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September 24, 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 Less-Than-Fair-Value Investigation of Grain-Oriented
Electrical Steel from the People's Republic of China

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by parties in the less-than-fair-value investigation of grain-oriented electrical steel (GOES) from the People's Republic of China (PRC). As a result of our analysis and as discussed below, we have not made any changes to the weighted-average dumping margin assigned to the PRC-wide entity, which includes the sole mandatory respondent in this investigation, Baoshan Iron & Steel Co., Ltd. (Baoshan). We recommend that you approve the positions of the Department of Commerce (the Department) set forth below in the "Discussion of Interested Party Comments" section of this memorandum.

II. BACKGROUND

On May 12, 2014, the Department published the preliminary determination of the less-than-fair-value investigation of GOES from the PRC in the *Federal Register*.¹ In the *Preliminary Determination*, we invited interested parties to comment on our findings and to request a hearing to discuss any issues raised in case and rebuttal briefs.² On June 3, 2014, Baoshan, the sole mandatory respondent in the investigation, filed comments on the preliminary determination and

¹ See *Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 26936 (May 12, 2014) (*Preliminary Determination*).

² *Id.* at 26937-38.



later incorporated these comments in its case brief, filed on July 1, 2014. After obtaining an extension for rebuttal comments, the domestic parties³ filed a timely rebuttal brief on July 9, 2014.

Baoshan requested a hearing to discuss the issues it raised in its brief on June 11, 2014, but withdrew the request on July 9, 2014. As there were no other requests for a hearing, none was conducted.

III. PERIOD OF INVESTIGATION

The period of investigation is January 1, 2013, through June 30, 2013.

IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers GOES. GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.*, laminations).

V. DISCUSSION OF COMMENTS

Comment 1: Application of Adverse Facts Available to Baoshan

Baoshan Comments

- Baoshan asserts that the Department's preliminary findings that the company failed to cooperate to the best of its ability in participating in the investigation and that its responses were unreliable are neither factually nor legally supported.
- Baoshan claims that, as the application of adverse facts available is the harshest penalty that the Department can impose in a proceeding, it is only for the most uncooperative of respondents, such as where the respondent completely fails to respond to a request for information, commits proven fraud, fails a verification, or submits data that is so deficient a margin calculation cannot be performed.⁴

³ The petitioners are AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America participated in this investigation as a domestic interested party. These parties (collectively, the "domestic parties") made joint submissions in this investigation.

⁴ In support of its statement, Baoshan cites *Tianjin Magnesium Int'l Co. v. United States*, 836 F. Supp. 2d 1377, 1381-82 (Ct. Int'l Trade 2012); *Hubscher Ribbon Corp., Ltd. v. United States (Hubscher Ribbon)*, 979 F. Supp. 2d 1360, 1364 (Ct. Int'l Trade 2014); *Yantai Xinke Steel Structure Co. v. United States*, 2012 WL 2930182, *13-14 (Ct.

- Baoshan asserts that its conduct did not merit the application of adverse facts available because it submitted timely questionnaire responses numbering thousands of pages of information and documents. Even if the Baoshan’s responses contained minor deficiencies, these did not warrant the rejection of the entire record. Baoshan adds that, in spite of its comprehensive submissions, it received the same treatment as that given to respondents in the parallel GOES investigations (*i.e.*, the investigations of GOES from Germany, Japan, Poland, and Russia) that chose not to cooperate with the Department’s requests at all.
- Baoshan argues that the Department’s preliminary conclusion that the company was “slow” to provide requested information is misplaced. Citing a chart submitted as an attachment to its case brief,⁵ Baoshan claims that it responded to all initial and supplemental questions and, where necessary, requested extensions for responses. Baoshan adds that, by only granting the extensions in part, the Department itself controlled the timing of Baoshan’s responses. Baoshan further argues that the Department had no basis for characterizing its responses as “evasive” because the voluminous record demonstrates that Baoshan responded to all questions and provided any requested clarification to the best of its ability. Baoshan adds that, if the Department had not “arbitrarily and unreasonably” cancelled verification, this process would have afforded the company with the opportunity to cure any confusion arising from the responses on the part of the Department.
- Baoshan opines that, with respect to the issues in its responses identified by the Department in the Preliminary Decision Memorandum, these issues are instances where the Department overlooked information on the record or misconstrued its responses. Baoshan points out that, upon recognition of any errors, it acted quickly to notify the Department of the errors. The fact that Baoshan made errors and corrections (which were not rejected by the Department) does not prove that the responses were unreliable or provide grounds for the application of adverse facts available. Baoshan argues that, rather, rectifying its errors demonstrates its commitment to providing reliable information and that, if verification had been allowed to take place, it would have afforded the Department with the opportunity to address any concerns about the reliability of Baoshan’s data.
- With respect to the Department’s denial of separate rate status to Baoshan, the company asserts that, since the Department did not identify issues relating to the company’s eligibility for a separate rate in the *Preliminary Determination*, there was no basis for the Department to find that Baoshan was not entitled to a separate rate.
- Baoshan concludes that it provided complete and reliable information and cooperated to the best of its ability in the investigation and, accordingly, the Department should

Int’l Trade 2012); and *Universal Polybag Co., Ltd., v. United States (Universal Polybag)*, 577 F. Supp. 2d 1284, 1298 (Ct. Int’l Trade 2008).

⁵This chart, which Baoshan also submitted as an attachment to its June 3, 2014, comments, offers Baoshan’s line-by-line comments on the Department’s adverse-facts-available call in the issues and decision memorandum accompanying the *Preliminary Determination*. See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Grain-Oriented Electrical Steel from the People’s Republic of China” (Preliminary Decision Memorandum), dated May 2, 2014, 7-15. In its rebuttal brief, the petitioners also attached a chart in which it provided rebuttal comments to Baoshan’s line-by-line comments.

calculate a final dumping margin for Baoshan based on its sales and factors-of-production data or, alternatively, the Department could apply partial facts available to any portion of the data that it still finds unclear or unreliable.

Domestic Parties' Comments

- Domestic parties respond that the record shows that Baoshan failed to cooperate to the best of its ability and failed to provide complete, accurate and reliable information, thereby warranting the application of adverse facts available to the company in the *Preliminary Determination*. In response to Baoshan's assertions that it was neither slow nor evasive in its responses, the domestic parties note that they submitted comments on flaws in Baoshan's reporting methodology, its extensive changes to data previously submitted, and its unexplained changes in its sales and factors-of-production reporting on seven occasions from January 24, 2014, through March 24, 2014. The domestic parties suggest that Baoshan's responses are characterized by limited, confusing and contradictory answers, which are often non-responsive and not supported by records kept in the ordinary course of business. The domestic parties posit that, where a respondent makes unexplained and undocumented changes to previously submitted data, or selectively fails to answer questions posed by the Department, such responses cannot be considered reliable or complete.⁶
- The domestic parties note that Baoshan bore the burden of compiling a complete and accurate record and it is not able to shift that burden to the Department by forcing the agency to uncover every misreported, or unreported, data point.⁷ The domestic parties rebut that, although Baoshan contends the Department is punishing the company with the application of adverse facts available for filing corrections to its earlier responses, there is no record information that the corrections filed by Baoshan are any more accurate or reliable than its original responses. The domestic parties add that, although Baoshan argues that its corrections reflected its commitment to provide the Department with accurate and reliable information, that is not the case here as Baoshan did not put forth the level of cooperation needed to ensure that its responses could be relied upon or verified.⁸
- The domestic parties assert that Baoshan would have the Department consider its willingness to respond to supplemental questionnaires as evidence in and of itself of its willingness to cooperate with the Department but that, in truth, it was a matter of delaying disclosures to avoid unwanted outcomes. They opine that needing such a large number of supplemental submissions to build the record of a proceeding is a clear warning sign of a respondent that is either unwilling or unable to provide complete and accurate responses within a reasonable time frame. The domestic parties note that the filing of a voluminous response is no indication of the reliability of the information provided by a respondent and that the Department has repeatedly stated that a

⁶ The petitioners cite *Taian Ziyang Food Co. v. United States (Taian Ziyang)*, 33 CIT 828, 853-54, 637 F. Supp. 2d 1093, 1119-20 (2009), in support of their statement.

⁷ The petitioners cite *Fujitsu General Limited v. United States*, 88 F.3d 1034, 1043, 1046 (1996), in support of this proposition.

⁸ In support of this assertion, the petitioners cite 14 points in the chart Baoshan attached to its case brief where the company acknowledges problems or omissions with its questionnaire responses.

respondent's failure to provide proper and timely information prevents it from performing its statutory duties, such as performing analysis and verification of questionnaire responses.⁹

- The domestic parties note that, between the issuance of the antidumping duty questionnaire on December 11, 2013, and the completion of the preliminary determination on May 2, 2014, Baoshan filed at least nine submissions in response to the questionnaire, and that the record reflects extraordinary patience and leniency on the part of the Department. They add that, by itself, the need for five sets of supplemental questions to resolve inconsistencies in Baoshan's responses is a major indicator of a pattern of evasion by the company and by no means indicates that the information placed on the record was complete or accurate.
- The domestic parties assert that the provision of unsolicited questionnaire responses (*i.e.*, corrections) is an admission that Baoshan essentially failed to meet the original deadline for the responses. According to the domestic parties, section 776(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), specifically authorizes the use of adverse facts available for information that is not submitted "by the deadlines" or in the form and manner requested. The domestic parties point out that Baoshan waited until two days before the due date on comments for surrogate values to file corrections to its original descriptions of the factors of production and then filed two additional sets of corrections on the factors – one set being filed on the final day for submission of factual information prior to the preliminary determination and containing revisions of tariff classifications for ten reported inputs. The domestic parties aver that the last-minute timing of Baoshan's corrections underscore a pattern of evasion whereby Baoshan sought to withhold substantive information from the Department and domestic parties to limit analysis of the responses and that this pattern was a legal gambit employed by Baoshan in an apparent attempt to determine how far it could push the envelope with the Department.
- The domestic parties comment that, despite being given the chance to establish a complete and accurate record through numerous extensions of due dates, Baoshan pursued a strategy of non-responsiveness and delay; after four months of supplemental questionnaires, the company had exhausted its time and credibility with the Department. The domestic parties assert that Baoshan left the Department with no choice but to find the responses were not complete or accurate and that, whether intentional or not, Baoshan's behavior had the effect of "running out the clock" by its providing minimal responses to the initial and supplemental questionnaires, responses that contained errors Baoshan thought could be corrected in later submissions.
- In response to Baoshan's comments about verification, the domestic parties state that verification is not the time for submitting new factual information or for re-constituting a deficient questionnaire response. The domestic parties note the Department's precedent that verification is where the Department checks, reviews and corroborates factual information previously submitted by the respondent and not the place to begin to

⁹ The petitioners cite *Taian Ziyang*, 33 CIT at 853-54, 637 F. Supp. 2d at 1119-20, for support. They also cite, for example, *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 32539, 32544 (June 1, 2012), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates*, 77 FR 64475 (October 22, 2012).

reconcile figures.¹⁰ They also note that the courts have upheld the Department's discretion not to verify information received by it.¹¹

- The domestic parties maintain that, although Baoshan argued that the Department improperly treated the company the same as non-responding companies in parallel GOES investigations, the provisions of section 776(a) of the Act permit the Department to resort to adverse facts available for respondents that file questionnaire responses but: (1) withhold information; or (2) fail to timely supply information in the form and manner requested; or (3) significantly impede an investigation; or (4) provide information that cannot be verified.
- The domestic parties assert that Baoshan failed to provide adequate public versions of important production and surrogate-value information, which prevented their counsel from timely sharing Baoshan's responses with them thereby hindering their ability to comment on the responses. They cite examples where Baoshan completely omitted stage-of-production data for the consumption of inputs from the public version of its Section D Response, where it failed to provide adequate public summary on the details of its 76 factors of production, and where it only publicly identified the characteristics of some factors after the deadline for filing surrogate-value rebuttal information had passed.
- The domestic parties argue that the Department's determination to rely on adverse facts available is supported by the factual record and that, although Baoshan may argue that deficiencies in its responses could have been handled with the assignment of partial facts available, the Department was within its statutory discretion to consider these flaws through the prism of the totality of circumstances, *i.e.*, the general pattern of being evasive and minimally responsive. The domestic parties assert that several deficiencies leave no doubt as to the appropriateness of assigning total adverse facts available, citing as an example Baoshan's failure to adequately report all affiliations.
- The domestic parties note that Baoshan's reported market-economy pricing cannot be evaluated because the company withheld information on affiliations in addition to failing to provide purchasing contracts.
- In response to Baoshan's comment that it is entitled to a separate rate, the domestic parties rebut that, although the Department cited only the company's unreliable questionnaire responses as the grounds for its ineligibility, this finding is also clearly supported by Baoshan's indisputable status as a state-owned company. The domestic parties assert that, as such, Baoshan cannot demonstrate an absence of *de jure* or *de facto* government control and, therefore, is only eligible for the PRC-wide rate. The domestic parties note that, as Baoshan is owned by the government of the PRC's State-owned Assets Supervision and Administration Commission (SASAC), which also owns Anshan Iron & Steel Group Corporation (Anshan Iron & Steel) and Wuhan Iron & Steel Co., Ltd. (WISCO),¹² Baoshan should have reported the identities and relationships with all

¹⁰ Citing *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 14.

¹¹ In support of this statement, the petitioners cite *NSK Ltd. v. United States*, 28 CIT 1535, 1563, 346 F. Supp. 2d 1312, 1337 (2004), *aff'd*, 510 F.3d 1375 (Fed. Cir. 2007).

¹² Both Anshan Iron & Steel and WISCO were identified in the Petition as producers/exporters of the merchandise under investigation and, although not selected to be mandatory respondents, they are included in the PRC-wide entity. The petitioners identified both companies as SASAC entities in Attachment 1 of comments they filed on Baoshan's Sections C and D Responses on February 12, 2014.

SASAC-owned affiliates, including those involved in the purchases of common inputs and those involved in the sales of GOES.

- The domestic parties argue that, due to its incomplete Section A Response, Baoshan also precluded a full analysis of the level of affiliations with its U.S. customers. They recount how, as late as April 4, 2014, the Department was still seeking clarification of information concerning Baoshan's sales and distribution processes, its channels of distribution, and its knowledge of downstream customers in the United States. The domestic parties assert that, even if the Department could have handled certain ambiguities as to selling functions and constructed-export-price expenses with a partial adverse inference, Baoshan's untimely, incomplete and contradictory answers relating to third-country processors and downstream customers in the U.S. market materially impeded the investigation because domestic parties and the Department were unable to pursue potential affiliations with processors.
- The domestic parties note that the Court of Appeals for the Federal Circuit (CAFC) has held that, in applying adverse facts available, the Department need not show intentional conduct existed on the part of the respondent, but merely that a failure to cooperate to the best of a respondent's ability existed.¹³ They further note that the CAFC has said that the statute (*i.e.*, section 776(a) of the Act) requires a factual assessment concerning the degree to which the respondent cooperates in investigating its records and in providing the Department with the requested information.¹⁴ The domestic parties add that the Department provided such a factual assessment in its Preliminary Decision Memorandum.
- The domestic parties conclude by opining that, in this proceeding, the Department weighed the totality of circumstances and correctly determined that Baoshan's actions rose to the level of leaving the record incomplete. They assert that the incompleteness resulted from Baoshan's withholding of requested information, failing to provide complete responses by established deadlines, and significantly impeding the investigation. The domestic parties argue that, by creating a situation where continuous revisions and corrections were needed, Baoshan demonstrated a pattern of withholding information and significantly impeding the investigation; even though the Department offered Baoshan opportunities to correct its deficiencies, the presence of so many of them after the filing of the initial questionnaire response can reasonably be deemed a failure to provide requested information by the established deadline. The domestic parties thus argue that Baoshan meets several of the statutory criteria for application of adverse facts available.

Department's Position:

In our Preliminary Decision Memorandum, we determined that the application of facts otherwise available was warranted pursuant to subsections 776(a)(2)(B) and (C) of the Act because, after an analysis of Baoshan's various questionnaire responses and submissions, we found that the company had both failed to provide information in the form and manner requested by the Department and had significantly impeded the investigation by repeatedly providing responses that were incomplete or appeared to contradict other information of record. We further found

¹³ The petitioners specifically cite *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1380 (Fed. Cir. 2003).

¹⁴ *Id.*

that, pursuant to section 776(b) of the Act, use of an adverse inference in applying the facts otherwise available was warranted because Baoshan failed to cooperate by not acting to the best of its ability to comply with our requests for information.

In reaching our conclusions, we observed that Baoshan had failed to heed our instruction in Section A of the antidumping questionnaire to contact Department officials within two weeks of receipt of the questionnaire in the event it had sold merchandise to third countries with the knowledge that this merchandise would ultimately be shipped to the United States. We noted that, if Baoshan had done so, we may have gained an understanding of Baoshan's sales process that was not clarified in a succession of questionnaire responses. Furthermore, we concluded that Baoshan was both slow and evasive in providing information to the Department which contributed to our inability to determine key components of the company's U.S. sales process. This missing information involved its sales and distribution process, its selection and reporting of U.S. sales, the selling functions performed by itself and its affiliate on reported U.S. sales, the costs associated with any selling functions, the company's production process, and the inputs it used to produce GOES. Because of Baoshan's conduct and the inconsistencies presented in its responses, we thus questioned the credibility of the entirety of its responses and submissions and noted that, since the information Baoshan refused to clarify was core to the investigation, its failure to provide such clarification rendered the information Baoshan provided too incomplete to serve as a reliable basis for the preliminary dumping-margin analysis.

Baoshan now argues that our preliminary findings were neither factually nor legally supported. It asserts that the application of adverse facts available is only indicated for the most uncooperative of respondents. Although we do not dispute the findings of the Court of International Trade (CIT) in these more egregious circumstances, we cannot agree with Baoshan that the provisions of subsections 776(a) and (b) of the Act only come into play when we are presented with such circumstances. Under section 776(a) of the Act, the Department may make determinations based on the facts available if: (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the Department, (B) fails to provide such information by the deadlines established or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided by section 782(i) of the Act. It is clear from the statute that only one of the criterion under subsection 776(a)(2) needs to be met for the Department to determine to apply facts available. Furthermore, there is no specification in the statute about the degree to which a respondent must act, or fail to act, to meet any given criterion.

Also, pursuant to section 776(b) of the Act, it is within our statutory discretion to find a respondent did not act "to the best of its ability" to comply with requests for information. The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has found that:

Before making an adverse inference, {the Department} must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to {the Department's} requests for information. Compliance with the "best of its ability" standard is determined by assessing

whether respondent has put forth its maximum effort to provide {the Department} with full and complete answers to all inquiries in an investigation.¹⁵

Furthermore, the Federal Circuit has found that:

While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element. “Inadequate inquiries” may suffice. The statutory trigger for {the Department’s} consideration of an adverse inference is simply a failure to cooperate to the best of respondent’s ability, regardless of motivation or intent.¹⁶

In other words, a finding that a respondent failed to cooperate to the best of its ability is not limited to a set of “egregious” circumstances as Baoshan advocates but, rather, also includes failure to respond completely to the Department’s questionnaires.¹⁷

In response to Baoshan’s argument that adverse facts available were not merited because its submissions were timely and voluminous, we note that it requested and received no fewer than eight extensions for the filing of its original and supplemental questionnaire responses in this investigation. The fact that the Department granted extensions for the supplemental questionnaires in part reflects the length and complexity of each supplemental questionnaire, which was due to the incompleteness or inconsistencies presented in the previous questionnaire responses. The poor quality of Baoshan’s questionnaire responses, combined with its inability to file the responses by the original due dates, speak more strongly to its failure, rather than its willingness, to cooperate to the best of its ability.

Also, Baoshan did submit large amounts of information in response to some of our requests. However, because the company generally failed to provide narrative responses identifying the relevance of the information to its reported data, we cannot find that the volume of these submissions showed a willingness to cooperate to the best of Baoshan’s ability.¹⁸ Often the additional information was unclear or inconsistent with other record information. For example, as we detailed in our Preliminary Decision Memorandum, Baoshan provided no detailed information in those responses regarding the size or operations of its U.S. affiliate. Then, on March 31, 2014, Baoshan submitted the 2013 tax returns for Baosteel America, which included tax returns filed in no less than nine states.¹⁹ The returns were not accompanied by any narrative

¹⁵ *Nippon Steel*, 337 F.3d at 1382; see also *Mukand, Ltd. v. United States*, 2013 Ct. Intl. Trade LEXIS 46, at *17-*18 (Ct. Int’l Trade 2013), aff’d *Mukand, Ltd. v. United States*, 2014 U.S. App. LEXIS 17747 (Fed. Cir. September 16, 2014).

¹⁶ *Nippon Steel*, 337 F.3d at 1383.

¹⁷ See, e.g., *Mukand*, 2013 Ct. Int’l Trade LEXIS at *18-*26 (sustaining the Department’s application of total AFA to a respondent that persistently failed to provide certain data core to the Department’s dumping calculation prior to the preliminary determination but suddenly was able to do so after the preliminary determination), aff’d *Mukand, Ltd. v. United States*, 2014 U.S. App. LEXIS 17747 (Fed. Cir. September 16, 2014).

¹⁸ “Respondents ‘must submit accurate data’ and ‘cannot expect Commerce, with its limited resources, to serve as a surrogate to guarantee the correctness of submissions.’” *Societe Nouvelle de Roulements (SNR) v. United States*, 910 F. Supp. 689, 694 (Ct. Int’l Trade 1995) (quoting *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 607 (Ct. Int’l Trade 1993)).

¹⁹ See Baoshan’s 2013 Audited Financial Statement and Baosteel’s 2013 Tax Return and Request for Extension, dated March 31, 2014, at exhibit 2.

text to identify or explain the income or business activities reflected on the returns or how such activities related to the reported U.S. sales. In addition, on April 17, 2014 – less than two weeks before the deadline for the *Preliminary Determination* – Baoshan submitted a dramatically revised calculation worksheet for its indirect selling expenses incurred in the United States, supported by extensive documentation that suggested the reported expenses were based on indirect selling expenses incurred by the affiliate on sales of all merchandise, rather than being allocated to subject GOES.²⁰ Again, the Department could only speculate on the selling activities of Baosteel America based on the submitted documentation, as Baoshan offered no explanation in its narrative response as to why it was revising its reported expenses to capture such a comprehensive list of expenses.²¹ Moreover, we could only guess at the relevance of the information to the sales under investigation. Thus, we cannot agree with Baoshan’s argument that the size of its submissions somehow denoted a willingness to cooperate in the proceeding. Therefore, we see no basis under these circumstances to treat Baoshan any differently than a respondent which simply opted not to file responses.

Baoshan argues that, because it filed a timely response for each questionnaire, the Department cannot find it to be slow in providing requested information. However, as illustrated by the examples immediately above and some addressed below in response to Baoshan’s line-by-line chart of objections filed with its case brief, Baoshan failed to provide answers that served to clarify the record in time for the Department to calculate a preliminary dumping margin. Baoshan asserts that, because we granted it extensions to respond to its original and supplemental questionnaires, the Department cannot punish it for being slow in its responses. But the fault lies with Baoshan. Through our process of developing the record, the company was given numerous opportunities to clarify its responses and data submissions; Baoshan failed to do so. Instead, it opted to provide information that was incomplete or inconsistent with earlier submissions. As a result, Baoshan failed to provide the Department with the information or data necessary for us to analyze Baoshan’s responses and calculate a dumping margin.²² In the words of the domestic parties, Baoshan appeared to be “running out the clock” each time it failed to provide a submission that would clarify or correct the record for our purposes. In this specific sense, Baoshan was slow in providing the necessary information to the Department.

Baoshan also claims that any areas of confusion could have been clarified at verification. However, verification does not represent an opportunity for a respondent to present new information, including explanatory information that should have been provided in the company’s narrative responses.²³ Thus, even if the Department had scheduled verification,²⁴ Baoshan

²⁰ See Baoshan’s Section C Second Supplemental Questionnaire Response (Supplemental Response C2), dated April 17, 2014, at exhibit S4-4.

²¹ *Id.* at 5.

²² See *Neuweg Fertigung GmbH v. United States*, 797 F. Supp. 1020, 1024 (Ct. Int’l Trade 1992) (“Ultimately it is the respondent’s responsibility to make sure that the ITA understands, and correctly uses, any information provided by the respondent”).

²³ See *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014), and accompanying Issues & Decision Memorandum at Comment 9 (“The purpose of verification is to verify the accuracy of information already on the record, not to continue the information-gathering stage of the Department’s investigation. Nor is verification an appropriate forum for respondents to present arguments with respect to the Department’s analyses”).

²⁴ Baoshan has argued that the Department “arbitrarily and unreasonably” cancelled the verification. In fact, no

would not have been able to clarify the record through a series of pre-verification corrections, since the information needed for clarification had not been previously placed on the record in its responses.

Baoshan argues that, in each instance that the Department found information to be incomplete or inconsistent in the Preliminary Decision Memorandum, the Department had actually overlooked or misconstrued the information contained in Baoshan's responses. For example, in its chart of line-by-line comments on the *Preliminary Determination*, submitted with its case brief, Baoshan asserts that it was clear from its Section A Response that it sold subject merchandise to "unaffiliated U.S. customers."²⁵ However, we later learned these very customers were, in fact, third-country processors. A complete review of the Section A Response shows that Baoshan never identified the processors as affiliated or unaffiliated, leaving the Department with no indication of which sales the company had selected as those made to the first unaffiliated U.S. customer.²⁶ Baoshan also asserts that it notified the Department of its sales through third countries in its quantity-and-value questionnaire response, so that it had no need to follow the instruction in Section A of the antidumping duty questionnaire to notify Department officials of these sales within two weeks of receipt of the questionnaire.²⁷ But a review of that response shows that Baoshan reported only export-price sales to the United States and through Mexico and Canada, without indicating that the unaffiliated customers were located in third countries.²⁸ In its Section A Response, Baoshan claimed that it had only made constructed-export-price (CEP) sales through Baosteel America during the period of investigation and, by not identifying the third-country processors as unaffiliated and by not following the instruction to contact the Department regarding the third-country sales, we had no reason to know that Baoshan was attempting to report U.S. sales made through unaffiliated customers in a third country. There was simply nothing on the record for us to misconstrue in these two instances.

With respect to its Section C Response, Baoshan asserts in its line-by-line comments that it had clearly identified the U.S. channels of distribution and the customer names.²⁹ But, by not identifying the chain of distribution to reach the first unaffiliated U.S. customer in either its Section A or Section C Responses, it failed to provide these key items of information. We could not overlook or misconstrue information that was not on the record at the time. Baoshan concedes that it erred in failing to report credit expenses and key indirect selling expenses (*i.e.*, office rent and salesmen's salaries) in its Section C Response but adds that, with respect to the missing narrative for all indirect selling expenses, the expenses are "self-explanatory."³⁰ However, we find that, if a company fails to report expenses, such as rent and salaries, in both its narrative description and its calculation worksheet, it is not self-explanatory but is akin to that information being unreported. Furthermore, we request narrative descriptions not only as a

verification was scheduled because, as noted in the *Preliminary Determination*, we found the company to be uncooperative and its information to be unreliable. See *Preliminary Determination* at 5.

²⁵ Baoshan's Case Brief (Case Brief), dated July 1, 2014, Attachment 1 at 1.

²⁶ Baoshan also declined to identify the status of the processors in its response to section C of the questionnaire, instead stating that the sales process had been described in its Section A Response. See Baoshan's Section C Questionnaire Response, dated January 31, 2014 (Section C Response), at 16.

²⁷ *Id.*, at Attachment 1 at 2.

²⁸ See Baoshan's Response to Quantity and Value Questionnaire, dated November 13, 2013, at Attachment 1.

²⁹ Baoshan's Case Brief, attachment 1 at 2-3.

³⁰ *Id.* at 3-4.

means to reconcile information reported in the descriptions and the calculation worksheets of the Section C Response, but also to reconcile them with the information provided in the other sections of the questionnaire response. By any measure, failure to provide narrative descriptions is a failure to provide information in the form and manner requested by the Department; this constitutes a failure to cooperate in the proceeding, pursuant to section 776(a)(2)(B) of the Act.³¹

Baoshan offers in its comments that the Department had no need for a description of the processing performed by the third-country processors, as the processing steps were “self-explanatory” and because neither Baoshan nor Baosteel America was affiliated with the processors.³² But because Baoshan had reported sales of GOES to unidentified third-country processors for unidentified further-processing in its Section A Response, we were trying to ascertain whether or not the GOES was substantially transformed into another product (in this case, transformer cores) in the third countries before being resold to the United States. In other words, we sought to confirm for the record that Baoshan’s reported U.S. sales actually consisted of the merchandise under investigation. But Baoshan was unable to assist us in this most basic inquiry; instead, Baoshan took it upon itself to determine the merits and motives of our inquiries.³³ It is the role of the Department to determine what information is relevant to its investigation, not the respondent in question.³⁴

In its line-by-line comments, Baoshan asserted that it did not need to identify the expenses listed in its revised indirect selling expenses calculation worksheet, submitted on April 17, 2014, because the Department had not asked it to tie the expenses to each specific selling activity performed by Baosteel America.³⁵ It added that it could not be faulted for not answering a question that had not been asked.³⁶ To the contrary, we did in fact ask Baoshan to account for indirect selling expenses incurred on its U.S. sales of subject merchandise in Section C of the original questionnaire. Based on its incomplete response, we asked for much greater detail in a

³¹ See, e.g., *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part*, 77 FR 14495, 14497-98 (March 12, 2012), and accompanying Issues & Decision Memorandum at Comment 6 (applying partial AFA to respondent’s steam allocation methodology because respondent failed to provide information in the form and manner requested by the Department; specifically, respondent failed to provide a narrative explaining its calculation methodology, or its complete set of calculations); see also *QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (quoting *Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (Ct. Int’l Trade 1992)).

³² *Id.* at 3-4.

³³ Although Baoshan never did provide a description of the steps performed by the processors, a response in its Section A Second Supplemental Questionnaire Response, dated April 8, 2014 (Supplemental Response A2), at 3, does appear to establish the resale of GOES to the United States for our purposes.

³⁴ See *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014), and accompanying Issues & Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences” (“it is the prerogative of the Department, and not the {Government of China}, to determine what information is relevant to the Department’s investigations and administrative reviews”) (citing *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (Ct. Int’l Trade 2010) (“{r}egardless of whether Esser deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion” and that “Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin”)).

³⁵ Baoshan’s Case Brief, Attachment 1 at 9.

³⁶ *Id.*

supplemental questionnaire for Section C, issued on February 21, 2014. In this questionnaire, we asked the company to submit a selling-functions chart in which it identified all selling activities performed by itself and Baosteel America on the U.S. sales, as well as the data fields in which it reported the expenses of each activity. We also asked the company to provide a description of each of the activities performed. Again, Baoshan provided an incomplete response in which it provided no selling-functions chart or descriptions of its selling activities.³⁷ In another follow-up supplemental questionnaire issued on April 4, 2014, we once again asked the company to tie a listing of the selling expenses it had provided to the specific data fields in which the expenses were reflected.³⁸ Thus, contrary to Baoshan's assertion, we asked the company to tie its indirect selling expenses to activities performed on its reported U.S. sales on three separate occasions. On all three occasions, Baoshan either provided off-point responses or incomplete information that generated additional inquiries from the Department.

Baoshan contends that, in its response to Section D of the questionnaire, it provided very detailed information regarding its production stages for GOES.³⁹ It further asserts that this information reconciled with calculation worksheets Baoshan provided in the response and which included all inputs and by-products used/generated during its production stages.⁴⁰ We note that, although Baoshan did provide a flowchart with production stages for GOES and calculation worksheets regarding their input consumption and by-product generation, it failed to link its narrative response and the description of its methodology to the flowchart and calculation worksheets, which, in turn, generated several inconsistencies in the response. For example, certain inputs listed in Baoshan's narrative response, such as pure water, nitrogen, industrial water, blast furnace gas, and coking oven gas, were completely omitted in its factors-of-production database or list of inputs.⁴¹ In response to the Department's inquiry about this, Baoshan explained that these were self-produced sources of energy that it reported based on the consumption of upstream inputs. However, the company failed to identify or describe the specific self-produced inputs and the generated upstream product.⁴² Baoshan also explained in an unsolicited submission, dated March 27, 2014, that the consumptions for each production stage were provided and that they "eventually flowed through to the final reported consumption quantity in the FOP database."⁴³ These types of general statements, without detailed descriptions and links between specific inputs used to generate other upstream inputs, further demonstrate the incompleteness of Baoshan's responses, as opposed to our ability to construe them.

In fact, in its March 27, 2014 submission Baoshan merely explained in its narrative that it had allocated the total consumption of, *inter alia*, self-produced inputs and energy for each stage in

³⁷ See Second Supplemental Questionnaire Response, dated March 7, 2014 (Supplemental Response C1) at 4-5.

³⁸ The company's response, filed in its Supplemental Response C2 at 1-2 to this request was discussed in the Preliminary Decision Memorandum at 9-10, as it presented a host of new issues to be considered by the Department.

³⁹ Baoshan's Case Brief, attachment 1 at 11.

⁴⁰ *Id.*

⁴¹ See Baoshan's Section D Response at D-5, as opposed to Exhibits D-3 for the FOP spreadsheets, D-6 for the FOP database, and D-7 for the list of inputs.

⁴² See Baoshan's Section D Supplemental Questionnaire Response, dated April 17, 2014 (Supplemental D Response), at 2.

⁴³ *Id.*, see also Baoshan's letter to the Department regarding "Investigation of Grain-Oriented Electrical Steel from People's Republic of China, Section D Corrected Factors of Production Spreadsheet," dated March 27, 2014 (March 27, 2014 submission).

the production process over the total production quantity of semi-finished products produced at each stage. Baoshan then cited to a revised exhibit that listed factor consumption and allocations for all production stages.⁴⁴ This exhibit not only included these revised input consumption and allocations, but also unit of measurement corrections to certain inputs. Baoshan also included information about a third-type of GOES transaction and processing initially unreported.⁴⁵ Moreover, according to Baoshan, none of these revisions affected the initial input consumption and production quantity reported at each stage and therefore, such reporting remained unchanged.⁴⁶ Exhibits listing formulas are not self-explanatory and even less informative if they include revised data and calculations.

As a fully-integrated producer, Baoshan failed to provide a detailed description of its steel-making process, such as the above-mentioned examples.⁴⁷ Furthermore, information specific to GOES production is crucial for the Department's understanding and corroboration of the nature of Baoshan's GOES production processes and its factors-of-production reporting. As an example, in its narrative response, Baoshan explains that in the "finishing and slitting" stage some finished coil "may also be domain refined by laser upon the clients' requirement."⁴⁸ However, it does not provide any description of such "domain refining." Another example is where Baoshan mentions that in eight of its 13 production stages (*i.e.*, continuous casting, continuous hot strip mill, annealing and picking, reverse cold-rolling mill, decarburizing and annealing, high-temperature annealing, final coating and annealing, finishing and slitting) "steel scrap is collected as by-product and can be sold or re-introduced into the production of steel making."⁴⁹ However, in its calculation worksheets, Baoshan listed not one (*i.e.*, steel scrap) but 14 different by-product/co-products.⁵⁰ Also, Baoshan failed to provide, as we specifically requested, any description or explanation of the designation of each of these by-products.⁵¹ It even claimed offsets to certain by-products but failed to provide the requested production records supporting these claims.⁵² Only upon the Department's request did Baoshan provide in its Supplemental D Response, filed two weeks before the preliminary determination deadline, a chart including a description of, this time, ten by-products that were listed in the factors-of-production database.⁵³ As recounted by the domestic parties, even once provided, Baoshan's long description of its inputs prompted additional questions regarding significant inputs, failed to

⁴⁴ See Baoshan's March 27, 2014 submission, at Appendix 1.

⁴⁵ *Id.*, at 1-2.

⁴⁶ *Id.*, at 2.

⁴⁷ See also *e.g.*, Petitioner's Rebuttal Brief, Attachment 1, at 38-39.

⁴⁸ See Baoshan's Section D Questionnaire Response, dated January 31, 2014 (Section D Response), at D-5.

⁴⁹ See Baoshan's Section D Response, at D-5-D-6

⁵⁰ *Id.*, at Exhibit D-13.

⁵¹ *Id.*, at D-17-D-18 (where the Department specifically asks for (a) a description and explanation for each of the by-products reported; (b) identification of monthly quantities produced, sold, re-introduced into production, or disposed, during the period of investigation; (c) production records demonstrating the generation of such by-products; (d) if applicable, evidence of the disposition of these; and (e) an explanation and derivation of the offset claimed; to which Baoshan merely states it "collected the by-products generated at each production process, {recorded them in negative figures to offset the cost, and reported the net quantity of offset by deducting these in subsequent production stages where they are wholly or partially introduced}" and then refers to an exhibit for the worksheet calculations and quantities. Basically, completely failing to address points (a), (c), and (d), and partially addressing, although not describing, points (b) and (e) with its spreadsheet.

⁵² *Id.*

⁵³ See Baoshan's Supplemental D Response, at 6 and Exhibit S5-16.

narrow down the input to one tariff category, or were incorrect.⁵⁴ Similarly, the supporting documentation requested by the Department in its Supplemental D Questionnaire, either did not tie to information submitted previously, listed data that did not include a narrative explanation on how it was used to calculate the reported consumption figures, was incomplete.⁵⁵ As such, record evidence only allowed speculation of Baoshan's complete production process. Further, because the proffered information was insufficient support for the crucial multi-stage consumption of factors (such as inventory movement documents), checking for errors in the reported factors-of-production data was virtually impossible.⁵⁶

As noted above, Baoshan did timely submit its Section D Responses and supplemental responses. Baoshan also filed two subsequent revisions to correct the errors in its original responses.⁵⁷ However, the lack of clear narratives and links to the reported data denied the Department a comprehensive understanding of Baoshan's steel-making process, crucial for the analysis. Even Baoshan concedes it "did not provide" important information regarding the production process such as "processing times and number of people involved in each production stage," and that "additional descriptions for some of the inputs may have been helpful."⁵⁸ Failure to provide a complete and accurate description, including supporting documentation and links between the narrative response and calculation worksheets, of Baoshan's inputs and multi-stage consumption of factors, affects the Department's ability to check for errors and appropriately account for the multi-stage allocation of factors of production. This is particularly so because any error can potentially distort these factor allocations to a significant degree and, consequently, the dumping margin calculation.

Baoshan also argues that the Department does not describe the "numerous inconsistencies" found for the *Preliminary Determination*.⁵⁹ The company states that the Department waited more than two months after its Section D Response was submitted to issue Baoshan a supplemental questionnaire. We note here that the numerous inconsistencies and several self-corrections submitted by Baoshan throughout those two months prevented the Department from issuing a comprehensive supplemental questionnaire to Baoshan earlier. For example, Baoshan's initial response did not include the factors-of-production spreadsheet necessary to analyze the factors-of-production data reported. Baoshan acknowledged it was missing such critical information and submitted this spreadsheet on March 12, 2014.⁶⁰ The spreadsheet submitted also included modifications to two inputs with no further explanation.⁶¹ Although Baoshan did clarify in subsequent submissions its revisions to these two inputs,⁶² we point out that the March 12, 2014, submission and corrections, was filed two days prior to the surrogate-values submission deadline for parties, thereby affecting domestic parties' opportunity to research and confer with the U.S.

⁵⁴ See e.g., Petitioner's Case Brief, Attachment 1, at 35-36 and 53-59.

⁵⁵ See e.g., *id.*, at 43-45.

⁵⁶ See e.g., *id.*, at 38-39.

⁵⁷ See Baoshan's letter to the Department regarding "Investigation of Grain-Oriented Electrical Steel from People's Republic of China, Section D Factors of Production Spreadsheet," dated March 12, 2014 (Baoshan's March 12, 2014 submission), and Baoshan's March 27, 2014 submission.

⁵⁸ See Baoshan's Case Brief at Attachment 1, pages 33 and 35, respectively.

⁵⁹ *Id.*, at 34-35.

⁶⁰ See Baoshan's March 12, 2014 submission, at 1.

⁶¹ *Id.*, at 1-2.

⁶² See Baoshan's March 27, 2014 submission, at 2; see also Baoshan's Supplemental D Response, at 2.

industry on the accuracy of such information. Subsequently, on March 27, 2014, Baoshan submitted additional, major corrections to its Section D Response due to unreported sales to the United States during the period of investigation of a third type of GOES.⁶³ Baoshan labeled this third type of GOES sold as “re-finishing coil,” but again no further description about the processing of this type of GOES was included in its submission. This correction implied that Baoshan had to revise the methodology used to report its sales quantity and to recalculate its worksheets and its factors-of-production database, requiring significant additional time for the Department to review. Lastly, on April 2, 2014, Baoshan filed additional factors-of-production corrections.⁶⁴ These consisted of ten completely revised HTS categories, due to errors in its previous reporting, and 13 HTS categories challenging those suggested by domestic parties. However, Baoshan did not provide any explanation or reasons for such selections aside from stating that these “reflect{ed} the actual FOP{s} used by Baoshan.”⁶⁵ Furthermore, the April 2, 2014, corrections were submitted on the same day before the regulatory deadline under 19 CFR 351.301(c)(3)(i), which limits submissions of new factual information to 30 days before the preliminary determination. These actions not only obstructed the Department’s ability to collect and analyze the information provided by Baoshan but limited the possibility for domestic parties to fully and accurately comment on the factors of production. As the domestic parties argue, “Baoshan failed to provide adequate public summary on the details of the 76 inter-related factors of production, and even provided surrogate values that contradicted information provided late and treated as proprietary.”⁶⁶

In light of the above, we cannot agree with Baoshan’s assertions that the Department overlooked or misconstrued information placed on the record. Where we identified deficiencies in the company’s questionnaire and supplemental responses and asked for follow-up information, it was because Baoshan had provided insufficient information on the topic. Remedying substantial deficiencies that go to the Department’s core ability to calculate an accurate dumping margin cannot go on *ad infinitum*, particularly in light of the Department’s statutory deadline to complete this investigation.⁶⁷ We also cannot agree with Baoshan’s suggestion that the submission of unsolicited corrections to its Section D Response spoke to the reliability of the corrections. In order for the Department to find the information reliable, we would have needed to review bases for the revisions of data and to draw comparisons between the original and revised data submissions. However, Baoshan did not provide us with these bases and thus allow us this opportunity. Furthermore, as discussed above, there is no way Baoshan could have filled in the lacunae in the record through pre-verification corrections; it is the Department’s intent to limit these corrections to information already placed on the record to the greatest extent possible.

As noted by Baoshan and domestic parties, we did not specifically cite to deficiencies in Baoshan’s responses concerning its entitlement to a separate rate in the Preliminary Decision Memorandum. However, as noted by the domestic parties, outstanding questions remain about Baoshan’s affiliations to Anshan Iron & Steel and WISCO, which are also state-owned entities.

⁶³ See Baoshan’s March 27, 2014 submission.

⁶⁴ See Baoshan’s letter to the Department regarding “Investigation of Grain-Oriented Electrical Steel from People’s Republic of China, Surrogate Values Submission and Corrections,” dated April 2, 2014.

⁶⁵ See Baoshan’s letter to the Department dated April 2, 2014, at 1-3.

⁶⁶ See Petitioner’s Case Brief at 10.

⁶⁷ See sections 733(b)(1) and 735(a)(1)-(2) of the Act.

In its Supplemental Response A2, Baoshan asserted that affiliation did not exist between the three companies under provisions of PRC Company Law.⁶⁸ The record concerning Baoshan's corporate structure is too incomplete for us to make a determination of whether the company is entitled to a separate rate.

Therefore, for the final determination, we continue to find that the application of facts otherwise available, pursuant to subsections 776(a)(2)(B) and (C) of the Act, is warranted based on Baoshan's responses, which are incomplete or unclear with respect to key information needed to calculate an individual dumping margin. Moreover, we find that, because the company failed to cooperate by not acting to the best of its ability, use of an adverse inference in applying the facts otherwise available, pursuant to section 776(b) of the Act, is warranted. To the extent that Baoshan claims that its numerous inconsistencies could have been remedied by resort to partial adverse facts available, we find the totality of Baoshan's responses, as discussed above, to be so contradictory and incomplete that we cannot use its submissions with any confidence of calculating an accurate margin.⁶⁹ Accordingly, we applied total adverse facts available for the weighted-average margin for the PRC-wide entity, including Baoshan.

Comment 2: Corroboration of Adverse Facts Available Rate

Baoshan Comments

- Baoshan states that, if the Department continues to apply a rate based on adverse facts available to Baoshan in the final determination, the Department must ensure that the rate is reliable by corroboration, pursuant to the applicable administrative and case law. Baoshan notes that, where the Department assigns an adverse facts available rate in multiples of 100 percent, the CIT has found that a bit more corroboration or record support is warranted.⁷⁰
- Baoshan asserts that the adverse facts available rate used by the Department was pulled from the Petition⁷¹ without any adjustments and that the Department's review of the rate for corroboration purposes was perfunctory, minimally explained, and incomplete. Baoshan opines that the Department corroborated the rate only by reviewing the Petition and supplements to the Petition and did not examine any independent sources of information to corroborate the rate.
- Baoshan argues that, in cases where the CIT has approved the use of a petition rate as an adverse facts available rate, the Department relied on additional sources to show that the rate was appropriate; namely, the Department has relied on the highest prior rate assigned

⁶⁸ See Supplemental Response A2 at 9-10.

⁶⁹ See *Mukand, Ltd. v. United States*, aff'd *Mukand, Ltd. v. United States*, 2014 U.S. App. LEXIS 17747 at *16 (Fed. Cir. September 16, 2014) (Fed. Cir. September 16, 2014) ("In general, use of partial facts available is not appropriate when the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty") (citing *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1348 n.13).

⁷⁰ In support of its statement, Baoshan cites *Hubscher Ribbon*, 979 F. Supp. 2d at 1370; and *Lifestyle Enter., Inc. v. United States (Lifestyle Enter)*, 768 F. Supp. 2d 1286, 1298 (Ct. Int'l Trade 2011).

⁷¹ See Petition for the Imposition of Antidumping Duties on Imports of Grain-Oriented Electrical Steel from the People's Republic of China (Petition), dated September 18, 2013.

to a company in a group and transaction-specific margins for other companies in an investigation in the corroboration of a rate.⁷²

- With respect to its finding of relevance, Baoshan asserts that the Department merely reiterated that it found the Petition to be reliable, that the information in the Petition was specific to Baoshan, and that the record contained no information to indicate that the rate in the Petition was not reflective of commercial practices of the GOES industry.

Domestic Parties' Comments

- The domestic parties rebut that the Petition information is corroborated and should not be replaced by information from other sources. They note that Baoshan's arguments ignore that the Petition rate used as adverse facts available is consistent with the statute, court precedent, and Department practice. The domestic parties also assert that Baoshan failed to explain how the use of another rate could be appropriate under the circumstances and that it failed to cite a single investigation where there were no cooperating respondents and the Department deviated from its practice of using the highest rate from the petition which, to the extent practicable, can be corroborated.
- The domestic parties note that, based on the analysis the Department performed in its preliminary determination, it should consider the information in the Petition, which was specific to Baoshan, to be corroborated for purposes of relying on adverse facts available.⁷³
- The domestic parties refute the legal precedent cited by Baoshan, arguing that *Hubscher Ribbon* and *Yantai Xinke Steel* actually support the Department's corroboration of the rates provided in the Petition because, as in *Yantai Xinke Steel*, the Petition rate is specific to the respondent. The domestic parties argue that Baoshan's reliance on *Lifestyle* is misplaced because, unlike in the current investigation, there were other cooperating respondents in that investigation that could be used as comparisons for corroboration purposes. The domestic parties add that, in *Hubscher Ribbon*, the CIT noted earlier cases in which there were ample data and abundant resources and which thus, in turn, significantly limited the Department's discretion to choose otherwise high adverse-facts-available margins in multiples of 100 percent.⁷⁴ But, as noted by the domestic parties, the CIT further stated in *Hubscher Ribbon* that the Department had tied the petition rate to the respondent and, in the absence of more calculated rates, had reasonably corroborated that rate to the extent possible.⁷⁵

⁷² Baoshan cites the CIT's decision in *Universal Polybag Co., Ltd. v. United States*, 577 F. Supp. 2d 1284, 1298 (Ct. Int'l Trade 2008).

⁷³ The petitioners cite *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349, 52353 (September 13, 2007), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007) in support of their conclusion.

⁷⁴ *Hubscher Ribbon*, 979 F. Supp. 2d at 1360.

⁷⁵ *Id.*

Department's Position:

We disagree with Baoshan. As explained in the Preliminary Decision Memorandum,⁷⁶ and reiterated by Baoshan in its case brief,⁷⁷ pursuant to sections 776(b) of the Act and 19 CFR 351.308(c)(1), in applying facts available, the Department may use information obtained from (1) the petition, (2) a final determination in the investigation, (3) any previous administrative review, or (4) any other information placed on the record to derive an adverse-facts-available rate. Because the instant proceeding is an investigation, the sources available and considered by the Department in this case are limited to the Petition and/or any other information placed on the record. However, the information submitted by Baoshan in its responses to the Department's questionnaires during the investigation was considered unreliable by the Department. Additionally, Baoshan is the sole mandatory respondent in the proceeding. As is our practice,⁷⁸ where there is no other reliable information on the record, we relied on information from the Petition, which is the single reasonably available source for determining Baoshan's dumping margin. Consequently, the adverse facts available rate assigned to Baoshan in our *Preliminary Determination* is consistent with the statute and the Department's practice. Furthermore, as the domestic parties argue, and as we agree, Baoshan failed to cite to any case precedent where in an investigation with no cooperative respondents the Department deviated from its practice of using the highest rate from the petition.⁷⁹

Regarding Baoshan's statement that the rate was "pulled directly from the petition, and without any adjustments," we note that Baoshan apparently suggests making adjustments to the Petition rate calculations, yet it does not provide the reasons for even considering any hypothetical adjustments, nor does it describe the specific types of adjustments it suggests.⁸⁰ Nevertheless, the Department did examine evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as adverse facts available. As explained in the Preliminary Decision Memorandum, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of the *Preliminary Determination*.⁸¹

Baoshan further contends that the Department's review of the rate for corroboration purposes (a) was "perfunctory, minimally explained, and incomplete;" (b) was performed only by reviewing the Petition itself; (c) did not explain the type of public information used; and (d) did not include any independent source.⁸² Although the Department did not describe in detail each of the steps

⁷⁶ See Preliminary Decision Memorandum at 16 through 17.

⁷⁷ See Baoshan's Case Brief at 6.

⁷⁸ See e.g., *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Orange Juice from Brazil*, 71 FR 2183, 2185 (January 13, 2006); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 67 FR 3155, 3156 (January 23, 2002); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

⁷⁹ See Petitioners Rebuttal Brief at 17.

⁸⁰ See Baoshan's Case Brief at 7.

⁸¹ See Preliminary Decision Memorandum at 18-19.

⁸² See Baoshan's Case Brief at 7.

followed in our corroboration analysis for purposes of the *Preliminary Determination*, we do so below.

Section 776(c) of the Act requires the Department to corroborate secondary information where practicable using independent sources.⁸³ The Statement of Administrative Action (SAA) provides that “secondary information” includes “information derived from the petition that gave rise to the investigation or review.”⁸⁴ To corroborate means that the Department “will examine whether the secondary information has probative value.”⁸⁵ The SAA lists some independent sources of information, including published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review.⁸⁶

For purposes of the *Preliminary Determination*, we relied on information from the Petition in deriving the adverse-facts-available rate, which is considered “secondary information.” However, we considered it unnecessary to provide a detailed description of our corroboration analysis since this was already described at the pre-initiation stage of the investigation.⁸⁷ Nonetheless, Baoshan’s statement that our corroboration analysis was incomplete or it did not include independent sources is incorrect. We clarify there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information.⁸⁸ We specifically examined the key elements and sources for the CEP and normal value calculations used in the Petition to derive the dumping margin alleged and for corroboration purposes and we found them to be reliable. For example, the petitioners estimated CEPs for GOES based on information sourced from a U.S. distributor of GOES that provided an offer for sale from Baoshan’s U.S. affiliated agent Baosteel America Inc.⁸⁹ At the pre-initiation stage, we requested and obtained affidavits directly from persons who obtained the U.S. price offer for sale.⁹⁰ To further examine the reliability of the U.S. price information in the Petition, for purposes of this final determination, we examined the monthly import statistics of GOES from the PRC during the period of investigation obtained by the petitioners. These data were compiled by the U.S. Bureau of the Census (Census Bureau), meaning it is “publicly available information.”⁹¹ We also examined the petitioners’ calculation of yearly average unit values (AUVs) of imports of GOES based on the Census Bureau import statistics.⁹² To further corroborate the AUVs calculated, we reviewed petitioners’ comparison of these AUVs with actual market prices and lost sales due to the pricing of PRC imports.⁹³ Moreover, by comparing the offer for sale information from the Petition to the AUVs for the period of investigation, we confirmed that the

⁸³ SAA at 870; section 776(c) of the Act.

⁸⁴ SAA at 870.

⁸⁵ 19 CFR 351.308(d); *see also* SAA at 870.

⁸⁶ 19 CFR 351.308(d); SAA at 870.

⁸⁷ *See* Preliminary Decision Memorandum at 17-18.

⁸⁸ *See* Volume II of the Petition, at 2-9, and Exhibits AD-C-2 and AD-C-4-19; *see also* Supplemental to the China AD Petition, dated September 26, 2013 (PRC AD Supplement), at 5-10 and AD Exhibits SC-2A, SC-6, SC-9, SC-11, and SC-12.

⁸⁹ *See* Antidumping Duty Investigation Initiation Checklist: Grain-Oriented Electrical Steel from the People’s Republic of China (Initiation Checklist), October 24, 2013, at 7.

⁹⁰ *Id.*

⁹¹ *See* Volume I of the Petition at 16 and Exhibit General-6; *see also* Initiation Checklist at 5.

⁹² *See* Petition at 19 and Exhibit General-4.

⁹³ *Id.*, at 19, 23, and Exhibit General-8, *see also* Initiation Checklist at 5.

value of the offer for sale was consistent with average U.S. import values.⁹⁴ Accordingly, official U.S. import statistics are data we consider reliable to corroborate secondary information.

Regarding adjustments to U.S. prices, the petitioners used publicly available data, such as the *Doing Business 2013: Thailand* and *Doing Business 2013: United States* reports from the World Bank, to estimate charges for U.S. and foreign brokerage and handling; they also used data queries from other public sources such as MAERSK Line and P.A.F. Cargo Insurance publications to estimate freight and insurance.⁹⁵ These are sources that we considered reliable in past proceedings. Likewise, we continue to consider this publicly available information reliable. Consequently, based on our examination of this information, and as further discussed in detail in the Initiation Checklist, we considered the petitioners' CEP calculations corroborated.

For normal value, in accordance with section 773(c)(4) of the Act, the petitioners based their calculations on factors of production valued in a surrogate market-economy country.⁹⁶ The petitioners explained that they selected Thailand as an appropriate surrogate country for valuing factors, except for financial ratios,⁹⁷ because it is (1) at a level of economic development comparable to that of the PRC; (2) a significant producer of comparable merchandise and; (3) public information to value factors of production is available.⁹⁸ We reviewed the information provided at the pre-initiation stage and, pursuant to section 773(c)(4) of the Act, found it appropriate to use Thailand as the surrogate country for purposes of initiation.⁹⁹ As demonstrated by the petitioners, we find that Thailand is at the same level of economic development as the PRC.¹⁰⁰ As we have stated previously, we consider the World Bank's Indicators Database, like other publicly available World Bank sources, to be an independent and reliable source for purposes of our corroboration analysis.¹⁰¹

To value inputs for the production of GOES, the petitioners obtained data from various public sources. Specifically, the petitioners valued raw materials for the period of investigation using import statistics from the World Bank *Doing Business 2013: Thailand* and the Global Trade Atlas (GTA), exclusive of imports from non-market and heavily subsidized economies, which are the latest import data available for Thailand.¹⁰² The petitioners valued labor costs using the

⁹⁴ See Volume II of the Petition at 1-3 and Exhibit AD-C2; see also Initiation Checklist at 5-6 and 8.

⁹⁵ See Initiation Checklist at 7.

⁹⁶ *Id.*, at 8.

⁹⁷ *Id.*, at 10.

⁹⁸ *Id.*, at 8-9.

⁹⁹ *Id.*

¹⁰⁰ See letter from the Department to all interested parties, regarding "Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information" dated January 30, 2014, at attachment 1. See also Initiation Checklist at 9.

¹⁰¹ The Department generally considers World Bank sources to be reliable. See, generally, *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007), and accompanying Issues & Decision Memorandum at Comment 8C ("Though the Department cannot ensure that each NME's GNI is untainted from any non-market influence, it can at least rely on third parties such as the World Bank, which is a reputable intergovernmental organization with reliable data collection methods"); *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues & Decision Memorandum at Comment 20 (finding that a *Doing Business* publication was a reliable source to derive surrogate truck freight prices, in part because it "is a World Bank publication").

¹⁰² See Initiation Checklist at 9.

most recent information published by the Thailand National Statistics Office industrial census.¹⁰³ Electricity and gas were valued using public data from the *Electricity Generating Authority of Thailand, 2012 Annual Report, Key Statistical Data* and Thai import data from GTA.¹⁰⁴ Because the petitioners used public sources of information, such as official import statistics that we confirmed were accurate to value factors of production, we consider this secondary information as corroborated.

With regard to the financial ratios used for the calculations, the petitioners used financial statements of a publicly traded Indian producer of comparable merchandise because, to the best of their knowledge, during the period of investigation, there were no other publicly available financial statements for a profitable company, within the countries that are considered by the Department to be economically comparable to China, which pertained to a vertically-integrated producer such as the PRC GOES producers.¹⁰⁵ Because the Petitioners used financial information from publicly traded companies, which we confirmed were accurate, we considered this secondary information as corroborated.

As demonstrated above, we find Baoshan's arguments regarding the completeness of our corroboration analysis to be entirely misplaced. Based on our examination of the information, as discussed in detail in the Initiation Checklist and *Initiation Notice*, we consider the petitioner's calculation of the U.S. price and NV underlying the 159.21 percent rate to be reliable. Accordingly, 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 (including official statistics), we continue to determine that the margins in the Petition are reliable for the purpose of this investigation.¹⁰⁶ We add that our corroboration analysis here is consistent with other investigations where total adverse facts available was applied to the sole mandatory respondent.¹⁰⁷

Regarding the legal precedent cited by Baoshan in its case brief, we agree with the domestic parties that the relevant facts on such cases are dissimilar to the ones present in this investigation. For example, citing to *Hubscher Ribbon*, Baoshan asserts "where Commerce assigns a total AFA rate 'in multiples of 100 percent, a bit more corroboration or record support is warranted.'"¹⁰⁸ As an initial matter, *Hubscher Ribbon* sustained the Department's assignment of the highest petition rate as total adverse-facts-available margin. This is precisely the approach we follow here.¹⁰⁹ As pointed out by the domestic parties,¹¹⁰ and as we acknowledge, the Department must

¹⁰³ *Id.*

¹⁰⁴ *Id.*, at 9-10.

¹⁰⁵ See Volume II of the Petition at 8-9 and Exhibit AD C-18; see also Initiation Checklist at 10.

¹⁰⁶ See, e.g., *Glycine from Japan*, at 52353, unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007).

¹⁰⁷ See, e.g., *Certain Oil Country Tubular Goods From Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying Decision Memorandum at "Selection and Corroboration of Information Used as Facts Available," unchanged in *Certain Oil Country Tubular Goods From Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 41978 (July 18, 2014).

¹⁰⁸ See Baoshan's Case Brief at 6 (citing to *Hubscher Ribbon*, 979 F. Supp. 2d at 1370).

¹⁰⁹ *Hubscher Ribbon*, 979 F. Supp. 2d at 1370-71.

¹¹⁰ See Petitioners' Rebuttal Brief at 19.

“demonstrate that the rate is reliable and relevant to the particular respondent.”¹¹¹ Also, as explained in *Gallant Ocean*, the Department “must select secondary information that has some grounding in commercial reality.”¹¹² However, in our *Preliminary Determination*, the Department applied to Baoshan an adverse-facts-available rate that was representative of its commercial reality because it was calculated using information specific to Baoshan.¹¹³ As such, we find this information both reliable and relevant to Baoshan.

Furthermore, the two cases cited in *Hubscher Ribbon* for Baoshan’s proposition that further corroboration is somehow required, involved “proceedings with ample data and abundant resources . . . which in turn significantly limited {the Department’s} discretion to choose otherwise high AFA margins in multiples of 100 percent,” as *Hubscher Ribbon* itself recognized.¹¹⁴ Conversely, and similar to *Hubscher Ribbon*, in the instant investigation, Baoshan is the sole mandatory respondent and therefore, there are no “ample data or abundant resources”¹¹⁵ to rely on. In *Lifestyle*, there were other respondents which were also cooperative and upon which the Department could rely for corroboration of the adverse-facts-available rate.¹¹⁶ This is not the case in the instant proceeding. In this investigation, there are no other selected respondents with calculated margins; the sole available calculated rate is the one from the Petition which, as noted, is specific to Baoshan.

Finally, citing *Universal Polybag*, Baoshan argues that in cases where the CIT found the corroboration of a petition rate to be adequate, the Department, in addition to sourcing information based on the petition, should rely on other factors such as (1) the highest prior rate assigned to a company in the group; and (2) transaction-specific margins for other companies in the initial investigation of the proceeding.¹¹⁷ We find this statement to be inapposite. The types of additional information relied on in *Universal Polybag* are not available in the instant proceeding. As mentioned above, and in our *Preliminary Determination*,¹¹⁸ the offers for sale supporting the initiation were specific to Baoshan. Baoshan was the sole respondent in this investigation; no other company’s information, and therefore no other transaction-specific margin calculations, are available on the record. Furthermore, there are no “prior rate{s}” assigned in this proceeding. Thus, the additional information mentioned by Baoshan for corroboration is not applicable in this case.

Regarding the Department’s determination as to the relevance aspect of corroboration, Baoshan argues it is not sufficient for the Department to demonstrate that the information and rate

¹¹¹ See *Hubscher Ribbon*, 979 F. Supp. 2d at 1366 (citing *Yantai Xinke Steel Structure Co. v. United States*, Slip Op. 12-95 at 27 (CIT July 18, 2012)).

¹¹² See *Gallant Ocean*, 602 F.3d at 1323-24.

¹¹³ See Preliminary Decision Memorandum at 18-19.

¹¹⁴ See Petitioners’ Brief at 19 (citing to *Lifestyle* at 1286 and *Qingdao Taifa Grp. Co. v. United States*, 760 F. Supp. 2d 1379 (CIT 2010) (*Qingdao*)); *Hubscher Ribbon*, 979 F. Supp. 2d at 1370-71.

¹¹⁵ *Hubscher Ribbon*, 979 F. Supp. 2d at 1371.

¹¹⁶ See *Lifestyle*, 768 F. Supp. 2d at 1298-99 (“Here, the highest separate rate assigned in the current review to a company other than Orient was 29.89%, which was the rate assigned to eighteen parties. . . . Commerce also assigned a 0% rate to two companies. Furthermore, Orient had been assessed a significantly lower rate of 7.28% from 2006 until 2008. . .”).

¹¹⁷ See Baoshan’s Case Brief at 7-8; *Universal Polybag Co. v. United States*, 577 F. Supp. 2d 1284, 1299-1301 (Ct. Int’l Trade 2008).

¹¹⁸ See Preliminary Decision Memorandum at 18.

calculated in the Petition is specific to Baoshan, and therefore relevant.¹¹⁹ The company further asserts that the Department “must actually consult independent sources and provide sufficient explanation to meet the statutory and regulatory requirements.”¹²⁰ We clarify that the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant.¹²¹ Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico*, the Department disregarded the highest margin as “best information available” (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense that resulted in an unusually high dumping margin.¹²²

In *Am. Silicon Techs. v. United States*, the CIT found that a particular adverse-facts-available rate bore a “rational relationship” to the respondent’s “commercial practices” and was, therefore, relevant.¹²³ In the pre-initiation stage of this investigation, we confirmed that the calculation of the margin in the Petition reflects commercial practices of the industry during the period of investigation, and particularly of the respondent Baoshan.¹²⁴ Further, no information has been presented in the investigation that calls into question the relevance of this information. Baoshan contends that the absence of contrary information on the record does not prove that the Petition rate is reliable or relevant.¹²⁵ However, it does not provide any explanations or reasons not to consider the Petition information, specific to Baoshan, as reflective of the commercial reality of the PRC GOES industry.¹²⁶ Therefore, we continue to determine that the margin in the Petition was based on adequate and accurate information. We corroborated this information as relevant as the adverse-facts-available rate for Baoshan.¹²⁷

Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation, and in the *Preliminary Determination*, we have corroborated the adverse-facts-available rate “to the extent practicable.”¹²⁸ Therefore, we continue to find that the weighted-

¹¹⁹ See Baoshan’s Case Brief at 8.

¹²⁰ *Id.*

¹²¹ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013), and accompanying Preliminary Decision Memorandum at “Application of Adverse Inferences for Facts Available,” unchanged in *Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan*, 79 FR 19868 (April 10, 2014), and accompanying Issues & Decision Memorandum.

¹²² See *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (*Fresh Cut Flowers from Mexico*).

¹²³ See *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (Ct. Int’l Trade 2003).

¹²⁴ See Volume I of the Petition at Exhibit General-8; see also Volume II of the Petition at Exhibit AD-C2 and Initiation Checklist at 5-7.

¹²⁵ See Baoshan’s Case Brief at 8.

¹²⁶ To the extent Baoshan argues we should consider calculated rates in other ongoing GOES investigations involving other countries, this argument is addressed below in Comment 3.

¹²⁷ See, e.g., *Glycine from Japan*.

¹²⁸ See section 776(c) of the Act; 19 CFR 351.308(d); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (Ct. Int’l Trade 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

average dumping margin of 159.21 percent in the *Initiation Notice*, and as applied in the *Preliminary Determination*, has probative value within the meaning of section 776(c) of the Act.¹²⁹ Consequently, the adverse-facts-available rate applied to Baoshan for purposes of this final determination continues to be 159.21 percent.¹³⁰

Comment 3: Selection of an Adverse Facts Available Rate

Baoshan Comments

- Baoshan suggests that, given there are no other mandatory respondents in the investigation of GOES from the PRC, the Department could use a weighted-average margin calculated for a respondent in one of the parallel investigations of GOES. Baoshan notes that, although the statute and regulations allow for the use of information obtained from a Petition, the courts are suspicious of petition rates and limit the Department's discretion to use such a rate where the record of a proceeding and independent sources of information present calculated rates of various respondents that potentially better inform of the commercial reality or actual rate of a non-cooperative party.¹³¹
- Baoshan asserts that the Department should select a more appropriate and reliable dumping rate for Baoshan by selecting from the non-adverse facts available rates calculated in the parallel GOES investigations which, because they are based on a company's own data, are reflective of the commercial reality of the GOES industry and the U.S. market. Baoshan notes that the fact that these rates ranged from 5.34 percent to 11.34 percent in the preliminary determinations of the investigations confirm that the Petition rate in the PRC proceeding is unreliable because it does not reflect the commercial reality of the GOES industry and the U.S. market. Baoshan proposes either selecting one of these rates, or an average of the rates.

Domestic Parties' Comments

- The domestic parties assert that Baoshan's suggestion that the Department consider non-adverse facts available rates from concurrent GOES proceedings is unreasonable. They counter that use of such rates would reward Baoshan's uncooperativeness and would establish a precedent of allowing respondents to "margin shop" by delaying or withholding information and then advocating for the use of non-adverse facts available rates from other proceedings. The domestic parties further assert that respondents should not have the opportunity to challenge a reasonable adverse facts available call through failing to file complete and accurate responses and that, accordingly, the Petition should continue to serve as the basis for the adverse facts available margin in the final determination for the investigation.

31, 1999)).

¹²⁹ See section 776(c) of the Act; see also 19 CFR 351.308(d).

¹³⁰ See *Initiation Notice*.

¹³¹ Baoshan cites *Hubscher Ribbon*, 979 F. Supp. 2d at 1369-70, in support of these statements.

Department's Position:

Baoshan's suggestion that the Department consult the record of the parallel GOES investigations to obtain additional information regarding the GOES industry is inconsistent with our practice in selecting an adverse facts available rate. It is not our practice to rely on information from other investigations in the application of adverse facts available for an uncooperative respondent in a companion investigation. Rather, as explained above, pursuant to sections 776(b) of the Act and 19 CFR 351.308(c)(1), in applying facts available, the Department may use information obtained from (1) the petition, (2) a final determination in the investigation, (3) any previous administrative review, or (4) any other information placed on the record to derive an adverse-facts-available rate. Record information from the parallel GOES investigations does not meet any of these criteria. Thus, there is no reason for us to deviate from our normal practice of considering secondary information such as the Petition where, as here, there is no other reliable information on the record in this investigation. As explained above, the Petition rate was corroborated in the pre-initiation stage of this investigation and in our *Preliminary Determination*, and was based on information and data specific to Baoshan. Moreover, the Petition rate has probative value to the commercial activities and realities of the GOES industry in the PRC, whereas dumping margins calculated for other companies in other countries do not. Finally, to consider the underlying data for dumping margin calculations in other ongoing GOES proceedings would erode the fundamental requirement that each case is based on its own record.¹³²

¹³² See *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying Issues & Decision Memorandum at Comment 5 ("The record in each segment in a proceeding stands on its own and, therefore, information must be evaluated in comparison to other information on that same record").

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margin for the PRC-wide entity, including Baoshan, in the *Federal Register*.



Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 SEPTEMBER 2014
Date