



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

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Investigation  
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September 8, 2014

**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 Investigation of Sales at Less Than Fair Value for Steel  
Concrete Reinforcing Bar from Mexico

## I. Summary

In this final determination, the Department of Commerce (the Department) finds that steel concrete reinforcing bar (rebar) from Mexico is being, or is 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). The estimated weighted-average dumping margins of sales at LTFV are listed in the "Final Determination" section of the accompanying *Federal Register* notice. The period of investigation (POI) is July 1, 2012, through June 30, 2013.

We analyzed the case and rebuttal briefs of interested parties submitted in this LTFV investigation of rebar from Mexico. This investigation covers one cooperative mandatory respondent: Deacero S.A.P.I. de C.V. and Deacero USA, Inc. (collectively, Deacero); a non-responsive mandatory respondent, Grupo Acerero (Acerero); and a voluntary respondent, Grupo Simec (Simec). As a result of our analysis of the case briefs, rebuttal briefs, and findings at verification, we made changes to the margin calculations for Deacero. For Simec, we determined to apply a margin based on total adverse facts available (AFA). Our determination for Acerero, to apply a margin based on total AFA, remains unchanged from the preliminary determination. We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum.



Below is the complete list of the issues in this investigation on which we received comments from parties.

## **II. List of Comments**

### **General Issues**

Comment 1: Scope of the Subject Merchandise

Comment 2: Whether Cooling Method Should Be Incorporated into CONNUMs

### **Issues regarding Deacero**

Comment 3: Whether Certain Home Market Sales Are Outside the Ordinary Course of Trade

Comment 4: Application of Adverse Facts Available for Deacero's Unreported U.S. Sales

Comment 5: Critical Circumstances Finding

### **Issues regarding Simec**

Comment 6: Application of Total Adverse Facts Available to Simec

Comment 7: Whether Constructed Value Can Be Used as the Basis for Normal Value

Comment 8: Whether the Department Can Calculate Indirect Selling Expenses from the Information on the Record

Comment 9: Whether Simec's Sales to Affiliated Distributors Were Made at Arm's Length

### **Issues regarding Acerero**

Comment 10: Whether the Application of Total AFA With Regard to Acerero is Warranted

Comment 11: Whether the AFA Rate Applied to Acerero is Punitive and Excessive

## **III. Background**

On April 24, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of rebar from Mexico.<sup>1</sup> The Department conducted sales and cost verifications of Simec and Deacero from May 12, 2014 through May 23, 2014, and June 16, 2014 through June 27, 2014, respectively.

We invited parties to comment on the *Preliminary Determination*. On August 4, 2014, we received case briefs from Petitioners, Deacero, Simec, and Acerero. On August 11, 2014, we received rebuttal briefs from Petitioners, Deacero, and Simec. Based on our analysis of the comments received, as well as our findings at verification, we revised the weighted-average margins calculated in the *Preliminary Determination*.

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<sup>1</sup> See *Steel Concrete Reinforcing Bar from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014) (*Preliminary Determination*).

As explained in the *Preliminary Determination*, we extended the deadline for this final determination by 60 days at Deacero's request in accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e).<sup>2</sup> Thus, the revised deadline for the final determination in this investigation is September 8, 2014.

#### **IV. Application of Adverse Facts Available With Regard To Acerero and Simec**

Sections 776(a)(1) and (2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. 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 10 below, because Acerero failed to respond to the Department's antidumping duty (AD) Questionnaire, pursuant to sections 776(a)(1) and (2)(A), (B) and (C) of the Act, we are relying upon facts otherwise available for Acerero's margin. In addition, as explained in Comment 10, we find that Acerero's failure to respond to the Department's AD Questionnaire indicates a failure to cooperate to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act. Therefore, in selecting from among the facts otherwise available, we find that an adverse inference is warranted with respect to Acerero.

As discussed below in Comments 6, 7, 8 and 9, Simec failed to reconcile its home market sales database during the sales verification conducted by the Department. Simec's inability to reconcile its home market sales data precluded the Department's verifiers from performing essential procedures that form the backbone of the Department's verification process. As a result, and as further discussed below in Comments 6 and 7, the Department concludes that application of total facts available is appropriate with respect to Simec pursuant to sections 776(a)(1) and (2)(A), (B), (C), and (D) of the Act. In addition, as explained in Comments 6, 7, 8 and 9, we find that Simec failed to cooperate to the best of its ability as provided under section 776(b) of the Act and, thus, in selecting from among the facts otherwise available, an adverse inference is warranted.

#### **Selection of AFA Rate and Corroboration**

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on total AFA, the Department selects a rate that is sufficiently adverse to

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<sup>2</sup> *Id.*, and accompanying Decision Memorandum at 5.

ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.<sup>3</sup> In this investigation, the dumping margins in the Petition range from 48.82 percent to 66.70 percent.<sup>4</sup> Thus, in accordance with our practice, we selected the highest dumping margin in the Petition of 66.70 percent as the AFA rate for Acerero and Simec.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Section 776(c) defines secondary information as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>5</sup> As stated in *Japanese TRBs*, to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.<sup>6</sup> The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>7</sup>

We determined that the Petition margin of 66.70 percent is reliable. We reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this final determination.<sup>8</sup> We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this final determination. During our pre-initiation analysis, we examined the key elements of the export price (EP) and normal value (NV) calculations used in the Petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from

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<sup>3</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)); see also *Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) and accompanying Issues and Decision Memorandum.

<sup>4</sup> See Petition for the Imposition of Antidumping Duties, *Steel Concrete Reinforcing Bar from Mexico*, vol. II (Petition) (September 4, 2013).

<sup>5</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

<sup>6</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*Japanese TRBs*); unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997).

<sup>7</sup> 19 CFR 351.308(d).

<sup>8</sup> See *Steel Concrete Reinforcing Bar From Mexico and Turkey: Initiation of Antidumping Duty Investigations*, 78 FR 60827 (October 2, 2013) (*Initiation Notice*) and accompanying Initiation Checklist at 8.

various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive an estimated margin.<sup>9</sup>

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioners' EP and NV calculations to be reliable.<sup>10</sup> Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents and affidavits, as well as publicly available information, we determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The Court of International Trade acknowledges that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.<sup>11</sup> Therefore, we examined the information on the record and find that we are able to corroborate the 66.70 dumping margin in the Petition.<sup>12</sup>

Specifically, for purposes of this determination, we find that the 66.70 percent dumping margin from the Petition is within the range of the transaction-specific dumping margins for Deacero, the single cooperative mandatory respondent in this investigation.<sup>13</sup> Accordingly, we determine that the 66.70 percent AD margin from the Petition is relevant as applied to Acerero and Simec for this investigation because it falls within the range of the transaction-specific dumping margins calculated for the other mandatory respondent, Deacero.

The Department is aware of no other independent sources of information that would enable it to corroborate further the U.S. and home-market prices, as furnished by Petitioners, for this final determination. Accordingly, by using this information that was corroborated in the pre-initiation stage of this investigation, as well as examining individual dumping margin calculations with respect to Deacero, we determine the 66.70 percent AD margin from the Petition to be both

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<sup>9</sup> See *Initiation Notice* and accompanying Initiation Checklist at 6-8.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (1999).

<sup>12</sup> For details regarding this finding, see the Memorandum to Melissa G. Skinner, Director, Office III, Operations, "Certain Steel Concrete Reinforcing Bar from Mexico: Corroboration of Margin Based on Adverse Facts Available," dated concurrently with this memorandum (Corroboration Memorandum).

<sup>13</sup> *Id.*, for a discussion of the proprietary corroboration information.

reliable and relevant to Acerero and Simec in this investigation, and we, therefore, corroborated this rate as the AFA rate “to the extent practicable.”<sup>14</sup>

Therefore, based on our efforts described above to corroborate the highest dumping margin in the Petition, we find that the rate of 66.70 percent has probative value within the meaning of section 776(c) of the Act.<sup>15</sup> Consequently, in selecting an AFA rate with respect to Acerero and Simec, we applied the Petition’s highest dumping margin of 66.70 percent.<sup>16</sup>

## V. Critical Circumstances

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) 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* the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

The Department preliminarily found that, pursuant to section 733(e)(1) of the Act, critical circumstances exist with regard to rebar from Mexico for Deacero, Acerero, and the Mexican firms subject to the all others rate, and that they do not exist with regard to Simec.<sup>17</sup> With respect to Deacero, Acerero, and the Mexican 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 exist for Deacero, Acerero, and the Mexican firms subject to the all others rate for the same reasons explained in the Preliminary Critical Circumstances Memorandum.

Concerning Simec, as noted above, we determined to apply total AFA with regard to the company as described under section 776(b) of the Act. Thus, for purposes of our critical circumstances analysis, we relied on the AFA rate of 66.70 percent for our analysis. This margin exceeds the quantitative thresholds established by the Department for purposes of determining whether imputed knowledge of dumping exists. Further, since the U.S. International Trade Commission (ITC) preliminarily found a reasonable indication that an industry in the United

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<sup>14</sup> See section 776(c) of the Act; 19 CFR 351.308(d); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, “pursuant to the to the extent practicable language...the corroboration requirement itself is not mandatory when not feasible.”); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Canada*, 63 FR 59527, 59529 (November 4, 1998) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (March 31, 1999)).

<sup>15</sup> See section 776(c) of the Act; see also 19 CFR 351.308(d).

<sup>16</sup> See *Initiation Notice* and Initiation Checklist 6-8.

<sup>17</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance From James Doyle, Director Office V, Antidumping and Countervailing Duty Operations, titled “Steel Concrete Reinforcing Bar from Mexico: Preliminary Affirmative Determination of Critical Circumstances, 2012-2013,” (April 18, 2014) at 7 (Preliminary Critical Circumstances Memorandum), which is incorporated herein by reference.

States is materially injured by imports of rebar from Mexico,<sup>18</sup> the Department determines that importers knew or should have known that there was likely to be material injury by reason of sales of rebar at LTFV by Simec. Accordingly, we determine that the criteria under section 733(a)(3)(A)(ii) of the Act have been met. Further, because we lack the necessary reliable shipment data from Simec,<sup>19</sup> we determine that, pursuant to section 776(b) of the Act, Simec shipped rebar in “massive” quantities during the base and comparison periods thereby fulfilling the criteria under section 733(a)(3)(B) of the Act and 19 CFR 351.206(i). Therefore, we determine that critical circumstances exist with regard to Simec.

## **VI. Scope Comments**

On June 19, 2014, Petitioners submitted a request that the Department amend the scope of this investigation to exclude certain types of deformed steel wire by inserting the sentence below immediately before the last sentence of the current scope language:

Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test.<sup>20</sup>

We solicited comments on the scope of the investigation from interested parties in the *Initiation Notice*<sup>21</sup> and case briefs.<sup>22</sup> Because no other interested party submitted comments regarding the Petitioners’ request to amend the scope language, and we see no reason to deny Petitioners’ request, we incorporated this amendment into the “Scope of the Investigation” section below.

## **VII. Scope of the Investigation**

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size or grade) and without being subject to an elongation

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<sup>18</sup> See *International Trade Commission, Investigation Nos. 701-TA-502 and 731-TA-1227-1228 (Preliminary), Steel Concrete Reinforcement Bar from Mexico and Turkey*, 68 FR 68090 (November 13, 2013).

<sup>19</sup> See Memorandum to Melissa G. Skinner, Director, Office III, Operations, “Verification of the Sales response of Grupo Simec and Constructed Export Sales of Simec USA in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico,” (July 1, 2014) at Exhibit-15 (Simec Sales Verification Report) at 2.

<sup>20</sup> See Petitioners’ request to amend scope language letter, dated June 19, 2014.

<sup>21</sup> See *Initiation Notice*, 78 FR at 60827.

<sup>22</sup> See *Preliminary Determination*, 79 FR at 22803.

test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

## VIII. All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding all rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Therefore, for purposes of determining the “all others” rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Deacero as the weighted-average dumping margin for all other producers and exporters of subject merchandise.

## IX. Discussion of the Issues

### Comment 1: Whether Certain of Deacero’s Home Market Sales are Outside the Ordinary Course of Trade

#### *Petitioners’ Argument*

- Deacero’s home market sales of a certain rebar product are outside the ordinary course of trade because: (1) the volumes and customers differ from Deacero’s other sales of rebar in the home market; (2) they are sold and marketed differently; (3) the sales appear to be driven solely to reduce dumping margins; (4) sales of this product in the home market have a disproportionate impact on the calculated dumping margins; and (7) Deacero’s refusal to provide communications related to sales of this product.
- In *Welded Pipes and Tubes from India*, the Department found that certain home market sales of a particular product were made outside of the ordinary course of trade because, among other reasons: 1) differences in the normal grades and standards between home market and U.S. market, 2) the limited volumes sold in the home market, and 3) the prices of the product in question differed from the other products.<sup>23</sup>

#### *Deacero’s Rebuttal*

- Home market sales of a certain rebar product were not extraordinary, and Petitioners failed to demonstrate that the sales at issue were extraordinary for the market in question.
- Deacero made sales of the product at issue well before the Petition was filed in an effort to expand into the rebar market in Mexico. Furthermore, the sales are consistent with Deacero’s home market sales of other rebar products in terms of sales quantities, net prices, and other factors.
- While the size of the Mexican market for the type of rebar at issue is smaller than the Mexican market for other types of rebar, home market sales of the rebar at issue has been marketed in Mexico for many years under NMX and ASTM specifications, and are not extraordinary.

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<sup>23</sup> See, e.g., *Final Results of Antidumping Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes From India*, 56 FR 64753 (December 12, 1991) (*Welded Pipes and Tubes from India*).

- Petitioners’ contention that Deacero refused to provide communications related to home market sales of certain rebar is baseless. Deacero provided copies of all the written communications that existed (*i.e.*, purchase orders and invoices).
- The facts of *Welded Pipes and Tubes from India* are distinguishable from the instant case. First, the sales quantities of Deacero’s home market sales of certain rebar are consistent with the sales quantities of its other home market sales. Second, the net price for home market sales of certain rebar is consistent with the net price for Deacero’s home market sales of other rebar products. Third, Deacero did not have production overruns during the POI because it produces products for inventory and sells from stock.

**Department’s Position:** We disagree with Petitioners that the rebar sales at issue are outside the ordinary course of trade. Section 771(a)(15) of the Act defines the term “ordinary course of trade” as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.” The Statement of Administrative Action (SAA), which accompanied the passage of the Uruguay Round Agreements Act of 1995 (URAA), further clarifies this portion of the statute when it states, “Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.”<sup>24</sup> Section 771(15) of the Act specifically establishes that sales made below the cost of production, as defined under section 773(b)(1) of the Act, and sales between affiliated parties that are disregarded under section 773(f)(2) of the Act, are outside the ordinary course of trade. The Department’s regulations at 19 CFR 351.102(b)(35) further defines sales outside the ordinary course of trade as: “sales or transactions {that} have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm’s length price.”

In examining whether certain home market sales are outside the ordinary course of trade, we usually compare the subset of home market sales at issue to other home market sales considered to be within the ordinary course of trade.<sup>25</sup> This comparison tests whether there are extraordinary characteristics with respect to the subset of sales at issue that render them outside the ordinary course of trade. As explained in further detail in the Deacero Final Determination Issue Memorandum,<sup>26</sup> we find that there are no different standards and product uses for the different types of rebars. We also find that the net price for home market sales of the rebar product at issue is not significantly different from the net price for Deacero’s home market sales of other rebar products, and the quantities sold are comparable to the quantities sold of other home market sales of other types of rebar. While Petitioners argue that the product at issue is

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<sup>24</sup> See SAA at 834.

<sup>25</sup> See, e.g., *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>26</sup> See Deacero Final Determination Issue Memorandum, dated concurrently with this issues and decision memorandum, which provides the proprietary details of our analysis.

overruns, there is no record evidence to support that contention. In addition, we find that there is no evidence on the record to demonstrate that the rebar product at issue was produced according to unusual product specifications; sold pursuant to unusual terms of sale or sold to an affiliated party at a non-arm's length price. Therefore, in accordance with section 771(15) of the Act and 19 CFR 351.102(b)(35), we find that Deacero's home market sales of the rebar product at issue are not outside the ordinary course of trade during the POI.

**Comment 2:** Whether the Department Should Apply AFA to Deacero's Unreported U.S. Sales

*Petitioners' Argument*

- Deacero has not accurately reported the proper universe of sales in the U.S. market. Record evidence indicates that in February 2013, Deacero sold a certain quantity of subject merchandise to a customer located in Puerto Rico, which Deacero did not report in its U.S. sales database.<sup>27</sup>
- The Department initiated its investigation of dumping based upon Deacero's sales to Puerto Rico; therefore, Deacero was aware of these sales.
- The Department should calculate a margin for this quantity of unreported merchandise based on facts that are otherwise available. Moreover, because Deacero knew or should have known about the existence of these sales, the Department should apply AFA to these sales.
- As facts available with adverse inferences, the Department should apply to the volume of unreported U.S. sales a dumping margin equal to the highest transaction specific margin calculated for the final determination, which is consistent with Department practice regarding unreported sales.<sup>28</sup>
- In *Canned Pineapple Fruit from Thailand*, the Department found that "by failing to report all U.S. sales, a respondent failed to act to the best of its ability."<sup>29</sup> The excuse that it inadvertently forgot to include sales did not alter the fact that respondent knew that the sales in question should have been included in its U.S. database. Therefore, the Department found that the partial application of an adverse inference was appropriate, pursuant to section 776(b) of the Act. Likewise, in the instant case, Deacero failed to act to the best of its ability because Deacero knew or should have known that Puerto Rico is located within the customs territory of the United States, and that the sales were reportable.

*Deacero's Rebuttal*

- Upon reviewing Petitioners' information, Deacero agrees that the sales were reportable. However, AFA is unwarranted because the omission was inadvertent and the volume of the sales is negligible.
- Petitioners significantly impeded the investigation by waiting until the filing of its case brief to alert the Department to the sales, despite the fact that it was aware of the sales throughout the investigation.

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<sup>27</sup> See Petition at Exhibit II-2.

<sup>28</sup> See *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic Of China*, 78 FR 70918 (November 27, 2013), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>29</sup> See *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 69 FR 50164 (August 13, 2004) (*Canned Pineapple Fruit from Thailand*), and accompanying Issues and Decision Memorandum at Comment 2.

- In *Coated Paper from Indonesia*,<sup>30</sup> the Department declined to apply AFA to the respondent's unreported sales to Puerto Rico because: (1) the omission was inadvertent; (2) the quantity of the unreported sales was insignificant; and (3) the issue of Puerto Rico sales had not arisen in prior investigations in which the respondent had participated.
- Here, the facts are the same as those in *Coated Paper from Indonesia*. First, the omission was inadvertent. In the normal course of business, Deacero does not classify sales to Puerto Rico as sales to the United States in its accounting/sales system. As a result, Deacero unintentionally failed to capture and include the sales to Puerto Rico in the U.S. sales database. Second, the omitted sales volume is negligible. Third, the issue of Puerto Rican sales has not arisen in prior proceedings in which Deacero participated as a respondent.
- Lastly, like *Coated Paper from Indonesia*, the omission occurred in an original investigation, in which the purpose is to calculate an estimated dumping margin. Thus, under these circumstances, the inadvertent omission of these negligible U.S. sales should be excused from an AFA finding.
- The situation in *Canned Pineapple Fruit from Thailand* is not applicable to the instant case. First, the issue of unreported sales to Puerto Rico arose in the context of an administrative review, not an original investigation. Consequently, the Department lacked "the necessary information to calculate an accurate weight averaged dumping margin and sale specific dumping margin on every U.S. sale," as required in an administrative review. In the instant case, the Department is merely calculating an estimated dumping margin for cash deposit purposes. Second, the respondent's failure to report the sales to Puerto Rico was not inadvertent. To the contrary, the Department highlighted that the issue of unreported sales to Puerto Rico had arisen in the original investigation, and that, as a participant in that investigation, the respondent had specific notice that sales to Puerto Rico needed to be included in the U.S. sales database. Thus, the circumstances in *Canned Pineapple Fruit from Thailand* are not present in the instant investigation.
- At the sales verification, the Department reviewed Deacero's method for identifying its U.S. sales of subject merchandise and its U.S. sales reconciliation and "noted no discrepancies."

**Department's Position:** We agree that Deacero failed to report its sales to Puerto Rico. However, we disagree with Petitioners that Deacero did not act to the best of its ability to comply with our request for information. Despite the fact that the Petition referenced sales to Puerto Rico, in the instant case, we find Deacero's explanation for its failure to report sales to Puerto Rico plausible because: (i) the Department's initial questionnaire was not clear because we requested that Deacero "state the total quantity and value of the merchandise under investigation that you sold during the period of investigation in or to the United States,"<sup>31</sup> and we did not request additional information on these sales; (ii) the sales constitutes a very small quantity of total U.S. sales;<sup>32</sup> and (iii) Deacero maintains a separate accounting system for non-U.S. sales, which includes Puerto Rico.<sup>33</sup> Therefore, we find that it is appropriate to assign a dumping

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<sup>30</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010) (*Coated Paper from Indonesia*), and accompanying Issues and Decision Memorandum at Comment 9.

<sup>31</sup> See Department's Initial Questionnaire, Section A at E-1 through E-3, dated December 3, 2013.

<sup>32</sup> See Deacero's Rebuttal Brief dated August 11, 2014, at Attachment 6; see also U.S. Sales Margin Program.

<sup>33</sup> See Memorandum to Melissa G. Skinner, Director, Office III, Antidumping and Countervailing Duty Operations, "Verification of the Sales Response of Deacero in the 2012-2013 Antidumping Duty Investigation of Concrete Steel Reinforcing Bar (Rebar) from Mexico" (Deacero Sales Verification), dated July 7, 2014, at 11 and 13-14.

margin to Deacero's sales to Puerto Rico based on facts available without an adverse inference, in accordance with section 776(a)(1) of the Act.

We disagree with Petitioners that the cases they cite as support for AFA are applicable here. We find that the fact pattern in *Canned Pineapple Fruit from Thailand* is not analogous to the fact pattern in this investigation. In *Canned Pineapple Fruit from Thailand*, the Department found that Dole, as an experienced respondent who participated in the original investigation and in four subsequent reviews, should have known to include its sales to Puerto Rico in its U.S. database.<sup>34</sup> Thus, by failing to report all U.S. sales, Dole did not act to the best of its ability, and it was a deliberate act not to report these sales. Moreover, in none of the cases that Petitioners cite did the Department apply AFA to a respondent which failed to report a small quantity of sales. Thus, as facts available under section 776(a)(1) of the Act, we are applying to the unreported Puerto Rican sales the weighted-average margin calculated for Deacero's reported U.S. sales, in accordance with our practice.<sup>35</sup>

### **Comment 3:** Whether Deformed Steel Wire is Within the Scope

#### *Deacero's Argument*

- The scope definition in the Petition is limited to rebar (excluding smooth rebar) and does not mention wire products. Also, none of the HTSUS numbers listed in the scope definition encompasses steel wire, which is separately covered under HTSUS headings 7217 (wire of iron or non-alloy steel), 7223 (wire of stainless steel), and 7229 (wire of other alloy steel).
- The omission of identifying U.S. producers of deformed steel wire in the petition further demonstrates that Petitioners did not intend to include deformed steel wire in the scope of the rebar investigation.
- Deacero's deformed steel wire products are clearly distinguishable from rebar in terms of manufacturing process, specifications, physical properties, use, purchaser expectations, cost of production, and manner of marketing.
- The Petition's description of the manufacturing process is limited to rebar. Rebar is manufactured by hot-rolling steel billet. In contrast, deformed steel wire, like any wire product, is manufactured by cold-drawing wire rod. For this reason, Deacero produces rebar and deformed steel wire at separate production facilities. Moreover, whereas rebar is produced to rebar specifications (such as ASTM A615, ASTM A706, and NMX C-407), deformed steel wire is produced to wire specifications (such as ASTM A469, ASTM A1064, and NMX B-253).
- In the Preliminary Scope Determination, the Department concluded that deformed steel wire was subject merchandise, in part, because "the scope provides no exclusions based on the production process."<sup>36</sup> However, there is no need for the scope definition to exclude

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<sup>34</sup> See *Canned Pineapple Fruit From Thailand*, and accompanying Issues and Decision Memorandum at 11.

<sup>35</sup> See *Coated Paper from Indonesia*; see also *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40848 (July 11, 2012), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>36</sup> See Memorandum To Paul Piquado, Assistant Secretary for Enforcement and Compliance From James Doyle, Director Office V, Antidumping and Countervailing Duty Operations, titled "Scope Comments Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from Mexico," (Preliminary Scope Determination) dated April 18, 2014, at 3.

deformed steel wire based on production process, because the scope explicitly covers steel concrete reinforcing bar.

- Rebar and deformed steel wire products exhibit different physical characteristics and properties. Deformed steel wire products typically have higher yield strengths than rebar. Moreover, as cold-drawn wire, Deacero's deformed steel wire products are less ductile than rebar.
- Rebar and deformed steel wire products are generally used in different applications. Rebar is used to reinforce concrete in construction projects. In contrast, Deacero mainly sells deformed steel wire for the production of welded wire products, produced to ASTM A496 specification to make welded deformed steel wire reinforcement mats. Rebar, in contrast, is not used to make downstream wire products.
- Ultimate purchasers of rebar and deformed steel wire have different expectations. Thus, Deacero sells rebar and deformed steel wire to different categories of customers.
- Because deformed steel wire requires an additional processing stage (cold-drawing), it is more costly to produce than rebar.
- Deacero markets rebar differently than deformed steel wire. Deacero has one rebar brochure that it uses to promote sales of rebar in Mexico, which does not mention deformed steel wire products. The Varilla 6000 products are marketed in a separate brochure, in which the company promotes Varilla 6000 as a cost-effective substitute for both rebar and wire rod.
- In the Preliminary Scope Determination, the Department inaccurately noted that Deacero acknowledged that deformed steel wire is "interchangeable" with rebar.<sup>37</sup> Deacero reported that deformed steel wire is a "limited substitute" for rebar.<sup>38</sup>
- For purposes of the margin calculation, the Department can eliminate deformed wire products from the sales databases by excluding certain sales reported in the SPECH/SPECU field, and from cost database based on certain control numbers (CONNUMs). As reported in the cost verification, there is no overlap between CONNUMs that include rebar and CONNUMs that include deformed steel wire.

#### *Petitioners' Rebuttal*

- Deacero's attempts to exclude Varilla 6000 and a certain other product is unwarranted based upon the plain language of the scope, which covers steel concrete reinforcing bar imported in either straight length or coil form regardless of metallurgy, length, diameter, or grade.
- Deacero's alleged distinctions are all irrelevant based upon the clear language of the scope. Therefore, the Department should not create distinctions which do not exist in the scope language.
- The scope clearly states that HTSUS categories are only illustrative, grades are irrelevant, and the manufacturing process is not mentioned.
- While the scope language is clear, even under the *Diversified Products* criteria, there is no basis to conclude that Varilla 6000 and a certain other product are outside the scope. These products have physical characteristics which overlap with the physical characteristics of other rebar. Second, wire rebar which is subject to the order is used in the same application as other types of rebar. All of these products are used to reinforce concrete which means that they have the same applications.

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<sup>37</sup> *Id.*

<sup>38</sup> See Deacero's Scope Comments at Exhibit 2, dated October 31, 2013.

- Deacero’s argument seems to be that the ultimate customers of these products have different expectations, except when it is actually sold and used as rebar. Thus, Deacero admits that the products in question can have the same customer which expects to use them for the same purpose.
- Deacero argues that the products in question are more costly than other rebar. However, the products in question are within the range of the cost of production variations for subject merchandise. As such, this fact does not favor a finding that these products should be excluded from the scope.
- Deacero does not explain how a substitute for rebar is different than rebar. They are both placed into concrete to reinforce the structure and used by the same ultimate customers. Thus, Deacero’s “substitute” rebar argument is nonsensical.
- The SPECH/SPECU field is not part of the CONNUM, and Deacero is attempting to exclude sales from the database which fit under the same CONNUMs as other rebar. Changing the specification and grade would allow Deacero to exclude subject merchandise from its U.S. and home market sales databases, even when all other product characteristics relevant to the CONNUM demonstrate the product is subject merchandise.

**Department’s Position:** We examined and analyzed interested parties’ comments regarding in scope merchandise in the Preliminary Scope Determination.<sup>39</sup> Interested parties did not provide any additional information or comments that warrant reconsideration of the Department’s preliminary determination.

The scope provides no exclusions based on the production process. Further, we continue to find that the merchandise is interchangeable with rebar and that Deacero admits that the merchandise is a substitute for rebar. We therefore maintain our position as stated in the Preliminary Scope Determination.

**Comment 4:** Whether Cooling Method Should Be Incorporated into CONNUMs

*Deacero’s Arguments*

- Water-cooled rebar is more prone to rusting than air-cooled rebar. As a result, there is a strong bias in the U.S. market against imported rebar that was water-cooled. Because the U.S. market strongly disapproves of water-cooled rebar imported from Mexico, cooling method results in a commercially significant difference that should be taken into account for purposes of model matching.
- In the *Preliminary Determination*, the Department concluded that water-cooled and air-cooled rebar are not different in any commercially meaningful manner. In making this conclusion, the Department noted that certain U.S. producers use the water-cooling method to make ASTM-compliant rebar. This, however, is irrelevant because U.S. produced rebar is not under investigation.
- Deacero’s reported cost of production data corroborates that the physical difference from the cooling method has commercial significance.

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<sup>39</sup> See Preliminary Scope Determination at 2 – 3.

### *Petitioners' Rebuttal*

- In the *Preliminary Determination*, the Department fully considered and rejected incorporating cooling method into the CONNUM, and should maintain this position in the final determination.

**Department's Position:** In the *Preliminary Determination*, the Department stated that while air-cooling may protect against rust on rebar when shipped overseas, we found that such a process does not result in a commercially-significant difference in the product. As a result, we found that there was no need to account for cooling method as a physical characteristic included in the model matching hierarchy for the subject merchandise.<sup>40</sup>

For the reasons stated in the *Preliminary Determination*, we continue to find that the sales of both water- and air-cooled rebar in the United States by U.S. and Mexican producers indicates that customer preferences are driven, in part, by differences in strength and weldability characteristics and not by rust-related concerns. Thus, we determine that the physical characteristics included in the initial questionnaire already properly account for the differences in physical characteristics, including strength and weldability, by virtue of the minimum specified yield strength field, which also distinguishes rebar based on the amount of equivalent carbon content. Furthermore, we find that record evidence does not support Deacero's claim that the different inputs and production processes result in rebar with commercially significant differences.<sup>41</sup>

The facts remain unchanged from the *Preliminary Determination* and the Department collected no new information during the verification of Deacero regarding rebar type that warrants reconsideration of our position on this issue. We hereby incorporate the Department's decision in the *Preliminary Determination* on this issue. Accordingly, our model match criteria remain unchanged for this final determination

### **Comment 5:** Whether Critical Circumstances Exist with Respect to Deacero's Shipments of Rebar

#### *Deacero's Arguments*

- The statute and regulations obligate the Department to determine whether critical circumstances exist based on imports when such data are available for an individual respondent. Here, whether measured by quantity or value, imports of subject merchandise exported by Deacero do not satisfy the 15 percent threshold for "massive" imports under the Department's regulations. Moreover, even if the Department were to use shipment data, Deacero's shipment data are not indicative of a "massive" increase.
- The plain language of the statute and regulation direct the Department to use respondent-specific import data when those figures are available. In this case, Deacero submitted the quantity and value of imports of subject merchandise exported by Deacero during the relevant period.
- Because Deacero submitted verifiable, respondent-specific import data, the Department was obligated under the statute and regulation to use these data for purposes of the critical

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<sup>40</sup> See *Preliminary Determination*, and accompanying Decision Memorandum at 11.

<sup>41</sup> *Id.*, at 12 – 13.

circumstances analysis. Instead, in the *Preliminary Determination*, the Department disregarded the import data without explanation, and used Deacero's shipment data. Shipments are not equivalent to imports. Therefore, in accordance with the statute and regulation, the Department should consider Deacero's import data for the final determination and find that critical circumstances do not exist with regard to Deacero.

- Deacero's shipment data also fail to manifest a "massive increase." Under 19 CFR 351.206(h)(1), the Department assesses both the value and volume of the imports. On a value basis, Deacero's shipments of subject merchandise to the United States during September increased by less than 15 percent compared to its U.S. shipments during June-August 2013. This demonstrates a lack of critical circumstances.
- On a quantity basis, Deacero's U.S. shipments increased by slightly more than 15 percent over the June-November 2013 period. However, 19 CFR 351.206(h) does not require the Department to find a "massive increase" based on an increase of 15 percent or more. Rather, the regulation precludes the Department from finding a massive increase unless the imports increased by 15 percent or more.
- Under the circumstances of this case, where the increase on an import basis is less than 15 percent, and the increase on a shipment basis is only slightly higher than 15 percent, the Department should find that a massive increase in imports and critical circumstances do not exist with regard to Deacero.
- Moreover, the consistency in Deacero's monthly shipment volumes before and after the filing of the petition on September 4, 2013, disproves Petitioners charge that Deacero increased shipments after the petition "in an effort to avoid the imposition of antidumping duties."
- Petitioners concede that "foreign producers and importers had no reason to believe, based on press reports or otherwise, that a proceeding covering rebar from Mexico was likely prior to the filing of the antidumping petition."<sup>42</sup> Therefore, Deacero's shipment volumes in July and August are representative of its normal commercial behavior.
- If just one month is added to the pre-petition and post-petition periods, the increase in both the volume and value of Deacero's shipments is less than 15 percent.

#### *Petitioners' Rebuttal*

- By requesting shipments made to the United States, the Department is, in fact, considering import data. There is no requirement in the statute or regulations that the Department must use the methodology suggested by Deacero to determine when the imports it examines were made.
- Although the Department's regulations state that it will normally examine the volume and value of imports, there is no requirement that both the quantity and the value must exceed the 15 percent threshold. In fact, although the Department requests both quantity and value information on a monthly basis, it has often used volume as its sole basis for finding critical circumstances.
- The Department should continue to find that critical circumstances exist with respect to Deacero because its shipment volumes increased by more than 15 percent after the petition was filed.

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<sup>42</sup> See Deacero's Case Brief at 21.

- Deacero’s argument that the Department should use alternative periods is not based in statute, regulations, or case law and has no legitimacy.

**Department’s Position:** As stated in the Preliminary Affirmative Critical Circumstances Determination, and as affirmed above in the Critical Circumstances section, we find that Deacero’s shipment volumes exceed the 15 percent threshold for “massive imports.”<sup>43</sup> Our reliance on volume data is consistent with the Department’s practice.<sup>44</sup> Further, contrary to Deacero’s arguments, there is no provision in the statute or regulations that prevents the Department from finding that critical circumstances exist when the data indicate an increase that “slightly” surpasses the 15 percent threshold.

We also disagree with Deacero’s argument that the Department use import data rather than its shipment data when conducting its “massive imports” analysis. As indicated in our questionnaire, we instructed Deacero to provide its shipments of rebar to the United States (as defined by the bill of lading date) during the three months before and after the September 4, 2013, filing of the Petition.<sup>45</sup> We solicited this information because the date on which Deacero actually shipped subject merchandise to the United States provides the Department with a better sense of the extent to which the filing of the Petition impacted Deacero’s business decisions, as opposed to the date in which subject merchandise was imported into the United States, a date that is not entirely under the control of Deacero. Further, the Department has a long history of relying upon shipment data when analyzing whether “massive imports” occurred.<sup>46</sup>

Therefore, we continue to find that the criteria under sections 733(a)(3)(A)(ii) and (B) of the Act and 19 CFR 351.206(i) are met and, thus, that critical circumstances exist with regard to Deacero.

#### **Comment 6: Whether to Apply Total AFA with respect to Simec**

##### *Simec’s Arguments*

- As a voluntary respondent, Simec has been diligent and cooperative. Simec encountered difficulties at verification, particularly with the preparation of the home market sales reconciliation. Specifically, company officials discovered that they had not properly accounted for price adjustments at certain plants when compiling the home market sales database, thereby inadvertently inflating the net value of the reported transactions and

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<sup>43</sup> See Preliminary Affirmative Determination of Critical Circumstances at 4.

<sup>44</sup> See *Certain Magnesia Carbon Bricks from the People’s Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances*, 75 FR 28237, 28238 (May 20, 2010) (*Bricks from the PRC*): “The Department normally considers a “relatively short period” as the period beginning on the date the proceeding begins and ending at least three months later. See 19 CFR 351.206(i). For this reason, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”).”

<sup>45</sup> See the Department’s February 14, 2014, questionnaire to Deacero.

<sup>46</sup> See *Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, In Part*, 77 FR 63791, 63793 (October 17, 2012).

overstating the dumping margin. After a number of “sleepless nights,” Simec’s personnel ultimately generated a reconciliation package, which is a part of sales verification package.<sup>47</sup>

- Per *Citric Acid and Certain Citrate Salts from China*<sup>48</sup>, the fact that the Department did not review or test Simec’s home market sales reconciliation for lack of time should not obscure the fact that the reconciliation can be done after verification on the basis of the verification package provided by Simec.
- The Department should follow the five steps detailed in Simec’s case brief to reconcile Simec’s home market sales to its financial statements.<sup>49</sup>
- Based on these data, the Department should adjust the home market sales value by the price adjustments shown on the sales reconciliation package, which will result in the Department correctly accounting for Simec’s inadvertent error in the home market database.<sup>50</sup>

#### *Petitioners’ Arguments*

- Despite Simec’s professed intent to fully participate in the investigation as a voluntary respondent, Simec’s questionnaire response was of dubious value and largely incomplete. For example, it was totally unclear which sales Simec had reported that involved sales to or sales by affiliated resellers or trading companies. Simec also failed to provide information regarding the services and office space that an affiliate provided to Simec and failed to report the selling expenses associated with the services.<sup>51</sup>
- The Department should find that Simec failed the sales verification because, in spite of providing a pre-verification outline to Simec detailing exactly what it would be reviewing, the Department was unable to verify Simec’s home market sales quantity and value reconciliation, one of the most fundamental items required in verification, and was unable to verify Simec’s sales made through affiliated parties in the home market, and several major adjustments to U.S. and home market price.
- Owing to the totality of Simec’s verification failures, the Department cannot rely upon the questionnaire data of Simec and can only base its final determination upon facts available. Moreover, given the depth of the failures, the Department should find that Simec has not cooperated to the best of its ability and that the Department should apply adverse facts available to Simec.
- If the Department does not apply total AFA, the Department should apply partial AFA to those adjustments and transactions which failed verification.

#### *Simec’s Rebuttal*

- The difficulties Simec encountered at its sales verification are not so egregious that they justify application of total AFA. The Department resorts to the punishment of total AFA

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<sup>47</sup> See Letter from Grupo Simec to the Secretary of Commerce, dated August 4, 2014 (Simec’s Case Brief) at 2-4, see also Memorandum from Joy Zhang and Stephanie Moore, Case Analysts, Office III, to the File, re: *Verification of the Sales response of Grupo Simec and Constructed Export Sales of Simec USA in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico* (July 1, 2014) at Exhibit-15 (Simec Sales Verification Report).

<sup>48</sup> See *Citric Acid and Certain Citrate Salts from the People’s Republic of China*, 74 FR 16836 (April 13, 2009) (*Citric Acid and Certain Citrate Salts from China*).

<sup>49</sup> See Simec Case Brief at 4-12.

<sup>50</sup> *Id.*, at 13.

<sup>51</sup> See Petitioners’ Case Brief at 22.

only for the most uncooperative of the respondents per *Tianjin I*<sup>52</sup> - where the respondent completely failed to respond,<sup>53</sup> commits proven fraud,<sup>54</sup> fails its verification, or where the submitted data is so deficient that a margin calculation cannot be performed.<sup>55</sup>

- It is entirely disproportionate and inappropriate to apply to Simec, a voluntary respondent that fully cooperated throughout the entirety of the investigation, the same total AFA applied to Grupo Acerero, a non-cooperative mandatory respondent that did not submit a single page of information to the Department.
- The Department has the discretion to analyze the information provided in the reconciliation package, as well as to consider a number of other options, without having recourse to AFA for its Final Determination.<sup>56</sup>

#### *Petitioners' Rebuttal*

- The magnitude of Simec's verification failures is akin to the facts in *Magnesium From China*<sup>57</sup> and *Steel Threaded Rod From China*<sup>58</sup>, where the Department applied total AFA because the respondents were unable to provide the necessary information before the commencement of verification (*e.g.*, sales reconciliation) and further found that respondents should have been able to provide documentation for various examination procedures conducted during verification (*e.g.*, packing expenses, indirect and direct selling expenses, home market sales to affiliated parties).
- Accordingly, the Department should find that Simec has not cooperated to the best of its ability, and should apply total AFA to Simec.<sup>59</sup>

**Department's Position:** As background, we provide the following information. The Department released its verification outline to Simec on May 1, 2014, eleven days before the commencement of verification on May 12, 2014. The outline instructed Simec to be fully prepared for verification, and to gather all the necessary information "by the appropriate personnel prior to the verifiers' arrival." Further, the outline specifically requests the respondent to prepare in advance of the verification the reconciliation of the quantity and value of sales reported in the Sections B and C sales database.<sup>60</sup>

As noted in the Department's sales verification report, on the first day of the verification, the verifiers reviewed the agenda with Simec and explained that they wanted to conduct the sales

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<sup>52</sup> See *Tianjin Magnesium Int'l Co. v. United States*, 836 F. Supp. 2d 1377, 1381-82 (CIT 2012) (*Tianjin I*).

<sup>53</sup> See *Hubscher Ribbon Corp., Ltd. v. United States*, 491 F. Supp. 2d 1360 (Ct. Int'l Trade 2014).

<sup>54</sup> See *Yantai Xinke Steel Structure Co. v. United States*, 2012 WL 2930182 (Ct. Int'l Trade 2012).

<sup>55</sup> See *Universal Polybag Co., Ltd., v. United States*, 577 F. Supp. 2d 1284 (Ct. Int'l Trade 2008) (*Universal Polybag*).

<sup>56</sup> See Letter from Grupo Simec to the Secretary of Commerce, dated August 11, 2014 (Simec's Rebuttal Brief) at 2-4.

<sup>57</sup> See *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*).

<sup>58</sup> See *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) (*Certain Steel Threaded Rod from China*).

<sup>59</sup> See Petitioners' Case Brief at 30-31.

<sup>60</sup> See Letter from Eric B. Greynolds, Program Manager, Office III, to Grupo Simec, re: *Antidumping Duty Investigation: Steel Concrete Reinforcing Bar from Mexico* (May 1, 2014) (Sales Verification Outline) at 9. See also Simec's supplemental questionnaire response, dated March 20, 2014, at Exhibit S-1 and Exhibit S-62.

reconciliation no later than the third day of the verification.<sup>61</sup> In the afternoon of the third day, Simec stated that the home market sales reconciliation was not ready for review because the company had found a discrepancy between its reported home market sales and Simec's net sales figure in its financial statements.<sup>62</sup> On the next day, Simec stated that, due to a computer crash, it was still not able to conduct the home market sales reconciliation.<sup>63</sup>

Due to Simec's delay in providing the verification information outlined in the agenda, the verifiers were not presented with, nor did they have a chance to review, Simec's home market sales reconciliation package until the afternoon of the fifth and final day of the verification.<sup>64</sup> Further, as noted by the verifiers during verification, the reconciliation package presented by Simec on the last day was different from the home market sales reconciliation that Simec submitted in Exhibit S-41 of its March 20, 2014, submission.<sup>65</sup> This difference between the two datasets is significant given that Simec claimed that the reconciliation data contained in its March 20, 2014, submission was, "reviewed and compared against the Company's record ledger accounting system, where the accuracy of these figures is reconciled."<sup>66</sup>

The home market sales reconciliation worksheets presented to the verifiers indicate certain price adjustments for certain plants as a reconciling item which were not included in Simec's earlier submissions.<sup>67</sup> Simec presented this information to the Department for the first time at verification on the afternoon of the last day of verification,<sup>68</sup> which left the verifiers no time to examine whether the price adjustments were related to sales made in the POI or to tie them to Simec's reported home market sales. Accordingly, due to lack of time and the revisions Simec made to its original submission, the verifiers terminated the review of Simec's home market sales reconciliation and did not perform any of the quantity and value reconciliation steps outlined in Section VII of the sales verification outline.<sup>69</sup>

Under 19 CFR 351.307(d), the purpose of verification is to "verify the accuracy and completeness of submitted factual information." Under 19 CFR 351.102(c)(5) of the revised factual filing regulations, which are in effect for investigation,<sup>70</sup> the deadline for submitting new factual information was no later than 14 days prior to the commencement of verification. Though Simec presented six minor corrections on the first day of verification, Simec did not notify the Department about the price adjustment issue prior to verification, but presented it as a

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<sup>61</sup> See Memorandum from Joy Zhang and Stephanie Moore, Case Analysts, Office III, to the File, re: *Verification of the Sales response of Grupo Simec and Constructed Export Sales of Simec USA in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico* (July 1, 2014) (Simec Sales Verification Report).

<sup>62</sup> *Id.* at Exhibit-15.

<sup>63</sup> *Id.* at 7.

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

<sup>65</sup> See Simec's supplemental questionnaire response dated March 20, 2014, at Exhibit S-41; see also Simec Sales Verification Report at 7. We note that the magnitude of the difference contained in the Simec Sales Verification Report is proprietary.

<sup>66</sup> See Simec's supplemental questionnaire response, dated March 20, 2014, at 20 and Exhibit S-41.

<sup>67</sup> See Simec's Sales Verification Report at Exhibit-15. We note that the details regarding these price adjustments, as discussed in the Simec Sales Verification Report, are proprietary.

<sup>68</sup> *Id.* at 2 and 7.

<sup>69</sup> *Id.*

<sup>70</sup> See *Initiation Notice*, 78 FR at 60830-31.

home market reconciling item on the last day of the verification.<sup>71</sup> Simec's inability to present its home market reconciliation in a timely manner (data that Simec concedes contains certain revisions)<sup>72</sup> prevented the verifiers from performing reconciliation tests. For example, the Department was unable to examine whether Simec's home market sales tie to its general ledger and to its Section B sales database; was unable to examine the computer programs that generated the sales reconciliation or to observe the computer programmer extracting sales from the computer system; was unable to tie home market sales to the reconciliation package; and was unable to assess whether sales reported in the home market sales database were subject to post-sale price adjustments. Such tests are necessary in order to confirm the completeness and accuracy of the reported information, and Simec'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.<sup>73</sup> Additionally, the Department explained that with regard to reconciliation:

It also serves another very important purpose in that it baselines accounting ledgers and worksheets that will be used to verify many other topics. Base lining documents means that verifiers have established the validity of these documents by tying them into the audited financial statements and that other verified topics can be tied into these documents without having to go back to the general ledger. Thus, each of the documents used to reconcile the total quantity and value of reported POI or POR sales back to the financial report can be considered a source document. This exercise requires that verifiers establish to their full satisfaction that the tie-in to the financial statement is complete and accurate. If not, where appropriate, verifiers should continue to reconcile verified topics back to the company's general ledger.<sup>74</sup>

Not only did Simec fail the home market sales reconciliation, it failed several other important verification items required in the Department's verification outline.<sup>75</sup> As noted in the sales verification report, and as discussed further below in Comment 9, Simec did not prepare any information on its home market sales made through affiliates.<sup>76</sup> It did not have any home market or U.S. packing expense packages available for verifiers to review by the end of verification.<sup>77</sup> Simec was unable to demonstrate the accuracy of the shipment data reported in its critical circumstances questionnaire response.<sup>78</sup> Simec failed to provide sales-related documents for one U.S. sales trace.<sup>79</sup> Simec also failed to demonstrate that a certain selling expense, which appears in Simec USA's financial statements, was not related to its U.S. sales of rebar.<sup>80</sup> The verifier

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<sup>71</sup> See Simec Sales Verification Report at 2-3, and 7.

<sup>72</sup> Simec states "{d}uring the preparation of the home market sales reconciliation, company officials discovered that it did not properly account for price adjustments at the San Luis and Tlaxcala plants when compiling the home market sales database, thereby inadvertently inflating the net value of the reported transactions and overstating the dumping margin." See Simec's Case Brief at 13.

<sup>73</sup> See AD Manual, Chapter 15, at 33 (2009), available at: <http://enforcement.trade.gov/admanual/2009/Chapter%2015%20Verifications.pdf>.

<sup>74</sup> *Id.*

<sup>75</sup> See the Department's Simec Sales Verification Outline.

<sup>76</sup> See Simec Sales Verification Report at 13.

<sup>77</sup> *Id.* at 2.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 2 and 11.

<sup>80</sup> *Id.* at 2.

requested this information as a part of the completeness test of U.S. sales.<sup>81</sup> Simec failed to provide any information regarding the selling expenses.<sup>82</sup> See Comment 8 for further discussion.

Accordingly, the Department finds that the use of facts otherwise available is warranted with respect to Simec pursuant to section 776(a) of the Act. Sections 776(a)(1) and (2) of the Act provides that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the administering authority or the Commission under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Because, as noted above, Simec failed to provide accurate information concerning its home market sales and otherwise failed verification, pursuant to sections 776(a)(1) and (2)(A), (B), (C), and (D) of the Act, we find that use of facts available is necessary with respect to Simec. In particular, we find that Simec's home market sales reconciliation package cannot be used in this investigation because, for the reasons explained above, it is not verifiable, and, thus, cannot serve as a reliable basis for determining the accuracy and completeness of the reported home market sales database. In addition, as noted above, Simec failed several other important verification items as well.

Further, pursuant to section 782(e) of the Act, we find that we cannot consider the information contained in Exhibit 15 of the Simec Sales Verification Report<sup>83</sup> because the information was not presented in a manner that enabled the Department to properly examine and test the data. As noted in the verification report, the verifiers collected the information merely to document the extent of the discrepancy between the home market reconciliation data Simec submitted prior to the commencement of verification and the reconciliation package Simec struggled to compile during the verification. The mere fact that the information and data included in Exhibit 15 are on the record of the investigation does not mean that data in the exhibit are verified. As noted above, Simec did not provide this information to the verifiers until afternoon of the last day of verification and, thus, precluded the verifiers from performing essential tests and examinations of the data (*e.g.*, tying the documents in Exhibit 15 into the audited financial statements as well as other verified documents), procedures that, as the AD Manual notes, are key in “{baselining}

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<sup>81</sup> See the Department's Verification Outline for Simec, dated May 1, 2014 at 8-9.

<sup>82</sup> See Sales Verification Report at 2, for a discussion of these omissions and discrepancies.

<sup>83</sup> *Id.* at 2 and 7.

accounting ledgers and worksheets that will be used to verify many other topics” during the verification.<sup>84</sup>

In addition, we find that Simec’s failure to provide accurate information concerning its 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.”<sup>85</sup> As in *SAIL*, in which the court found that the deficiencies to respondent’s submissions were “pervasive and persistent,”<sup>86</sup> the problems encountered during the verification of Simec were extensive and, as noted above, called the integrity of Simec’s submissions to the Department into question.<sup>87</sup> For the many reasons explained above, Simec failed its home market sales reconciliation. Failing such an important agenda renders an entire verification a failure because it casts serious doubt on the validity 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.<sup>88</sup> The Court 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 information.<sup>89</sup> The Court held that this evidence demonstrated that the Department “was unable to verify information provided by King Pac, 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 law.”<sup>90</sup> Therefore, as discussed in further detail below in Comment 7, we disagree that the Department may utilize portions of Simec’s data to derive a calculated margin based on partial facts available or partial AFA.

We also find, pursuant to section 776(b) of the Act, that Simec failed to cooperate to the best of its ability, and thus, adverse inferences are warranted. As noted above, the sales and cost reconciliations are the essential building blocks of the entire verification.<sup>91</sup> The importance of sales reconciliation is clearly stated in the Department’s AD Manual:

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<sup>84</sup> See AD Manual, Chapter 15, at 33.

<sup>85</sup> See *Steel Authority of India, Ltd., v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001) (*SAIL*) (citing *Heveafil Sdn. Bhd. v. United States*, 25 CIT 147 (2001)).

<sup>86</sup> See *SAIL*, 149 F. Supp. 2d at 928.

<sup>87</sup> See Simec’s Sales Verification Report at 2, which details the areas of Simec’s response that the Department was not able to verify.

<sup>88</sup> See *Notice of Final Results and Partial Recission (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; *Magnesium from China*, and accompanying Issues and Decision Memorandum at 28; see also *Steel Threaded Rod from China*, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>89</sup> See *Universal Polybags*, 577 F. Supp. 2d at 1295.

<sup>90</sup> *Id.*, 577 F. Supp. 2d at 1295-96.

<sup>91</sup> See AD Manual, Chapter 15 at 33.

Reconciliation of quantity and value of sales is the transition phase between laying the foundation and the on-going completeness tests. In verifying a respondent's quantitative sales response, this is one of the most important tasks performed.<sup>92</sup>

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.<sup>93</sup> 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.<sup>94</sup>

Here, we disagree with Simec that its participation throughout the proceeding should mitigate its failure to properly reconcile its home market sales data to its financial records during verification. The Department's verification outline, which was released to Simec eleven days before the commencement of verification, specifies clearly what items the verifiers intended to examine during verification and instructs Simec to have complete sales reconciliation available on the first day of verification. As a voluntary respondent, Simec should have better prepared for verification. However, Simec did not inform the Department of the difficulties it experienced in reconciling its home market sales to its financial statements until the third day of verification and did not have the home market sales reconciliation package available until the afternoon of the last day of verification. Contrary to Simec's purported claim that it has been "extremely cooperative,"<sup>95</sup> we find Simec failed to cooperate by not acting to the best of its ability to comply with a request for information. Simec could have provided the information requested but did not. In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) provides:

The statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent.<sup>96</sup>

The Federal Circuit further held in *Nippon Steel* that:

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

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<sup>92</sup> *Id.*

<sup>93</sup> See *Magnesium From China*, and accompanying Issues and Decision Memorandum at Comment 1.

<sup>94</sup> See *Steel Threaded Rod From China*, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>95</sup> See Simec's Case Brief at 2.

<sup>96</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*).

through inadvertence, neglect, or otherwise to look beyond the files immediately available.<sup>97</sup>

Thus, consistent with the Federal Circuit’s holding and the Department’s practice, we disagree with Simec that its repeated efforts to produce a home market sales reconciliation package to the verifiers exonerates it from receiving an AD margin based on total AFA. Instead, the salient fact here is that Simec, despite being in possession of the necessary financial information and despite having claimed that the home market sales data contained in its questionnaire response “reconciled”<sup>98</sup> to its financial records, failed to provide home market sales reconciliation information to the verifiers in a timely manner at verification and, thus, precluded the verifiers from properly examining the data at verification. As a result, we find that Simec failed to act to the best of its ability and, thus, the application of total AFA under section 776(b) of the Act is warranted.

Simec argues that the Department resorts to the punishment of total AFA only for the most uncooperative respondents. We agree with Simec that the circumstances here do not appear to be “tainted by material fraud,” as was the case in *Tianjin I*,<sup>99</sup> or a circumstance in which Simec completely failed to respond. However, the Department’s application of total AFA is not limited to these circumstances. Rather, the Department applies total AFA to a respondent because the respondent “fail{ed} to cooperate by not acting to the best of its ability to comply with requests for information,” pursuant to section 776(b) of the Act, and such instances include such circumstances as presented in the instant case, in which a party fails to provide accurate and verifiable information.<sup>100</sup>

Contrary to Simec’s argument, the Department finds that facts concerning *Citric Acid and Certain Salts from China* are distinct from those of the instant investigation. In *Citric Acid and Certain Salts from China*, the Department attempted to accept a large amount of information from the Government of China (GOC) as a verification exhibit so that it would be able to further examine the data at a later time, a request that the GOC refused. As a result, the information in question was never placed on the record of the investigation.<sup>101</sup> In contrast, and as noted above, the verifiers did not instruct Simec to submit its reconciliation as a verification exhibit that was to be examined at a later point in the verification or proceeding. Rather, on the first day of the verification, the verifiers stipulated that Simec was to present its home market reconciliation for examination no later than the third day of the five-day verification. Despite the verifiers’ instructions and despite the verifiers’ repeated requests to examine the home market information following day three of verification, Simec did not submit its home market reconciliation data to the Department until the afternoon of the last day of verification, by which time it was too late for the verifiers to examine the data.<sup>102</sup> Simec’s inability to provide home market reconciliation data to the verifiers in a timely manner precluded the verifiers from properly verifying and reconciling the home market sales database.

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 20 and Exhibit S-41.

<sup>99</sup> See *Tianjin I*, 836 F. Supp. 2d at 1381-82.

<sup>100</sup> See, e.g., *Universal Polybags*, 577 F. Supp. 2d at 1295-96.

<sup>101</sup> See *Citric Acid and Certain Citrate Salts from China*, and accompanying Issues and Decision Memorandum at 22.

<sup>102</sup> See Simec Sales Verification Report at 2 and 8.

## **Comment 7: Whether Constructed Value Can Be Used as the Basis for Normal Value**

### *Simec's Arguments*

- Simec cites to *AK Steel* and argues that if the Department disregards Simec's home market sales, the Department has the discretion to use constructed value (CV) as the basis for NV.<sup>103</sup>

### *Petitioners' Rebuttal*

- On this point, Simec relies solely on *AK Steel*, a 20-year old case where the Department used CV when the product characteristics of its home market sales could not be verified because the relevant records were not maintained.
- The facts of *AK Steel* are drastically different from the instant investigation because the case involved a rare occurrence where the respondent simply did not have any means to provide the information needed to verify the home market sales.<sup>104</sup>
- Here, Simec had the ability to reconcile its home market sales data to its financial records and failed to do so.

**Department's Position:** As we explained above, we find it appropriate to apply total AFA with respect to Simec. This determination is based on the fact that Simec failed to provide necessary information regarding its home market sales reconciliation. As noted above, reconciliation is one of the essential tasks of verification in that it constitutes "the transition phase between laying the foundation and the on-going completeness tests."<sup>105</sup> Further, reconciliation is critical because it serves to "{baseline} accounting ledgers and worksheets that will be used to verify many other topics" during the verification."<sup>106</sup> Thus, when a respondent fails to reconcile its home and/or U.S. sales data at verification, it calls in question the reliability of the entire verification process.<sup>107</sup> For these reasons, we find we cannot, as Simec suggests, use part of the company's response, namely its cost data, when assigning it an AFA margin.

Furthermore, aside from its inability to reconcile its home market sales database, Simec also failed several other important items at verification.<sup>108</sup> As noted above, the Federal Circuit in *Nippon Steel* held that, "{i}n preparing a response to an inquiry from Commerce, it is presumed that respondents are familiar with their own records."<sup>109</sup> Furthermore, in *Nippon Steel*, the Federal Circuit found that a respondent's inability, however "inadvertent" or "neglectful," to properly access and submit information that is in its possession to the Department may not serve as a basis to avoid the application of AFA.<sup>110</sup> Given the magnitude of Simec's verification failures, we find that the data Simec submitted on the record cannot be used to calculate an

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<sup>103</sup> See Simec's Case Brief at 14, citing *A.K. Steel Corp. v. United States*, 988 F. Supp. 594, 599 (CIT 1997) (*AK Steel*).

<sup>104</sup> See *AK Steel*, 998 F. Supp. 594.

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

<sup>106</sup> See AD Manual, Chapter 15, at 33 (2009), available at: <http://enforcement.trade.gov/admanual/2009/Chapter%2015%20Verifications.pdf>.

<sup>107</sup> See *Universal Polybags*, 577 F. Supp. 2d at 1295-96.

<sup>108</sup> See Simec Sales Verification Report at 2.

<sup>109</sup> See *Nippon Steel*, 337 F.3d at 1383.

<sup>110</sup> *Id.*

accurate dumping margin, and that the application of total AFA is warranted within the meaning of section 776(a) and (b) of the Act.<sup>111</sup>

We disagree that the facts of *AK Steel* are applicable here. In *AK Steel*, the Department was unable to fully verify the accuracy of the respondent's home market product characteristics due to the fact that such information was not maintained in the respondent's normal records. The Department then based foreign market value on CV.<sup>112</sup> In contrast, Simec had all documents in its possession and had the ability to provide complete and accurate sales reconciliations prior to verification, but failed to do so.

**Comment 8:** Whether the Department Can Calculate Indirect Selling Expenses from the Information on the Record

*Simec's Argument*

- Simec did not report the indirect selling expenses associated with its U.S. affiliate Simec USA. This was an inadvertent error that Simec attempted to correct at verification.
- Although the verifiers refused to accept Simec's corrected information, the information necessary to calculate the indirect selling expense ratio is, nonetheless, on the record.
- Using Exhibit 6 from the Simec Sales Verification Report, which includes Simec USA's 2012 and 2013 financial statements, the Department may calculate Simec USA's indirect selling expense ratio. The resulting ratio should be multiplied by the gross unit price reported for Simec's U.S. sales to derive the per-unit U.S. indirect selling expense.

*Petitioners Rebuttal*

- The Department cannot use Simec's U.S. indirect selling expenses not reported until verification. Simec's failure to report the required information is another basis for the application of total AFA.

**Department's Position:** As indicated in the verification report, Simec attempted to present to the verifiers new information concerning its U.S. indirect selling expenses as part of the minor corrections exhibit.<sup>113</sup> Verification is not meant to be an opportunity for respondents to present new blocks of data, whole cloth. Rather, it is meant to be a process by which the verifiers confirm the accuracy and reliability of information that has already been placed on the record of the proceeding. While the Department does permit respondents to present minor corrections at the outset of verification, the minor corrections process is not meant to be an opportunity for respondents to present new and previously unreported fields in the home or U.S. market databases.<sup>114</sup> Thus, the verifiers rightly refused to review or accept the new information. If Simec wanted the Department to incorporate its U.S. indirect selling expenses into its analysis, then it should have provided information concerning this field during the extensive questionnaire period that preceded verification.

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<sup>111</sup> See *Notice of Final Results of Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 69 FR 6255 (February 10, 2004), and accompanying *Issues and Decision Memorandum* at Comment 10.

<sup>112</sup> See *AK Steel*, 998 F. Supp. at 600.

<sup>113</sup> See Simec Sales Verification Report at 2.

<sup>114</sup> See Simec Sales Verification Outline at 2.

Simec's belated attempts to submit the indirect selling expense information at verification further demonstrates how it failed to act to the best of its ability during the course of this investigation, as discussed in further detail above in Comment 6. Furthermore, its arguments concerning the U.S. indirect selling expenses are moot. As explained above, because Simec failed to reconcile its home market data and failed to substantiate several other aspects of its questionnaire responses at verification, we find that we are unable to use any of its data for purposes of its margin calculation and, therefore, in accordance with section 776(a) and (b) of the Act, we are assigning Simec a margin based entirely on AFA.

**Comment 9:** Whether Simec's Sales to Affiliated Distributors Were Made at Arm's Length

*Simec's Arguments*

- During the POI, Simec made a small number of sales to affiliated distributors. Because these sales exceed the five percent threshold, the Department can only use them in its NV calculation if they are demonstrably made at arm's length.
- The Department should use these sales in its NV calculation because Simec made virtually all of its sales at above cost. Second, the majority of the Simec's sales to affiliated distributors passed the arm's length test and the quantity of sales failing the test are relatively small.

*Petitioners Rebuttal*

- The Department should dismiss Simec's argument that sales to affiliated distributors were made at Arm's Length. Examination of Simec's sales from affiliates to unaffiliated customers was one of the verification items, which was released to Simec before the commencement of verification.<sup>115</sup> However, Simec did not provide any home market sales documentation related to these sales. Thus, Simec's sales to affiliated parties failed verification, establishing yet another basis for rejecting Simec's home market sales database.

**Department's Position:** As indicated in the sales verification report, Simec failed to provide any information that would have allowed the verifiers to confirm the veracity of the information concerning its sales to affiliated parties in the home market.<sup>116</sup> Simec's failure in this regard demonstrates how it failed to act to the best of its ability during this investigation, as discussed in further detail above in Comment 6. Furthermore, its arguments concerning its affiliated sales in the home market are moot. As explained above, because Simec failed to reconcile its home market data and failed to substantiate several other aspects of its questionnaire responses at verification, we find that we are unable to use any of its data for purposes of its margin calculation and, therefore, in accordance with section 776(a) and (b) of the Act, we are assigning Simec a margin based entirely on AFA.

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<sup>115</sup> See Letter from Eric. B. Greynolds, Program Manager, Office III, to Grupo Simec, re: Antidumping Duty Investigation: *Steel Concrete Reinforcing Bar from Mexico: Issuance of Verification Agenda Addendum to Simec* (May 8, 2014) at 2 (Verification Outline Addendum).

<sup>116</sup> See Simec's Sales Verification at 2 and 13.

**Comment 10:** Whether the Application of Total AFA With Regard to Acerero is Warranted

*Acerero's Arguments*

- The 66.70 percent AFA margin assigned to Acerero is punitive. This is particularly evident given that Acerero's failure to submit an initial questionnaire response arose from a good-faith misunderstanding of the Department's policies and instructions.
- Acerero was not named in the petition and, thus, did not receive notice of its involvement in the investigation prior to the issuance of the initial questionnaire.
- Further, upon receipt of the initial questionnaire, Acerero, a firm that heretofore had no prior involvement with the Department, was interfacing with the Department on a *pro se* basis. As a result, Acerero lacked a clear understanding of the Department's investigative process.
- The questionnaires mailed to Acerero by the Department were received by a guard at the factory. It took several days for the questionnaires to be delivered to Acerero's headquarters.
- When the questionnaire was at last received by Acerero's commercial director on December 23, 2013, the official immediately contacted the Department's official in charge, via email, and explained the situation, and requested an extension.
- In a reply email, the official in charge explained that Acerero needed to make a written request for an extension and, in so doing, merely referred the company to the cover page and general instructions of its questionnaire for instructions on how to file a formal extension request with the Department.<sup>117</sup>
- However, the instructions in the questionnaires were not sufficient to permit Acerero to decipher the electronic filing process. Furthermore, because it was Christmas Eve, Acerero was not able to consult new legal counsel as to how to properly file extension requests with the Department.
- Without counsel, Acerero was left to its own understanding concerning the Department's filing instructions and, moreover, the significance of the term "application of facts available" in the absence of information from the company. The company understood that to mean that if it was unable to respond, the Department would apply a rate based on the "facts available" – *i.e.*, an average rate based on information from other responding companies.
- Thus, Acerero was left with the impression that its participation while requested was not absolutely mandatory. Thus, Acerero believed, not unreasonably, that if it could not respond in time the Department would select a replacement firm.
- Acerero's believed its understanding was confirmed when the Department selected Simec as a replacement respondent, especially since the voluntary respondent memorandum does not indicate that Acerero would be punished for its failure to respond to the questionnaire.<sup>118</sup> Thus, Acerero had no reason to expect that it would receive a total AFA rate by virtue of not responding to the initial questionnaire. It was not until the *Preliminary Determination* was published that Acerero first became aware that the consequence of not responding to the

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<sup>117</sup> See the Memorandum to the File from Stephanie Moore, Case Analyst, "Antidumping Investigation of Steel Concrete Reinforcing Bar from Mexico: E-mail Correspondence – Grupo Acerero," (March 13, 2014).

<sup>118</sup> See Memorandum to Christian Marsh, Deputy Assistance Secretary for Antidumping and Countervailing Duty Operations, "Antidumping Investigation of Steel Concrete Reinforcing Bar ("Rebar") from Mexico: Selection of Voluntary Respondent," (February 12, 2014) (Voluntary Respondent Selection Memorandum).

questionnaire would be that the Department might assign Acerero a rate higher than the other respondents.<sup>119</sup>

- Acerero's misplaced understanding of the consequences of not responding to the Department's questionnaire is understandable in light of the ITC's treatment of non-responding companies. While it is commonly known that ITC requires firms to respond to its questionnaires, the ITC does not impose a penalty for a non-response.

#### *Petitioners' Rebuttal*

- It is entirely irrelevant whether Acerero fully understood the consequences of not responding to the Department's questionnaire.
- The Department picked Acerero as a mandatory respondent on November 20, 2013. Thus, it would be truly amazing if the company was not contacted by U.S. law firms concerning representation in this investigation prior to its first contact with the Department on December 24, 2013.
- The Department's initial questionnaire clearly states that failure to respond would result in the "application of partial or total facts available, pursuant to section 776(b) of the Act, which may include adverse inferences."<sup>120</sup>
- If Acerero did not know the consequences of failing to respond to the questionnaire, then it should have taken the time to find out.
- Acerero cannot bury its head in the sand, only to emerge at the case brief stage of the investigation asking for leniency and claiming ignorance.

**Department's Position:** As discussed in the *Preliminary Determination*,<sup>121</sup> the Department selected Acerero as a mandatory respondent on November 20, 2013.<sup>122</sup> Because Acerero had not made an entry of appearance by means of the Department's electronic filing system, known as IA ACCESS, the Department mailed the Section A and Section B-C questionnaire to the company. The Department confirmed that the Section A questionnaire was delivered on December 6, 2014, 18 days ahead of the response deadline, and that the B-C questionnaire was delivered on December 18, 2013, 35 days ahead of the response deadline.<sup>123</sup> Furthermore, these questionnaires contained instructions as to how Acerero could file its response with the Department, including information regarding notices of appearance, registration with the IA ACCESS system, and requests for extensions.<sup>124</sup> Additionally the initial questionnaires indicated that the Department would apply adverse inferences in the event that Acerero failed to

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<sup>119</sup> See *Preliminary Determination*, 79 FR at 22083.

<sup>120</sup> See the Department's December 3, 2013, Initial Questionnaire at 2 (Initial QNR).

<sup>121</sup> See *Preliminary Determination*, and accompanying Decision Memorandum at 2.

<sup>122</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Selection of Respondents for the Antidumping Investigation of Steel Concrete Reinforcing Bar from Mexico," (November 20, 2013) (Respondent Selection Memorandum) at 5.

<sup>123</sup> See Memorandum to the File from Joy Zhang, International Trade Compliance Analyst, "Placement on the Record of Confirmation that Grupo Acerero Has Received the Initial Questionnaire," (December 11, 2013) (Section A Delivery Confirmation Memorandum); see also Memorandum to the File from Joy Zhang, International Trade Compliance Analyst, "Placement on the Record of Confirmation that Grupp Acerero Has Received the Initial Sections B & C Questionnaire," (December 18, 2013) (Section B-C Delivery Confirmation Memorandum).

<sup>124</sup> See the Department's December 3, 2013, Initial Questionnaire to Acerero at 2-3.

cooperate in the investigation.<sup>125</sup> On December 23, 2013, a company representative contacted the Department, seeking guidance with respect to requesting an extension. The Department indicated that any request for extension must be in writing, and directed Acerero to the questionnaire cover letter for instructions on how to do so.<sup>126</sup>

Acerero did not file a response to the Section A, B or C questionnaire. Acerero also did not file a notice of appearance, register with IA ACCESS, submit an extension request, or otherwise attempt to communicate with the Department. On April 18, 2014, the Department issued its *Preliminary Determination* in which it found that total AFA was appropriate with respect to Acerero.<sup>127</sup> After the *Preliminary Determination*, counsel on behalf of Acerero filed a notice of appearance<sup>128</sup> and, later filed a case brief.<sup>129</sup>

As noted above, sections 776(a)(1) and (2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. 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.

We disagree with Acerero that the application of total AFA is unwarranted. As described in the *Preliminary Determination*, Acerero's failure to respond to the Department's questionnaire precluded the Department from conducting the necessary analysis to calculate a dumping margin for the company.<sup>130</sup> Accordingly, the Department continues to find, pursuant to section 776(a) of the Act, that application of facts available is appropriate. Furthermore, we continue to find that Acerero failed to cooperate to the best of its ability to comply with the Department's request for information. Therefore, the Department determines that, in selecting from among the facts otherwise available, an adverse inference is warranted, in accordance with section 776(b) of the Act.

We disagree that Acerero should not be held accountable for its failure to submit a response to the Department's questionnaire. The Department provided clear instructions to Acerero on how

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<sup>125</sup> *Id.* at 3: "If the Department does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding . . . Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act."

<sup>126</sup> See the Memorandum to the File from Stephanie Moore, Case Analyst, "Antidumping Investigation of Steel Concrete Reinforcing Bar from Mexico: E-mail Correspondence – Grupo Acerero," (March 13, 2014).

<sup>127</sup> See *Preliminary Determination*, 79 FR at 22803 and accompanying Decision Memorandum at 13-16.

<sup>128</sup> See counsel to Acerero's May 5, 2014 entry of appearance.

<sup>129</sup> See Acerero's August 4, 2014, case brief.

<sup>130</sup> See *Preliminary Determination*, and accompanying Decision Memorandum at 13-16.

to file its response with the Department, including information regarding a notice of appearance, registration with the IA ACCESS system, and requests for extensions in its questionnaire cover letter. This information was directly repeated to Acerero by the Department in a subsequent email communication in which Acerero inquired about an extension request. Acerero was directed to submit a formal request in writing, and instructions on how to do so were included in the questionnaire cover letter. If Acerero followed these instructions, it would have been able to submit a questionnaire response or extension request to the Department. However, Acerero did not do so. Further, in the initial questionnaire the Department clearly explained the serious consequences of failing to submit a questionnaire response:

This investigation will be conducted on a schedule dictated by law. If you fail to provide accurately the information requested within the time provided, the Department may be required to base its findings on the facts available. If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department may use information that is adverse to your interest in conducting its analysis.<sup>131</sup>

Thus, we are unpersuaded by Acerero's claims of ignorance concerning the importance of cooperating with the Department's request for information. We are also unpersuaded by Acerero's arguments that a party with an understanding of the ITC's procedures could reasonably infer that the Department's procedures would be identical. The Department conducts its proceedings in accordance with its own rules and procedures; parties to these proceedings bear the burden of familiarizing themselves with these rules and procedures. On this basis, we continue to find that the application of total AFA with regard to Acerero is warranted.

**Comment 11: Whether the AFA Rate Applied to Acerero is Punitive and Excessive**

*Acerero's Arguments*

- Acerero did not willfully refuse to cooperate. The Department should recognize this fact and assign it a lower rate, namely the all others rate.
- In *Timken*, the Federal Circuit found that the Department cannot demand absolute perfection of respondents and must make allowances for errors in a company's submissions, understanding, or judgment.<sup>132</sup>
- Granting Acerero the all others rate would be consistent with the Department's practice. For example, in *Lined Paper from India*, the Department initially imposed total AFA on a *pro se* respondent that did not respond to the Department's questionnaire after having received it late and lacked the knowledge to respond. The Department revised its preliminary finding and assigned the company a non-selected rate in the final results.<sup>133</sup>

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<sup>131</sup> See the Department's December 3, 2104, Section A Questionnaire issued to Acerero at 7.

<sup>132</sup> See *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1353-54 (Fed. Cir. 2006) (*Timken*), in which the Federal Circuit held that the Department should allow corrections even after preliminary determinations, including errors in judgment.

<sup>133</sup> See *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 22232 (April 15, 2013) (*Lined Paper from India*) and accompanying Issues and Decision Memorandum at Comment 4.

- If, however, the Department chooses to impose a higher rate on Acerero, it cannot reasonably use the highest petition rate, as done in the *Preliminary Determination*.
- In *de Cecco*, the Federal Circuit forbade “punitive” rates and required that AFA rates be a “reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to noncompliance.”<sup>134</sup>
- The Courts’ holdings are further reflected in *Gallant Ocean*, where the Federal Circuit found that, when applying AFA, the Department “must select secondary information that has some grounding in commercial reality.”<sup>135</sup>
- The AFA applied to Acerero was six times higher than the calculated rate for Simec. As noted by the Court in *Gallant Ocean*, a rate five times higher than the highest calculated rate is “far beyond an amount sufficient” to deter non-compliance.<sup>136</sup>
- The Court previously rejected the Department’s corroboration method from the *Preliminary Determination*. Specifically, the Court found that the Department cannot corroborate an AFA margin by looking only at selected sales to justify a rate much higher than the calculated rate.<sup>137</sup>
- Thus, in the final determination, the Department should assign Acerero the all others rate. Alternatively, the Department could assign Acerero a rate that is comprised of the average rate from the petition and Deacero’s margin (e.g.,  $((35.01 + 36.99) / 2) + 20.56 / 2 = 28.28$ ).<sup>138</sup>

#### *Petitioners’ Rebuttal*

- The AFA rate of 66.70 percent applied to Acerero in the *Preliminary Determination* is not excessive. The 66.70 AFA is not high compared to the AFA rate of other proceedings.
- The Department has no idea whatsoever what Acerero’s real margin would have been if it cooperated with the Department. Thus, Acerero’s claim that the margin applied to it bears no relationship to its actual dumping margin is pure speculation.
- In investigations, the Department routinely applies the AFA rate calculated at initiation to unresponsive parties, because that rate is corroborated by record evidence in the petition.<sup>139</sup>

**Department’s Position:** As noted above, a respondent’s intent is immaterial when determining whether the respondent has acted to the best of its ability, as described under section 776(b) of the Act:

The statutory trigger for Commerce’s consideration of an adverse inference is simply a failure to cooperate to the best of respondent’s ability, regardless of motivation or intent.<sup>140</sup>

<sup>134</sup> See *F.lli de Cecco di Filippo Fara S. Martino S.p.A v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*de Cecco*).

<sup>135</sup> See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319, 1323 (Fed. Cir. 2010) (*Gallant Ocean*).

<sup>136</sup> *Id.*, 602 F.3d at 1324.

<sup>137</sup> See, e.g., *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 752 F. Supp. 2d 1336, 1349 (CIT 2011) (*Tianjin III*).

<sup>138</sup> See *Steel Concrete Reinforcing Bar from Mexico and Turkey: Initiation of Antidumping Duty Investigations*, 78 FR 60827 (October 2, 2013), and *Preliminary Determination*, 79 FR at 22803.

<sup>139</sup> See 19 U.S.C. 1677e(b)(1).

<sup>140</sup> See *Nippon Steel*, 337 F.3d at 1383.

Simply put, there is no *mens rea* component to the section 1677e(b) inquiry.<sup>141</sup>

Thus, we disagree with Acerero that we must consider its argument that it did not willfully refuse to cooperate. As established above, Acerero's failure to participate supports our finding that total AFA is appropriate pursuant to section 776(a) and (b) of the Act.

Further, we do not find that the holding in *Timken* is applicable here. In *Timken*, the Federal Circuit addressed a respondent's desire to correct certain clerical errors it discovered after the preliminary results and before the final results.<sup>142</sup> In contrast, there are no data for Acerero to correct because it never complied with the Department's request for information.

Further, we disagree that the Department's findings in *Lined Paper from India* are controlling here. In *Lined Paper from India*, the situation involved a recipient that received the Q&V questionnaire after the response deadline. Thus, in the final results, the Department used the respondent's belated receipt of the Q&V questionnaire as a basis for refraining from assigning it an AFA rate and instead the Department assigned the respondent the non-selected rate.<sup>143</sup> However, the facts of the instant investigation are different. As noted above, Acerero received the initial section A and B-C questionnaires well ahead of the Department's deadlines.<sup>144</sup> Furthermore, the Department provided direct guidance to Acerero regarding an extension request in the initial questionnaire and over the telephone.<sup>145</sup>

The cases cited by Acerero regarding our corroboration analysis are inapposite. As noted above, here, the 66.70 percent AFA rate is the highest margin alleged in the Petition, and was appropriately corroborated by examining the transaction-specific margins of Deacero, the single cooperative mandatory respondent. In particular, we examined the transaction-specific margins that fell within the range of 66.70 percent.<sup>146</sup> In *de Cecco*, the Federal Circuit found that the Department could not apply as total AFA a petition rate that the Department itself acknowledged was uncorroborated, and that "all available evidence indicate{d}" that the AFA rate was many times higher than the uncooperative respondent's actual dumping margin.<sup>147</sup> Here, there is substantial evidence demonstrating that the AFA rate is, in fact, well within the range of transaction-specific margins from Deacero, the cooperative mandatory respondent, and is not many times higher than Deacero's calculated rate. In addition, the Court in *de Cecco* explicitly recognized that "the statute has no requirement that Commerce is limited to the highest rate imposed on a cooperating company when selecting a rate for a non-cooperating respondent" and further that "the statute explicitly allows for use of 'the petition' to determine relevant facts when a respondent does not cooperate."<sup>148</sup> Thus, nothing in *de Cecco* requires the Department to

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

<sup>142</sup> *See Timken*, 434 F.3d at 1357.

<sup>143</sup> *See Lined Paper from India*, 78 FR at 22234 and accompanying Issues and Decision Memorandum at Comment 4.

<sup>144</sup> *See* Section A Delivery Confirmation Memorandum; *see also* Section B-C Delivery Confirmation Memorandum.

<sup>145</sup> *See* the Department's December 3, 2014, Section A Questionnaire to Simec at 3; *see also* the Memorandum to the File from Stephanie Moore, Case Analyst, "Antidumping Investigation of Steel Concrete Reinforcing Bar from Mexico: E-mail Correspondence – Grupo Acerero," (March 13, 2014).

<sup>146</sup> *See* Corroboration Memorandum for additional discussion of this proprietary information.

<sup>147</sup> *See de Cecco*, 216 F.3d at 1032.

<sup>148</sup> *Id.* (citing section 776(b) of the Act).

disregard a petition rate that has been corroborated in favor of a rate applied to a cooperating mandatory respondent, as Acerero advocates here. Likewise, in *Gallant Ocean* the Federal Circuit found that the petition rate that the Department used as adverse facts available suffered from several flaws, including the fact that it was based on a small amount of data sourced from other respondents during a *different* segment of the proceeding.<sup>149</sup> Consequently, *Gallant Ocean* does not undermine the Department's corroboration analysis based on the transaction-specific sales of a mandatory respondent in this investigation.

The fact that the Department relies on a range of several of Deacero's sales to corroborate the Petition margin is not fatal to the corroboration analysis. For instance, in *PAM*, the Federal Circuit affirmed an AFA rate even though only 0.5 percent of the respondent's total sales were above the selected rate.<sup>150</sup> Similarly, in *Ta Chen*, the Federal Circuit upheld the selected AFA rate even though it was based only on a single sale made by the respondent.<sup>151</sup>

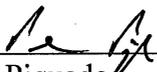
We also disagree that *Tianjin III* undermines the Department's corroboration method. In that case, the Department attempted to corroborate an AFA margin that was established several years prior to the review at issue. Thus, under these very different circumstances, the Court rejected the Department's reliance on the company's volatile range of calculated margins from previous reviews and a select group of sales for a time period two years removed from the instant POR.<sup>152</sup>

On this basis, we reject Acerero's arguments that the total AFA rate is punitive and excessive.

#### X. Recommendation

We recommend applying the above methodology for this final determination.

Agree  Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

8 SEPTEMBER 2014  
Date

<sup>149</sup> See *Gallant Ocean*, 602 F.3d at 1324 (explaining, after noting that petition rate was higher than rates calculated for cooperative respondents, that "nothing in the record ties the adjusted petition rate to Gallant, because Gallant did not participate in the original investigation").

<sup>150</sup> *PAM, S.p.A v. United States*, 582 F.3d 1336, 1338-40 (Fed. Cir. 2009) (*PAM*).

<sup>151</sup> *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (*Ta Chen*).

<sup>152</sup> See *Tianjin III*, 752 F. Supp. 2d at 1346-47.