to Marcegaglia Carbon Steel S.p.A. (“Marcegaglia Carbon Steel”).¹⁶²

Petitioners' Comments:

- The Department should not find Marcegaglia Carbon Steel to be a successor-in-interest to Marcegaglia because the Department first needs to conduct a changed circumstances review.¹⁶³
- For the final determination, the Department should assign Marcegaglia Carbon Steel a higher final estimated weighted-average dumping margin than Marcegaglia's using adverse facts available.¹⁶⁴
- The Department should include any and every name under which Marcegaglia might ship subject merchandise to the United States in its cash deposit instructions.¹⁶⁵

Department's Position: With respect to Marcegaglia's argument that the Department should assign Marcegaglia's estimated weighted-average dumping margin to Marcegaglia Carbon Steel, the Department agrees, in part. The Department's verification report indicates that, following a corporate re-organization, operations relevant to the production and sale of hot-dipped and galvanized steel fall under Marcegaglia Carbon Steel.¹⁶⁶ Moreover, Marcegaglia was able to provide the Department with a copy of Marcegaglia Carbon Steel's business registration showing that this is the appropriate name for the company.¹⁶⁷ As a result, the Department will apply Marcegaglia's estimated weighted-average dumping margin and cash deposit requirements to Marcegaglia Carbon Steel as well for this final determination.

Regarding Petitioners' argument that a higher final margin than Marcegaglia using adverse facts available should be applied to Marcegaglia Carbon Steel, the Department disagrees. As noted above in Comment 1, the Department is already applying total AFA to Marcegaglia; thus rendering this issue moot.

Finally, we disagree with Petitioners' argument that the Department should include any and every name under which Marcegaglia might ship subject merchandise. As previously noted by

¹⁶² See Marcegaglia's Revised Case Brief at 23-24.

¹⁶³ See Petitioner's Case Brief on Marcegaglia at 19-20.

¹⁶⁴ *Id.* at 19.

¹⁶⁵ *Id.* at 20.

¹⁶⁶ See Marcegaglia EP Verification Report at 5 and Exhibit 1 at 13 and 67.

¹⁶⁷ *Id.* at Exhibit 68-80.

the Department, “we find that it is not administratively feasible for us to deconstruct every possible permutation of each company’s name.”¹⁶⁸ Moreover, consistent with *Vietnam Shrimp 2013-2014*, we will consider a company’s name if it is on a business registration certificate.¹⁶⁹ As discussed above, because the record includes Marcegaglia Carbon Steel business registration, we will include this name with Marcegaglia in the Department’s final determination and instructions to CBP.

Comment 3: Application of Adverse Facts Available (“AFA”) to Arvedi’s Non-Prime Sales

Petitioners’ Comments

- In its home market sales database, Arvedi reported for its sales of non-prime merchandise: (1) “99” in field CQUALH (Quality); and (2) “9” in field CSTRENH (Yield Strength). However, these codes were not specified by the Department in the physical characteristic reporting requirements in the original questionnaire.¹⁷⁰
- When the Department requested information regarding why Arvedi’s Quality and Yield Strength codes did not comply with the Department’s reporting requirements for its sales of non-prime merchandise, Arvedi stated that it reported these physical characteristics as it did because there was no information available to assign the codes specified in the Department’s original questionnaire.
- Arvedi stated that its non-prime home market sales are sold as “STOCK” because no grade is indicated for these products and no mill certificates are available for these sales.¹⁷¹ However, at verification, the Department found that Arvedi maintained certificates of analysis documents for both prime and non-prime products, which listed the yield strength of each product.¹⁷²
- At verification when the Department inquired why Arvedi did not report the physical characteristic information contained in these certificates for non-prime home market sales, Arvedi stated that since “STOCK” sales do not match grade specifications, it instead reported “9” for this characteristic.¹⁷³
- By intentionally providing inaccurate and incomplete product coding on the physical characteristics of its non-prime home market sales that was not discovered until verification, Arvedi knowingly chose to withhold information, failed to provide such information by the specified deadline, and significantly impeded this proceeding.¹⁷⁴

¹⁶⁸ See *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review: 2013-2014*, 81 FR 14092 (March 16, 2016) and accompanying Issues and Decision Memorandum at unchanged at Comment 11 unchanged at *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review: 2013-2014*, 81 FR 19136.

¹⁶⁹ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015) and accompanying Issues and Decision Memorandum at Comment 13B.

¹⁷⁰ See Arvedi’s Section B Questionnaire Response, (October 6, 2015) at 11.

¹⁷¹ See Arvedi’s Supplemental Sections B and C Response, (November 5, 2015) at 10 and Exhibit B-28.

¹⁷² See Arvedi’s Home Market Sales Report at 21 and 22, and Verification Exhibits (“VE”)-10 and VE-13; Petitioners’ Case Brief on Arvedi at 7.

¹⁷³ See Petitioners’ Case Brief on Arvedi at 8.

¹⁷⁴ *Id.* at 9.

- Because Arvedi explained at verification that some non-prime products with quality defects can be reallocated to another customer's order, the record demonstrates that Arvedi's non-prime merchandise can also be sold as prime merchandise to other customers.¹⁷⁵
- By failing to provide full physical characteristics for the products that Arvedi reported as non-prime merchandise, the Department is unable to make a proper comparison of the prices of prime merchandise on a CONNUM-specific basis with the prices of CONNUMS of non-prime merchandise.¹⁷⁶
- Also, by failing to provide full physical characteristics for the products that Arvedi reported as non-prime merchandise, the Department cannot accurately: (1) perform the arms-length test because it does not have a correct home market sales data with CONNUMs properly coded; (2) perform the cost test because it will be skewed based on the inaccurate results of the arms' length test; and (3) calculate constructed value ("CV") profit because this calculation is based on sales that passed both the arms' length test and below-cost test.¹⁷⁷
- Finally, Arvedi certified in its questionnaire responses that no mill certificates were available for sales of non-prime merchandise as the reason it could not report CQUALH and CSTRENH. However, this was contradicted at verification. Arvedi misled the Department on this issue and the Department should apply AFA for all home market sales of non-prime merchandise for the final determination.¹⁷⁸
- In keeping with the Department's practice when a respondent withheld information on missing product characteristics, the Department should apply AFA by assigning the highest individual dumping margin for Arvedi's U.S. sales as the overall estimated weighted-average dumping margin for Arvedi. In the alternative, the Department should increase the home market price for all prime sales by applying the ratio of the average net unit price for prime merchandise and the average net unit price for non-prime merchandise.¹⁷⁹

Arvedi's Comments

- The certificates of analysis for "STOCK" or non-prime merchandise, and the fact that these documents listed some product characteristics, was not new information disclosed at verification.¹⁸⁰
- In its second supplemental response, Arvedi explained that it did not maintain mill certificates for non-prime merchandise but only an analysis report that indicated tensile strength and yield strength.¹⁸¹ This information was disclosed to the Department prior to verification.¹⁸²

¹⁷⁵ See Petitioners' Case Brief on Arvedi at 10; and Arvedi Home Market Sales Report at 14-5.

¹⁷⁶ See Petitioners' Case Brief on Arvedi at 10-1.

¹⁷⁷ *Id.* at 11.

¹⁷⁸ See Petitioners' Case Brief on Arvedi at 12.

¹⁷⁹ *Id.* at 12-3; *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 33396 (June 12, 2008) and accompanying Issues and Decision Memorandum at Comment 1 ("*Hot-Rolled from Thailand Final Results*").

¹⁸⁰ See Arvedi's Home Market Sales Report at 2; and Arvedi's Rebuttal Brief at 2.

¹⁸¹ See Arvedi's Second Supplemental Sections A-C Response, (December 4, 1015) at 14 and Exhibit B-46 ("Arvedi's Second Supplemental Response").

¹⁸² See Arvedi's Rebuttal Brief at 2.

- The fact that the certificates of analysis list the information regarding the tensile and yield strength characteristics for non-prime merchandise is not in dispute. However, Arvedi does not record these characteristics for “STOCK” material in its data system once it is classified as a non-prime product.¹⁸³
- Because all of Arvedi’s U.S. sales are prime quality merchandise, Arvedi has properly reported its home market sales of prime and non-prime merchandise and these sales of non-prime merchandise would never be used as comparison to U.S. sales of prime merchandise.¹⁸⁴
- Contrary to Petitioners’ argument, the Department never stated that it found at verification that Arvedi improperly classified prime merchandise as such.¹⁸⁵
- The classification of merchandise as prime or non-prime by Arvedi is not based on product characteristics but rather the degree to which the product conforms to an applicable standard, such as ASTM, and has no defect.¹⁸⁶
- Contrary to Petitioners’ argument, Arvedi’s sales of non-prime merchandise cannot be sold as prime merchandise because adjustments to non-conforming material are rare and if the material were to be resold as prime merchandise, this material would have been reported as such.¹⁸⁷
- Arvedi’s reporting methodology for the physical characteristics of its non-prime merchandise was reasonable and not distortive because the certificates of analysis do not report all characteristics, such as grades/norms and coating type. In contrast, the mill certificates for prime merchandise list the grade/norm and all characteristics.¹⁸⁸
- The mill certificate and certificate of analysis are different documents. The mill certificate certifies that prime material meets the requirements of the given industry specification (“norm”) and is required by customers who need this material to meet these specifications for certain applications.¹⁸⁹ The certificate of analysis lists the yield and tensile strength on a heat basis for non-prime merchandise. A review of the mill certificates and certificates of analysis gathered at verification show that the mill certificates record the grade, norm, and mechanical and technological tests performed on prime merchandise, which are not listed on the certificates of analysis.¹⁹⁰ It is not feasible to use this information to determine the yield strength for a specific line item on each invoice because such sales involve the bundling of numerous products across many different heats and steel grades.¹⁹¹
- Furthermore, as explained in its responses, the CONNUM characteristic for “QUALH” is based on steel grade and this information is not listed in either the invoice or certificate of

¹⁸³ *Id.* at 3; and Arvedi’s Home Market Sales Report at 21.

¹⁸⁴ See Arvedi’s Rebuttal Brief at 4; *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008) and accompanying Issues and Decision Memorandum at Comment 11; Department’s Antidumping Duty Questionnaire issued to Arvedi, (July 24, 2015) at Appendix VI, page VI-2.

¹⁸⁵ See Arvedi’s Rebuttal Brief at 5.

¹⁸⁶ *Id.* at 5; and Arvedi’s Second Supplemental Response at 10.

¹⁸⁷ See Arvedi’s Rebuttal Brief at 6.

¹⁸⁸ *Id.* at 7.

¹⁸⁹ *Id.* at 7; Arvedi’s Second Supplemental Response at 14 and Exhibit B-46.

¹⁹⁰ See Arvedi’s Rebuttal Brief at 8.

¹⁹¹ *Id.* at 9.

analysis for sales of non-prime merchandise. Thus, Arvedi's reporting of its physical characteristics for its sales of non-prime merchandise is consistent and correct.¹⁹²

Department's Position: The Department agrees with Petitioners, in part, that given the facts presented on the record regarding Arvedi's sales of non-prime merchandise, and the reporting of the physical characteristics, the application of partial AFA is warranted for this final determination. We disagree with Petitioners' assertion that AFA should be applied to all of Arvedi's home market sales. Instead, the Department is applying partial AFA only where information is missing on the record as to its sales of non-prime merchandise and to Arvedi's affiliated sales of prime merchandise in the home market.¹⁹³

As background, Arvedi's original Section B questionnaire response did not report two of the physical characteristics, quality and yield strength, based on the Department's reporting requirements in the original questionnaire for its sales of non-prime merchandise.¹⁹⁴ For quality, Arvedi instead reported "99" for all of its non-prime or "STOCK" merchandise sold in the home market.¹⁹⁵ Additionally, for yield strength, Arvedi reported "9" for all of its non-prime or "STOCK" merchandise sold in the home market.¹⁹⁶ Neither of these codes was among the Department's established codes for these two physical characteristics. Moreover, for yield strength, the Department's physical characteristic letter noted that if "{no} minimum specified yield strength is identified in the specification for the product in question, explain in detail your rationale for using one of the above reporting codes to report this field for the product (do not create additional reporting codes)."¹⁹⁷ Although Arvedi submitted a worksheet listing the reporting codes for quality and yield strength used for prime and non-prime merchandise sold in its home market sales data, the Department finds that Arvedi did not explain in its original narrative response why it could not report these physical characteristics based on the reporting requirements defined by the Department, *i.e.*, using the Department's codes.¹⁹⁸

The Department finds that it is appropriate to apply partial AFA to Arvedi's non-prime sales and its affiliated prime sales for the final determination because Arvedi failed to provide complete information regarding the documents that it maintained regarding its prime and non-prime sales. Specifically, throughout this investigation, the Department requested numerous times that Arvedi report its physical characteristics for both its prime and non-prime sales in the home market regarding the Department's reporting requirements, as detailed below. While Arvedi complied in this request for its prime sales, Arvedi did not follow this request for its non-prime sales for two of the seven physical characteristics, yield strength and quality, that make up the CONNUM-hierarchy.¹⁹⁹ These physical characteristics form the basis of the Department's model match

¹⁹² *Id.* at 10.

¹⁹³ See *Xanthan Gum from Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 1 ("*Xanthan Gum from Austria Final*").

¹⁹⁴ See Arvedi's Section B Questionnaire Response at 15 (Field 3.7 for CQUALH) and 16 (Field 3.8 for CSTRENH).

¹⁹⁵ *Id.*, at Exhibit B-5.

¹⁹⁶ *Id.*

¹⁹⁷ See the Department's Model Match Letter to Interested Parties, (August 4, 2015) at 6.

¹⁹⁸ *Id.* at 15-16 and Exhibit B-5.

¹⁹⁹ See Arvedi's Section B Questionnaire Response at 12-18; Preliminary Decision Memorandum at 10-11.

criteria, which identifies the home markets sales of either identical or the most similar merchandise as the basis for normal value. The identification of identical or the most similar merchandise is determined with respect to the unique measurable physical characteristics of the merchandise.²⁰⁰

The Department finds that Arvedi did not comply with the Department's request to report the CONNUMs for its non-prime home market sales based on the Department's reporting requirements and provide full, accurate information regarding these non-prime sales, including all documentation maintained for these sales, prior to verification. When the Department requested clarification for why Arvedi could not report the quality and yield strength physical characteristics based on the Department's reporting requirements, Arvedi simply stated that it could not do so since its non-prime sales were not categorized by grade or specification. However, in the Department's repeated requests regarding the records maintained for its prime and non-prime sales, the Department finds that Arvedi never specified that yield strength information for individual lots was maintained in certificate of analysis documents. This information was not disclosed until verification and thus the Department was prevented from soliciting information earlier in this investigation to ascertain whether Arvedi could report the yield strength characteristic for its non-prime sales more accurately, as requested multiple times by the Department. However, the Department notes that the missing information for yield strength was not contained in the certificates of analysis documents for the quality characteristic and thus, there is no basis for applying partial AFA for Arvedi's failure to report this physical characteristic following the Department's reporting requirements.

As noted above, the Department will apply FA if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that the Department may AFA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.²⁰¹

For this final determination, because Arvedi failed to provide the correct yield strength information for its sales of non-prime merchandise in the home market in the form or manner

²⁰⁰ See, e.g., *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 63 FR 18879 (April 16, 1998), at Comment 2 ("The creation of a product concordance inherently relies upon the matching of significant physical characteristics."); and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Model Match Comment 1 ("...the Department focuses its selection of model match characteristics on unique measurable physical characteristics that the product can possess...").

²⁰¹ See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-6 (September 13, 2005); *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). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 7340 (May 19, 1997); see also *Nippon Steel Com. v. United States*, 337 F. 3d 1373, 1382-3 (Fed. Cir. 2003) ("Nippon").

requested by the Department within the established deadlines, we have determined to apply facts otherwise available in accordance with section 776(a) of the Act. Additionally, we have determined that, pursuant to section 776(b) of the Act, the application of an adverse inference is warranted as partial AFA because Arvedi failed to act to the best of its ability and did not report the yield strength characteristic despite possessing that information, and, as a result, different CONNUMs for its non-prime merchandise, as requested by the Department in the original and supplemental questionnaire responses.²⁰²

In sum, prior to verification, Arvedi never informed the Department of the existence of yield strength data for its non-prime merchandise in a fully-translated document, nor adequately explained its effort to report this characteristic, despite the Department's specific requests to report the yield strength characteristic following the Department's reporting requirements. As a result, the Department could not inquire, assess or validate the accuracy and reasonableness of Arvedi's reporting of its yield strength characteristic for its non-prime merchandise prior to verification.²⁰³ Accordingly, as relates to the available information for reporting accurate CONNUMs for Arvedi's sales of non-prime merchandise, the Department finds that Arvedi withheld information, failed to provide information in the manner requested by the Department, significantly impeded this proceeding, and provided information that did not verify regarding the yield strength characteristic for its non-prime merchandise sold in the home market as provided by section 776(a) of the Act.

That the Department was not aware that the certificates of analysis contained yield strength information for Arvedi's non-prime merchandise prior to verification, when they were first placed on the record, was a direct result of Arvedi's failure to file a full translation of the certificates and lack of full disclosure about the information in those certificates in its narrative responses.²⁰⁴ Accordingly, the Department does not agree with Arvedi's argument that it was aware of all information regarding the physical characteristics, including the yield strength data, for its non-prime sales prior to verification.

While Arvedi is a new respondent, the statute does not condone carelessness, especially the type of carelessness where a respondent merely codes all products as being identical with respect to a particular characteristic, when the respondent is in possession of information such as certificates of analysis demonstrating said products may not be identical with respect to that product characteristic.²⁰⁵ Accordingly, we find that Arvedi did not act to the best of its ability in reporting certain necessary and accurate information under section 776(b) of the Act. Moreover, Arvedi did not meet all the criteria of section 782(e) of the Act as pertains to its improperly coded non-prime merchandise. The generic yield strength information it provided for non-prime merchandise did not verify because specific information existed, and Arvedi did not demonstrate that it acted to best of its ability in reporting generic yield strength codes for sales of non-prime merchandise because it possessed specific information, which it failed to fully disclose to the Department when requested multiple times by the Department prior to verification. Therefore,

²⁰² See *Xanthan Gum from Austria Final* at Comment 1; see also Arvedi Analysis Memo for the underlying details.

²⁰³ See *Xanthan Gum from Austria Final* at Comment 1.

²⁰⁴ See Arvedi Home Market Report at 21-22.

²⁰⁵ See *Hot-Rolled Carbon Steel Flat Products from Thailand Final Results* at Comment 1.

we find it appropriate to use an inference that is adverse to Arvedi's interest in selecting from among the facts otherwise available.

Arvedi contends that the quality and yield strength characteristics do not determine whether its products are prime or non-prime based, and therefore its yield strength coding is reasonable. The Department agrees with Arvedi with respect to that point.. However, the issue is not whether the quality or yield strength characteristics determine whether a product is prime or non-prime. Instead, the issue is whether Arvedi accurately reported these characteristics based on the information available to it to so that the CONNUMs of its non-prime merchandise are accurately reported based on our reporting requirements. Although Arvedi claims that it accurately reported the physical characteristics, the Department disagrees as Arvedi has not reported the yield strength characteristic for its sales of non-prime merchandise based on all information available, including testing documents that were not disclosed until verification. Thus, the Department does not have complete, accurate CONNUMs for its non-prime sales, as demonstrated by the record evidence.^{206, 207}

Although Arvedi claims in its rebuttal brief that it would not be possible to report the yield strength characteristic for its sales of non-prime merchandise more specifically using the data in the certificates of analysis, the Department disagrees. Arvedi argues that it could not have reported yield strength based on the Department's reporting requirements due to the differences in yield strength in the multiple lot numbers that comprise a single sales observation in the sales data.²⁰⁸ However, the Department finds that this is only one example that demonstrates differences in the minimum yield strength for the lot numbers that comprise each invoice line for non-prime merchandise.²⁰⁹ Arvedi could have proposed an alternative way to report this characteristic, based on the Department's reporting requirements, however, the Department was precluded from working with Arvedi in developing an accurate reporting methodology because the Department was not informed about the yield strength data maintained in Arvedi's records for its non-prime merchandise until verification.²¹⁰

Arvedi additionally contends that it has properly reported its sales of non-prime merchandise and the prices of these home market sales would never be the basis for comparison to its sales of prime merchandise in the U.S. market. The Department disagrees. First, accurate costs of production, which are by definition only for prime merchandise, cannot be assigned to sales of merchandise which are missing codes for two physical characteristics. For the arm's length test, these missing codes prevents the Department from being able to compare prices of non-prime merchandise to affiliated customers with the prices of identical or similar non-prime merchandise to unaffiliated customers.²¹¹ For the cost test, the Department compares an adjusted home

²⁰⁶ See Arvedi Home Market Report at 21-22.

²⁰⁷ While Arvedi notes that prime and non-prime sales are not matched and that the Department has in the past excused respondents from reporting non-prime sales when there were no non-prime sales in the U.S. market, the Department notes that Arvedi never requested to be excused from reporting its non-prime sales in the home market.

²⁰⁸ See Arvedi Home Market Report at 21-2

²⁰⁹ *Id.*

²¹⁰ See Arvedi's Section B Response at 12-16.

²¹¹ Specifically, when these comparisons are between sales of similar non-prime merchandise, no accurate difmer adjustment can be applied because there are no accurate costs of production associated with these sales.

market prices with the products cost of production. As noted for the arm's length test, without all of the physical characteristics of the sold non-prime merchandise being accurately reported, the Department is unable to assign the cost of production for the sold non-prime merchandise, which will directly impact the accuracy of the Department's analysis.

Prior to the *Preliminary Determination*, Arvedi informed the Department that it had affiliated sales in the home market for both prime and non-prime sales, which were further processed by its affiliate, and the Department noted that the total volume of affiliated sales accounted for more than 5 percent of total volume of sales in the home market.²¹² After Arvedi objected to the Department's request for the downstream sales and further processing data from its affiliated home market customer, the Department excused Arvedi from reporting the downstream sales and further processing data from its affiliated customer since Arvedi provided evidence demonstrating that its total volume of affiliated-customer sales, including both prime and non-prime merchandise, passed the arms' length test at that time.²¹³ The Department found in the *Preliminary Determination* that Arvedi's sales to its affiliated customer, which included both prime and non-prime merchandise, passed the arms' length test.

However, the Department now finds that the arms' length test performed in the *Preliminary Determination* was based on inaccurate reporting of the yield strength characteristic, and thus, improper matching by CONNUM of affiliated-customer sales of non-prime merchandise to unaffiliated-customer sales of non-prime merchandise.²¹⁴ While sale prices for prime and non-prime merchandise are not directly matched in the arms' length test, the resulting affiliated/unaffiliated price ratios are weight-averaged for *all* products sold to the affiliated customer to determine if the prices on average are between 98 and 102 percent of prices to unaffiliated customers, *i.e.*, made at arms' length.²¹⁵ Thus, the Department finds that the improper reporting of the yield strength characteristic for Arvedi's sales of non-prime merchandise resulted in incorrect CONNUMs (*i.e.*, identical matches for the yield strength characteristic for all CONNUMs for both affiliated and unaffiliated non-prime sales) for the affiliated-customer sales of non-prime merchandise that were used to perform the arms' length test. This resulted in inaccurate results.²¹⁶ However, the Department did not find out about the inaccurate CONNUM reporting until verification, which was more than a month after the *Preliminary Determination* and after we had issued post-preliminary supplemental questionnaires to Arvedi. The Department notes that we could have requested this data after the *Preliminary Determination* if we were aware that the affiliated-customer sales did not pass the arms' length test and the CONNUMs for the non-prime merchandise were inaccurate. However, while we discovered this need at verification, verification is not the place to obtain entirely new

²¹² See Arvedi's Section A Response at Exhibit A-1; Arvedi's Third Supplemental Section B Response (December 2, 2015) at 3. The Department notes that the market-economy questionnaire specifies that the respondent should either show that these sales are made at arms' length or report the downstream sales to the first unaffiliated customer when "sales to all affiliates, in the aggregate, are equal to or greater than five percent of your total sales in the comparison market." See the Department's Original Questionnaire to Arvedi at B-4 (*emphasis added*).

²¹³ See the Department's November 25, 2015, Letter to Arvedi at 1-2; Arvedi's Section B Response at Exhibit B-3; Arvedi's Letter to the Department, Re: Corrosion-Resistant Steel Products from Italy, Antidumping Duty Investigation, Case No. A-475-832: Objection to CSI Questionnaire and Request for Meeting, (November 20, 2015).

²¹⁴ See Arvedi Prelim Analysis Memo at 10.

²¹⁵ See *Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR at 69187.

²¹⁶ See Arvedi Home Market Report at 21-2; Arvedi Prelim Analysis Memo at 10.

data. Without the correct yield strength for all of Arvedi's sales of non-prime merchandise, the Department does not have the information to accurately compare Arvedi's sales to affiliated and unaffiliated customers to whether the sales are at arms' length. Furthermore, the record does not contain the necessary information to calculate normal value for Arvedi's affiliated-customer sales in the home market because we also do not have the downstream sales and further processing cost data from Arvedi's affiliated customer.

Finally, the Department also disagrees with Arvedi's contention that its non-prime product characteristics result in an accurate sales-below-cost test. After calculating the cost of production ("COP") by CONNUM, the Department tests whether each home market sale of the foreign-like product was above or below cost, using an annual weighted-average basis, and comparing that result on a CONNUM-specific basis.²¹⁷ This test is still important to determine whether our overall pool of home market sales are within the ordinary course of trade, including prime and non-prime sales. Because Arvedi coded yield strength the same for all non-prime products in the cost data and the home market sales data, we find the reported costs for these sales to be unreliable because we do not have cost data that reflects accurate yield strength differences. Thus, we do not have accurate CONNUMs with different costs reported for our non-prime sales. As mentioned above, at verification we found individual lots of non-prime products had different yield strengths.²¹⁸

Accordingly, pursuant to section 776(a)(2)(A)-(D) of the Act, partial FA is justified with respect to Arvedi's home market sales of non-prime merchandise. Arvedi failed to provide the requested information concerning yield strength in the form and manner requested by the Department by the established deadlines on numerous occasions. Despite the Department's multiple requests, and Arvedi's own knowledge that it had yield strength data for its sales of non-prime merchandise, Arvedi reported the yield strength characteristic and CONNUMs based on a single uniform coding for all of its non-prime merchandise. Additionally, during the course of this investigation, Arvedi revised its home market data several times, affording it several opportunities to correct its yield strength characteristic reporting error. Furthermore, while Arvedi did provide samples of the yield strength information for selected sales of non-prime merchandise at verification, the Department notes that this information could not be verified against what was on the record. It is not the purpose of verification to collect new information which should have been timely submitted to the Department in response to questionnaires.²¹⁹

Furthermore, we determine, within the meaning of section 776(b) of the Act, that the application of partial AFA is warranted because Arvedi did not act to the best of its ability in reporting the necessary and accurate information concerning yield strength for its sales of non-prime merchandise. Accordingly, as partial AFA, we are excluding all of Arvedi's sales of non-prime merchandise, including sales to both affiliated and unaffiliated customers, from the home market sales data because we do not have the proper, complete CONNUMs. Additionally, because we do not have the necessary information to accurately perform the arms' length test on Arvedi's sales to affiliated customers, and we were unaware that we required that information until it was

²¹⁷ See Arvedi Prelim Analysis Memo at 6-7.

²¹⁸ See Arvedi Home Market Report at 21-22.

²¹⁹ *Id.*

too late in this investigation to request and analyze the necessary downstream sales and further processing cost data, we are applying partial AFA to all of Arvedi's sales to affiliated customer of both prime and non-prime merchandise. Because we do not have accurate information to perform the arms' length test due to Arvedi's failure to report accurate CONNUMs for its non-prime merchandise, and thus, cannot ascertain whether Arvedi's sales to affiliated customers were made at arms' length, we are applying partial AFA due to Arvedi's failure to cooperate to the best of its ability. As partial AFA, we are using the highest net unit price to unaffiliated customers to perform the sales-below-cost test on these sales to affiliated customers of prime merchandise, which ensures that only sales passing the cost test (with this adverse inference) will be considered. This application of partial AFA carries forward into other aspects of the Department's margin analysis, including the calculation of normal value for comparison with U.S. prices. For a detailed analysis of the Department's application of partial AFA in its margin calculations, see the Arvedi Final Analysis Memo.

Although we largely agree with Petitioners, as outlined above, we disagree with Petitioners' arguments in two key respects. First, Petitioners attempt to link the discovery of the yield strength data in the certificates of analysis documents for Arvedi's non-prime merchandise to the quality characteristic, which was also reported uniformly.²²⁰ We note that the quality characteristic is categorized by steel grades or specifications.²²¹ The mill certificates for sales of prime merchandise list the grade or specification of each product, and Arvedi reported quality codes based on these mill certificates.²²² In contrast, the certificates of analysis documents for the non-prime merchandise did not list the grade or specification for these sales.²²³ The Department finds that certificates of analysis documents, which are testing documents issued by Arvedi's quality department, are a different document than the mill certificates provided for prime merchandise, which are issued to Arvedi's customers as a guarantee that the material meets a certain specification.²²⁴ Thus, unlike for yield strength, the Department finds that these documents do not demonstrate that Arvedi could have reported the quality characteristic for its sales of non-prime merchandise.

Second, while Petitioners are correct that the production manager at verification noted that Arvedi's non-prime material can sometimes be re-allocated to other orders for customers that do not perceive this material as defective, the Department finds that this does not demonstrate that Arvedi failed to demonstrate its classification of prime and non-prime merchandise sold in the home market.²²⁵ While this statement is disconcerting, the Department notes that the production manager clarified that this happens infrequently, and Arvedi primarily classifies and sells non-conforming or "STOCK" material as non-prime material.²²⁶ Beyond this statement, the Department finds that there is no record evidence demonstrating that Arvedi classified prime or non-prime material incorrectly.²²⁷ Accordingly, we do not find that there is a basis to apply facts

²²⁰ See Petitioners' Case Brief on Arvedi at 7-9.

²²¹ See Arvedi's Section B Questionnaire Response at 15.

²²² *Id.*, at Exhibit B-6; Arvedi Home Market Report at VE-17 and VE-10.

²²³ *Id.*

²²⁴ See Arvedi Home Market Report at 10-11 and 21-22.

²²⁵ See Arvedi Home Market Report at 14-15.

²²⁶ *Id.*

²²⁷ *Id.*, at 12-18.

available to all of Arvedi's home market sales, including both prime and non-prime merchandise. In sum, while the Department finds that it is missing necessary information to perform product comparisons on Arvedi's non-prime merchandise, we have the necessary information to perform calculations on Arvedi's sales of prime merchandise and there is no basis for applying AFA to all of Arvedi's sales data for this final determination.

Comment 4: Application of AFA to Arvedi's Packing Revenue

Petitioners' Comments

- Record evidence shows that the unit price of the merchandise and the packing costs were separately itemized on invoices issued by Arvedi to the U.S. customer.²²⁸ However, the gross unit price reported in the U.S. sales data includes these two separate line items included as a single price.
- By incorrectly reporting these packing costs, Arvedi is improperly adding packing revenue to the reported gross unit price for its U.S. sales.²²⁹
- The Department's practice is to not increase U.S. prices for revenues in excess of the associated expense as reflected in the purchaser's net outlay for the subject product.²³⁰
- By including the packing revenue in the gross unit price, Arvedi uniformly overstated the gross unit price and rendered the U.S. sales data unreliable.²³¹
- As adverse facts available, the Department should adjust the gross unit price by deducting the itemized line item attributed to packing revenue and make no further adjustments to Arvedi's U.S. sales. Alternatively, if no facts available is applied, the Department should include the itemized line item for packing revenue in field PACKREVU and offset this amount by the associated U.S. packing costs (PACKU), which is consistent with the Department's normal practice.²³²

Arvedi's Comments

- As explained at verification, the packing cost listed on the commercial invoice is part of the total price negotiated and paid by the customer. It is only listed on the commercial invoice for internal purposes.²³³
- The total invoice value is recorded in Arvedi's accounting records as sales revenue and there is no separate entry for packing revenue.²³⁴

²²⁸ See Arvedi's Supplemental Sections B and C Questionnaire Response, (November 5, 2015) at Exhibit C-22; Arvedi's Home Market Sales Report at 23 and Exhibits VE-8, VE-11, VE-26, and VE-32; and Petitioners' Case Brief on Arvedi at 14-15.

²²⁹ See Petitioners' Case Brief on Arvedi at 14-5.

²³⁰ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016) and accompanying Issues and Decision Memorandum at Comment 3 ("*Large Power Transformers from Korea Final*"); *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 3, 2012) and accompanying Issues and Decision Memorandum at Comment 3 ("*Pipe and Tube from Thailand Final*"); and Petitioners' Case Brief on Arvedi at 15.

²³¹ *Id.*, at 16-17.

²³² *Id.*

²³³ *Id.*, at 11; Arvedi's Home Market Sales Report at 31.

²³⁴ See Arvedi's Rebuttal Brief at 11.

- The Department’s verification of Arvedi’s quantity and value (“Q&V”) reconciliation for its U.S. sales confirms that there was never a separate itemized charge for packing revenue.²³⁵
- The Department’s verification of Arvedi’s actual cost incurred for packing for its U.S. sales show that there was no separate charge for packing revenue.²³⁶
- Thus, Arvedi’s reported gross unit price is correct and there is no basis for making any deduction for packing revenue in the final determination. However, if the Department chooses to make a deduction, the Department should only make an adjustment based on the difference of the packing charge line item listed in the commercial invoice and the actual reported packing costs for U.S. sales (PACKU).²³⁷

Department’s Position: The Department finds that the calculation of Arvedi’s net price results in packing costs being added twice since the reported gross unit price includes the flat fee packing charge listed on the commercial invoice and the reported actual packing costs are then added in the calculation of foreign unit price in U.S. dollars (“FUPDOL”) for Arvedi’s U.S. sales.²³⁸ Additionally, the Department notes that the flat fee packing charge listed on each invoice is greater than the reported actual packing costs for subject merchandise.²³⁹ Thus, we end up with a net price and FUPDOL for each U.S. sale that is greater than the actual unit price due to profit earned on the sale of services (*i.e.*, packing).²⁴⁰

Pursuant to 19 CFR 351.102(b)(38), the Department will make adjustments to the gross unit price for a respondent’s U.S. sales for “any change in the price charged for subject merchandise or foreign like product, such as discounts, rebates, or other adjustment, including under certain circumstances, a change that is made after the time of sale, that are reflected in the purchaser’s net outlay.”²⁴¹ However, it is the Department’s practice to cap revenue at the corresponding amount of expenses incurred because it is inappropriate to increase the gross unit price for subject merchandise as a result of profit earned on the sale of services, such as packing or freight.²⁴²

While Arvedi contends that the separate packing charge on the commercial invoice is only listed for internal management purposes, the Department disagrees that this does not demonstrate there was no revenue or profit incurred by Arvedi for packing. Specifically, as mentioned above, the flat fee packing charge listed as a separate line item on each commercial invoice for Arvedi’s U.S. sales is greater than the reported actual packing costs for Arvedi’s U.S. sales of subject merchandise.²⁴³ The Department has consistently stated that the statute and its regulations do

²³⁵ *Id.*, at 13-4; Arvedi’s Home Market Sales Report at 33-36 and VE-7.

²³⁶ See Arvedi’s Rebuttal Brief at 14.

²³⁷ *Id.*, at 10 and 14.

²³⁸ See Arvedi Prelim Analysis Memo at 14 and Attachment IV.

²³⁹ See Arvedi Home Market Report at 21-3 and 30-1 and VE-31.

²⁴⁰ See 19 CR 351.102(b)(38).

²⁴¹ *Id.*; *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24, 2016).

²⁴² See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 81 FR 14087 (March 8, 2016) and accompanying Issues and Decision Memorandum at Comment 3 (“*Large Power Transformers from the Republic of Korea Final*”).

²⁴³ See Arvedi Home Market Report at 23 and 30-1 and VE-31.

not permit the Department to adjust U.S. prices for revenues in excess of their related expense.²⁴⁴ For this reason, in line with past practice, we find that it is inappropriate to calculate Arvedi's net U.S. price using the reported gross unit price since it includes the separate flat fee packing charge listed on the commercial invoice, which is greater than Arvedi's reported actual packing costs for its U.S. sales of subject merchandise.²⁴⁵

Arvedi is correct that the total value of the invoice is recorded in Arvedi's accounting books and records as sales revenue and there is no separate line item for packing revenue listed in these records. However, this does not explain the fact that Arvedi's order confirmation and commercial invoice that it issues for all of its U.S. sales list separate line items for the unit price of the subject merchandise for sale and the packing charges. Thus, while the U.S. customer's net outlay to Arvedi is based on the total value of the commercial invoice, the record evidence shows that the revenue received by Arvedi from the U.S. customer includes payment for both the unit price of the subject merchandise and the packing charges for each sale.²⁴⁶

Additionally, Arvedi contends that the fact the price negotiated between Arvedi and the U.S. customer listed on the purchase order does not include a separate packing charge shows that Arvedi did not incur packing revenue.²⁴⁷ However, Arvedi established that the terms of sale are not set until issuance of the commercial invoice, which includes the reported gross unit price taken from the commercial invoice.²⁴⁸ Thus, the commercial invoice shows that Arvedi earned packing revenue on its U.S. sales since the flat fee packing charge listed on the commercial invoice is greater than Arvedi's reported actual packing costs.

Arvedi also contends that the Department's verification of Arvedi's quantity and value ("Q&V") reconciliation for its U.S. sales and its actual packing costs for its U.S. sales shows that Arvedi received no packing revenue. It is true that the Department did not identify that Arvedi receive packing revenue when it conducted the Q&V reconciliation of Arvedi's U.S. sales but this is because Arvedi records the total value of the invoice, which includes the separate line item for packing charges, as sales revenue.²⁴⁹ Additionally, the Department did not identify packing revenue in its verification of Arvedi's actual packing costs because this verification item only involved the reconciliation of the packing materials and expenses, such as overhead and labor,

²⁴⁴ See *Large Power Transformers from the Republic of Korea Final* at Comment 3.

²⁴⁵ *Id.*, at Comment 3 (citing to *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying Issues and Decision Memorandum at Comment 3 (Circular Welded Carbon Steel Pipes and Tubes from Thailand); *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 77 FR 63291 (October 16, 2012) and accompanying Issues and Decision Memorandum at Comment 6; *Certain Steel Concrete Reinforcing Bars from Turkey: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 21634, 21637 (May 1, 2002), unchanged in *Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 66110, 66,112 (October 30, 2002); *Purified Carboxymethylcellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 48310, 48314 (August 10, 2010), unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Review*, 75 FR 77829 (December 14, 2010)).

²⁴⁶ See Arvedi Home Market Report at 21-3 and VE-8, VE-11, VE-26, VE-32, and VE-33.

²⁴⁷ *Id.*

²⁴⁸ See Arvedi's Supplemental Section A Response at 17 and Exhibit A-46.

²⁴⁹ See Arvedi Home Market Report at 15-16 and 22-3.

incurred by Arvedi in the actual packing of the finished merchandise.²⁵⁰ However, these arguments do not address the fact that Arvedi's reported gross unit price includes a separate line item for packing charges that is greater than the actual reported packing costs for Arvedi's U.S. sales, which the Department verified.²⁵¹ Thus, the record evidence conclusively demonstrates that Arvedi's reported gross unit price is inclusive of packing revenue.

The Department finds that it is not appropriate to apply FA to Arvedi for this final determination, pursuant to section 776(a)(1) and (a)(2) of the Act. Specifically, it is true that Arvedi did not identify in its responses prior to verification that its gross unit price was inclusive of the packing revenue listed on the commercial invoice. However, there were fully translated, sales documentation on the record prior to verification that identified this fact.²⁵² Nonetheless, the Department never requested that Arvedi remedy or explain this aspect of its reported gross unit price used in its U.S. sales data, pursuant to section 782(d) of the Act. Therefore, the Department finds that Arvedi did not withhold information that was requested by the Department or fail to provide such information in a timely manner, pursuant to section 776(a)(2)(A) and (B) of the Act.

Additionally, it is true that the Department did not find until verification that Arvedi's reported gross unit price for its U.S. sales is inclusive of packing charges. However, the Department found that all of Arvedi's U.S. sales include a flat fee for packing charges listed on the commercial invoice and that this flat fee is included in the commercial invoice for each sale, which the Department verified against the documentation on the record prior to verification.²⁵³ The Department has the necessary information on the record to make the requisite adjustment to Arvedi's reported gross unit price for its U.S. sales to offset the additional packing charges or revenue from Arvedi's reported actual packing costs for this final determination. Accordingly, the Department finds that Arvedi did not significantly impede this investigation or provide information regarding U.S. sales data that could not be verified, pursuant to sections 776(a)(2)(C) and (D) of the Act. As such, there is no basis to apply AFA to Arvedi for its U.S. sales for the final determination.

However, as explained above, because Arvedi's reported gross unit price is inclusive of packing revenue, pursuant to section 772(c)(22) of the Act, the Department will deduct the flat fee packing charges that is listed on Arvedi's commercial invoice to the U.S. customer from the reported gross unit price for its U.S. sales in the final determination. Additionally, the Department will continue to add Arvedi's reported actual packing costs listed in the U.S. sales data to Arvedi's net U.S. price to calculate FUPDOL in the final determination.

Comment 5: Treatment of Arvedi's Cost of Manufacturing ("COM")

A. Other Operating Costs

²⁵⁰ *Id.* at 31-3 and VE-31.

²⁵¹ *Id.* at 21-3.

²⁵² *See* Arvedi's Supplemental Section A Response at Exhibit A-46.

²⁵³ *Id.*; Arvedi Home Market Report at 22-3.

Petitioners' Comments

- The Department should revise Arvedi's G&A expense rate to continue to include the amount for the other operating expenses for the fiscal year 2014, as was done for the *Preliminary Determination*.²⁵⁴

Arvedi's Comments

- Did not comment on this issue.

Department's Position: The Department agrees with Petitioners and for the final determination, we adjusted Arvedi's G&A expenses to include the other operating expenses, consistent with the *Preliminary Determination*.²⁵⁵

B. Net Extraordinary Charges

Petitioners' Comments

- In the cost verification report, the Department revised the calculation of the G&A expense rate, but inadvertently failed to include the amount for net extraordinary charges, an adjustment it made in the *Preliminary Determination*.²⁵⁶
- Some of these extraordinary charges relate to prior fiscal periods and thus, should be excluded from the net extraordinary charges.²⁵⁷

Arvedi's Comments

- Contrary to Petitioners' argument, the main component of the amount cited by Petitioner is booked in a non-operating loss account.²⁵⁸
- The main component of the above amount is a one-time non-recurring charge that relates to the resolution of a long-standing legal dispute. Thus, the charge did not relate to the company's activities during the POI or during the 2014 fiscal year.²⁵⁹
- With the non-recurring charge amount removed, no meaningful amount remains in the category "Net Extraordinary Charges" and thus no adjustment is necessary.

Department's Position: The Department agrees with Petitioners that the sales price adjustments related to the prior fiscal periods should be excluded and have adjusted the net extraordinary charge accordingly. For clarification purposes, the Department notes that the account in question is described as "non-operating losses" and is included in the account category "non-recurring items" in Arvedi's trial balance.²⁶⁰ However, it is identified in the financial statement as

²⁵⁴ See Petitioners' Case Brief on Arvedi at page 17.

²⁵⁵ See Memorandum to Neal M. Halper through Ernest Z. Gziryan from Christopher J. Zimpo - Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Acciaieria Arvedi S.p.A., (December 21, 2015) ("Arvedi Preliminary Cost Calculation Memo").

²⁵⁶ See Arvedi Preliminary Cost Calculation Memo at 1 and Attachment 2.

²⁵⁷ See Petitioners' Case Brief on Arvedi at 18-19.

²⁵⁸ See Letter from Arvedi to U.S. Department of Commerce Re: Corrosion-Resistant Steel Products from Italy, Third Supplemental Section D Questionnaire Response (December 28, 2015) at 2 and Exhibit D-40.

²⁵⁹ See Arvedi's Rebuttal Brief at 15.

²⁶⁰ See Arvedi's Supplemental section D Response at Exhibit D-23 and Cost Verification Exhibit 5B.

“Extraordinary Charges.” We note that Arvedi did not object to this adjustment raised by Petitioners to derive a revised net extraordinary charge amount.

Regarding the remaining balance of the net extraordinary charges, Arvedi argues that the main component of this amount is a one-time charge related to a long-standing legal dispute booked in “other” receivables prior to fiscal year 2014. In August 2014, the Court of Appeal of Rome confirmed the decision of the court of first instance in favor of the debtor. As a result, the charge in dispute was resolved by the Courts and included in non-recurring items on the 2014 financial statements. Arvedi argues that the charge did not relate to the company’s activities during the POI or during the 2014 fiscal year, and thus should not be included in the company’s G&A expenses. The Department disagrees. As the Department stated in *Welded Pipe from Korea*, “...the fact that the underlying events that led to the accrual of the penalties took place prior to the POR does not change the fact that these expenses are related to the general operations in the current year.”²⁶¹ Hence, while the event giving rise to the current period charge occurred in a prior period, Arvedi recorded the actual cost associated with the dispute for the first time on its audited financial statements prepared in accordance with Italian GAAP in 2014. If the Department were to ignore the expense in this fiscal year, it would go unreported in any fiscal year. Therefore, for the final determination, the Department continues to include the above amount in Arvedi’s G&A expenses.

C. Bad Debt Expenses

Petitioners’ Comments

- Un-reported bad debt expenses should be accounted for in Arvedi’s G&A expenses and reported as part of Arvedi’s cost of production.
- Alternatively, the write-down of bad debt expense should be included in indirect selling expenses.²⁶²

Arvedi’s Comments

- The write-down of bad debt expense should be included in indirect selling expenses.

Department’s Position: The Department agrees with Arvedi and Petitioners’ alternative argument that bad debt expenses should be included in the numerator of indirect selling expenses for the final determination. At the cost verification of Arvedi, the Department noted that there was a line item in Arvedi’s financial statement for bad debt expenses and company officials explained that this was a write-down of accounts receivable.²⁶³ Arvedi admitted that this expense was included in neither its reported indirect selling expenses nor in its cost of production.²⁶⁴

²⁶¹ See *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 79 FR 37284 (July 1, 2014) and accompanying Issues and Decision Memorandum at Comment 4 (“*Welded Pipe from Korea*”).

²⁶² See Petitioners’ Case Brief on Arvedi at 19-20.

²⁶³ See Arvedi Cost Verification Report at 10.

²⁶⁴ *Id.*

Although Petitioners propose that this expense should be included in Arvedi's cost of production, the Department notes that this account relates to accounts receivable from Arvedi's customers and relates to general selling expenses not cost of production. Additionally, the Department's practice is to treat bad debt expenses that were incurred by the company during the subject period as an indirect selling expense.²⁶⁵ Accordingly, the Department is including Arvedi's bad debt expenses in the numerator and recalculating Arvedi's reported indirect selling expenses for the final determination.²⁶⁶

D. Offset of Electricity Sales to COM

Petitioners' Comments

- The Department should disallow as an offset to COM the revenues generated from the sale of electricity because these revenues resulted from activities that have nothing to do with the manufacture of the subject merchandise.²⁶⁷
- Arvedi's trial balance and income statement treat the offsets as revenues.

Arvedi's Comments

- The cost of electricity that exceeds the amount actually used in production should not be included in the cost of manufacturing for the subject product.
- Arvedi secures the supply of electricity by purchasing forward contracts, and when the actual consumption is less than planned consumption, Arvedi has to sell the excess electricity supply since electricity cannot be stored.²⁶⁸

Department's Position: The Department agrees with Arvedi. The Department notes that the cost of electricity booked in Arvedi's financial accounts includes not only the electricity that was consumed in the production process, but also the excess electricity that was purchased but not used in the production process. This purchased and unused electricity was sold back to the grid because it cannot be stored for future use.²⁶⁹ The Department notes that for the month we reviewed at verification, the revenues from the sale of electricity were less than the included cost for the purchased and sold electricity.²⁷⁰ Thus, for the final determination, we consider it appropriate to allow the revenues generated by the sale of excess electricity as an offset to the total electricity cost booked in the COM.

In this case, Arvedi is not in the business of selling electricity, rather, the company sold the excess electricity back to the grid because the electricity cannot be stored. Consequently, Arvedi's selling of electricity is not a separate line of business, it is merely a means to recover

²⁶⁵ See *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 73444 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 3; see also *Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 70 FR 7243 (February 11, 2005) and accompanying Issues and Decision Memorandum at Comment 6.

²⁶⁶ See Arvedi Final Analysis Memo at Attachment IV.

²⁶⁷ *Id.*, at 20.

²⁶⁸ See Arvedi Rebuttal Brief at 16-17.

²⁶⁹ See Arvedi Cost Verification Report at 10.

²⁷⁰ *Id.*, at CVE-12.

costs for excess electricity. Therefore, for the final determination, we continue to allow Arvedi's sales of excess electricity as an offset to the COM.

E. Adjust Variable Manufacturing Cost Based on Sales Quantities

Petitioners' Comments

- Arvedi's failure to report CONNUM-specific production quantities data is a fundamental flaw in Arvedi's cost reporting methodology.
- At verification, Arvedi demonstrated that it could have reported the sales quantities, adjusted for beginning and ending inventory, on a CONNUM-specific basis as a surrogate for production quantities in its cost file, had it elected to do so.
- Arvedi has not cooperated to the best of its ability, and the Department should resort to partial FA and make an adjustment based on sales quantity as proposed by Petitioners.

Arvedi's Comments

- The Department investigated and verified the limitations of Arvedi's cost accounting system with respect to reporting quantities of further processed products. Arvedi's accounting system considers the hot dipped galvanized ("HDG") coil to be a finished product, and regards any additional production steps to be downstream processing of the finished HDG coil.
- Petitioners' calculation of the proposed adjustment to account for the difference in costs between the sales quantity based calculation and production quantity based calculation does not appear to be accurate.
- It provided an alternative reconciliation based on applying the reported cost to the actual quantities of Arvedi's sales of all subject and non-subject products to serve as a test of the reasonableness of Arvedi's reported cost.

Department's Position: The Department agrees with Arvedi that the analysis prepared based on sales quantity as described in the cost verification report²⁷¹ supports the reasonableness of its reported costs. As explained in the Department's cost verification report, Arvedi's normal books and records do not track product-specific production quantities at certain finishing processes (*i.e.*, slitting, cutting, and painting). As a result, the company was unable to determine CONNUM-specific production quantities for products that went through these finishing processes. For reporting purposes, the company calculated the average cost of each finishing process and reported the resulting per-unit costs in the cost database. Because Arvedi did not report CONNUM-specific production quantities for the above finishing processes, to demonstrate that the total costs reported in the cost database, including the finishing costs, reconcile to company's books, Arvedi provided an alternative reconciliation using the POI product-specific sales quantities. We note that the resulting total reported variable costs for all products based on the sales quantities reconciled to the corresponding total POI costs per the normal books and records.²⁷²

²⁷¹ See Arvedi Cost Verification Report at 15.

²⁷² *Id.*

We disagree with Petitioners' proposed analysis and adjustment as it compares costs which are not on the same basis. Specifically, Petitioners compare the total extended variable costs prior to the finishing processes in question, from the cost database, to the sales quantity based variable costs from its normal books and records, including costs incurred at the finishing processes. Comparing total costs that exclude the finishing stages to those that include the finishing stages results in a meaningless comparison. Therefore, for the final determination, we have not made an adjustment to Arvedi's reported costs as proposed by Petitioners.

F. Disallow Insurance Claim as "Indirect Damages" As An Offset to Fixed Overhead Costs

Petitioners' Comments

- At verification, the Department noted that Arvedi's insurance reimbursement for "Indirect Damages" is booked as "Other Income and Revenue." The insurance proceeds were used to compensate Arvedi for lost profits.
- Arvedi stated that "the cost of production was higher than it would be otherwise, due to the reduced production volumes and the continuing fixed costs." However, Arvedi failed to provide any documentation to support and substantiate its claim.
- Arvedi provided an estimated amount of the indirect damages²⁷³ and, therefore, failed to show how the claimed indirect damages were composed of actual costs. The Department should disallow this offset to the fixed overhead for insurance reimbursement.

Arvedi's Comments

- Arvedi's insurance provider will not make payments for non-covered items under the insurance contract or in the absence of evidence that such losses were actually incurred.
- Arvedi demonstrated at verification that the insurance company investigated its damages and determined that recovery for both direct and indirect damages was required under the policy; it negotiated a settlement with Arvedi to pay a certain amount of those total damages and the company remitted such payments due under the settlement.
- The Department should reduce the amount of the fixed overhead expenses by the amount of the insurance proceeds received by Arvedi.

Departments Position: While the Department agrees with Petitioners that a portion of the insurance reimbursement received by Arvedi relates to lost profits, the Department disagrees that the entire amount of the reimbursement does.

Arvedi experienced a fire in an electric supply conduit in October 2014. Due to the fire, production was interrupted for 45 days. The indirect damage costs associated with the interruption to production include overhead costs and increased costs incurred for steel coils that had to be purchased at a higher price on the open market.²⁷⁴

²⁷³ See Arvedi Cost Verification Report at 25.

²⁷⁴ See Supplemental Section A Response at Exhibit A-24 (Directors' report related to the fire states that: "The Gross Operating Profit (EBITDA) was affected by the extraordinary events described above. The recognized value includes a portion of the insurance compensation of 38,500,000 collected on December 31, 2014. Specifically, 28,800,000 was assessed as the compensation for the "business interruption", attributed on the basis of the *lost*

It is the Department's normal practice to allow insurance proceeds to offset costs up to the amount of the loss.²⁷⁵

In this situation, the company's insurance policy covered indirect damages related to "lost contribution margin." Arvedi's insurance policy defines the contribution margin as revenues less variable cost, i.e., the contribution margin reflects fixed costs and profit.²⁷⁶ Thus, the insurance proceeds for indirect damages include a portion related to lost profit. We note that the insurance settlement specifically identified an amount for the lost contribution margin (i.e., fixed costs and profit). Thus, consistent with our normal practice, we consider it appropriate to allow an offset for insurance proceeds associated with costs incurred, but not profits. For the final determination we allowed the insurance reimbursement as an offset, but only for the portion related to additional fixed costs incurred. In doing so, we allocated the total insurance reimbursement for indirect damages between fixed costs and profit based on the ratio of fixed costs and profit from the 2013 fiscal year financial statements (i.e., the financial statements for the fiscal year not affected by the loss). For further details regarding our calculation, see Arvedi Final Cost Calculation Memo.

Comment 6: Programming Errors in Arvedi's Margin Program

A. Net U.S. Price Variable

Petitioners' Comments

- In the *Preliminary Determination*, the Department's margin program contained an error in that the Department used the incorrect U.S. price denominated in Euros (NETUPRU—unit price after post-sales adjustment) and then converted the U.S. price into U.S. dollars ("USD") using the applicable exchange rate.²⁷⁷
- However, at verification, the Department found that the sales documents show that the unit price for Arvedi's U.S. sales was invoiced to the U.S. customer in USD and the customer made payment to Arvedi in USD.²⁷⁸

Arvedi's Comments

- Did not comment on this issue.

contribution margin (emphasis added), as defined and calculated for insurance purposes, it is a different measure from the gross operating margin.").

²⁷⁵ See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico*, 73 FR 7710 (February 11, 2008) and accompanying Issues and Decision Memorandum at Comment 13 ("SSSSC from Mexico"). That is, we normally match the loss resulting from the insured event with the proceeds received for that event. See, e.g., *Notice of Final Determinations of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741, (August 28, 2003) and accompanying Issues and Decision Memorandum at Comment 19.

²⁷⁶ See Arvedi Cost Verification Report at CVE-10 at page 71.

²⁷⁷ See Memorandum to the File from Julia Hancock, Senior Case Analyst, through Paul Walker, Program Manager, Subject; Calculations Performed for Acciaieria Arvedi SPA ("Arvedi") for the Preliminary Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy, (December 21, 2015) ("Arvedi Preliminary Analysis Memo") at 12 and Attachment 3; Petitioners' Case Brief on Arvedi at 28.

²⁷⁸ See Arvedi's Home Market Sales Report at VE-8, VE-11, VE-26, VE-32, and VE-33.

Department's Position: The Department agrees with Petitioners that we used the incorrect U.S. price in calculating Arvedi's margin for the *Preliminary Determination*. In the *Preliminary Determination*, the Department used the U.S. price denominated in Euros (NETUPRU) and converted the U.S. price into USD using the applicable exchange rate.²⁷⁹ However, at verification, we noted that unit price for Arvedi's U.S. sales was invoiced to the U.S. customer in USD and the customer made payment to Arvedi in USD, which Arvedi converted to Euros when it was booked in its accounting records.²⁸⁰ Accordingly, for this final determination, we are calculating Arvedi's U.S. price using the U.S. price invoiced to the U.S. customer in USD (USD_NETUPRU) adjusted for post-sales adjustments and deducted for the separate packing charge/revenue listed on the commercial invoice, as discussed above in Comment 2.

B. Marine Insurance

Petitioners' Comments

- In the *Preliminary Determination*, the Department's margin program contained a programming error in the calculation of Arvedi's net U.S. price. Specifically, the Department failed to deduct Arvedi's marine insurance expenses from the calculation of total international movement expenses in the margin program for Arvedi.²⁸¹

Arvedi's Comments

- Did not comment on this issue.

Department's Position: The Department agrees with Petitioners that the program used for calculating Arvedi's net U.S. prices in the *Preliminary Determination* contained a programming error. In the *Preliminary Determination*, the Department stated that it was deducting marine insurance expenses incurred by Arvedi on its U.S. sales but we note that we did not perform this deduction in the margin program.²⁸² Accordingly, for the final determination, we are correcting this programming error and making this deduction to Arvedi's net U.S. price in the margin program.²⁸³

Comment 7: Revised U.S. Sales Data for Arvedi

Petitioners' Comments

- The Department should use Arvedi's revised U.S. and home market sales databases based on minor corrections provided at verification.²⁸⁴

²⁷⁹ See Arvedi Preliminary Analysis Memo at 12; Arvedi's Sections B-D Response at Exhibit C-2.

²⁸⁰ See Arvedi's Home Market Sales Report at 23-5 and VE-8, VE-11, VE-26, VE-32, and VE-33.

²⁸¹ See Petitioners' Case Brief on Arvedi at 29.

²⁸² See Preliminary Decision Memorandum at 11; Arvedi Preliminary Analysis Memo at 12-3.

²⁸³ See Memorandum to the File from Julia Hancock, Senior Case Analyst, through Paul Walker, Program Manager, Subject; Calculations Performed for Acciaieria Arvedi SPA ("Arvedi") for the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy, (May 24, 2016) ("Arvedi Final Analysis Memo") at 1-2 and Attachment 3.

²⁸⁴ See Arvedi's Home Market Sales Report at 2-3 and VE-9.

Arvedi's Comments

- Did not comment on this issue.

Department's Position: The Department agrees with Petitioners and will calculate Arvedi's estimated weighted-average dumping margin for this final determination using the revised U.S. and home market sales data that incorporate the minor corrections submitted at verification.²⁸⁵

Comment 8: Adjustments to Arvedi's Cost Data Based on Verification

Petitioners' Comments

- The "transactions disregarded" adjustment should be revised to reflect the minor corrections submitted at verification.
- The Department should recalculate the fixed overhead rate to exclude the SG&A from the denominator in the fixed overhead rate calculation.
- The Department should revise the interest expense rate to exclude certain interest income and adjust the denominator in the ratio calculation to exclude G&A expenses and packing.

Arvedi's Comments

- Did not comment on this issue.

Department's Position: The Department agrees with Petitioners and made the above adjustments outlined in the Arvedi Cost Verification Report for this final determination. For details, *see* Arvedi Final Cost Calculation Memo.

²⁸⁵ *See* Arvedi Final Analysis Memo at 1-2 and Attachment 3.

Conclusion

We recommend applying the above methodology for this final determination.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

(Date)