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Investigation
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January 4, 2017

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Less-Than-Fair-Value Investigation of Certain Biaxial Integral
Geogrid Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (the Department) determines that certain biaxial integral geogrid products (geogrids) from the People's Republic of China (the PRC) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification,¹ we find that necessary information was not on the record, and that both mandatory respondents, BOSTD² and Taian Modern,³ withheld information, failed to provide information in the form and manner requested subject to sections 782(c)(1) and (e) of the Act, significantly impeded the proceeding and provided information that could not be verified.⁴ Additionally, we find that both mandatory respondents, BOSTD and Taian Modern, failed to cooperate by not acting to the best of their ability to comply with requests for information, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act. As a part of the application of AFA, we determine that both BOSTD and Taian Modern are no longer eligible for

¹ See the Department's two memoranda regarding: "Verification of the Sales and Factors Response of Taian Modern Plastic Co., Ltd. (Taian Modern) in the Antidumping Duty Less Than Fair Value Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China," dated November 4, 2016 (Taian Modern Verification Report); and "Verification of the Sales and Factors Responses of BOSTD Geosynthetics Qingdao Ltd. (BOSTD) in the Antidumping Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China," dated November 15, 2016 (BOSTD Verification Report).

² BOSTD Geosynthetics Qingdao Ltd. (BOSTD).

³ Taian Modern Plastic Co., Ltd. (Taian Modern).

⁴ See sections 776(a)(1) and (a)(2)(A), (B), (C), and (D) of the Act.



a separate rate, and for this final determination, are treating both companies as part of the PRC-wide entity.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

On August 22, 2016, the Department published its *Preliminary Determination* in the LTFV investigation of geogrids from the PRC.⁵

On August 31, 2016, Petitioner⁶ submitted rebuttal surrogate value data regarding the ocean freight surrogate value information that the Department placed on the record for the *Preliminary Determination*.⁷

Between August and November 2016, the Department received supplemental questionnaire responses and revised data from BOSTD and Taian Modern. Additionally, in September 2016, the Department conducted verification of the sales and factors of production (FOP) data reported by BOSTD and Taian Modern, respectively, pursuant to section 782(i) of the Act.⁸

We invited parties to comment on the *Preliminary Determination*. On November 23, 2016, Petitioner and Taian Modern submitted timely, properly filed case briefs, pursuant to our regulations.⁹ On November 30, 2016, Petitioner and Taian Modern submitted timely, properly filed rebuttal briefs, pursuant to our regulations.¹⁰ On December 2, 2016, BOSTD submitted a timely, properly filed revised case brief and rebuttal brief, pursuant to our regulations.¹¹

⁵ See *Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 56584 (August 22, 2015) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

⁶ Tensar Corporation (Petitioner).

⁷ See Petitioner’s Letter to the Secretary of Commerce entitled “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Rebuttal Ocean Freight Surrogate Value Data,” dated August 31, 2016.

⁸ See BOSTD Verification Report; and Taian Modern Verification Report.

⁹ See Letter from Petitioner to the Secretary of Commerce entitled, “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Case Brief on BOSTD”, dated November 23, 2016 (Petitioner’s BOSTD Case Brief); Letter from Petitioner to the Secretary of Commerce entitled, “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Case Brief on Taian Modern,” dated November 23, 2016 (Petitioner’s Taian Modern Case Brief); and Letter from Taian Modern to the Secretary of Commerce entitled “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Case Brief,” dated November 23, 2016 (Taian Modern Case Brief).

¹⁰ See Letter from Petitioner to the Secretary of Commerce entitled, “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Rebuttal Brief on Taian Modern,” dated November 30, 2016 (Petitioner’s Taian Modern Rebuttal Brief); and Letter from Taian Modern to the Secretary of Commerce entitled “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Case Brief,” dated November 30, 2016 (Taian Modern Rebuttal Brief).

¹¹ See BOSTD’s Letter to the Secretary of Commerce entitled “Revised Case Brief of BOSTD Geosynthetics Qingdao Ltd. in the Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” dated December 2, 2016 (BOSTD Revised Case Brief); and BOSTD’s Letter to the Secretary

Additionally, on December 6, 2016, Petitioner submitted a timely, properly filed revised rebuttal brief, pursuant to our regulations.¹²

We did not receive any comments in the case and rebuttal briefs regarding the memorandum that we issued in the *Preliminary Determination* analyzing certain comments received on the scope of this investigation.¹³ Thus, the scope of this investigation remains unchanged for the final determination.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was January 2016.¹⁴

IV. SCOPE OF THE INVESTIGATION

The products covered by the scope are certain biaxial integral geogrid products. Biaxial integral geogrid products are a polymer grid or mesh material (whether or not finished, slit, cut-to-length, attached to woven or non-woven fabric or sheet material, or packaged) in which four-sided openings in the form of squares, rectangles, rhomboids, diamonds, or other four-sided figures predominate. The products covered have integral strands that have been stretched to induce molecular orientation into the material (as evidenced by the strands being thinner in width toward the middle between the junctions than at the junctions themselves) constituting the sides of the openings and integral junctions where the strands intersect. The scope includes products in which four-sided figures predominate whether or not they also contain additional strands intersecting the four-sided figures and whether or not the inside corners of the four-sided figures are rounded off or not sharp angles. As used herein, the term “integral” refers to strands and junctions that are homogenous with each other. The products covered have a tensile strength of greater than 5 kilonewtons per meter (kN/m) according to American Society for Testing and Materials (ASTM) Standard Test Method D6637/D6637M in any direction and average overall flexural stiffness of more than 100,000 milligram-centimeter according to the ASTM D7748/D7748M Standard Test Method for Flexural Rigidity of Geogrids, Geotextiles and Related Products, or other equivalent test method standards.

of Commerce entitled “Revised Rebuttal Brief of BOSTD Geosynthetics Qingdao Ltd. in the Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” dated December 2, 2016 (BOSTD Revised Rebuttal Brief).

¹² See Petitioner’s Letter to the Secretary of Commerce entitled “Revised Rebuttal Brief of Petitioner on BOSTD in the Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” dated December 6, 2016 (Petitioner’s Revised BOSTD Rebuttal Brief).

¹³ See Memorandum to James C. Doyle, Director, Office V, from Julia Hancock, Senior International Trade Compliance Analyst, entitled “Subject: Preliminary Determination on Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Scope Comments,” dated August 16, 2016) (Preliminary Scope Memorandum).

¹⁴ See 19 CFR 351.204(b)(1).

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise further processed in a third country, including by trimming, slitting, coating, cutting, punching holes, stretching, attaching to woven or non-woven fabric or sheet material, or any other finishing, packaging, or other further processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the biaxial integral geogrid.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 3926.90.9995. Subject merchandise may also enter under subheadings 3920.20.0050 and 3925.90.0000. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on the Department's verifications of BOSTD and Taian Modern, we made changes from the *Preliminary Determination*. For both BOSTD and Taian Modern, we have determined to apply total adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, as discussed in section VI below.

VI. APPLICATION OF ADVERSE FACTS AVAILABLE

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the Act, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

BOSTD

As discussed below, BOSTD failed to report its FOP database on a CONNUM-specific basis despite the Department's repeated requests. Specifically, despite BOSTD's claims to the contrary, the Department found at verification that BOSTD did maintain documentation tracking inputs on a CONNUM (product-specific) basis. Furthermore, at BOSTD's verification the Department found several inconsistencies with respect to its accounting system which were not previously reported in BOSTD's submissions to the Department. As a result, as discussed below in Comment 1, the Department determines that the use of facts otherwise available with an

adverse inference is warranted with respect to BOSTD pursuant to sections 776(a)(2)(A)-(D) of the Act.

Taian Modern

As discussed in Comment 9 below, at verification Taian Modern failed to reconcile its reported factors of production database and cost reconciliation data from its audited financial statement to its accounting books and production records. Further, the Department found other deficiencies related to Taian Modern's reported sales data. The Department cannot rely on Taian Modern's reported data because they do not tie to Taian Modern's books and records and, therefore, are unreliable for the purposes of calculating Taian Modern's estimated weighted-average dumping margin. Furthermore, Taian Modern's inability to reconcile its reported data precluded the Department's verifiers from performing essential procedures that form the backbone of the Department's verification process.¹⁵ As a result, and as discussed below in Comment 9, the Department concludes that application of total facts available with an adverse inference is appropriate with respect to Taian Modern, pursuant to sections 776(a)(1), (2)(A)-(D), and 776(b) of the Act.

The PRC-wide Entity

In the *Preliminary Determination*, we determined that the record indicates that there are other PRC exporters and/or producers of the subject merchandise during the POI that did not respond to the Department's requests for information.¹⁶ Specifically, the Department did not receive timely responses to its Q&V questionnaire, or separate rate applications, from numerous PRC exporters and/or producers of merchandise under consideration that were named in the Petition and to which the Department issued Q&V questionnaires.¹⁷ Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department continues to consider them to be part of the PRC-wide entity.

AFA Rate for the PRC-wide Entity

For the PRC-wide entity, we find the highest Petition rate of 372.81 percent relevant to the PRC-wide entity and corroborated the AFA rate of 372.81 percent to the extent practicable, pursuant to section 776(c) of the Act. For further discussion of our analysis regarding the selection of the AFA rate for the PRC-wide entity, please *see* Comment 12 below.

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

¹⁶ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 18-19.

¹⁷ See Memorandum to The File entitled "Antidumping Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Quantity and Value Questionnaire Delivery Confirmation," dated February 24, 2016. Of the 28 packages sent, 24 were delivered, two were refused by recipients, and two were unable to be delivered because of insufficient or incorrect addresses.

VII. AFFIRMATIVE FINDING OF CRITICAL CIRCUMSTANCES

On August 22, 2016, the Department preliminarily determined that critical circumstances exist for Taian Modern and the PRC-wide entity, but not BOSTD. As discussed below, for the final determination, the Department determines that Taian Modern and BOSTD are part of the PRC-wide entity. Critical circumstances continue to exist for the PRC-wide entity.

VIII. LIST OF COMMENTS

Company-Specific Issues

BOSTD

Comment 1: Application of Total Adverse Facts Available (AFA) to BOSTD

Comment 2: Moot Arguments for BOSTD

Taian Modern

Comment 3: Application of Total AFA to Taian Modern

Comment 4: Moot Arguments for Taian Modern

General Issues

Comment 5: Selection of AFA Rate to PRC-Wide Entity

Comment 6: Critical Circumstances

Comment 7: Moot Arguments for General Issues

VIII. DISCUSSION OF COMMENTS

Comment 1: Application of Total Adverse Facts Available (AFA) to BOSTD

Petitioner's Comments:

- BOSTD falsely claimed that it could not report its costs on a CONNUM-specific basis. At verification, the Department discovered that BOSTD maintains production records that permit the company to calculate and report its FOPs on a CONNUM-specific basis. Moreover, prior to verification, BOSTD did not include this documentation identified by the Department in its listing of production records.¹⁸
- The Department's practice involving NME countries is to require respondents to report the usage rates of its FOPs on a CONNUM-specific basis unless the respondent demonstrates that its accounting system does not allow it to do so.¹⁹
- BOSTD failed to use a methodology that reflects the quantities of FOPs actually consumed during the POI. Instead, BOSTD employed standard consumption rates from bills of material (BOM) and applied a variance between its standard consumption and total actual consumption of inputs consumed over the POI. At verification, BOSTD was unable to provide supporting documentation demonstrating how the standard consumption rates from

¹⁸ See Petitioner's BOSTD Case Brief at 10.

¹⁹ *Id.*, at 2.

its BOM were calculated. As a result, the standard consumption rates used to calculate BOSTD's FOP usage rates are based on unsubstantiated estimates instead of production records tracking actual consumption rates.²⁰

- Tests performed at verification show that the usage rates reported by BOSTD for polypropylene and masterbatch²¹ were grossly inaccurate.²²
- At verification, the Department found that BOSTD reported only one type of masterbatch despite actually consuming two different types of masterbatch in its production process.²³
- At verification, the Department was unable to verify the accuracy of BOSTD's reported consumption of polypropylene scrap.²⁴
- BOSTD's failure to report its consumption of lubricating oil and water is another indication of its failure to cooperate to the best of its ability.²⁵
- The Department should reject BOSTD's argument that its FOP usage rates based on BOMs are more accurate than the FOP usage rates based on production records that track actual consumption. While BOSTD states that its production records are inaccurate due to variances regarding quantities withdrawn and consumed in one given day, there is no record evidence to support such a claim.²⁶ The variation in the standard BOM consumption rates and the consumption rates based on production records indicates that the FOP usage rates are more accurate.²⁷
- BOSTD's assertion that the Department has previously allowed respondents to rely on BOMs to calculate FOP consumption is unsupported.²⁸
- BOSTD's cost responses and data contain multiple errors, omissions, and misrepresentations including differences in BOSTD's production and accounting records, missing FOPs, and incorrectly reported inputs.²⁹
- BOSTD failed to disclose key information regarding its U.S. sales process and affiliation during the POI.³⁰ At verification, the Department found numerous discrepancies between the data reported by BOSTD and the sales documentation examined in the context of the company's sales traces.³¹
- Because the Department was not able to verify the accuracy and completeness of BOSTD's reported cost and sales data, the Department must resort to facts available to calculate the company's dumping margin.
- The Department should employ an adverse inference in calculating BOSTD's dumping margin because BOSTD failed to cooperate to the best of its ability in reporting accurate usage rates, failed to disclose an affiliate, consistently hid details regarding its U.S. sales

²⁰ *Id.*, at 5-6.

²¹ Masterbatch is polypropylene mixed with nucleating agent. *See* BOSTD Verification Report at 12.

²² *Id.*, at 6-7.

²³ *Id.*, at 10.

²⁴ *Id.*, at 7-9.

²⁵ *Id.*, at 13-16.

²⁶ *See* Petitioner's Revised BOSTD Rebuttal Brief at 4.

²⁷ *Id.*, at 10-11.

²⁸ *Id.*, at 6-7.

²⁹ *See* Petitioner's BOSTD Case Brief at 9-10.

³⁰ *Id.*, at 11-17.

³¹ *Id.*, at 17-20.

process, and reported sales data and documentation inconsistent with the documentation examined at verification.³²

- The Department and the courts previously recognized that the application of AFA is appropriate when critical information is discovered at verification that was previously undisclosed and also when a respondent makes misrepresentations to avoid producing information sought by the Department. Both of these situations occurred in this instance with respect to BOSTD, which further underscores the fact that AFA should be applied to BOSTD.³³

BOSTD's Comments:

- BOSTD cooperated to the best of its ability with the Department's requests for information regarding its FOPs. Further, the quantity of raw materials consumed to produce the merchandise under consideration based on BOSTD's BOMs was verified by the Department.
- BOSTD's methodology for calculating its FOPs based on its BOMs is product-specific and, as a result, CONNUM-specific, which is supported by BOSTD's accounting records.³⁴
- Because its BOMs are the source documents used by the accounting department to generate monthly or annual reports, BOSTD's BOMs are reliable for calculating its FOPs.³⁵
- BOSTD disagrees that there is a difference between its production and accounting records, as alleged by Petitioner, and these were verified successfully by the Department.³⁶
- BOSTD's BOMs are technical "recipes" which are relied on in the planning and implementation of its production schedule.³⁷
- BOSTD asserts that it relies on its BOMs to withdraw the required quantities of raw materials for production planning. BOSTD books into its accounting system the necessary raw materials withdrawn and sent into production.
- Due to BOSTD's continuous 24-hour production operation, it is impossible to accurately trace the specific raw materials withdrawn on a given day to the product that actually consumed the raw materials.³⁸
- The Department previously accepted a respondent's reliance on BOMs kept in the ordinary course of business as the basis for reporting a company's FOP consumption.³⁹
- BOSTD's reporting methodology using BOMs which are adjusted by total actual quantity of materials withdrawn during the POI is more accurate than relying on daily or monthly actual quantity of materials withdrawn.⁴⁰
- The reason why the Department calculated a different consumption rate at verification was because it did not allocate the raw materials consumed over all corresponding products; thus resulting in different consumption rates from those submitted to the Department. As a result,

³² *Id.*

³³ *Id.*, at 25-26.

³⁴ See BOSTD's Revised Rebuttal Brief at 6-7.

³⁵ *Id.*, at 7-8.

³⁶ *Id.*, at 12-13.

³⁷ See BOSTD's Revised Case Brief at 3.

³⁸ *Id.*, at 5.

³⁹ *Id.*, at 6.

⁴⁰ *Id.*, at 8-12.

the theoretical sample calculation calculated by the Department at verification should be rejected.⁴¹

- With respect to scrap, BOSTD rebuts that the Department found no discrepancies and verified BOSTD's methodology to report scrap as accurate.⁴²
- BOSTD's use of lubricating oil is an overhead expense, which was verified by the Department. Additionally, BOSTD did not fail to report water as it is "self-produced" from steam already reported and accounted for in BOSTD's FOPs.⁴³
- BOSTD rebuts that the FOP reported for masterbatch covers both regular masterbatch and nucleated masterbatch.⁴⁴
- BOSTD accurately reported its sales to the United States during the POI as export price (EP) sales.⁴⁵

Department's Position: The Department agrees with Petitioner that the application of total facts available with an adverse inference is warranted for the final determination.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

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

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the

⁴¹ *Id.*

⁴² See BOSTD's Revised Rebuttal Brief at 14-15.

⁴³ *Id.*, at 15-16.

⁴⁴ *Id.*, at 16-18.

⁴⁵ *Id.*, at 19-24.

applicable requirements established by administering authority if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁴⁶ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Pursuant to sections 776(a)(2)(A)-(D) of the Act, the Department finds that the application of facts available is warranted because BOSTD failed to provide complete, accurate, and reliable CONNUM-specific FOP information for the subject merchandise during the POI, as requested by the Department, significantly impeded this investigation, and provided information that could not be verified.

A. Application of Facts Available

During the course of this investigation, the Department discovered that BOSTD withheld key information necessary to calculate an accurate margin. Specifically, BOSTD failed to provide in the form and manner requested by the Department an accurate, reliable FOP database that is reported on a CONNUM-specific basis. Additionally, BOSTD reported conflicting information with respect to the way in maintains its production documentation. Further, BOSTD also did not report complete accounting information to the Department, with respect to its sales reconciliation.

Additionally, where the request for information was clear and relates to some of the central issues in an antidumping case, such as accurate sales and FOP databases, the Court of International Trade (CIT) has found that the respondent has a “statutory obligation to prepare an accurate and complete record in response to questions plainly asked by the Commerce.”⁴⁷ Further, the CIT has stated that the terms of sections 782(d) and (e) of the Act do not give rise to

⁴⁶ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat 362 (June 9, 2015) (TPEA).

⁴⁷ See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) (*Tung Mung*) (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1571-72 (Fed. Cir. 1990)); see also *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-33 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where the Department questioned the respondent regarding the information, and where the Department was unaware of the deficiency, the Department is in compliance with 782(d), and it is the respondent’s obligation to create an accurate record and provide the Department with the information requested).

an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all criteria of 782(e).⁴⁸

Here, the requests for information were clear and BOSTD cannot claim that it was unaware of its obligation to submit the information, thus requiring further notification by the Department. Record evidence clearly shows that BOSTD was aware of its obligation to report complete, accurate, and reliable FOP data for its sales of subject merchandise to the United States during the POI.⁴⁹ Therefore, the Department finds that BOSTD had ample notification of the centrality of the issues, as well as ample opportunity to provide complete, accurate, and reliable FOP databases. However, it did not do so.

1. BOSTD's FOP Database and Reporting Methodology

Pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act, the Department finds that the application of facts available is warranted because BOSTD failed to provide a complete, accurate and reliable CONNUM-specific FOP database for the merchandise under consideration during the POI, as requested, and significantly impeded this investigation.

In its original questionnaire responses in this investigation, despite specific instructions detailed in the antidumping duty questionnaire, BOSTD did not follow instructions to provide a full, accurate, CONNUM-specific FOP database based on actual or allocated data. Specifically, in March 2016, the Department issued the NME questionnaire to BOSTD.⁵⁰ Section D of the questionnaire requested respondents that are unable to provide

Actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis, {to} *please provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under investigation on a CONNUM-specific basis.* Additionally, please provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under investigation on a CONNUM-specific basis and explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount.⁵¹

Additionally, Section D of the questionnaire instructed BOSTD: “If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge *before* preparing your response to this section of the questionnaire.”⁵²

Despite the Department’s clear instructions that BOSTD report its FOPs on actual quantities consumed on a CONNUM-specific basis, BOSTD instead calculated its FOP consumption based

⁴⁸ See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of section 782(d) of the Act are not triggered unless the respondent meets all of the five enumerated criteria of section 782(e) of the Act).

⁴⁹ See the Department’s original questionnaire and supplemental questionnaires.

⁵⁰ See Letter from the Department, to BOSTD, dated March 9, 2016 (BOSTD Original Questionnaire) at D-2.

⁵¹ *Id.*, at D-4 (*emphasis added*).

⁵² *Id.*, at D-1.

on standard consumption rates from its BOMs and not actual consumption rates. As mentioned above, the original questionnaire clearly stated that, if the respondent were not reporting FOPs using actual quantities on a CONNUM-specific basis, the respondent should explain all efforts it undertook to develop such a methodology and provide a detailed explanation of how the respondent “derived {its} estimated FOP consumption for merchandise under investigation on a CONNUM-specific basis.”⁵³ Accordingly, BOSTD was on notice from the time it received the original questionnaire in March 2016, that the Department was requesting CONNUM-specific FOP information based on actual quantities consumed.⁵⁴ However, without informing the Department prior to submitting its original response, BOSTD calculated its FOPs based on standards and not actual consumption amounts.

In response to the Department’s request that it “should calculate the per-unit factors amount based on the actual inputs used by {BOSTD} during the POI as recorded under {its} normal accounting system,”⁵⁵ BOSTD responded that it “is reporting per-unit factor amounts based on the actual inputs used by the company during the POI as recorded in its normal course of business.”⁵⁶ BOSTD further explained that it “maintains material withdrawal data indicating the consumption for processing and therefore can trace monthly actual consumption accordingly.”⁵⁷ However, BOSTD did not use these monthly consumption amounts and instead calculated its FOP consumption using BOMs. Specifically, BOSTD stated that its BOMs “reflect the standard consumption of each specific geogrid code” and that “BOSTD derives a total standard consumption of specific Geogrid products according to the BOM and the production quantity from the accounting system, and allocates the variance between the total consumption and total actual consumption to each specific product based on weight.”⁵⁸ This methodology resulted in BOSTD calculating the same average consumption rates for numerous CONNUMs with differing characteristics.⁵⁹ Thus, BOSTD reported its FOPs on an average basis, despite the Department’s specific instructions and without informing the Department prior to submitting the original response.

Noting that BOSTD’s FOP reporting methodology did not comply with the Department’s questionnaire requirements, the Department issued a supplemental questionnaire on that issue.⁶⁰ Specifically, the Department instructed BOSTD to “revise and resubmit {its} Section D database reporting all FOPs using the actual books and records,” or if reporting estimated FOP consumption to “provide a detailed explanation of how you derived your estimated FOP

⁵³ *Id.*, at D-2.

⁵⁴ *Id.*

⁵⁵ *Id.*, at D-1.

⁵⁶ See Letter from BOSTD, to the Department, entitled “BOSTD Section D Response in the Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” dated April 29, 2016 (BOSTD Section D Response) at D-2.

⁵⁷ *Id.*, at D-12.

⁵⁸ See BOSTD Section D Response at D-12.

⁵⁹ *Id.*, at Exhibit D-7.

⁶⁰ See Letter from the Department, to BOSTD, entitled “Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Supplemental Section D Questionnaire,” dated June 17, 2016 (BOSTD 2nd Supplemental) at 4.

consumption ... and why the methodology {BOSTD} selected is the best way to accurately demonstrate a mathematically accurate consumption ratio.”⁶¹

In response to the Department’s supplemental Section D questionnaire, BOSTD stated that it “cannot trace the actual consumption of each input on a product-specific or CONNUM-specific basis at the production stage” because it “maintains a continuous 24-hour uninterrupted production line.”⁶² Moreover, BOSTD asserted that “it is unrealistic for BOSTD to stop the product line and count the actual consumption of each input for each product in the normal course of business.”⁶³ Yet, BOSTD states that in its original Section D response, it did report CONNUM-specific FOPs and that it “did not estimate inputs and outputs when reporting the FOPs.”⁶⁴

The Department found that in the same discussion, BOSTD stated that “it maintains the raw material withdrawal records showing the actual consumption of each main input.”⁶⁵ Despite maintaining actual consumption records, BOSTD continued to use an allocation methodology based on standard consumption quantities as listed in BOSTD’s BOMs. As explanation, BOSTD further described its methodology noting that

{i}n order to allocate the actual consumption of each main input to each individual finished product, BOSTD first calculates the total standard consumption of each main input by multiplying the unit standard consumption of each input per each finished product (as reflected in the BOM sheets maintained by the company in daily operations) by the corresponding production quantity of each finished product. BOSTD then divided the total actual consumption by the total standard consumption of each main input to determine the ratio (as shown in line 42 of Exhibit D-7); finally, BOSTD applied this ratio to the unit standard consumption of each input per each finished product to derive the actual unit consumption of each input on a product-specific basis (*i.e.* a3 and b3 in columns L and M of Exhibit D-7).⁶⁶

With respect to its BOMs, BOSTD stated that “it employed the best reasonable way to allocate the total consumption of each input to each individual product (*i.e.*, on a product-specific basis) by using product-specific unit standard consumption of each input reflected in BOM sheets” because it “maintains the BOM sheets and uses BOM sheets to identify the consumption of each main input for each finished product in the normal course of business.”⁶⁷

With respect to BOSTD’s argument that its FOP data is based on BOMs that are maintained in the normal course of business which are product-specific and thus CONNUM-specific, we disagree. BOSTD’s database includes 12 CONNUMs based on different strengths, which are the

⁶¹ *Id.*

⁶² *Id.*, at 2.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*, at 3.

⁶⁶ *Id.*

⁶⁷ *Id.*, at 4.

most important characteristics in the CONNUM-hierarchy.⁶⁸ In other cases, the Department has found that allocating the consumption of materials over numerous products (*e.g.*, all subject merchandise, all subject and non-subject merchandise, *etc.*) may result in a reporting methodology that is not accurate because there is no variation in the calculation of normal value even though there are clear differences in the physical characteristics of the CONNUMs and in the actual amount of inputs used.⁶⁹ However, by using BOMs to calculate its FOPs, BOSTD calculated the same average consumption amounts for several different CONNUMs for the most important FOPs, polypropylene and masterbatch, and the same average consumption amount for all CONNUMs for other FOPs. As a result, the Department finds that BOSTD's methodology for reporting its FOPs is not CONNUM-specific.

In its responses to the Department, BOSTD provided conflicting information with respect to the type of information it recorded during the normal course of business to track its material consumption. As mentioned above, in its Section D response to the Department, BOSTD stated that it “maintains material withdrawal data indicating the consumption for processing and therefore can trace monthly actual consumption accordingly.”⁷⁰ In contrast, BOSTD later stated that it “does not track the monthly consumption of inputs and outputs on a product-specific basis.”⁷¹ However, in its Supplemental Section D response, BOSTD stated that “the company does not trace inputs and outputs on {a} CONNUM-specific basis in the normal course of business” and that it “cannot trace the actual consumption of input on a product-specific or CONNUM-specific basis at the production stage.”⁷² Accordingly, the Department finds BOSTD's claims regarding its recordkeeping to be inaccurate.

Despite BOSTD's claims that it did not track the consumption of inputs and outputs on a product-specific basis, at verification the Department found that BOSTD did in fact maintain documentation recording raw material consumption on a product-specific basis. Specifically, in order to substantiate BOSTD's statements to the Department, at verification, the Department requested that the company provide all the production notes, production records, product cost calculation, and BOMs for a single production run of a chosen product during the POI.⁷³ In doing so, BOSTD provided monthly and daily material input records refuting BOSTD's aforementioned claims that it did not track the consumption of inputs and outputs on a product-specific basis.⁷⁴ The Department additionally finds that these documents were not previously included in BOSTD's list of production documents/reports.⁷⁵ As a result, the Department finds

⁶⁸ See Letter from the Department, to Interested Parties, entitled “Product Characteristics for the Antidumping Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China,” dated March 23, 2016.

⁶⁹ See *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum at Comment 16.

⁷⁰ See BOSTD Section D response at D-12.

⁷¹ *Id.*, at D-5.

⁷² See BOSTD Supplemental Section D response at 2.

⁷³ See BOSTD Verification Report at 21.

⁷⁴ *Id.*

⁷⁵ See BOSTD Section D Response at Exhibit D-4.

that BOSTD withheld information that was previously requested by the Department and failed to provide information by the deadlines in the form and manner requested.

With respect to BOSTD's claims that the source data for its consumption of raw materials was accurately reported and verified, we disagree. As discussed above, to calculate its FOP consumption, BOSTD calculated standard consumption amounts using its BOMs and the production quantity from its accounting system and then allocated a variance between total standard consumption and total actual quantity.⁷⁶ Because BOSTD claimed that BOMs were the starting point for its FOP consumption, the Department sought to verify the accuracy of the standards listed in BOSTD's BOMs and tie it to BOSTD's books and records. In doing so, the Department requested to see supporting documentation in the form of technical documentation demonstrating how the consumption ratios listed in the BOMs were calculated.⁷⁷ However, BOSTD was unable to provide this information but instead stated that the ratios were based on BOSTD's industry experience. Further, as discussed in the Department's verification report, BOSTD maintained material input records that documented the actual material input quantity placed into production, the beginning balance, and the ending balance. It additionally listed the actual ratio of polypropylene to masterbatch.⁷⁸ In contrast to BOSTD's claims, the BOMs listed only standard ratios.⁷⁹ As a result, differences exist between the BOM-based data BOSTD provided and its actual polypropylene to masterbatch proportions.⁸⁰ As a result, we find BOSTD's claims that its source data for consumption of raw materials are accurate could not be verified, within the meaning of section 776(a)(2)(D) of the Act.

Regarding BOSTD's argument that it accurately accounted for consumption of total POI raw materials consumption, which was verified by the Department,⁸¹ we disagree. While BOSTD cites the Department's review of its production records and accounting documents for total POI consumption at verification,⁸² we note BOSTD's total POI actual consumption is only one step of the methodology employed by BOSTD to report its FOPs. As mentioned above, because the Department could not verify BOSTD's first step (*i.e.*, standard consumption amounts), the Department finds that BOSTD's consumption amounts were neither accurately accounted for, nor verified.

With respect to Petitioner's argument that BOSTD reported an inaccurate usage rate for its main inputs, polypropylene and masterbatch,⁸³ we agree. At verification, we attempted to test the accuracy of BOSTD's standard FOP usage rates. In doing so, the Department selected two products and calculated the usage rates for polypropylene and masterbatch using the actual total monthly input quantity for polypropylene and masterbatch listed in the daily summary of the material input records for July, 2015.⁸⁴ This resulted in the Department finding that the standard

⁷⁶ *Id.*, at D-12.

⁷⁷ See BOSTD Verification Report at 22.

⁷⁸ *Id.*, 21.

⁷⁹ *Id.*

⁸⁰ See BOSTD Verification Report at Exhibit 4.

⁸¹ See BOSTD Revised Case Brief at 7.

⁸² *Id.*, at 7 (citing BOSTD Verification Report at 33, 34, and 36).

⁸³ See Petitioner's BOSTD Case Brief at 6-7.

⁸⁴ See BOSTD Verification Report at 35.

FOP usage rates were different in comparison to the actual FOP usage rates calculated from BOSTD's actual production records on a product-specific basis.⁸⁵ Although BOSTD argues that the Department's methodology is incorrect because the Department did not allocate the raw materials consumption over all corresponding products, we find that doing so results in FOP consumption rates that are not CONNUM-specific.

Additionally, we disagree with BOSTD's reliance on prior cases involving BOMs.⁸⁶ In *Windtowers*, the Department relied on BOMs to determine that the respondent did not use stainless steel round bars in the production of the merchandise under consideration.⁸⁷ However, as stated by Petitioner, in that case, there is no discussion regarding the use of BOMs to calculate FOPs. With respect to *Diamond Sawblades*, the Department accepted a respondent's use of BOMs to report the appropriate CONNUM classification for the subject merchandise as opposed to using BOMs to calculate FOPs.⁸⁸ Last, *Wooden Bedroom Furniture* does not discuss the circumstances under which the respondent's BOMs were used and, therefore, does not provide any information supporting BOSTD's argument. Accordingly, the Department does not find that BOSTD has substantiated its argument that it is the Department's common practice to accept the use of BOMs in calculating FOP rates.

The Department also disagrees with BOSTD's argument that the Department verified its scrap reporting methodology as accurate.⁸⁹ Similar to its reporting of polypropylene and masterbatch, BOSTD allocated a standard consumption rate to all of its products instead of reporting actual CONNUM-specific consumption rates.⁹⁰ Despite the Department's request that it provide CONNUM-specific consumption rates based on actual consumption, BOSTD continued to use a single average scrap consumption rate for all of its CONNUMs.⁹¹ In order to verify BOSTD's methodology, the Department used BOSTD's production records to calculate a CONNUM-specific scrap consumption rate for one of BOSTD's products.⁹² As a result, the Department verified that, despite BOSTD's claims, BOSTD could have reported CONNUM-specific scrap consumption rates using actual production records.

We also agree with Petitioner's argument that BOSTD failed to report water and lubricating oil. At verification, the Department observed that BOSTD consumed certain FOPs (*i.e.*, water and lubricating oil),⁹³ used to produce merchandise under consideration, which contradicts BOSTD's questionnaire response where it did not report these inputs.⁹⁴ While BOSTD argues that

⁸⁵ *Id.*

⁸⁶ See BOSTD Revised Case Brief at 6.

⁸⁷ See *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 77 FR 75992 (December 26, 2012) (*Windtowers*) and accompanying Issues and Decision Memorandum at Comment 13.

⁸⁸ See *Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (*Diamond Sawblades*) and accompanying Issues and Decision Memorandum at Comment 22.

⁸⁹ See BOSTD's Revised Case Brief at 7-8.

⁹⁰ See BOSTD's Section D Response at Exhibit D-7.

⁹¹ See BOSTD's Supplemental Section D Response at Exhibit SD-1A.

⁹² See BOSTD Verification Report at 44-46.

⁹³ *Id.*, at 3, 20, and 21.

⁹⁴ See BOSTD Section D at Exhibit 3.

accounting for its consumption of water would be double counting because its water is derived from purchased steam and that its lubricating oil is an overhead item,⁹⁵ we agree with Petitioner that BOSTD is not addressing the fact that the company did not report lubricating oil and water in its submissions to the Department. The Department's original questionnaire states:

If you believe that your company uses any raw materials that should be classified as factory overhead expenses rather than valued as factors of production and directly included in normal value, please: (1) notify the Department official in charge, and (2) identify these materials in your first Section D questionnaire.⁹⁶

As such, the Department finds that BOSTD failed to follow clear instructions when it did not report its consumption of either water or lubricating oil.

Based on the Department's findings at verification, the Department finds that the necessary information, *i.e.*, accurate FOPs utilized in producing the merchandise under consideration, are not on the record. Further, by not informing the Department of this information until verification, BOSTD failed to provide information within the deadlines established by the Department in this investigation, significantly impeded our ability to calculate a margin for BOSTD, and provided information that could not be verified. Taken together, we find that BOSTD's data are unreliable. The scale of the problem is such that the Department cannot use BOSTD's questionnaire responses to determine a reliable dumping margin. Therefore, we must resort to facts available.

B. BOSTD's U.S. Sales

Pursuant to section 776(a)(2)(D) of the Act, the Department finds that the application of facts available is further warranted because we were unable to successfully verify all of the information in numerous sales traces during the Department's verification.

On September 15, 2016, the Department released a letter to BOSTD enclosing an outline of the planned schedule for a verification of BOSTD's responses to the Department.⁹⁷ In this outline, we identified six observations for which we requested BOSTD prepare packages tracing the sale from the initial inquiry from the U.S. customer through payment by the U.S. customer. In addition to these six pre-selected sales, we selected two additional sales on-site to review. In reviewing these sales, the Department found several discrepancies between BOSTD's reported sales data and the supporting documentation reviewed at verification.

Specifically, in sales trace 3, the Department found a difference between the quantity reported in the U.S. sales database and the warehouse-out slip for the sale.⁹⁸ At verification, BOSTD

⁹⁵ See BOSTD Revised Case Brief at 13-16.

⁹⁶ See BOSTD Questionnaire at D-1.

⁹⁷ See Letter from the Department, to BOSTD, entitled "Certain Biaxial Integral Geogrid Products ("Geogrids") from the People's Republic of China ("PRC"): Verification Agenda," dated September 15, 2016 ("BOSTD Verification Outline").

⁹⁸ See BOSTD Verification Report at 28.

explained that the difference was the result of reporting the product from the standard square meters times the quantity of rolls versus the actual square meters as recorded in its warehouse-out slips.⁹⁹ However, in its case brief, BOSTD presents a different explanation and states that the difference was because the commercial invoice incorrectly identified the specification for the product.¹⁰⁰ With respect to the payment date, the Department finds that BOSTD correctly reported the date of its last payment in its U.S. sales database.¹⁰¹ However, because there are two conflicting explanations regarding quantity, the Department finds that the information reported by BOSTD for this sale is inaccurate.

For sales trace 4, the Department finds that there was a discrepancy with the destination reported in BOSTD's U.S. sales database. The Department's original questionnaire instructs that BOSTD report the U.S. postal "ZIP" code for the customer's place of delivery. Despite these instructions, for sales trace 4, BOSTD instead reported the zip code for the consignee and not the customer's place of delivery.¹⁰² As such, the Department agrees with Petitioner that the BOSTD's U.S. sales database does include a discrepancy in this respect.

With respect to sales trace 6, as discussed by Petitioner, we agree. BOSTD initially stated at verification that it received payment amounts based on its invoice value.¹⁰³ However, in its discussion of sales trace 6, BOSTD stated that they payment for this sale was actually based on the total value from the PRC customs declaration form.¹⁰⁴ In reviewing the customer's payment, the Department compared the actual payment values as listed in the invoice against the export declaration form and observed the difference that resulted from the conversion from the number of rolls of the merchandise under consideration to kilograms, as required by the PRC export declaration form.¹⁰⁵ Accordingly, the Department finds that BOSTD's statement regarding payment is disparate from its claim and the Department's observation that payment is based on its invoices.

Last, Petitioner points to sales trace 7 and argues that the Department found a discrepancy in the total weight reported by BOSTD and the quantity listed in the warehouse-out slip, and the Department agrees. In its Section C response, BOSTD stated that it "reports quantity in KG (derived directly from the actual weight as recorded on the packing list at the time of loading)."¹⁰⁶ At verification, BOSTD explained that there were different quantities because "in November 2015, BOSTD Qingdao's accounting department started using a standard weight ... that allowed the accounting department to convert the quantity into weight based on the actual weight of each roll."¹⁰⁷ Because BOSTD had not previously reported this change in how it

⁹⁹ *Id.*

¹⁰⁰ *See* BOSTD Revised Rebuttal Brief at 25.

¹⁰¹ *See* BOSTD Verification Report at 28.

¹⁰² *Id.*

¹⁰³ *Id.*, at 27.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*, at 28-29.

¹⁰⁶ *See* Letter from BOSTD, to the Department, entitled "BOSTD Section C Response in the Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People's Republic of China," dated April 28, 2016 (BOSTD Section C Response) at 18.

¹⁰⁷ *See* BOSTD Verification Report at 29.

recorded its sales of the merchandise under investigation, the Department agrees with Petitioner that a discrepancy exists with respect to this sale.

The purpose of verifying these sales trace packages is to determine whether the information submitted to the Department for sales observations in the U.S. sales database is accurate. This “spot-check” allows us to review, in depth, the accuracy of reported sales quantities, values, gross unit prices, and terms of sale. Because the Department found discrepancies in half of BOSTD’s sales traces, we find that, pursuant to 776(a)(2)(D) of the Act, the application of facts available is further warranted because we were unable to successfully verify all of the information in numerous sales traces, particularly as many of the discovered differences affected the sales quantity and therefore the reported unit price.

With respect to Petitioner’s argument that BOSTD failed to disclose its joint venture, BOSTD America, the Department finds that because it is applying total AFA to BOSTD this argument is moot.

C. Accounting System

Pursuant to section 776(a)(2)(D) of the Act, the Department finds that application of facts available is further warranted because we were unable to successfully verify BOSTD’s accounting system during the Department’s verification.

At verification, the Department found that BOSTD did not submit all of its charts of accounts that were applicable to the POI, which form the basis of its accounting system in its questionnaire responses.¹⁰⁸ The Department’s original questionnaire clearly states:

*A detailed understanding of your accounting and financial practices will help to ensure an accurate verification, and is necessary for the Department to analyze your reporting and allocation of expenses.*¹⁰⁹

The Department’s questionnaire instructed BOSTD, as part of providing a detailed understanding of its accounting and financial practices, to submit the chart of accounts for the POI.¹¹⁰ In its questionnaire responses, BOSTD submitted its chart of accounts and sub-accounts.¹¹¹ However, at verification, the Department discovered that BOSTD did not submit all of the charts of accounts in effect during the POI in its questionnaire responses.¹¹² While BOSTD argues that its provision of one chart of accounts in its questionnaire responses was sufficient,¹¹³ the

¹⁰⁸ *Id.* at 3, 12-13.

¹⁰⁹ See BOSTD Questionnaire at A-16.

¹¹⁰ *Id.*

¹¹¹ See Letter to the Department, from BOSTD, entitled “BOSTD Section A Response in the Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” dated April 6, 2016 (BOSTD Section A) at Exhibit A-15; see also Letter to the Department, from BOSTD, entitled “BOSTD Supplemental Section A Response in the Antidumping Duty Investigation on Certain Biaxial Integral Geogrid Products from the People’s Republic of China,” (BOSTD Supplemental Section A) at Exhibit SA-14.

¹¹² See BOSTD Verification Report at 3, 12-13.

¹¹³ See BOSTD Revised Rebuttal Brief at 18.

Department disagrees. The Department finds that having a complete, accurate understanding of a respondent's accounting practices is key to ensuring an accurate verification and analyzing a respondent's FOP and U.S. sales data.¹¹⁴ By not reporting both charts of accounts in its questionnaire responses, the Department was prevented from gaining a complete, detailed understanding of BOSTD's accounting and financial practices, which is necessary to analyze its reported FOP and U.S. sales data to ensure the data is complete.¹¹⁵ While some differences in the reporting of BOSTD's accounting practices may appear minor on a macro level, the Department's analysis is performed on a micro level, and the Department is charged with reviewing information at the transaction-specific or product-specific level.¹¹⁶ Thus, the differences in the overall reporting of BOSTD's accounting practices and observed inaccuracies in the reporting of the accounting data at verification concern the overall completeness and reliability of its accounting data, which is the basic foundation for verifying BOSTD's FOP and U.S. sales databases.¹¹⁷

Additionally, at verification the Department found that BOSTD's accounting records do not match its production records.¹¹⁸ The Department's original questionnaire instructed BOSTD to

*Please provide a detailed explanation of any difference that may exist between the production records (both standard and actual) maintained by the company in the normal course of business by the production department, and the company's accounting records, with specific {reference to} the cost of production records used to tie the company's records to its financial statements.*¹¹⁹

In its questionnaire response, BOSTD stated that "No difference exists between the production records and the Company's accounting records."¹²⁰ However, at verification, the Department found that differences existed between BOSTD's production and accounting records. Specifically, BOSTD stated that not all products matched from the accounting records, internal cost calculation worksheet, and the monthly/daily input records for each product that used polypropylene.¹²¹ Although BOSTD argues that this statement does not mean that its accounting and production records do not match,¹²² BOSTD has not substantiated this argument with any evidence on the record. Accordingly, the Department finds that BOSTD's response to the Department regarding whether its accounting and production records match is inaccurate and unverifiable.

¹¹⁴ See BOSTD Questionnaire at A-16; and *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying Issues and Decision Memorandum at Comment 13 (*Hydrofluorocarbon Blends from the PRC*).

¹¹⁵ See BOSTD Questionnaire at A-16.

¹¹⁶ See *Hydrofluorocarbon Blends from the PRC* at Comment 13.

¹¹⁷ See BOSTD Questionnaire at A-16.

¹¹⁸ See BOSTD Verification Report at 2, 35 and 36.

¹¹⁹ See BOSTD Questionnaire at D-3.

¹²⁰ See BOSTD's Section D Response at D-5.

¹²¹ See BOSTD Verification Report at 36.

¹²² See BOSTD Revised Case Brief at 10.

D. Use of Adverse Inference

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for information.”¹²³ In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.¹²⁴ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹²⁵ The Court of Appeals for the Federal Circuit (Federal Circuit), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability” standard, stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.¹²⁶ The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, and that inadequate responses to agency inquiries “would suffice” as well.¹²⁷ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.¹²⁸ The Federal Circuit further stated that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹²⁹

In conclusion, despite the Department’s detailed and specific questionnaires and instruction, the Department determines that BOSTD failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. Accordingly, the Department finds that the use of facts otherwise available is warranted with respect to BOSTD pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act and that these facts otherwise available should include an adverse inference because of BOSTD’s failure to cooperate to the best of its ability pursuant to section 776(b) of the Act.

E. Eligibility for Separate Rate

Based on the fact the Department was unable to validate the integrity of BOSTD’s accounting system at verification, for all the reasons discussed above, the Department also finds that BOSTD’s separate rate information is unreliable for the final determination. Because a valid accounting system is fundamental to a respondent’s ability to support its separate rate claim, we find that BOSTD is not eligible for a separate rate in this investigation and will be considered part of the PRC-wide entity.¹³⁰ A respondent’s books and records, including accounting

¹²³ See section 776(b) of the Act.

¹²⁴ *Id.*; see also Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870.

¹²⁵ See SAA at 870.

¹²⁶ See *Nippon Steel v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003).

¹²⁷ *Id.*, at 1380.

¹²⁸ *Id.*, at 1382.

¹²⁹ *Id.*

¹³⁰ See *Hydrofluorocarbon Blends from the PRC* at Comment 13.

documentation, especially in those cases in which the respondent cites to its books and records to support its claimed independence, are tied to the documentation regarding separate rate eligibility.¹³¹ As discussed above, BOSTD's accounting system was found to be incomplete and unreliable due to the incomplete chart of accounts, missing FOPs, a reported FOP database that could not be reconciled through the accounting system to the financial statement, and other deficiencies related to BOSTD's U.S. sales.

Pursuant to the Department's practice in an NME investigation, the Department starts with a rebuttable presumption that all companies within the NME country are subject to government control. For *de facto* government control of its export functions, the Department considers four factors: 1) whether the export prices are set by or are subject to the approval of a governmental agency; 2) whether the respondent has the authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.¹³² With respect to *de facto* government control, the Department examined the relevance of the books and records to the separate rate issue with respect to statements made by BOSTD that support a *de facto* determination. In examining this question, we find a critical nexus between certain criteria mentioned above and the company's books and records. In cases in which the Department finds that the company's books and records are unreliable, the submitted responses which rely on the books and records for support cannot be accepted as accurate factual statements.¹³³ In order to examine BOSTD's separate rate information at verification, this procedure involved examining BOSTD's accounting system, including cash-in-bank accounts, accounts receivables, sales accounts, and retained earnings and profit distribution accounts.¹³⁴ However, as described above, the Department was unable to establish that the information recorded in these accounts is accurate, especially in light of BOSTD's two charts of accounts.¹³⁵ Without complete, reliable information on BOSTD's accounting system, there is no accurate means to reconcile the general ledger, which includes profit and losses and the dispositions thereof. Therefore, the Department is unable to rely upon the statements concerning the *de facto* criteria in BOSTD's separate rate responses because such statements are unverifiable on the grounds that they rely on BOSTD's accounting documentation.¹³⁶ In other words, the accounting system is a cornerstone of the Department's *de facto* separate rate analysis, and a company has to satisfy all of the criteria in order to demonstrate eligibility for a separate rate.¹³⁷ Accordingly,

¹³¹ *Id.*

¹³² See *Silicon Carbide*, 59 FR 22585; *Furfuryl Alcohol*, 60 FR 22545; and *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 20.

¹³³ See *Hydroflouorocarbon Blends from the PRC* at Comment 14.

¹³⁴ *Id.*

¹³⁵ See BOSTD Verification Report at 12.

¹³⁶ See BOSTD's Section A Response; BOSTD's Supplemental Section A Response; BOSTD's Second Supplemental Section A Response; and BOSTD Verification Report. Indeed, under the Department's *de facto* separate rates analysis, all of the *de facto* criteria can be, in some way or another, supported (or refuted) by data recorded in the company's accounting system.

¹³⁷ See also, e.g., *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014*, 80 FR 60624 (October 7, 2015), and accompanying Preliminary Decision Memorandum at 7, unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*;

because BOSTD's responses related to its export sales process and its disposition of export proceeds directly implicate its accounting system, the Department cannot conclude through verifiable evidence that BOSTD met the *de facto* criteria for eligibility of a separate rate. Thus, BOSTD failed to rebut the presumption of government control under the *de facto* criteria and we are assigning to it the rate applied to the PRC-wide entity for the final determination.

Comment 2: Moot Arguments Relating to BOSTD

BOSTD's and Petitioner's Comments

- Both BOSTD and Petitioner raised a number of issues related to the Department's preliminary margin calculation for BOSTD. The issues included market economy purchases of polypropylene, double remedies adjustment, treatment of lubricating oil and water, treatment of value-added tax on U.S. sales, reported payments for U.S. sales, and calculation errors for reported distances.¹³⁸

Department's Position: Because we did not calculate a final dumping margin for BOSTD, these issues are moot and we did not address them here.

Comment 3: Application of Total AFA to Taian Modern

Petitioner's Comments

- The Department should apply total AFA to Taian Modern in the final determination because Taian Modern completely failed verification and the Department must disregard all of Taian Modern's reported data.¹³⁹
- As detailed in the Taian Modern Verification Report, the Department found that Taian Modern failed numerous aspects of the cost and sales verification. These failures include, but are not limited to: 1) the Department was unable to reconcile Taian Modern's reported costs in its FOP database to its financial statements through accounting and production records; 2) the Department was unable to verify that the production quantity denominator or the raw materials, energy, labor, and by-product FOPs in Taian Modern's FOP database; and 3) the Department was unable to verify the minor correction product characteristics change to the CONNUM structure in the majority of the CONNUMs in the FOP database did not result in no change in the FOP usage rates.¹⁴⁰
- Moreover, the Department also found multiple instances of inconsistencies and deficiencies including issues affecting date of sale, the chart of accounts, unreported FOPs, the movement

2013-2014, 81 FR 21840 (April 13, 2016); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments*; 2013-2014, 80 FR 80476 (December 28, 2015), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2013-2014, 81 FR 39905 (June 20, 2016).

¹³⁸ See BOSTD's Revised Case Brief; BOSTD's Revised Rebuttal Brief; Petitioner's BOSTD Case Brief; and Petitioner's Revised BOSTD Rebuttal Brief.

¹³⁹ See Petitioner's Taian Modern Case Brief at 1.

¹⁴⁰ See Taian Modern Verification Report at 1-32.

expenses for U.S. sales, the reported U.S. sales quantity, and reconciliation of selected sales traces.¹⁴¹

- Despite receiving the verification outline almost two weeks prior to verification, many of these failures were due to Taian Modern's unpreparedness for verification and inability to provide the appropriate verification packages to the Department.¹⁴²
- The antidumping statute requires that the Department verify information upon which it relies in reaching its final determination in antidumping investigations.¹⁴³ If the respondent fails to provide appropriate evidence at verification to support the sales and cost data, the antidumping statute provides that the Department must disregard that information and rely upon facts otherwise available.¹⁴⁴ Where the Department is unable to verify information that is critical to the calculation of U.S. price and normal value, it is appropriate to disregard the respondent's submissions in their entirety and rely completely on facts available to calculate the respondent's dumping margin.¹⁴⁵
- Here, there is no question that the Department must disregard all of Taian Modern's reported data and rely entirely on facts available to calculate Taian Modern's dumping margin.¹⁴⁶
- As the CIT has recognized, where so much information is unverifiable, the Department is "not required to cobble together the remaining information to produce an unreliable, inaccurate dumping margin."¹⁴⁷
- The Department should employ an adverse inference in calculating Taian Modern's dumping margin because the respondent must not only submit information but the information needs to be complete and accurate.¹⁴⁸
- Here, Taian Modern was woefully unprepared for verification and its lack of preparation was not confined to a single narrow issue but extended to numerous issues of critical importance to the Department's verification. Thus, Taian Modern plainly did not cooperate to the best of its ability with the Department during the investigation and the Department should apply total AFA to calculate Taian Modern's dumping margin.¹⁴⁹

Taian Modern's Comments

- While the Department ended verification of Taian Modern before it could verify certain requested information due to time constraints, the Department should find Taian Modern's data and responses to be complete and accurate.¹⁵⁰
- Taian Modern cooperated to the best of its ability in this investigation and provided extensive, complete responses to the Department's questionnaires and prepared for verification to the best of its ability.¹⁵¹

¹⁴¹ *Id.*

¹⁴² See Petitioner's Taian Modern Case Brief at 1-7.

¹⁴³ See section 782(i) of the Act.

¹⁴⁴ See *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 27 CIT 1059, 1062 (CIT 2003).

¹⁴⁵ See *Universal Polybag Co. v. United States*, 32 CIT 904, 915-6 (CIT 2008).

¹⁴⁶ See Petitioner's Taian Modern Case Brief at 7.

¹⁴⁷ *Id.*, at 915-6 (citing *Steel Auth. of India, Ltd. v. United States*, 25 CIT 482, 485-6 (CIT 2001)).

¹⁴⁸ See *Nippon Steel* at 337 F. 3d 373, 1382.

¹⁴⁹ See Petitioner's Taian Modern Case Brief at 1-7.

¹⁵⁰ See Taian Modern's Case Brief at 16-9.

¹⁵¹ *Id.*

- The Department requested an extensive amount of information in both the verification outline and at verification itself, which significantly delayed the verification.¹⁵²
- Taian Modern submitted verification packages and responses to the Department's questions as quickly as possible based on the company's accounting system and the resources available considering that it is a small company. Due to this, Taian Modern submits that this information was sufficient to verify the accuracy of its responses.¹⁵³
- Since the Department has the discretion to extend the time for verification and it chose to not provide additional time or review particular items, the Department should find Taian Modern's responses to be accurate just as it does where it chooses to not conduct verification.¹⁵⁴
- Although the Department was unable to complete all of its sales traces, the Department was able to complete two sales traces and there is no evidence that the Department would have found anything new or different with respect to the other sales traces. Additionally, the Department did not raise any questions about the inaccuracy or incompleteness of the sales documents that it did verify.¹⁵⁵
- With respect to the cost reconciliation, Taian Modern provided extensive supporting documentation to its cost reconciliation in its questionnaire responses. The Department did not issue any additional supplemental questionnaires or indicate that it had additional questions prior to verification. Thus, the Department verified Taian Modern's cost reconciliation and all of its FOPs in the FOP database when it submitted its questionnaire responses prior to verification.¹⁵⁶
- Taian Modern correctly reported the date of sale as the invoice date because the material terms of sale are when the goods are shipped from the factory and the commercial invoice establishes the final terms of sale. Additionally, the Department did not inquire further about this issue at verification and there is no record evidence showing that the use of the invoice date led to errors in Taian Modern's reporting of its U.S. sales database.¹⁵⁷
- Contrary to Petitioner's argument, Taian Modern submitted the complete chart of accounts for FY 2015 and this did not lead to the discovery of missing FOPs.¹⁵⁸
- The difference between the actual net weight in the packing list and calculated weight in the U.S. sales database is due to the calculated weight being derived from a conversion ratio, which was requested by the Department in a supplemental questionnaire.¹⁵⁹
- This is not a case where the Department discovered numerous errors or omissions in Taian Modern's submitted data. Nor is it a case where the company deliberately withheld

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See *Boltless Steel Shelving Unites Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) and accompanying Issues and Decision Memorandum at Comment 3; see e.g., *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 178 F. Supp. 2d 1305, 1319 (CIT 2001).

¹⁵⁵ See Taian Modern's Case Brief at 16-19.

¹⁵⁶ See Taian Modern's Rebuttal Brief at 1-7.

¹⁵⁷ *Id.*

¹⁵⁸ See Taian Modern Verification Report at 13.

¹⁵⁹ See Taian Modern's Second Supplemental Section C Response dated July 14, 2016, at 4-7.

information or the submitted information from verification did not support the questionnaire responses.¹⁶⁰

- Since the Department ended verification before verifying Taian Modern's Section D responses on site, Taian Modern's information submitted in its questionnaire responses demonstrates that its FOP database is accurate, complete, and reasonable.¹⁶¹

Department's Position: As explained in detail below, the Department agrees with Petitioner and determines that the application of total AFA to Taian Modern is warranted for the final determination.

A. *Legal Framework*

For reference to the Department's authority to apply AFA to Taian Modern under sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act, please *see* the Department's position for Comment 1, discussed above.

B. *Unpreparedness at Verification*

The Department released its verification outline to Taian Modern on September 6, 2016, almost two weeks prior to the commencement of verification on September 19, 2016.¹⁶² The outline instructed Taian Modern to fully prepare for verification, and clearly indicated that Taian Modern should gather specific information listed in the outline from the appropriate personnel prior to the verifiers' arrival. Moreover, the outline instructed Taian Modern to contact us with any questions regarding the verification or if Taian Modern felt there were "verification procedures {that could} be performed," which it failed to do prior to the start of verification.¹⁶³ Further, in addition to the Department's original questionnaire requiring that Taian Modern reconcile its reported FOP and sales data to its books and records,¹⁶⁴ the outline specifically requested that Taian Modern prepare in advance of the verification the reconciliation of the cost of production (COP) (cost reconciliation) for its FOPs reported in the FOP database.¹⁶⁵

Despite the Department's detailed, and specific, questionnaires and instructions in the verification outline, Taian Modern failed to cooperate by not acting to the best of its ability to reply accurately and completely to requests for information regarding its FOPs and sales data. Specifically, Taian Modern failed to reconcile the FOP data and cost reconciliation from the company's financial statement through its accounting books and production records, which, as described in detail below, is critical to the Department's analysis of whether the reported information is reliable for use in calculating Taian Modern's estimated weighted-average dumping margin. Additionally, due to its lack of preparedness, Taian Modern significantly

¹⁶⁰ See *Nippon Steel* at 337 F. 3d 1373, 1382; *AK Steel Corp. v. United States*, 21 CIT 1265, 1267 (CIT 1997).

¹⁶¹ See Taian Modern's Rebuttal Brief at 1-7.

¹⁶² See Letter to Taian Modern, from the Department entitled "Certain Biaxial Integral Geogrid Products from the People's Republic of China: Verification Agenda," dated September 6, 2016 (Taian Modern Verification Outline).

¹⁶³ See Taian Modern Verification Outline at 3.

¹⁶⁴ See Letter from the Department, to Taian Modern, dated March 9, 2016 (Taian Modern Original Questionnaire) at A-3.

¹⁶⁵ See Taian Modern Verification Outline at 14-5.

impeded the Department's verification, rendering the Department unable to verify the accuracy and completeness of the information in Taian Modern's responses as detailed in the verification outline. Moreover, as discussed in further detail below, the Department found multiple instances of inconsistencies and deficiencies including issues affecting date of sale, the chart of accounts, unreported FOPs, the movement expenses for U.S. sales, the reported U.S. sales quantity, and reconciliation of selected sales traces.¹⁶⁶

While Taian Modern complains that it prepared for verification based on the schedule allotted by the Department, and asserts that the Department failed to realize the volume of information we requested to verify and used the time for verification unwisely, we disagree. With respect to the time allotted for verification (*i.e.*, a week that is standard for all NME AD verifications), we note that the Department prepared a reasonable verification schedule based on the resources available to the Department and did so in consultation with Taian Modern. The Department made every attempt possible during verification to review as much of the material that Taian Modern was able to present. Taian Modern, as the holder of the information, received the verification outline almost two weeks prior to verification, and made no attempt to alert the Department that the scope of the verification was unrealistic given the allotted time, as it now claims. At no time prior to the verification did Taian Modern request the Department postpone or extend the verification. Although Taian Modern claims that the Department ended verification without reviewing certain items, the Department finds that it ended verification at the conclusion of the scheduled fifth day with all of Taian Modern's FOP data unverified and many items in the U.S. sales data unverified. All of this was due to Taian Modern's complete unpreparedness that resulted in significant delays throughout the entire week of verification.¹⁶⁷ Contrary to Taian Modern's argument that this should be excused due to it being a small company with limited resources, the courts repeatedly have recognized that it is appropriate to apply facts available to a respondent that fails verification because it did not adequately prepare though it had the ability to do so.¹⁶⁸ As such, the Department finds no merit in Taian Modern's belated argument that there was not enough time to verify Taian Modern's responses.

The Department finds that Taian Modern had sufficient time to prepare for verification and sufficient notice of the procedures that it needed to follow so that verification was completed within the scheduled time agreed upon by the Department and Taian Modern. The Taian Modern Verification Outline stated that "the time available for the verification is limited. Consequently, we ask that the necessary information be gathered by the appropriate personnel prior to the verifiers' arrival."¹⁶⁹ The Taian Modern Verification Outline also stated that "copies of supporting documentation, along with English translations of all pertinent information, should be made *prior* to the verification."¹⁷⁰ Most importantly, the Taian Modern Verification Outline stated that:

¹⁶⁶ See Taian Modern Verification Report at 2-4.

¹⁶⁷ *Id.*, at 2-4.

¹⁶⁸ See *Heveafil Sdn. Bhd. v. United States*, 25 CIT 147, 151-54 (CIT 2001); *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 27 CIT 1059, 1067-69 (CIT 2003).

¹⁶⁹ See Taian Modern Verification Outline at 1.

¹⁷⁰ *Id.* (*emphasis added*).

If your client is not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. *If, due to time constraints, it is not possible to return to that item, we may consider the item unverified, which may result in our basing the results of this administrative review on the facts available, possibly including information that is adverse to the interests of your client....* Please note that verification is not intended to be an opportunity for submission of new factual information. New information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.¹⁷¹

At the outset, Taian Modern was ill-prepared for verification, with numerous daily delays caused by incomplete verification packages, which resulted in returned verification packages with additional instructions by the Department, untranslated documents, and a poorly managed tally of documents for verification exhibits.¹⁷²

C. *Failure to Reconcile COP Data and FOP Database*

Additionally, at verification, Taian Modern failed to reconcile the COP data which it reported to the Department with the FOP information it maintains in its own accounting books and production records. The Department's verification outline listed specific instructions as to what information Taian Modern was expected to provide at verification with respect to its cost reconciliation of its FOP database:

For September 2015, provide a package which shows how the aggregated cost data contained in your company's cost of production/manufacture sub-ledger (for materials, energy, and labor inputs used to produce the merchandise under review which meets the description of the scope listed in the original questionnaire produced during the POI) traces to the data contained in your financial statements (i.e., the cost of goods sold line item in the income statement account applicable during the POI)... For September 2015, also provide a package which shows how the cost data contained in your company's materials sub-ledger for geogrids traces to the data contained in your company's cost of production/manufacture sub-ledger.¹⁷³

It is clear that the Department provided specific instructions to Taian Modern to prepare the cost reconciliation package to tie the COP for geogrids from its FOP database to its accounting books and production records. This was necessary so that the Department could reconcile the reported figures from the original source documents, including production records that formed the basis

¹⁷¹ *Id.*, at 2 (*emphasis added*).

¹⁷² See Taian Modern Verification Report at 2-46.

¹⁷³ See Taian Modern Verification Outline at 15.

for Taian Modern's FOP database, to the appropriate accounting sub-ledgers, then to the general ledger, and finally to the audited financial statement.¹⁷⁴

Despite these clear instructions, Taian Modern did not reconcile its costs for the production of geogrids from its FOP database to its cost data maintained in its accounting books and production records.¹⁷⁵ As described in the Department's verification report, Taian Modern first presented us with cost reconciliation linking the total cost of business from the monthly income statement for September 2015 but did not start the reconciliation from the audited financial statement, as described in the verification outline.¹⁷⁶ The cost reconciliation is a three-step process that the respondent needs to follow to reconcile its FOP database: 1) Step one is to reconcile the cost of goods sold (COGS) to the financial statements; 2) Step two is to reconcile the COGS to the cost of manufacture (COM) or COP; and 3) Step three is to reconcile the COM to per-unit consumption data in the FOP database.¹⁷⁷

After providing Taian Modern additional instructions, the Department was able to trace the total cost of business from the FY 2015 audited financial statement to each month's income statement and then through to the general ledger for the selected month (*i.e.*, total cost of business was segregated by main operating cost and other operating cost).¹⁷⁸ While we were able to complete step one of the cost reconciliation procedures, when the Department attempted to then reconcile the cost of business or COGS to the COM for Taian Modern, we encountered further delays. Specifically, Taian Modern did not tie the total COM from the general ledger through the total cost of raw materials and each subsidiary sub-ledger, as instructed in the verification outline.¹⁷⁹

After receiving further on-site instructions multiple times, and have the time to review its cost reconciliation extended, Taian Modern was unable to provide a complete, cost reconciliation that reconciled its COM from the general ledger to the COM sub-ledger through the subsidiary sub-ledgers and through the production records to Taian Modern's FOP database.¹⁸⁰ Additionally, due to Taian Modern's unpreparedness, it was unable to reconcile the differences between the original COM summary worksheet and the revised COM summary worksheet that it presented to the Department mid-way through the verification of its cost responses. Taian Modern stated that its revised COM summary worksheet linked the COM of geogrids through its accounting records. However, Taian Modern's based its FOP database on the monthly and daily production records. Accordingly, the Department found that the COM in the accounting records and the COM in the production records needed to be reconciled to complete Taian Modern's cost

¹⁷⁴ See Taian Modern's Supplemental Section D response, dated July 11, 2016, at 6 and Exhibit SD-5.

¹⁷⁵ *Id.*, at 4.

¹⁷⁶ See Taian Modern Verification Report at 33.

¹⁷⁷ See *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012–2013*, 80 FR 13332 (March 13, 2015) (*PRC Hangers 2015*) and accompanying Issues and Decision Memorandum at Comment 1. The Department assigned total AFA to this respondent for its failure to reconcile COGS to its financial statements.

¹⁷⁸ See Taian Modern Verification Report at 33.

¹⁷⁹ *Id.*, at 34; and Taian Modern Verification Outline at 14-5.

¹⁸⁰ See Taian Modern Verification Report at 35-37 (where the Department returned the cost reconciliation package back to Taian Modern five times and provided further instructions for how specific items needed to be prepared for the cost reconciliation to be complete and fully reconciled).

reconciliation.¹⁸¹ However, again due to Taian Modern's unpreparedness, this procedure was never completed, and thus, Taian Modern's FOP data reported in the FOP database were never reconciled from the production records through the accounting records, which form steps 2 and 3 of the cost reconciliation.¹⁸² Finally, another key piece of information, the reported production quantity of subject geogrids that was reported as the FOP denominator, was not reconciled because Taian Modern never provided a package reconciling the finished goods inventory general ledger to the reported FOP production quantity denominator, as the Department instructed during the cost reconciliation portion of verification.¹⁸³ In short, Taian Modern demonstrated a disregard for the Department's instructions and a lack of preparedness that significantly impeded the verification.

The cost reconciliation is an integral part of the Department's examination of a respondent, as it is through that process that a respondent demonstrates that the FOP database it provided to the Department are grounded in the respondent's own books and records. This is why the Department: 1) requires respondents to complete a cost reconciliation in the standard NME questionnaire and 2) includes the cost reconciliation in the Taian Modern Verification Outline.¹⁸⁴ The Department finds that Taian Modern's inability to complete the cost reconciliation portion of verification, which includes reconciling COM through the accounting books and production records to Taian Modern's reported per-unit consumption FOPs, impugns the complete accuracy and reliability of Taian Modern's FOP database. While Taian Modern argues that the Department should find that its FOP data are complete and accurate, the Department finds that Taian Modern was also unprepared at verification when it presented the raw material inputs package, which formed a significant portion of normal value in the *Preliminary Determination*.¹⁸⁵ Specifically, Taian Modern did not have its raw material inputs package prepared, as instructed in the verification outline, from the underlying production records through the accounting records to the general ledger, and thus, all of Taian Modern's raw material FOPs remained unverified at the conclusion of verification.¹⁸⁶

Additionally, Taian Modern's failure to complete the cost reconciliation portion of verification meant that Taian Modern's reported by-product, energy, labor, and packing FOPs were not reconciled from the FOP database up through the production records and accounting books to the audited financial statement.¹⁸⁷ Moreover, the Department finds that Taian Modern's failure to complete the cost reconciliation portion of verification meant that Taian Modern's reported pricing procedures related to the changes in input raw material costs (*i.e.*, double remedies) were not reconciled to its books and records. Because Taian Modern could not reconcile its COGS and COM, including raw material costs, from its audited financial statement to the underlying books and records to complete the cost reconciliation, Taian Modern was unable to reconcile not

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015) and accompanying Issues and Decision Memorandum at Comment 11 (*Boltless Steel Shelving from the PRC Final Determination*).

¹⁸⁵ See Taian Modern Verification Report at 2-3, and 38-45.

¹⁸⁶ *Id.*, at 38-39.

¹⁸⁷ *Id.*, at 2-3, and 38-45.

only its cost reconciliation but also the raw material costs that were subject to its double remedies responses.¹⁸⁸

The Department disagrees with Taian Modern's arguments that its FOPs were properly calculated and, as a result, at least its FOPs can be used to calculate a dumping margin. At verification, the Department observed that Taian Modern failed to report FOPs, heating oil and lubricating oil, used to produce merchandise under consideration. Taian Modern claims that it did not report these items as FOPs because these items were considered to be manufacturing overhead, but the Department finds that one of these FOPs was not listed in the items that Taian Modern considered to be manufacturing overhead in its questionnaire responses.¹⁸⁹ Additionally, at verification, the Department observed that these items were being consumed during the production process of geogrids, and the Department found that Taian Modern's accounting records demonstrated that these FOPs were taken out of stock to be placed into production.¹⁹⁰ While the Department gathered certain information about the consumption of these FOPs during verification, the Department does not consider the data collected to be complete and verified, as the Department did not learn about the consumption of these inputs until well into the verification, and the Department could only conduct a cursory survey of the consumption of these unreported FOPs.

Finally, the Department finds that Taian Modern's FOP database is unreliable because Taian Modern was unable to substantiate at verification that the submitted minor correction regarding the change in the reporting of the physical characteristics comprising the CONNUM structure resulted in no change to the reported FOP ratios.¹⁹¹ Specifically, this minor correction resulted in the majority of the 23 CONNUMs being reported differently in the U.S. sales and FOP databases.¹⁹² However, Taian Modern's inability to complete the cost reconciliation portion of the verification (*i.e.*, including reconciling the reported per-unit consumption ratios in the FOP database) also means that it was unable to substantiate that the changes in the CONNUM structure for the majority of the CONNUMs in the FOP database did not result in differences in the reported FOP usage ratios. In sum, the Department finds that Taian Modern's reported cost reconciliation and FOP database are incomplete and unreliable because Taian Modern was unable to reconcile its FOP data from the FOP database up through the source records to the audited financial statement. Without this, the Department finds that it does not have accurate FOP data to calculate a margin for Taian Modern for the final determination.

As such, Taian Modern did not act to the best of its ability to provide the Department with verifiable data.¹⁹³ As the CIT stated, "a reasonable and responsible foreign producer would have known that it must keep and maintain documents such as factory-out slips, production notices, and production subledgers..." and the respondent's "efforts to avoid producing the requested

¹⁸⁸ See *id.*, at 38-46; *Boltless Steel Shelving from the PRC Final Determination* at Comment 11.

¹⁸⁹ See Taian Modern Verification Report at 2, 13, and 22.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*, at 3-4.

¹⁹² *Id.*

¹⁹³ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941, 15943 (March 22, 2011).

documents...” resulted in the application of total AFA.¹⁹⁴ Moreover, Taian Modern’s lack of preparedness generated significant delay, preventing the Department from fully verifying the information submitted by Taian Modern and demonstrated the degree of the company’s lack of cooperation despite the clearly listed requirements in the Taian Modern Verification Outline.¹⁹⁵

Establishing the completeness and accuracy of a respondent’s reported FOP data from its audited financial statement through the underlying accounting books and production records is a significant element of verification, which serves as the foundation of not only the verification but also of the respondent’s FOP database and cost reconciliation submitted to the Department over the course of the investigation. Only with a complete and accurate cost reconciliation, which includes reconciling COM to the reported per-unit ratios in the FOP database, can the Department be confident that it has a sound foundation on which to perform its analysis, including calculating normal value to then compare to U.S. price, for the final determination.¹⁹⁶ Because of Taian Modern’s complete inability to reconcile its cost data beyond the general ledger and to link the total COM to the underlying material consumption, the Department finds Taian Modern’s FOP database to be unreliable.¹⁹⁷

In addition, we find that Taian Modern’s failure to provide accurate, verifiable information concerning its cost reconciliation and FOP database renders its entire response unreliable. We note that the Court has upheld the Department’s decision to reject respondent’s data *in toto* when “it is flawed and unverifiable.”¹⁹⁸ As in *SAIL*, in which the Court found that the deficiencies in respondent’s submissions were “pervasive and persistent,”¹⁹⁹ the problems encountered during the verification of Taian Modern were extensive and, as mentioned above, called the integrity of Taian Modern’s submissions to the Department into question.²⁰⁰ For the reasons explained above, Taian Modern failed its cost reconciliation, rendering the verification a failure because it casts serious doubt on the reliability of the respondent’s reported information. In such instances, the Department has no assurance that a respondent accurately reported a complete universe of sales or cost reconciliation for its FOP data in its questionnaire responses or that the correct value of those sales and their adjustments have been properly reported.²⁰¹ The Court has affirmed the

¹⁹⁴ See *Qingdao Taifa Group Co. v. United States*, 637 F. Supp. 2d 1231, 1239 (CIT 2009).

¹⁹⁵ See Taian Modern Verification Report and Taian Modern Verification Outline.

¹⁹⁶ See *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹⁷ See *Boltless Steel Shelving from the PRC Final Determination* at Comment 11.

¹⁹⁸ See *Steel Authority of India, Ltd., v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001) (*SAIL*) (citing *Heveafil Sdn. Vhd. V. United States*, 25 CIT 147 (2001)).

¹⁹⁹ See *SAIL*, 149 F. Supp. 2d at 928.

²⁰⁰ See Taian Modern Verification Report at 2-4, which details the areas of Taian Modern’s response that the Department was not able to verify.

²⁰¹ See *Notice of Final Results and Partial Rescission (sic) of Antidumping Administrative Reviews: Heavy Forged Hand Tools from the People’s Republic of China*, 65 FR 43290 (July 13, 2000) and accompanying Issues and Decision Memorandum at Comment 2; *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 9037 (February 24, 2005) (*Magnesium from China*) and accompanying Issues and Decision Memorandum at Comment 5; see also *Certain Steel Threaded Rod from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) (*Steel Threaded Rod from China*) at Comment 5.

Department's determination to apply total facts available in such instances.²⁰²

Accordingly, the Department finds that it must rely on the use of facts otherwise available with respect to Taian Modern, pursuant to sections 776(a)(2)(C) and (D) of the Act. Further, pursuant to section 776(b) of the Act, we find that Taian Modern failed to cooperate by not acting to the best of its ability, and thus, adverse inferences are warranted. As discussed above, total FOP data, and their reconciliation, are the essential building blocks of the entire verification as well as the information submitted to the Department over the course of the investigation. The importance of the cost reconciliation and underlying FOP data is clearly expressed in our practice of verifying a respondent's factors of production, which form the basis of the normal value calculation.²⁰³ For example, in *Steel Threaded Rod from China*, the Department resorted to the use of total AFA when the verifiers were unable to reconcile the total production quantity that was the underlying denominator for a respondent's FOP data.²⁰⁴

D. Failure to Substantiate the U.S. Sales Database

Additionally, we disagree with Taian Modern that it fully cooperated with the Department during the verification of its U.S. sales database and do not find that this data is accurate and reliable for the final determination. Contrary to Taian Modern's claim that it fully cooperated,²⁰⁵ as discussed further below, we find that Taian Modern failed to cooperate by not acting to the best of its ability to comply with various requests for information and by failing to be prepared for verification. Furthermore, in *Nippon Steel*, the Federal Circuit held that “[t]he statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent.”²⁰⁶ The Federal Circuit stated:

{T}he statute requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information... *It is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think through inadvertence, neglect, or otherwise to look beyond the files immediately available.*²⁰⁷

To provide an example, Taian Modern's sales traces as originally presented to the Department²⁰⁸ at verification did not include most of the documents generated during the sales process (*i.e.*, documentation generated by the sales department, production department, and accounting

²⁰² See *Universal Polybag Co., Ltd., v. United States*, 577 F. Supp. 2d 1284 (Ct. Int'l Trade 2008) (*Universal Polybag*) at 1295.

²⁰³ See *Steel Threaded Rod from China* and accompanying Issues and Decision Memorandum at Comment 5; *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 55680 (September 11, 2013) and accompanying Issues and Decision Memorandum at Comment 3.

²⁰⁴ See *Steel Threaded Rod from China* and accompanying Issues and Decision Memorandum at Comment 5.

²⁰⁵ See Taian Modern Case Brief at 2-4.

²⁰⁶ See *Nippon Steel*, 337 F. 3d at 1378.

²⁰⁷ *Id.* (emphasis added)

²⁰⁸ See Taian Modern Verification Report at 26.

department, such as the sales order, stock-out ticket, and delivery note) despite being required in the Department's verification outline. In fact, the two sales traces reviewed by the Department took four days of the five-day verification to complete, but only after the Department returned the sales trace packages multiple times with additional instructions for preparing the packages.²⁰⁹ Although Taian Modern contends that these sales traces were fully verified, the Department finds that, despite the additional time provided, Taian Modern still did not provide all documents, *i.e.*, export goods load and bay plan, that comprise the sales process for these sales traces by the conclusion of verification.²¹⁰ Due to numerous delays in receiving the requested documentation, as well as delays in completing other sections of the verification outline, the other four pre-selected sales traces and the sales trace selected on-site were not completed.²¹¹

The purpose of verifying these sales trace packages is to determine whether the information submitted to the Department for sales database is accurate. This "spot-check" allows us to review, in depth, the accuracy of reported sales quantities, values, gross unit prices, and terms of sale.²¹² Because the Department was not provided with the documentation to complete the selected sales traces in a timely fashion, and therefore could not complete the verification of numerous selected sales traces, the Department cannot have confidence that information reported in Taian Modern's U.S. sales database is accurate or reliable.

Additionally, during verification and because of its unpreparedness, Taian Modern failed to substantiate its reported movement expenses that it incurred on its reported U.S. sales. The Taian Modern Verification Outline specified that Taian Modern should prepare packages "to verify each reported adjustment and expense that is not a transaction-specific charge or adjustment that was examined in the context of the selected sales traces."²¹³ However, while Taian Modern informed the Department that the movement expenses had separate verification packages outside of the sales traces, the Department found that the original movement expense packages only include some documents but did not include such fundamental shipment-related documentation as the bill of lading, freight forwarder invoice, payment documentation to the freight forwarder, or documentation reconciling these expenses to Taian Modern's accounting records, as requested in the verification outline.²¹⁴ Moreover, the original movement expenses package also did not identify the calculation methodology substantiating the reported per-unit expenses for the selected sales traces.²¹⁵ Despite the Department providing additional instructions multiple times to Taian Modern, Taian Modern was unable to provide a complete, prepared package for its movement expenses that contained all requisite documents, pursuant to the verification outline. Thus, the reported movement expenses for its U.S. sales were not completed at the conclusion of verification.

In sum, Taian Modern did not prepare the sales trace packages and packages related to expenses for its U.S. sales that were included in the verification outline as items that should be ready for

²⁰⁹ *Id.*, at 2-3 and 26-7.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² See *Steel Threaded Rod from China* and accompanying Issues and Decision Memorandum at Comment 5.

²¹³ See Taian Modern Verification Outline at 13-4.

²¹⁴ See Taian Modern Verification Report at 30-2.

²¹⁵ *Id.*, at 30-31.

the Department.²¹⁶ Taian Modern, as the holder of the information, did not, prior to verification, alert the Department that the scope of the verification was unrealistic or otherwise unreasonable, in its view, given the allotted time.

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

Prior to verification of its U.S. sales, Taian Modern stated that the final terms of sale are established when the commercial invoice is issued and the U.S. sales universe for the POI was reported based on the invoice date.²¹⁷ Additionally, Taian Modern stated that the commercial invoice is typically issued after the merchandise is shipped from the factory to the port for export to the United States.²¹⁸ At verification, the Department inquired as to when the final terms of sale are established and Taian Modern stated that the final terms of sale (*i.e.*, quantity and price) are established when the merchandise is shipped from the factory to the port based on the delivery note (*i.e.*, dispatch date).²¹⁹ In fact, the Department found that the commercial invoice was not issued until further along in the sales process and that there were sales reported in the U.S. sales database with a shipment date that preceded the invoice date.²²⁰ While Taian Modern contends that its reporting of the commercial invoice date that is issued sometimes a week after the shipment date does not impugn the accuracy of its U.S. sales database, the Department disagrees.²²¹ The Department finds that Taian Modern's inaccurate date of sale reporting does change the universe of sales since there are sales included in the U.S. sales database that fall outside of the POI. More importantly, by not reporting the accurate date of sale, pursuant to the Department's requirements when the shipment date precedes the invoice date, Taian Modern prevented the Department from verifying the accuracy of Taian Modern's U.S. sales database.²²² Thus, the Department cannot determine whether the total quantity and value of Taian Modern's sales reported in the U.S. sales database are overreported or underreported. Additionally, the Department cannot determine the accuracy of the total value, gross unit price and expenses reported in the U.S. sales database. Therefore, the Department does not have reliable sales data to compare to NV and calculate a dumping margin for Taian Modern.²²³

At verification, the Department also found that the net weight (kilograms (kg)) listed on the packing list for each U.S. sale was different than the calculated net weight reported in the U.S. sales database. While Taian Modern claims that the difference in these weights was addressed in

²¹⁶ See Taian Modern Verification Outline.

²¹⁷ See Taian Modern's Section A Response at A-18; Taian Modern's 2nd Supplemental Section A Response, dated July 7, 2016, at 12; and Taian Modern's Section C Response, dated April 28, 2016, at C-19.

²¹⁸ See Taian Modern's 2nd Supplemental Section A Response, at 12.

²¹⁹ See Taian Modern Verification Report at 18-9.

²²⁰ *Id.*

²²¹ See *id.*, at 18-9; Taian Modern's Rebuttal Brief at 4.

²²² See Taian Modern Original Questionnaire at I-3 (where the Department explained its practice for establishing date of sale vis-à-vis invoice date and shipment date).

²²³ See *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 69938 (November 12, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

its questionnaire responses, the Department finds that Taian Modern was contradictory in whether the net weight from the packing list was an actual or calculated (*i.e.*, estimated) weight in kg.²²⁴ In its questionnaire responses, Taian Modern originally stated that it was reporting the actual net weight in kg for U.S. sales from the packing list but then clarified that this was an estimated weight (*i.e.*, an average weight of rolls multiplied by the number of rolls).²²⁵ Based on this contradictory information, the Department requested that Taian Modern report the weight in kg in its U.S. sales database based on the actual conversion ratio (roll/kg) that Taian Modern stated it maintained its production records.²²⁶ However, Taian Modern again contradicted itself at verification when it stated that the net weight from the most recent U.S. sales database was from the calculated conversion ratio of the average weight in kg/roll.²²⁷ This contrasts from Taian Modern's most recent response when it stated that it used an actual conversion ratio based on the actual weight in kilograms recorded in its production records.²²⁸ More importantly, the Department finds that Taian Modern acknowledged at verification that it weighed each finished roll of subject merchandise after packing and that the actual weight is recorded in its production records.²²⁹ Based on the continuing contradictions in Taian Modern's statements and the differences that the Department observed at verification, the Department finds that it cannot ascertain whether the reported weight in kg for its U.S. sales is accurate and reliable. Additionally, since the reported weight in kg for its U.S. sales was also used to calculate the reported gross unit price in kg and the Department also observed differences at verification, the Department cannot ascertain whether Taian Modern reported the proper gross unit price.²³⁰ This further contributes to our finding that Taian Modern's U.S. sales database is inaccurate and unreliable.

E. Failure to Substantiate the Accounting System

Finally, at verification, the Department also found that Taian Modern did not submit the complete chart of accounts that form the basis of its accounting system in its questionnaire responses.²³¹ The Department's questionnaire clearly states:

*A detailed understanding of your accounting and financial practices will help to ensure an accurate verification, and is necessary for the Department to analyze your reporting and allocation of expenses.*²³²

The Department's questionnaire instructed Taian Modern, as part of providing a detailed understanding of its accounting and financial practices, to submit the chart of accounts for the POI.²³³ In its questionnaire responses, Taian Modern submitted a chart of accounts and sub-

²²⁴ See Taian Modern's Section C Response at 24; Taian Modern's Supplemental Section C Response at 16.

²²⁵ *Id.*

²²⁶ See Taian Modern's Second Supplemental Section C Response at 5-7.

²²⁷ See Taian Modern Verification Report at 28.

²²⁸ See Taian Modern's Second Supplemental Section C Response at 5-7.

²²⁹ See Taian Modern's Verification Report 22.

²³⁰ *Id.*, at 28-9.

²³¹ *Id.*, at 6 and 12-3.

²³² See Taian Modern Original Questionnaire at A-16.

²³³ *Id.*

accounts.²³⁴ However, at verification, the Department discovered that Taian Modern did not submit the complete chart of accounts in its questionnaire responses and claimed that it only reported the accounts that had a balance during the POI.²³⁵ While Taian Modern argues that not reporting all of its chart of accounts does not impugn the accuracy of its reported data, the Department disagrees. The Department finds that having a complete, accurate understanding of a respondent's accounting practices is key to ensuring an accurate verification and analyzing a respondent's reported FOP and U.S. sales data.²³⁶ Contrary to Taian Modern's argument, the Department found that there were accounts not listed in its chart of accounts submitted in its questionnaire responses, which included the account for FOPs (*i.e.*, lubricating oil and heating oil), that it did not report in its FOP database.²³⁷ By not reporting the complete chart of accounts in its questionnaire responses, the Department was prevented from gaining a complete, detailed understanding of Taian Modern's accounting and financial practices, which is necessary to analyze its reported FOP and U.S. sales data to ensure the data is complete.²³⁸ While some omissions in the reporting of Taian Modern's accounting practices may appear minor the Department is charged with reviewing information at the transaction-specific or product-specific level.²³⁹ Thus, minor differences in the overall reporting of Taian Modern's accounting practices and observed inaccuracies in the reporting of the accounting data at verification raise concerns regarding the overall completeness and reliability of the accounting data, which is the basic foundation for verifying Taian Modern's FOP and U.S. sales databases.²⁴⁰ This combined with the fact that Taian Modern was unable to reconcile its cost reconciliation and FOP database, along with the other deficiencies regarding its U.S. sales data found at verification, demonstrates that all of Taian Modern's submissions are incomplete and unreliable for purposes of this final determination.

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

F. Use of Adverse Inference

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for

²³⁴ See Taian Modern's Section A Response at Exhibit A-13; and Taian Modern's Second Supplemental Section A Response at Exhibit 2SA-14.

²³⁵ See Taian Modern's Verification Report at 6.

²³⁶ See Taian Modern Original Questionnaire at A-16; and *Hydrofluorocarbon Blends from the PRC* and accompanying Issues and Decision Memorandum at Comment 13 (*Hydrofluorocarbon Blends from the PRC*).

²³⁷ See Taian Modern's Verification Report at 13.

²³⁸ See Taian Modern Original Questionnaire at A-16.

²³⁹ See *Hydrofluorocarbon Blends from the PRC* at Comment 13.

²⁴⁰ See Taian Modern Original Questionnaire at A-16.

information.”²⁴¹ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁴² The Court of Appeals for the Federal Circuit (Federal Circuit), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability” standard, stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.²⁴³ The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, and that inadequate responses to agency inquiries “would suffice” as well.²⁴⁴ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.²⁴⁵ The Federal Circuit further stated that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.²⁴⁶

Despite the Department’s detailed and specific questionnaires and instructions in the verification outline, and questions and instructions at verification as to what procedures and documentation was necessary to successfully complete the verification process, Taian Modern gave insufficient attention to its statutory duty to reply accurately and completely to requests for information, as described above. Further, Taian Modern’s significant lack of preparation for verification is evidence of a failure to put forth its “maximum efforts” in this investigation. Accordingly, the Department finds that the facts otherwise available should include an adverse inference because of Taian Modern’s failure to cooperate to the best of its ability, pursuant to section 776(b) of the Act.

G. *Eligibility for a Separate Rate*

For the same reasons detailed above for BOSTD in Comment 1 and based on the fact that the Department was unable to validate the integrity of Taian Modern’s accounting system at verification, the Department also finds that Taian Modern’s separate rate information is unreliable for the final determination.²⁴⁷ Because a valid accounting system is fundamental to a respondent’s ability to support its separate rate claim, we find that Taian Modern is not eligible for a separate rate in this investigation and will be considered part of the PRC-wide entity for this final determination.

²⁴¹ See section 776(b) of the Act.

²⁴² See SAA at 870.

²⁴³ See *Nippon Steel v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003).

²⁴⁴ *Id.*, at 1380.

²⁴⁵ *Id.*, at 1382.

²⁴⁶ *Id.*

²⁴⁷ See *Hydroflouorocarbon Blends from the PRC* at Comment 13; Taian Modern’s Section A Response; Taian Modern’s Supplemental Section A Response; Taian Modern’s Second Supplemental Section A Response; and Taian Modern Verification Report at 2-4. Indeed, under the Department’s *de facto* separate rates analysis, all of the *de facto* criteria can be, in some way or another, supported (or refuted) by data recorded in the company’s accounting system.

Comment 4: Moot Arguments for Taian Modern

Taian Modern's and Petitioner's Comments

- Both Taian Modern and Petitioner raised a number of issues related to the Department's preliminary margin calculation for Taian Modern. The issues included treatment of U.S. import duties and double remedies adjustment.²⁴⁸

Department's Position: Because we did not calculate a final dumping margin for Taian Modern, these issues are moot and we did not address them here.

Comment 5: Selection of the AFA Rate for the PRC-wide Entity

Petitioner's Comments

- In applying total AFA, the Department must select a rate that is sufficiently adverse to induce companies to provide the Department with complete and accurate information.²⁴⁹
- The SAA emphasizes that in applying AFA the Department should take into account the extent to which a respondent may benefit from its own lack of cooperation.²⁵⁰
- The courts recognized that the use of adverse inferences is intended to ensure that parties who choose not to cooperate with the Department do not benefit from their lack of cooperation and such parties are provided with sufficient incentive to cooperate to the best of their ability in future proceedings.²⁵¹
- As total AFA, the Department should assign to the PRC-wide entity, which includes both BOSTD and Taian Modern, the highest rate in the Petition of 372.81 percent.²⁵²
- The statute authorizes the Department to use the petition rate when it is selecting total AFA to apply to a respondent that has failed to cooperate in an antidumping investigation when the Department found these rates to be accurate and reliable.²⁵³
- The Department should not apply as total AFA to PRC-wide entity, including BOSTD and Taian Modern, the highest transaction-specific margin that was calculated for Taian Modern in the *Preliminary Determination*. This rate was based on information that the Department now has found to be unverifiable and completely unreliable.²⁵⁴

²⁴⁸ See Taian Modern's Case Brief; Taian Modern's Rebuttal Brief; Petitioner's Taian Modern Case Brief; and Petitioner's Taian Modern Rebuttal Brief.

²⁴⁹ See *Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review*, 74 FR 17160, 17163-4 (April 14, 2009) and accompanying Issues and Decision Memorandum.

²⁵⁰ See the SAA accompanying the Uruguay Round Agreements Act (URAA), H.R. Rep. No 103-316 at 870 (1994).

²⁵¹ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841, 850 (CIT 2000).

²⁵² See *Initiation Notice*, 81 FR at 7758; Petitioner's Letter to the Secretary of Commerce entitled, "Supplemental Response to the Petition," dated January 28, 2016, at Exhibit Supp. II-19.

²⁵³ See *F. Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000); *Initiation Notice*, 81 FR at 7758.

²⁵⁴ See Comment 8 for further discussion.

- The highest-transaction specific margin calculated for Taian Modern is also understated because it is based on a normal value calculation that is missing FOPs and U.S. price that is not net of all relevant selling expenses.
- Further, the highest-transaction specific margin applied to the PRC-wide entity in the *Preliminary Determination* does not achieve the statutory objective of ensuring that the PRC-wide entity, including BOSTD and Taian Modern, do not benefit from its failure to cooperate.

Taian Modern's Comments

- The antidumping statute requires that the assignment of a rate resulting from an adverse inference based on secondary information be corroborated by evidence showing that the rate is “reliable and relevant to the particular respondent.”²⁵⁵
- In the *Preliminary Determination*, the Department already found the rates from the Petition to be uncorroborated and instead chose the highest transaction-specific margin calculated for Taian Modern, 66.74 percent, as the AFA rate.²⁵⁶
- The record evidence continues to support the use of this rate, which is more than sufficient to provide a respondent incentive to cooperate and calculated based on information from this investigation.

Department's Position: The Department agrees with Petitioner that the AFA rate assigned to the PRC-wide entity which now includes BOSTD and Taian Modern, should be a rate from the Petition and not the highest-transaction specific margin calculated for Taian Modern in the *Preliminary Determination*.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.²⁵⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.²⁵⁸

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin

²⁵⁵ See *Foshan Shunde Yongjian Housewares & Hardware Co. v. United States*, 991 F. Supp. 2d 1322, 1328 (CIT 2014) (*Foshan Shunde CIT 2014*); *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 701 F. 3d 1367, 1371 (Fed. Cir. 2012) (*Changzhou Wujin 2012*).

²⁵⁶ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 22.

²⁵⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

²⁵⁸ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁵⁹ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.²⁶⁰

The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²⁶¹

In the *Preliminary Determination*, we determined that the highest CONNUM-specific margin of 66.74 percent demonstrated that the petition margins of 289.23 to 372.81 percent had no probative value.²⁶² We, therefore, determined that the petition margins of 289.23 to 372.81 percent had not been corroborated and, instead, used the highest calculated CONNUM-specific margin of 66.74 percent as the AFA rate applied to the PRC-wide entity.²⁶³

However, for the final determination, as discussed above, there are no calculated margins for either of the mandatory respondents in this investigation because we found the entirety of the submissions for both mandatory respondents to be incomplete, inaccurate, and, in totality, unreliable.²⁶⁴ Therefore, as AFA, the Department has assigned to the PRC-wide entity the rate of 372.81 percent, which is the highest dumping margin alleged in the petition. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁶⁵ The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value,²⁶⁶ although under the TPEA, the Department is not required to corroborate any dumping margin

²⁵⁹ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

²⁶⁰ See also 19 CFR 351.308(c).

²⁶¹ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

²⁶² See *Preliminary Determination*, and accompanying Preliminary Decision Memo at 22-23.

²⁶³ See, e.g., *Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77FR 46044, 46050-51 (August 2, 2012); see also *High Pressure Steel Cylinders From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 77964, 77970-71 (December 15, 2011), unchanged in *High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739, 26742 (May 7, 2012) (*PRC Steel Cylinders 2012*).

²⁶⁴ For further discussion of these findings, see Comments 1 and 8.

²⁶⁵ See SAA at 870.

²⁶⁶ *Id.*, at 870; see also 19 CFR 351.308(d).

applied in a separate segment of the same proceeding.²⁶⁷ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²⁶⁸

The AFA rate that the Department used is from the Petition, and, thus, is secondary information subject to the corroboration requirement. Petitioners’ methodology for calculating the EP and normal value in the Petition is discussed in the Initiation Checklist and the *Initiation Notice*.²⁶⁹ We determined that the highest Petition margin of 372.81 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis. For purposes of this final determination we also find the 372.81 percent Petition margin is reliable.²⁷⁰

To corroborate the 372.81 percent petition rate for purposes of this final determination, the Department first revisited its pre-initiation analysis of the reliability of the information in the petition. During our pre-initiation analysis, we examined: (1) the information used as the basis for export price and normal value in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided either in the petition or in supplements to the petition.²⁷¹

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider Petitioners’ EP and NV calculations to be reliable.²⁷² Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents, as well as publicly available information, we preliminarily determine that this Petition rate is reliable for the purposes of assigning an AFA rate as the PRC-wide rate in this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will

²⁶⁷ See section 776(c)(2) of the Act; TPEA, section 502(2).

²⁶⁸ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²⁶⁹ See *Initiation Notice*; see also Antidumping Duty Investigation Initiation Checklist: Certain Biaxial Integral Geogrid Products from the People’s Republic of China (PRC AD Initiation Checklist).

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The Petition rate is relevant because it is based on a price quote for the merchandise under consideration and surrogate values that are contemporaneous with the POI. In addition, no verified information has been placed on the record that discredits this margin. As such, we find the highest Petition rate of 372.81 percent relevant to the PRC-wide entity. Furthermore, as there are no respondents in this investigation for which we are calculating a separate dumping margin, we relied upon the rates found in the Petition, which is the only information regarding the geogrid industry reasonably at the Department's disposal. Accordingly, the Department has corroborated the AFA rate of 372.81 percent to the extent practicable within the meaning of section 776(c) of the Act.

Comment 6: Critical Circumstances

Petitioner's Comments

- The Department should continue to find that critical circumstances exist with respect to Taian Modern.
- The antidumping statute requires that for the Department to find critical circumstances in an antidumping investigation, there must have been “massive imports of the subject merchandise over a relatively short period.”²⁷³ In making this determination, the Department ordinarily bases its analysis on shipment data for at least three months preceding (base period) and at least the three months following (comparison period) the filing of the petition.²⁷⁴
- Because the petition was filed on January 13, 2016 (*i.e.*, during the first half of the month), the Department appropriately used July 2015 through December 2015 as the base period and January 2016 through June 2016 as the comparison period, pursuant to the Department's practice.²⁷⁵
- Contrary to Taian Modern's suggestion, the Department has not made an exception to its established practice in other investigations where the filing date of the petition was near the middle of the month.
- If the Department abandoned its bright-line rule on how to treat the month of the petition, it would introduce ambiguity and unnecessary additional complications to the critical circumstances analysis.
- Additionally, Taian Modern's suggestion that the Department should ascertain factors, such as the respondent's ability to rapidly increase import volumes, adds additional complications into a well-established and fair process.
- The Department should also reject Taian Modern's argument that there are no massive imports of the subject merchandise due to the seasonality of the geogrids industry. As found in the *Preliminary Determination*, there is no record evidence that the geogrids industry is seasonal and more import volumes are concentrated at the beginning of the year.²⁷⁶

²⁷³ See section 733(e)(1) of the Act.

²⁷⁴ See 19 CFR 351.206(i).

²⁷⁵ See 19 CFR 351.206(h)(2); *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710 (June 8, 1999) and accompanying Issues and Decision Memorandum at Comment 4.

²⁷⁶ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 10.

- Even assuming, *arguendo*, that there is evidence of seasonality in the geogrids industry, Taian Modern's shipments in the post-petition period would still be massive if such "seasonality" was taken into account.
- Accordingly, the Department should continue to find an affirmative critical circumstances determination with respect to Taian Modern in the final determination.

Taian Modern's Comments

- The legislative history to the critical circumstances provision indicates that the law is meant to prevent "exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the Department."²⁷⁷ Therefore, the Department should focus on the actions taken by exporters since initiation of an investigation.
- In its *Preliminary Determination*, the Department rejected Taian Modern's argument that the geogrids industry is seasonal and made an affirmative critical circumstances determination with respect to Taian Modern.²⁷⁸
- Since then, the Department now has substantial evidence supporting the seasonality of the geogrids industry.
- A review of the shipment data indicates that shipments increased when comparing the base period (July through December 2015) to the comparison period (January through June 2016). However, the record also demonstrates that imports increased historically in 2014 and 2015 during the beginning of the calendar year. This demonstrates the seasonal nature of the geogrid industry where customers require shipments early in the calendar year.²⁷⁹
- The increase in imports that the Department observed in the beginning of the calendar year after initiation of the investigation was not related to the filing of the petition but rather due to the normal operations of the geogrid industry.
- Since the petition was not filed until three days before the middle of the month in January 2016, the Department should base the relevant date for the base and comparison periods not on the filing of the petition but on the date that the first official document of this investigation was published in the *Federal Register*.
- The courts previously held that publication in the *Federal Register* provides the parties with constructive notice.²⁸⁰ Therefore, the Department should treat the publication of the ITC notice in January 2016 as providing constructive notice to exporters and include January in the base period.²⁸¹

Department's Position: For the final determination, the Department determines that Taian Modern and BOSTD are part of the PRC-wide entity, and that critical circumstances continue to exist for the PRC-wide entity.

²⁷⁷ See H.R. Rep. No. 96-317, at 63 (1979).

²⁷⁸ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 5-10.

²⁷⁹ See Taian Modern's Monthly Shipment Submission dated August 22, 2016, at Attachments.

²⁸⁰ See *Cathedral Candle Co. v. United States*, 27 CIT 1541, 1549 (CIT 2003).

²⁸¹ See *Certain Biaxial Integral Geogrid Products from China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, 81 FR 3157 (January 20, 2016).

Pursuant to sections 733(e)(1)(A)(ii) and 735(a)(3)(A)(ii) of the Act, the Department normally considers estimated weighted average dumping margins of 25 percent or more for export sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.²⁸² As discussed above, BOSTD and Taian Modern, as part of the PRC-wide entity, have been assigned a dumping margin based on AFA of 372.81 percent. This rate exceeds the quantitative thresholds established by the Department for purposes of determining whether imputed knowledge of dumping exists. Further, consistent with the Department's practice,²⁸³ since the U.S. International Trade Commission (ITC) preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of geogrids from the PRC, the Department determines that importers knew or should have known that there was likely to be material injury be reason of sales of geogrids at LTFV by the PRC-wide entity. Accordingly, we determine that the criteria under section 735(a)(3)(A)(ii) of the Act have been met. Further, because we lack the necessary reliable shipment data from the PRC-wide entity, we determine that the PRC-wide entity had massive imports during the comparison period, thereby fulfilling the criteria under section 735(a)(3)(B) of the Act and 19 CFR 351.206(h). Therefore, for this final determination, we determine that critical circumstances exist with regard to the PRC-wide entity, which includes BOSTD and Taian Modern.

Moreover, we continue to find that seasonality in the critical circumstances context does not apply to geogrids. While Taian Modern asserts that information on the record supports the existence of seasonality, as discussed above, the relevant U.S. sales data could not be verified by the Department. Therefore, the Department continues to find that insufficient information on the record exists to support the claim of seasonality.

Comment 7: Moot Arguments on General Issues

BOSTD's, Petitioner's, and Taian Modern's Comments

- BOSTD, Petitioner, and Taian Modern raised a number of general issues related to both mandatory respondents. These issues included selection of surrogate country, selection of surrogate financial ratios, calculation of surrogate financial ratios, double-counting of energy, calculation of the surrogate value for labor, surrogate value for ocean freight, calculation errors for South African import data, and differential pricing.

Department's Position: Because we are applying total AFA and not calculating dumping margins for both BOSTD and Taian Modern in the final determination, these issues are moot and we did not address them here.

²⁸² See, e.g., *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 5606, 5607 (February 3, 2005) (unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9307 (February 24, 2005)).

²⁸³ See, e.g., *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108 (January 20, 2016) and accompanying Issues and Decision Memorandum at VI.

Conclusion

We recommend applying the above methodology for this final determination.

Agree

Disagree

1/4/2017

X 

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance