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MEMORANDUM TO: Carole Showers
Executive Director, Office of Policy
Policy & Negotiations
Enforcement and Compliance

FROM: Scot T. Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Less-Than-Fair-Value Investigation of Aluminum Wire and
Cable from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that aluminum wire and cable (AWC) from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2018 through June 30, 2018.

In the *Preliminary Determination*, we relied on facts otherwise available, with an adverse inference (AFA), in determining the estimated weighted-average dumping margin for the China-wide entity, which included both mandatory respondents examined in this investigation, Shanghai Silin Special Equipment Co., Ltd. (Silin) and Hebei Huatong Wires and Cables Group Co., Ltd. (Huatong).¹ We have analyzed the comments of interested parties and continue to rely on AFA for the China-wide entity in this final determination. Furthermore, there are two non-examined companies, Changfeng Wire & Cable Co., Ltd. (Changfeng) and Wuxi Jiangnan Cable Co., Ltd. (Wuxi Jiangnan), which Commerce continues to find are eligible for a separate rate.²

Below is a complete list of the issues in this investigation for which we received comments from interested parties:

¹ See *Aluminum Wire and Cable From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 26069 (June 5, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Preliminary Determination* PDM at 11.



General Issues

Comment 1: Selection of the AFA Rate

Huatong Issues

Comment 2: Application of Total AFA to Huatong

Comment 2a: Commerce Overstated Huatong's Errors and Failed to Issue Supplemental Questionnaires

Comment 2b: Cancellation of Verification of Huatong

Comment 3: Huatong's Eligibility for a Separate Rate

Silin Issues

Comment 4: Application of Total AFA to Silin

Comment 4a: Reliability of Silin's Sales Data and Sales Reconciliation

Comment 4b: Accuracy of Silin's Control Numbers (CONNUMs)

Comment 4c: Cancellation of Verification of Silin

Comment 5: Offset of Countervailable Benefits for Aluminum Rod

II. BACKGROUND

On June 5, 2019, Commerce published the *Preliminary Determination* of sales at LTFV of AWC from China and invited interested parties to comment.³ As noted in the *Preliminary Determination*, Commerce did not conduct verification of the examined respondents because both respondents were determined to have not cooperated with Commerce's investigation.⁴

On June 25, 2019 and June 26, 2019, Commerce received comments on its *Preliminary Determination*, as well as requests to conduct verification from Huatong and Silin, respectively.⁵ On June 27, 2019 and June 28, 2019, we received responses from the petitioners in this investigation, Encore Wire Corporation (Encore) and Southwire Company, LLC (Southwire) (collectively, the petitioners), indicating their opposition to the respondents' requests for verification.⁶ On July 9, 2019, Commerce officials met with a representative of Huatong

³ See *Preliminary Determination*, 84 FR at 26069.

⁴ *Id.*

⁵ See Huatong's letter, "Aluminum Wire and Cable from the People's Republic of China – Huatong's Comments on the Preliminary Determination and Request for Verification," dated June 26, 2019 (Huatong Verification Request); and Silin's letter, "Aluminum Wire and Cable from the People's Republic of China – Silin's Comments on the Department's Preliminary Determination and Request for Verification," dated June 25, 2019 (Silin Verification Request). We note that on July 11, 2019, Commerce rejected Silin's Verification Request because the submission contained unsolicited new factual information (NFI) (*see* Commerce's letter, "Less-Than-Fair-Value Investigation of Aluminum Wire and Cable from the People's Republic of China: Rejecting Silin's Letter Submitted on June 25, 2019," dated July 10, 2019). On July 11, 2019, Silin refiled its submission without NFI (*see* Silin's letter, "Aluminum Wire and Cable from the People's Republic of China – Refile Silin Letter Dated June 25, 2019).

⁶ See Encore's letter, "Aluminum Wire and Cable from China: Petitioner's Opposition to Silin's Request for Verification," dated June 27, 2019; Encore's letter, "Aluminum Wire and Cable from China: Petitioner's Opposition to Huatong's Request for Verification," dated June 28, 2019; and Southwire's letter, "Aluminum Wire and Cable from the People's Republic of China: Opposition to Verification Requests," dated June 28, 2019.

regarding Huatong's Verification Request.⁷ After considering the arguments on the record, Commerce did not conduct verification of either Huatong or Silin.⁸

On July 15, 2019, Huatong and Silin filed case briefs.⁹ On July 22, 2019, Encore and Southwire submitted rebuttal briefs.¹⁰ On September 24, 2019, Silin submitted comments requesting Commerce to offset benefits conferred from the Government of China's (GOC) provision of aluminum rod for less than adequate remuneration (LTAR), which was found to be countervailable in the post-preliminary determination of the companion countervailing duty (CVD) investigation on September 9, 2019.¹¹ On September 25, 2019, Encore submitted a request for Commerce to reject Silin's submission and its request for a limited briefing schedule regarding this issue.¹² On September 25, 2019, we published a memo to the file accepting both submissions and confirming that we were not reopening the briefing schedule for this issue.¹³

In the *Preliminary Determination*, Commerce postponed the final determination to October 18, 2019, pursuant to section 735(a)(2) of the Act.¹⁴

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2018 through June 30, 2018.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are aluminum wire and cable from China. Commerce addressed all scope comments received in the *Preliminary Determination* and accompanying

⁷ See Memorandum, "Antidumping Duty Investigation of Aluminum Wire and Cable from the People's Republic of China: Huatong's Request for Verification," dated July 9, 2019 (Ex-Parte Memo).

⁸ See Commerce's letter to Huatong, "Response to Verification Request in the Antidumping Duty Investigation of Aluminum Wire and Cable from the People's Republic of China," dated July 11, 2019; and Commerce's letter to Silin, "Response to Verification Request in the Antidumping Duty Investigation of Aluminum Wire and Cable from the People's Republic of China," dated July 11, 2019.

⁹ See Huatong's letter, "Aluminum Wire and Cable from the People's Republic of China – Huatong's Case Brief," dated July 15, 2019 (Huatong Case Brief); and Silin's letter, "Aluminum Wire and Cable from the People's Republic of China – Case Brief," dated July 15, 2019 (Silin Case Brief).

¹⁰ See Encore's letter, "Aluminum Wire and Cable from China: Rebuttal Brief of Encore Wire Corporation," dated July 22, 2019 (Encore Rebuttal Brief); Southwire's letter, "Aluminum Wire and Cable from the People's Republic of China: Rebuttal Brief – Southwire Company, LLC - Hebei Huatong Wires and Cables Group Co., Ltd.," dated July 22, 2019 (Southwire Rebuttal Brief for Huatong); and Southwire's letter, "Aluminum Wire and Cable from the People's Republic of China: Rebuttal Brief – Southwire Company, LLC - Shanghai Silin Special Equipment Co., Ltd.," dated July 22, 2019 (Southwire Rebuttal Brief for Silin).

¹¹ See Silin's letter, "Aluminum Wire and Cable from People's Republic of China - Request to Offset NSA Export Programs," dated September 24, 2019 (Silin NSA Offset Request).

¹² See Encore's letter, "Aluminum Wire and Cable from China: Request to Reject Silin's Request to Offset Benefits Countervailed Pursuant to the Government of China's Provision of Aluminum Rod for Less Than Adequate Remuneration," dated September 25, 2019 (Encore NSA Offset Rebuttal).

¹³ See Memorandum, "Antidumping Duty Investigation of Aluminum Wire and Cable from the People's Republic of China: Response to Comments Regarding the Offset of the Provision of Aluminum Rod for Less than Adequate Remuneration (LTAR)," dated September 25, 2019 (LTAR Offset Memo).

¹⁴ See *Preliminary Determination*.

PDM.¹⁵ For a complete description of the scope of this investigation, which is unchanged since the *Preliminary Determination*, see Appendix I of the accompanying *Federal Register* notice.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

There have been no changes since the *Preliminary Determination*.

VI. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In an LTFV investigation, where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found in the concurrent CVD investigation. Doing so is consistent with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy."¹⁶

For this final determination, Commerce has relied exclusively on the two dumping margins alleged in the Petition,¹⁷ and addressed in the Initiation Checklist,¹⁸ in order to determine each of the estimated weighted-average dumping margins.¹⁹ Each of the dumping margins alleged in the Petition are based on U.S. prices regarding Silin's sales in the United States during the POI. Furthermore, as discussed in detail below, we are relying on applying total AFA to determine the weighted-average dumping margin for both respondents in this investigation under the China-wide entity, which includes both mandatory respondents, Huatong and Silin. Accordingly, in order to avoid a double remedy as a result of export subsidies that are collected as part of the companion CVD proceeding, Commerce must adjust the estimated weighted-average dumping margins for the China-wide entity and the non-examined, separate-rate companies (which are based on the margins alleged in the Petition and thus based on Silin's U.S. prices). Commerce determined in the final determination of the companion CVD investigation that all exporters of subject merchandise benefitted from certain programs that are export contingent, where the total of these subsidy rates for these programs equals 10.68 percent.²⁰ Therefore, Commerce will adjust the estimated weighted-average dumping margin for all exporter/producer combinations, including the China-wide entity, by 10.68 percent to determine each of the cash deposit rates. As noted in the *Federal Register* notice, suspension of liquidation for provisional measures in the

¹⁵ See *Preliminary Determination* PDM at 5-6.

¹⁶ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁷ See petitioners' letter, "Aluminum Wire and Cable from China: Antidumping and Countervailing Duty Petitions," dated September 21, 2018 (Initial Petition); and petitioners' letter, "Aluminum Wire and Cable from China: Amendment of Petitions and Response to Commerce's Supplemental Questions," dated September 28, 2018 (Petition SQR) (collectively, the Petition).

¹⁸ See Memorandum, "Antidumping Duty Investigation Initiation Checklist: Aluminum Wire and Cable from the People's Republic of China (China)," dated October 11, 2018 (Initiation Checklist).

¹⁹ The estimated weighted-average dumping margin for the non-examined, separate-rate companies is an average of the two dumping margins alleged in the Petition, and the estimated weighted-average dumping margin based on adverse facts available is the highest of the two dumping margins alleged in the Petition.

²⁰ See *Aluminum Wire and Cable from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, dated concurrently with this notice, and accompanying IDM.

companion CVD proceeding has been discontinued; therefore, we will not instruct CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those subsidies at this time.

VII. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, Commerce requested company-specific information from the mandatory respondents as part of the initial antidumping questionnaire.²¹ The information sought included information regarding whether countervailable subsidies were received during the relevant period, information on costs, and information regarding the respondents' pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. Huatong and Silin submitted responses to Commerce's company-specific double remedies questionnaire for purposes of evaluating whether to adjust any individual weighted average dumping margin calculated for them.²² As noted below, we have determined that Huatong and Silin are part of the China-wide entity for purposes of this investigation. Further, we have determined that the China-wide entity has not acted to the best of its ability in complying with Commerce's requests for information and determined the rate for the China-wide entity based on total adverse facts available. Because we have not calculated weighted-average dumping margins for Huatong and Silin, the company-specific information submitted in their responses to the double remedies questionnaire is not applicable. We have, therefore, made no adjustments under section 777A(f) of the Act to the China-wide entity rate.

VIII. CHINA-WIDE ENTITY AND USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce 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, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

²¹ See Commerce's letter to Huatong, dated December 4, 2018; and Commerce's letter to Silin, dated December 4, 2018.

²² See Huatong's letter, "Aluminum Wire and Cable from the People's Republic of China – Double Remedies Supplemental Questionnaire Response," dated February 19, 2019; see also Silin's letter, "Aluminum Wire and Cable from the People's Republic of China– Double Remedies Questionnaire Response," dated February 4, 2019 (Silin Double Remedies QR).

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among 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. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."²³ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁴

When using facts otherwise available, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "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 concerning the subject merchandise."²⁵ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,²⁶ although under the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. It is Commerce's practice to consider information to be corroborated if it has probative value.²⁷ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.²⁸ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²⁹

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. Further, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had

²³ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998) (*Semiconductors from Taiwan*).

²⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

²⁵ See, e.g., SAA at 870.

²⁶ See SAA at 870.

²⁷ See section 776(c)(2) of the Act.

²⁸ 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).

²⁹ See, e.g., SAA at 869.

cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.³⁰

In the *Preliminary Determination*, we relied on facts otherwise available, with an adverse inference, in determining the estimated weighted-average dumping margin for the China-wide entity, which includes both mandatory respondents Huatong and Silin.³¹ As explained in the section below, we continue to rely on AFA to determine the estimated weighted-average dumping margin for the China-wide entity, including both mandatory respondents, for this final determination.

The China-wide Entity

Commerce continues to find that it is appropriate to deny both Huatong and Silin a separate rate, because their failures to respond accurately and completely to Commerce’s requests for information means there is not enough reliable information on the record to determine whether there is an absence of *de facto* government control over the company’s respective export activities.³² As such, for this final determination, Commerce finds that both Huatong and Silin are part of the China-wide entity. Furthermore, as noted in the *Preliminary Determination*, the China-wide entity also includes companies that failed to establish their eligibility for separate rate status, as well as other Chinese exporters or producers that did not respond to Commerce’s quantity and value questionnaire.³³

Application of Facts Otherwise Available, with an Adverse Inference

As explained below, because both respondents did not adequately respond to Commerce’s questionnaires regarding various deficiencies in their respective responses, there is insufficient reliable information to determine whether Huatong and Silin have established their separate rate eligibility and to calculate an accurate estimated weighted-average dumping margin. Additionally, the record does not include quantity and value information from certain Chinese exporters and producers that failed to respond to Commerce’s requests for information.³⁴ Because the China-wide entity includes both mandatory respondents Huatong and Silin, as well as these non-responsive Chinese exporters and producers, pursuant to sections 776(a)(1) and (2)(A)-(D) of the Act, we find that the application of facts otherwise available is warranted in determining the weighted-average dumping margin for the China-wide entity.

Further, we find, pursuant to section 776(b) of the Act, that the numerous discrepancies highlighted below, and resulting critical deficiencies on the record, are due to the respondents’ failure to cooperate to the best of their ability to provide the information required to adequately complete this investigation. In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) clarified that the “best of its ability” standard of section 776(b) of the Act means to put

³⁰ See sections 776(d)(1)-(2) of the Act.

³¹ See *Preliminary Determination* PDM at 14-25.

³² For further discussion, see Comment 3 (responding to parties’ comments on Huatong’s separate rate eligibility); see also *Preliminary Determination* PDM at 13-14.

³³ See *Preliminary Determination* PDM at 3 n.23, 14 n.81, and 22.

³⁴ *Id.*

forth maximum effort to provide full and complete answers to all inquiries.³⁵ The CAFC also explained that, although the statutory standard for cooperation “does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.”³⁶ A described more fully described under Comment 2 and Comment 4, despite several opportunities afforded to both Huatong and Silin to provide accurate information through the multiple supplemental questionnaires and deadline extensions, the incomplete record for each respondent demonstrates a failure on the part of both respondents to put forth “maximum effort” in reporting accurate and complete information. As a result, the record lacks necessary information to determine the separate rate eligibility or calculate an accurate estimate weighted-average dumping margin for Huatong and Silin. That the record also lacks necessary quantity and value information from certain Chinese exporters and producers that comprise the China-wide entity also demonstrates a failure on the part of these companies to put forth “maximum effort” in responding to Commerce’s requests for information. Therefore, Commerce continues to find that facts otherwise available with an adverse inference is warranted in determining the estimated weighted-average dumping margin for the China-wide entity.

Selection and Corroboration of AFA Rate

In deciding which facts to use as the basis for the AFA rate, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that Commerce may rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In selecting a rate as AFA, Commerce selects a rate sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner.”³⁷ Further, it is Commerce’s practice to select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁸

Therefore, in order to induce the respondents to provide Commerce with complete and accurate information in a timely manner, Commerce’s practice is to select, as AFA, the higher of: (a) the highest margin alleged in the Petition or (b) the highest calculated rate for any respondent in the investigation.³⁹ We have determined that the deficiencies in the questionnaire responses from Huatong and Silin are so pervasive they render their responses unreliable such that we cannot rely on the information submitted on the record. As a result, in this case, the highest rate is 63.47 percent, which is the highest margin alleged in the Petition.⁴⁰

Application of the highest dumping margin alleged in the Petition (*i.e.*, 63.47 percent), as an AFA rate is consistent with section 776(b)(2)(A) of the Act and is sufficiently adverse so “as to

³⁵ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

³⁶ *Id.*

³⁷ See *Semiconductors from Taiwan*.

³⁸ See SAA at 870.

³⁹ See, *e.g.*, *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying IDM at Comment 20.

⁴⁰ See Petition SQR.

effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”⁴¹

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce 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. As noted above, 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.⁴²

Because the AFA rate applied to the China-wide entity is derived from the Petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable. As noted in the *Preliminary Determination*, we have determined that the dumping margins alleged in the Petition are reliable after reviewing and considering the adequacy and accuracy of the information in the Petition.⁴³ Specifically, we examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in it for use as AFA for purposes of this final determination. During our pre-initiation analysis, we also examined the key elements of the alleged dumping margin calculations, *i.e.*, export price, normal value, and constructed value. Based on our examination of the information on the record, as discussed in detail in the Initiation Checklist, we determined, at the time of initiation, the petitioners’ export price, normal value, and constructed value calculations to be reliable. We continue to consider the export price, normal value and constructed value calculations to be reliable for purposes of assigning an AFA rate to the respondents in this investigation (*see* Comment 1 below for a discussion of the labor rate used in the Petition).

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. Because we find that the information submitted on the record by both respondents to be unreliable, we have not used the information submitted by Huatong and Silin to further corroborate the Petition rate, and instead have relied upon information alleged in the Petition, which is the only information regarding the AWC industry reasonably at Commerce’s disposal.

Accordingly, we determine that the highest dumping margin alleged in the Petition has probative value, and we have corroborated the AFA rate of 63.47 percent the extent practicable within the meaning of section 776(c) of the Act by demonstrating that: 1) the rate was considered by Commerce to be reliable in the pre-initiation stage of this investigation; and 2) the rate is relevant to the uncooperative respondent, the China-wide entity, which includes the mandatory respondents Huatong and Silin.

⁴¹ See *Drill Pipe from China*, and accompanying IDM at “V. Use of Adverse Facts Otherwise Available and Adverse Inferences;” *see also Semiconductors from Taiwan*.

⁴² See SAA at 870.

⁴³ See *Preliminary Determination PDM* at 24-25.

IX. DISCUSSION OF THE ISSUES

Comment 1: Selection of the AFA Rate

Huatong's Case Brief:

- Commerce's selected AFA rate in the *Preliminary Determination*, which was based on the highest dumping margin alleged in the Petition, is unreasonable and unsupported by substantial evidence.⁴⁴ Specifically, the Petition used a labor rate from 2012, adjusted for inflation, in its calculation of the alleged dumping margin.⁴⁵ Commerce ignored Huatong's submission of surrogate values for labor from 2017 that is on the record of this investigation. This rate is more recent and reliable than the 2012 rate in the Petition.

Encore's Rebuttal Brief:

- Contrary to Huatong's claims, Commerce's reliance on the Petition rate for AFA, which estimates labor costs for 2017, is not unreliable simply because Huatong prefers a different source.⁴⁶ The statute clearly states that when applying an adverse inference, Commerce may rely upon information derived from the Petition.
- Commerce has reviewed and confirmed the accuracy of the Petition rates in its pre-initiation analysis.⁴⁷ Commerce also corroborated the Petition rate in its *Preliminary Determination*, pursuant to section 776(c) of the Act.⁴⁸ Commerce's selection of the AFA rate is, therefore, grounded in law and record evidence.

Commerce Position: As an initial matter, Commerce's standard practice is to select an AFA rate as the higher of the highest dumping margin alleged in the Petition or the highest calculated dumping margin of any respondent in the investigation, as we explained in the *Preliminary Determination*.⁴⁹ Although we do not disagree that section 776(b) of the Act permits other options, including any other information supplied in the record, in selecting the AFA rate, we find that the circumstances in this investigation do not require a deviation from Commerce's standard practice of assigning the highest dumping margin alleged in the Petition. In the current investigation, interested parties have not argued, nor has Commerce found, information from the Petition to be uncorroborated or otherwise proven inaccurate and unreliable in the course of the investigation. Moreover, Commerce's practice is not to update dumping margins alleged in a petition based on later-discovered surrogate value information within the context of a proceeding; rather, Commerce's practice is to evaluate and, consequently, confirm the reliability of the information presented in a Petition at the time of the initiation of an investigation. Therefore, Commerce has not used the information presented by Huatong to reconsider the dumping margins alleged in the Petition.

⁴⁴ See Huatong Case Brief at 7.

⁴⁵ *Id.* at 54 (citing Initial Petition at Exhibit GEN-23; and Petition SQR at 3-4).

⁴⁶ See Encore Rebuttal Brief at 23.

⁴⁷ *Id.* (citing *Preliminary Determination* PDM at 24).

⁴⁸ *Id.* (citing *Preliminary Determination* PDM at 24-25).

⁴⁹ See *Preliminary Determination* PDM at 24-25.

Comment 2: Application of Total AFA to Huatong

Huatong's Case Brief:

- In its *Preliminary Determination*, Commerce applied total AFA to Huatong due to the purported “totality of deficiencies” in Huatong’s questionnaire responses.⁵⁰ However, Commerce’s decision to reject Huatong’s questionnaire responses in their entirety and apply total AFA is “not supported by the statute, the factual record, or {Commerce} precedent.”⁵¹ In this case, Commerce is incorrect in its assertion that there are “significant deficiencies” in Huatong’s responses.⁵²
- Before resorting to facts available, Commerce is required under section 782(d) of the Act to inform a respondent of all deficiencies and provide a respondent an opportunity to remedy or explain the deficiency. In this investigation, Commerce failed to provide Huatong an opportunity to explain or remedy deficiencies identified in the *Preliminary Determination*, because it failed to issue a deficiency questionnaire.⁵³ In fact, some information requested in Commerce’s supplemental questionnaires were first-time requests to Huatong, and therefore did not qualify as deficiency questions under the statute.⁵⁴ Furthermore, the fact that many of the alleged deficiencies were raised by the petitioners after the factual record closed and during an *ex parte* meeting with Commerce officials does not excuse Commerce from its statutory requirement to issue a deficiency questionnaire.⁵⁵ Finally, Commerce failed to address whether there was insufficient time to permit Huatong an opportunity to remedy deficiencies, and therefore cannot apply AFA under the statute.⁵⁶
- Even if Commerce continues to find information on the record “not satisfactory” after granting a respondent an opportunity to remedy or explain identified deficiencies, Commerce “*still* must use the information, rather than facts available, so long as the criteria of {section 782(e) of the Act have been met.”⁵⁷ Specifically, section 782(e) of the Act precludes Commerce from “ignoring information” where the interested party can demonstrate that: 1) it acted to the best of its ability in supplying compliant information; and; 2) the information is timely submitted, verifiable, not so incomplete that it cannot furnish a reliable basis for making the determination, and can be used without undue difficulties.⁵⁸ Huatong’s responses meet these requirements, as any errors are limited to discrete portion of the response and are “non-core” or minor in nature.

⁵⁰ See Huatong Case Brief at 8 (citing *Preliminary Determination* PDM at 13).

⁵¹ *Id.*

⁵² *Id.* at 12.

⁵³ *Id.* at 8.

⁵⁴ *Id.* at 12-13.

⁵⁵ *Id.* at 14-15 (citing *China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337 (CIT 2007), at 1353-1354 (*China Kingdom*)).

⁵⁶ *Id.* at 15 (citing *China Kingdom* at 1329, 1366, “where the court concluded that {Commerce} erred in using the facts otherwise available without first finding, pursuant to section 782(d) of the Act, that it would not be practicable to permit the respondent to remedy or explain the deficiency given the time limits for completion of the review.”)

⁵⁷ *Id.* at 9-10 (citing *Borden, Inc. v. United States*, 22 CIT 233, 260, 4 F. Supp. 2d (1998) at 1221, 1245).

⁵⁸ *Id.* at 10 (citing *Hyundai Steel Co. v. United States*, 282 F. Supp. 3d 1332 (CIT 2018) at 1343-44).

- The record does not support Commerce’s finding that Huatong failed to put forth maximum effort or failed to cooperate.⁵⁹ An insufficient response or the absence of necessary information on the record is not enough in this regard; instead, Commerce must point to evidence on the record demonstrating “circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made.”⁶⁰

Encore’s Rebuttal Brief:

- Commerce was correct to rely on facts available, because usable information is not on the record, pursuant to section 776(a) of the Act.⁶¹ Contrary to Huatong’s claims, the deficiencies on the record are not minor issues; rather, they significantly impact the reliability of the sales data, reporting of physical characteristics and CONNUM coding, and the factors of production (FOP) data.
- Commerce also provided Huatong with opportunities to remedy the issues cited in the *Preliminary Determination*, consistent with section 782(d) of the Act.⁶² Contrary to Huatong’s argument, the statute does not require Commerce to issue multiple rounds of supplemental questionnaires itemizing each and every individual instance within a deficiency category; rather, Commerce is required to provide an opportunity to remedy a deficiency in a respondent’s initial questionnaire response (*i.e.*, a supplemental questionnaire) and, if the respondent’s subsequent response is unsatisfactory in remedying these issues, Commerce is authorized to “disregard all or part of the original and subsequent responses.”⁶³ The U.S. Court of International Trade (CIT) and the CAFC have also affirmed Commerce’s practice regarding the statute.⁶⁴
- The record, therefore, supports Commerce’s decision to rely on total AFA, because Huatong failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. This standard does not require perfection, but it also “does not condone inattentiveness, careless, or inadequate record keeping.”⁶⁵ In this investigation, Huatong failed to adequately respond to multiple supplemental questionnaires.⁶⁶

Southwire’s Rebuttal Brief:

- Commerce properly applied AFA in accordance with the law, because Huatong’s responses were persistently deficient and failed to provide necessary information, pursuant to the AFA standard established in *Nippon Steel*.⁶⁷ Specifically, the CAFC has

⁵⁹ *Id.* at 16 (citing *The Stanley Works (Langfang) Fastening Sys. Co. v. United States*, 964 F. Supp. 2d 1311 (CIT 2013) at n.20, “holding that ‘although Stanley did not submit certain unverifiable data to Commerce, nothing on the record indicates that Stanley did not put forth its maximum effort to provide Commerce with the data it requested.’”).

⁶⁰ *Id.* (citing *Nippon Steel*, 337 F. 3d at 1382).

⁶¹ See *Encore Rebuttal Brief* at 2.

⁶² *Id.* at 3.

⁶³ *Id.* at 5 (citing 19 U.S.C. § 1677m(d) and (d)(1)).

⁶⁴ *Id.* (citing *Linyi Chengen Imp. & Exp. Co. v. United States*, Slip. Op. 2019-67 at *36 (CIT 2019); and *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1361 (CAFC 2017) (*Maverick Tube Corp.*)).

⁶⁵ See *Encore Rebuttal Brief* at 4 (citing *Nippon Steel*, 337 F. 3d at 1373 and 1382).

⁶⁶ *Id.* at 7.

⁶⁷ See *Southwire Rebuttal Brief for Huatong* at 1.

found that the Act does not require Commerce to determine whether a respondent has intentionally concealed or provided inaccurate responses in an investigation.⁶⁸

- The discrepancies on the record demonstrate Huatong’s failure to put forth maximum effort in its responses, in accordance with section 776(b) of the Act. Other than Huatong’s denial of a methodological error in its invoice reporting, Huatong does not challenge that there are numerous other errors on the record.⁶⁹ These errors are pervasive, as they include unreliable invoice values, factors of production (FOPs), and CONNUMs. The application of AFA is therefore lawful under the statute.
- Huatong incorrectly argues that total AFA only applies when: 1) *none* of the data on the record are usable or verifiable; and 2) *all* of the data on the record have pervasive and persistent deficiencies that cut across all aspects of the submission.⁷⁰ However, this is contrary to the “best of one’s ability” standard set forth in *Nippon Steel*, which does not include such an extreme measure for finding that a respondent failed to cooperate. In fact, Commerce has previously found that even non-systematic errors that “cut across many areas” of a respondent’s sales data justify the application of AFA.⁷¹

Comment 2a: Commerce Overstated Huatong’s Errors and Failed to Issue Supplemental Questionnaires

Huatong’s Case Brief:

- The deficiencies described in the *Preliminary Determination* are “either proper responses misunderstood by {Commerce}, minor errors, or issues for which {Commerce} was required to but failed to follow up with a clarifying deficiency questionnaire.”⁷² Huatong’s arguments regarding each deficiency are summarized below:
- 1) Failure to correct reporting errors for U.S. price: Commerce issued a supplemental questionnaire requesting that Huatong provide sales trace documents for a certain export channel; in an another supplemental questionnaire, Commerce requested that Huatong correct inconsistencies between the sales trace documents and the commercial invoice values reported in its sales data.⁷³ Huatong subsequently made a “clerical typing error” when entering the commercial invoice value identified by Commerce in its updated sales data.⁷⁴ However, Huatong’s failure to correct this invoice value is not a sufficient basis for Commerce to disregard Huatong’s entire sales data, as Commerce took no issue with other sales traces and the corresponding invoice values reported in the sales data. At minimum, Commerce must conduct a verification to confirm accurate reporting for all types of sales.⁷⁵ Furthermore, Commerce is required to provide Huatong an opportunity to correct the sales data regarding this deficiency.

⁶⁸ *Id.* at 2-3 (citing *Nippon Steel*, at 1383).

⁶⁹ *Id.* at 4 and Exhibit 1.

⁷⁰ *Id.* at 5 (citing Huatong Case Brief at 8 and 11).

⁷¹ *Id.* at 6 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from France*, 82 FR 16363 (April 4, 2017) (*CTL from France*), and accompanying IDM at 33).

⁷² *Id.* at 6.

⁷³ See Huatong Case Brief at 17-20.

⁷⁴ *Id.* at 20.

⁷⁵ *Id.* at 21 (citing, e.g., *Certain Lined Paper Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 71 FR 53079 (September 8, 2006), and accompanying IDM at Comment 13,

- 2) Methodological error for reporting invoice values: Commerce’s characterization of Huatong’s allegedly flawed methodology for reporting invoice values (*i.e.*, that Huatong does not report the face value of commercial invoices for a certain export channel) is speculative.⁷⁶ Although Commerce claimed that its “own analysis” confirms the petitioners’ comments regarding this issue, it provided no analysis of its own in the *Preliminary Determination*. There is nothing wrong with Huatong’s reported methodology in its updated sales data.⁷⁷ Furthermore, Commerce never raised the issue of a methodological error in any of its supplemental questionnaires, nor did it ask how the “typographical error” in a certain sales trace may affect the entire sales data. Commerce should conduct verification to confirm Huatong’s reporting.⁷⁸

Additionally, Commerce took issue with purported “reference errors” reported as invoice values in Huatong’s sales data. The entries at issue are not actually “errors” but, rather, “offsetting entries” due to how Huatong records certain sales.⁷⁹ For these sales, Huatong reported three entries for each sale: one for the actual sales price, one as an offsetting entry, and one for the invoice issued.⁸⁰ Huatong complied with Commerce’s request to fix the “reference errors” by removing the first and second entries and leaving the third entry for a single sale; however, Huatong could not both respond to Commerce’s request and then correct remaining “errors” by placing the first and second offsetting entries back into the sales data. Huatong should not be penalized for Commerce’s unclear question; moreover, removing the first and second entries had no effect on the overall sales data, because the final invoice value is unaffected.⁸¹ These “reference errors” are unrelated to Commerce’s claim that there is a methodological error in its reported invoice values, and Commerce fails to explain how these “reference errors” render its entire U.S. sales data unreliable.⁸² If these “reference errors” are a “deficiency,” Commerce should have followed up with an additional supplemental questionnaire. Finally, the eight “errors” at issue are limited to a discrete portion of the sales data.⁸³ Commerce should have conducted verification to confirm how Huatong maintains its accounting records.

- 3) Failure to provide product specification sheets: In a supplemental questionnaire, Commerce requested specification sheets for two product codes in order to check whether Huatong was “correctly reporting the aluminum grade, aluminum weight, and relevant aluminum inputs for its products.”⁸⁴ Huatong did not provide the specification sheets, but provided specifications (*i.e.*, the dimensions of cable conductors) for these products instead. This was the first time Commerce requested these specification sheets, and Commerce never followed up with an additional request (as required by statute).⁸⁵

“determining that total AFA not warranted because although unable to verify certain information, was able to isolate such information and apply partial {facts available} or partial AFA as appropriate.”).

⁷⁶ *Id.* at 24-25; *see also Preliminary Determination* PDM at n.103.

⁷⁷ *Id.* at 26.

⁷⁸ *Id.* at 27.

⁷⁹ *Id.* at 28.

⁸⁰ *Id.* at 28-29.

⁸¹ *Id.* at 29-30.

⁸² *Id.* at 30.

⁸³ *Id.* at 31.

⁸⁴ *Id.* at 32; *see also Preliminary Determination* PDM at 18.

⁸⁵ *Id.* at 33.

Huatong was doing the best to cooperate with Commerce's requests, as it provided specification sheets in response to another question in the same questionnaire.⁸⁶ Moreover, Commerce failed to explain why the absence of these specification sheets renders Huatong's entire response unreliable or unusable.⁸⁷

- 4) Failure to explain similar aluminum usage rates for different products: Commerce claimed that Huatong failed to adequately respond to a supplemental questionnaire regarding why the mix of four aluminum inputs was essentially the same for two products made of different aluminum grades.⁸⁸ However, the question at issue is part of a series of questions that, when read in context, show that Huatong is "discussing the weight of the conductors as the basis for the difference in aluminum weights throughout the response."⁸⁹ Huatong also states in another supplemental questionnaire response that "it only calculates one yield ratio for all aluminum materials and does not further break out aluminum inputs by type."⁹⁰ Moreover, Commerce's question regarding this issue was ambiguous and warrants an additional clarifying question under the statute.⁹¹
- 5) Unreliable reporting of aluminum weight: Commerce claimed that Huatong failed to adequately provide the equations used to calculate the aluminum weights for two products because 1) there was no explanation for a "coefficient" used in the equation; and 2) the actual results of the equations do not match the reported aluminum weights for these products.⁹² However, Commerce only asked Huatong "to provide the calculation;" it did not request Huatong to explain each step of the calculation. Additionally, Commerce claims that Huatong failed to adequately respond to a supplemental questionnaire requesting an explanation for why the total aluminum usage rates are less than the aluminum weight reported for a specific product.⁹³ However, the issue between the standard and actual weights was raised for the first time in response to a supplemental questionnaire, and Commerce failed to provide an opportunity to correct it. Commerce also contends that Huatong frequently reported a standard aluminum weight that is higher than the reported aluminum usage rates.⁹⁴ However, Commerce did not give Huatong an opportunity to explain this difference, as required by statute. Additionally, Commerce's calculations do not consider the aluminum wrapping weight for 17 products, which, when considered, reduces the difference between standard and actual aluminum weights.⁹⁵
- 6) Failure to match CONNUMs with reported physical characteristics: in a supplemental questionnaire, Commerce requested that Huatong correct 136 CONNUMs in the sales data that did not match the reported physical characteristics.⁹⁶ Due to "typing and clerical mistakes," Huatong inadvertently failed to change the corresponding physical

⁸⁶ *Id.* at 33-34.

⁸⁷ *Id.* at 34.

⁸⁸ *Id.* at 34; *see also Preliminary Determination PDM* at 18-19.

⁸⁹ *Id.* at 35-36.

⁹⁰ *Id.* at 36.

⁹¹ *Id.* at 37 (citing *Agro Dutch Indus. v. United States*, 31 CIT 2047 (U.S. 2007) at 2060-61).

⁹² *Id.* at 38-39; *see also Preliminary Determination PDM* at 19.

⁹³ *Id.* at 40-41; *see also Preliminary Determination PDM* at 19; and Memorandum, "Antidumping Duty Investigation of Aluminum Wire and Cable from the People's Republic of China: Huatong Preliminary Determination Analysis Memo Public Version," (Huatong Preliminary Analysis Memo) at 2-3.

⁹⁴ *Id.*; *see also Preliminary Determination PDM* at 19.

⁹⁵ *Id.* at 43; *see also Huatong Preliminary Analysis Memo* at Appendix I.

⁹⁶ *Id.* at 44; *see also Preliminary Determination PDM* at 19.

characteristics for Field 3.8 and Field 3.9.⁹⁷ These are minor mistakes that can be fixed with another questionnaire or by a minor correction at verification. Commerce also has the revised and corrected CONNUM codes in the sales data to conduct verification and calculate a final dumping margin. Furthermore, these CONNUM errors affect only four percent of Huatong's total sales observations, not the 25 percent alleged in the *Preliminary Determination*, and Commerce has not explained how or why these CONNUM errors have resulted in an inability to calculate dumping margins.⁹⁸

- 7) Failure to match reported physical characteristics with product specifications: In a supplemental questionnaire, Commerce requested that Huatong fix reporting errors in the largest conductor size characteristic for a certain CONNUM and product code pairing.⁹⁹ Although Huatong acknowledged the mistake, it was not clear that it had to correct these errors in an updated sales data that it submitted as part of a subsequent Section C supplemental response. Given that there was “no direct instruction” from Commerce to correct this error in a subsequent response, it is reasonable to conclude that Huatong did not know it had to update its sales data to reflect the corrected CONNUMs at issue.¹⁰⁰

Encore's Rebuttal Brief:

- Contrary to Huatong's assertion, Commerce has met its statutory obligations regarding the various deficiencies in its responses and has correctly found Huatong's responses to be grossly deficient. Encore addresses each of the deficiencies identified in the *Preliminary Determination* below:
- 1) Failure to correct reporting errors for U.S. price: Commerce's initial questionnaire required Huatong to “report the unit price recorded on the invoice for sales shipped and invoiced.”¹⁰¹ In a supplemental questionnaire, Commerce asked Huatong to explain why the reported invoice amount did not match the invoice included in the reported sale trace, and, in its response, Huatong acknowledged the error and provided a “corrected” value, which neither matched the invoice in the sales trace nor the updated sales data submitted by Huatong.¹⁰² Commerce correctly found all of the invoice values unreliable, as “it is particularly troubling that when given the opportunity to fix deficiencies in its response or explain discrepancies, Huatong commits additional errors or creates additional discrepancies.”¹⁰³
- 2) Methodological error for reporting invoice values: Huatong does not address what is at issue in Commerce's analysis, which is specifically concerned with the fact that Huatong never reports the face value of Invoice 2 (*i.e.*, the commercial invoice value).¹⁰⁴ This error is not insignificant, as it applies to 25 percent of Huatong's sales data.¹⁰⁵
- 3) Failure to provide product specification sheets: instead of providing specification sheets as requested in a supplemental questionnaire, Huatong simply provided the

⁹⁷ *Id.* at 46.

⁹⁸ *Id.* at 46-47; *see also Preliminary Determination* PDM at 19.

⁹⁹ *Id.* at 47.

¹⁰⁰ *Id.* at 47-48.

¹⁰¹ *See* Encore Rebuttal Brief, at 8 (citing Huatong Preliminary Analysis Memo at 1).

¹⁰² *Id.* at 9 (citing *Preliminary Determination* PDM at 17; and Huatong Preliminary Analysis Memo at 1-2).

¹⁰³ *Id.* (citing Huatong Preliminary Analysis Memo at 2).

¹⁰⁴ *Id.* at 10

¹⁰⁵ *Id.* at 11 (citing *Preliminary Determination* PDM at 18).

dimensions for the products at issue.¹⁰⁶ Without the specification sheets, Commerce could not check whether Huatong correctly reported the aluminum grade and weight, as well as the relevant aluminum inputs for its products.¹⁰⁷ Furthermore, the law does not entitle Huatong to an additional opportunity to address the same issue.¹⁰⁸

- 4) Failure to explain similar aluminum usage rates for different products: contrary to Huatong’s claim, the supplemental questionnaire at issue was unambiguous. The record establishes that aluminum conductors are made of either 1350 or 8000 aluminum type,¹⁰⁹ and the initial questionnaire requested Huatong to “report each raw material used to produce a unit of the {subject merchandise}.”¹¹⁰ Commerce issued a supplemental questionnaire because Huatong reported a blend of aluminum inputs for all products in its FOP data.¹¹¹ Huatong argues that Commerce could have deduced the answer to its supplemental question by referencing separate responses.¹¹² However, this explanation does not address Commerce’s question.
- 5) Unreliable reporting of aluminum weight: based on the aluminum weight reported in Huatong’s sales data, the aluminum used in its finished goods exceeded the weight of the aluminum inputs for the same goods, indicating that Huatong underreported its aluminum usage in its FOP database.¹¹³ Commerce issued a supplemental questionnaire to address this deficiency and provided an opportunity for Huatong to show the calculations used to derive the aluminum weights reported in the sales data for two products.¹¹⁴ However, Huatong failed to provide an accurate calculation demonstrating how it derives the theoretical aluminum weight in the first place.¹¹⁵ In response to another question addressing this issue, Huatong also failed to elaborate on why the standard weight is higher than the actual weight. Contrary to Huatong’s claim, Commerce is not obligated to issue yet another supplemental questionnaire.¹¹⁶
- 6) Failure to match CONNUMs with reported physical characteristics: Commerce’s initial questionnaire requested that Huatong “assign a control number (CONNUM) to each unique product” and, in a supplemental questionnaire, Commerce requested that Huatong correct 136 CONNUMs in which the same CONNUM had different reported physical characteristics.¹¹⁷ Huatong admits that it failed to correct all the CONNUM errors identified by Commerce, but insists that it should be granted another opportunity to address this issue because the remaining errors are “minor.”¹¹⁸ Huatong’s argument is an attempt to unlawfully “shift the burden onto Commerce to try and issue supplemental

¹⁰⁶ *Id.* at 18 (citing *Preliminary Determination PDM* at 18).

¹⁰⁷ *Id.* (citing *Preliminary Determination PDM* at 18).

¹⁰⁸ *Id.* at 18-19 (citing Huatong Case Brief at 33); *see also Maverick Tube Corp* at 1361.

¹⁰⁹ *Id.* at 13 (citing Memorandum, “Product Characteristics,” dated November 16, 2018 (Product Characteristics Memo), at 3).

¹¹⁰ *Id.* (citing Commerce’s letter to Huatong, dated November 6, 2018 (Initial Questionnaire), at D-6).

¹¹¹ *Id.*

¹¹² *Id.* (citing Huatong Case Brief at 36).

¹¹³ *Id.* at 15.

¹¹⁴ *Id.* at 15-16 (citing *Preliminary Determination PDM* at 19).

¹¹⁵ *Id.* at 16 (citing *Preliminary Determination PDM* at 19).

¹¹⁶ *Id.* at 16-17.

¹¹⁷ *Id.* at 20 (citing *Preliminary Determination PDM* at 19).

¹¹⁸ *Id.* (citing Huatong Case Brief at 46).

questionnaire after supplemental questionnaire.”¹¹⁹ Huatong also seeks to minimize the CONNUM errors by alleging that these mistakes only affect four percent of Huatong’s sales data, when the record shows that 25 percent of the U.S. sales entries are affected.¹²⁰

- 7) Failure to match reported physical characteristics with product specifications: although Huatong claimed it had fixed this deficiency, the error was actually not corrected in its updated sales data.¹²¹ Huatong claims that because it was responding to a supplemental Section D questionnaire, it was unaware that it was obligated to correct this error in an updated sales data submitted in response to a supplemental Section C questionnaire two weeks later.¹²² However, it is “well settled that the onus for creating a complete and accurate record rests with the respondent.”¹²³ Moreover, Huatong is essentially arguing that Commerce should permit a respondent to fail to provide accurate responses even after it admits the errors to Commerce.¹²⁴

Southwire’s Rebuttal Brief:

- Huatong fails to acknowledge that it relied on flawed methodology to report invoice values that affected thousands of transactions in its sales data.¹²⁵ Huatong reported two invoice values for each sale (*i.e.*, the value-added tax (VAT) invoice (Invoice 1) and the commercial invoice (Invoice 2), which is the value ultimately paid by the U.S. customer). Huatong argues that it accurately reported these invoice values; however, the record clearly shows that both Invoice 1 and Invoice 2 were reported incorrectly for the sale trace at issue.¹²⁶ Furthermore, the record shows that even though Huatong claimed it had corrected this reporting error, its updated sales data continued to exhibit the same errors. Commerce therefore rightfully concluded that the continued reporting error was not a single error, but was rather due to a “double-conversion” methodology used for this export channel.¹²⁷
- Commerce has previously found that a respondent is entitled to only one opportunity to remedy deficiencies in its questionnaire responses before making an AFA call.¹²⁸ In this investigation, Commerce devoted numerous questions to Huatong’s reporting of invoice values for the sales trace at issue; Huatong nevertheless failed to provide adequate and reliable responses.

¹¹⁹ *Id.* (citing *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 11679 (March 16, 2018) (*Power Transformers from Korea*), and accompanying IDM at Comment 4).

¹²⁰ *Id.* at 21 (citing Huatong Case Brief at 46; *Preliminary Determination PDM* at 19; and Southwire Rebuttal Brief on Huatong).

¹²¹ *Id.* at 22 (citing *Preliminary Determination PDM* at 19).

¹²² *Id.* (citing Huatong Case Brief at 47).

¹²³ *Id.* (citing *Ta Chen Stainless Steel Pipe v. United States*, 24 CIT 841 (CIT 2000)).

¹²⁴ *Id.*

¹²⁵ See Southwire Rebuttal Brief for Huatong at 11 and Exhibit 3.

¹²⁶ *Id.* at 7 (citing Huatong Case Brief at 25-26).

¹²⁷ *Id.* (citing *Preliminary Determination PDM* at 17-18).

¹²⁸ *Id.* at 9 (citing, *e.g.*, *Certain Hardwood Plywood Products from People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017), and accompanying IDM at 14-15, stating that “{w}hile {the respondent} now argues that it should have been granted an additional chance to file information regarding its affiliations, the regulations clearly provide ‘one opportunity.’”).

- Legal precedent places the burden on Huatong to create an adequate record,¹²⁹ while Commerce only needs to provide an opportunity for respondents to remedy deficiencies to the extent that is “practicable.”¹³⁰ Huatong’s claim that Commerce should issue additional deficiency questionnaires to follow-up on the same breadth of issues places the burden on Commerce to create an adequate record, which is not required under law.¹³¹
- Commerce correctly found that the deficiencies in Huatong’s responses render the record wholly unreliable, as Huatong’s errors are individually significant, pervasive, and hinder Commerce’s ability to calculate accurate dumping margins.¹³² Specifically, the errors identified by Commerce affect the reliability of Huatong’s reported invoice values, CONNUM coding, and its FOP data, each of which is necessary for accurate dumping margins. Even if Commerce accepts that these errors were typographical or clerical in nature, Commerce practice does not support the conclusion that they are minor.¹³³ Huatong also ignores the cumulative effect of the errors in its questionnaire responses, despite Commerce’s decision to apply AFA because “{the errors} are so pervasive that they become significant in the totality of circumstances and render Huatong’s questionnaire responses unreliable.”¹³⁴

Comment 2b: Cancellation of Verification of Huatong

Huatong’s Case Brief:

- Under section 782(i) of the Act, Commerce shall verify all the information in a final determination in an investigation.¹³⁵ Therefore, even with the alleged “deficiencies” identified by Commerce, it is obligated to verify Huatong’s responses because the submitted information is usable under the statute. Furthermore, Commerce fails to explain in detail why Huatong’s purported deficiencies render its questionnaire responses unusable in calculating an estimated weighted-average dumping margin for Huatong.¹³⁶
- The deficiencies highlighted in the *Preliminary Determination* are non-core issues that do not render Huatong’s entire response unusable or unreliable. Specifically, Commerce only cites one invoice reporting error in Huatong’s sales data; deficient reporting in the weights of aluminum inputs, which only constitute four out of 91 total FOPs, with the difference between the standard and actual aluminum weights being less than nine percent; and CONNUM errors that are limited to 186 sale observations.¹³⁷ When errors are limited to discrete portions of the record, as in this situation, Commerce practice is to conduct verification.¹³⁸ Commerce is further compelled to use a respondent’s

¹²⁹ *Id.* at 10 (citing, e.g., *Sinopec Sichuan Vinylon v. United States*, 30 CIT (CIT 2006) (*Sinopec Sichuan*), at 2041 and 2045).

¹³⁰ *Id.* (citing *Preliminary Determination PDM*, at 15).

¹³¹ *Id.*, at 11.

¹³² *Id.*

¹³³ *Id.*, at 12 (citing, e.g., *CTL from France IDM* at 35).

¹³⁴ *Id.* (citing *Preliminary Determination PDM* at 22; and *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium*, 32 FR 16378 (April 4, 2017)).

¹³⁵ See Huatong Case Brief at 7.

¹³⁶ *Id.* at 48.

¹³⁷ *Id.* at 51-52.

¹³⁸ *Id.* at 52 (citing, e.g., *Certain Quartz Surface Products From the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84

questionnaire responses, even with deficiencies, if they are verifiable.¹³⁹ Furthermore, the CAFC has encouraged the correction and verification of information on the record.¹⁴⁰

- Commerce’s decision to apply total AFA to Huatong based on errors in Huatong’s FOP data is contrary to Commerce practice, in which Commerce has conducted verification and declined to apply total AFA in cases where FOPs for inputs could not be verified.¹⁴¹ In contrast, Commerce has applied total AFA to a respondent when there is “unusable and missing information affecting the majority of FOPs,” which is not the situation for Huatong.¹⁴² Commerce has only declined to conduct verification “as a last resort” and only in situations where “the respondent fails to provide core information cutting across the entire response.”¹⁴³ The CIT has also emphasized the importance of verification, by reasoning that “Commerce does not make a ‘final decision’ in a preliminary determination; it makes a *preliminary* determination.”¹⁴⁴

Encore’s Rebuttal Brief:

- Commerce precedent establishes that “a prerequisite to verification in an investigation is that a selected mandatory respondent submit{s} a substantially complete questionnaire response.”¹⁴⁵ Verification is intended to be a “spot check” of information already on the record,¹⁴⁶ and “not a forum...to resolve issues that have not been resolved in questionnaire responses, especially when these issues pertain to the integrity and accuracy of the totality of the data.”¹⁴⁷ Moreover, verification is not an “opportunity for

FR 23767 (May 23, 2019) (*Quartz from China*), and accompanying IDM at Comment 12, “declining to apply total AFA to first-time respondent with complex corporate structure and an unsophisticated accounting system, because while finding CEP sales database unreliable, it was able to verify respondent’s EP sales and FOPs.”).

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 52-53 (citing, e.g., *Timken U.S. Corp v. United States*, 434 F. 3d. 1345, 1354 (Fed. Cir. 2006) (commenting disapprovingly on {Commerce’s} rejection of information as unverified {in an administrative review} when Commerce could have, but did not, subject that information to verification.”).

¹⁴¹ *Id.* at 48 (citing *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China* 75 FR 57449 (September 21, 2010), and accompanying IDM at Comment 16, where Commerce “declined to apply total AFA to a respondent, even after discovering during verification that the company had incorrectly calculated billet ratios (usage rates for all production inputs) for two out of three cost centers.”).

¹⁴² *Id.* at 49 (citing *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 IDM at Comment 16).

¹⁴³ *Id.* at 50 (citing, e.g., *Certain Stainless Steel Wire Rods from India: Final Results and Partial Rescission of Antidumping Administrative Review*, 68 FR 26288 (May 15, 2003), and accompanying IDM at Comment 1, “cancelling verification after six supplemental questionnaires requesting cost reconciliation and to correct response deficiencies to respondent who continuously failed to provide required cost reconciliation and other information.”).

¹⁴⁴ *Id.* at 53 (emphasis in original) (citing *Shandong Dongfang Bayley Wood Co., Ltd. v. United States*, Slip Op. 17-77 (July 3, 2017); and 19 CFR 351.205(a), “whether the Secretary’s preliminary determination is affirmative or negative, the investigation continues.”).

¹⁴⁵ See *Encore Rebuttal Brief* at 25 (citing *Galvanized Steel Wire From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012) (*Galvanized Wire from China*), and accompanying IDM at Comment 1).

¹⁴⁶ *Id.* (citing *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People’s Republic of China*, 72 FR 9508 (March 2, 2007) (*Certain Activated Carbon from China*), and accompanying IDM at Comment 7).

¹⁴⁷ *Id.* (citing *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016) (*Certain Steel Nails from China*), and accompanying IDM at Comment 4.2).

respondents to argue their position,”¹⁴⁸ nor is it intended to be an “exhaustive examination of the respondent’s business.”¹⁴⁹ The CIT has also found that Commerce is under no duty to conduct a verification if a respondent does “not meet their preliminary burden of creating an adequate record.”¹⁵⁰

- As demonstrated above, the record regarding Huatong’s sale prices, FOP data, and CONNUM coding is seriously deficient. Verification would therefore be “an exercise in futility,” given the deficiencies on the record.¹⁵¹

Southwire’s Rebuttal Brief:

- Huatong argues that Commerce should conduct verification because its responses are “usable and verifiable;” however, as described above, the record shows that the errors in Huatong’s questionnaire responses are both significant (either individually or on a cumulative basis) and inexcusable, given that Commerce provided opportunities for Huatong to correct them.¹⁵²

Commerce’s Position: As a general matter, Commerce disagrees with Huatong’s allegation that Commerce must request information at least twice for Huatong to provide the relevant information. We also disagree with Huatong’s claim that if information submitted in response to a deficiency questionnaire is not provided as requested, or is found to contradict other information on the record, Commerce must issue additional deficiency questionnaires to receive information as originally requested. Section 782(d) of the Act requires that, if Commerce determines that a response to a request for information does not comply with the request, then Commerce shall inform the person submitting a response of the deficiency, and “to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews....” Furthermore, Commerce must conduct its investigation or review under statutory deadlines which require cooperation, accuracy and completeness of the information submitted by a respondent. Huatong’s argument goes beyond what is required by the statute, ignores the respondent’s burden to build an accurate record, and would not permit Commerce to efficiently and effectively administer the antidumping law.

Further, we emphasize that verification is not the appropriate place to collect new information which has been requested already, nor is it intended to resolve issues or argue for positions that should have been addressed in questionnaire responses.¹⁵³ Rather, the purpose of verification is to confirm the accuracy of the information *already on the record* of the investigation.¹⁵⁴ If a respondent has adequately cooperated and accurately and completely provided the information requested by Commerce, then there is no need to collect new information, beyond minor

¹⁴⁸ *Id.* at 25-26 (citing *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) (*OTR Tires from China*), and accompanying IDM at Comment 36).

¹⁴⁹ *Id.* at 26 (citing *Certain Activated Carbon from China* IDM at Comment 7).

¹⁵⁰ *Id.* (citing *Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (*Tianjin Mach.*)).

¹⁵¹ *Id.* at 27.

¹⁵² See Southwire Rebuttal Brief for Huatong at 14 (citing Huatong Case Brief at 48).

¹⁵³ See, e.g., *Certain Steel Nails from China* IDM at Comment 4.2; and *OTR Tires from China* IDM at Comment 36.

¹⁵⁴ See, e.g., *Certain Activated Carbon from China* IDM at Comment 7.

corrections, at verification. The CIT has also found that Commerce is under no duty to conduct a verification if a respondent does “not meet their preliminary burden of creating an adequate record.”¹⁵⁵ As described below, Huatong did not meet its burden of creating an accurate record. We therefore find that our decision not to conduct verification is in accordance with law and Commerce practice.

Commerce agrees with the petitioners that we have met our statutory obligations regarding the various deficiencies in Huatong’s questionnaire responses, as identified in the *Preliminary Determination*,¹⁵⁶ which are sufficient to warrant the application of total AFA, and to determine that verification was inappropriate and unwarranted given the significance of the deficiencies in Huatong’s data. Remedying such significant deficiencies would substantially exceed any measure of minor corrections found during the preparation for verification. Such corrections would relate to significant deficiencies known to exist prior to the *Preliminary Determination*.

We also continue to find these deficiencies so pervasive that, in addition to being significant errors on their own, they render the entirety of Huatong’s responses unreliable when considered in the totality of circumstances. Specifically, we address Huatong’s arguments regarding each deficiency identified in the *Preliminary Determination*, below:

- 1) Failure to correct reporting errors for U.S. price: A sale trace is a collection of documents exchanged between the respondent and its U.S. customer, as well as with intermediaries, such as freight companies, banks, and trading companies. Huatong reported a particular sales channel involving two segments: a sale from Huatong to Customer X, a trading company/reseller, and a resale from Customer X to Huatong’s U.S. customer. Commerce requested that Huatong provide a sale trace including both invoices values for this sales channel,¹⁵⁷ and report both invoice values in its sales data (*i.e.*, the upstream value (Invoice 1) to Customer X, and the downstream value (Invoice 2) to the U.S. customer).¹⁵⁸ Commerce noted that the value reported in the sales data for Invoice 1 did not match the actual upstream invoice.¹⁵⁹ The value in the sales data was higher, leading Commerce to suspect that Huatong had mistakenly reported the value for the downstream sale in the field for the upstream sale. However, in its supplemental questionnaire response, Huatong confirmed that the value was for the upstream sale.¹⁶⁰ Huatong then acknowledged the discrepancy between the Invoice 1 value reported in the sales data and the value on the actual invoice value. It stated it had “corrected” the problem, but instead reported a third value for Invoice 1, which Commerce could not tie to either the upstream invoice or the downstream invoice.¹⁶¹ Huatong did not attempt to

¹⁵⁵ See, *e.g.*, *Tianjin Mach*.

¹⁵⁶ See *Preliminary Determination* PDM at 17-20.

¹⁵⁷ See Initial Questionnaire at A-4; and Huatong’s letter, “Aluminum Wire and Cable from the People’s Republic of China – Section A Supplemental Questionnaire Response,” dated February 2, 2019 (Huatong ASQR), at Question 2, part a.

¹⁵⁸ See Huatong ASQR at Question 2, part 1; and Huatong’s letter, “Aluminum Wire and Cable from the People’s Republic of China – Response to Section A and Section C Supplemental Questionnaire,” dated March 28, 2019 (Huatong ACSQR), at Question 2, part d.

¹⁵⁹ See Huatong ACSQR at Question 4.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 5.

tie the new number to the sale trace package. Subsequently, the petitioners provided their own explanation for why the reported invoice values do not match the sales trace documents, an explanation from which they deduced a systemic or methodological problem with how Huatong was determining the Invoice 2 values (*i.e.*, the value actually paid by U.S. customers) without direct reference to the actual invoices.¹⁶² Commerce then confirmed the petitioners' theory through its own analysis (this "methodological" error is discussed in more detail below).¹⁶³

Huatong argues that Commerce was required to provide an additional opportunity to correct its sales data regarding this deficiency.¹⁶⁴ However, the record reflects that Commerce satisfied its statutory obligation in this regard. Our initial questionnaire instructed Huatong to "report the unit price *recorded on the invoice* for sales shipped and invoiced in whole or in part" in the sales data (emphasis added).¹⁶⁵ As described above, Huatong initially reported invoice values for sales between itself and two companies (Invoice 1) that were involved in certain export sales channels to the United States.¹⁶⁶ We subsequently issued a supplemental question regarding why the total invoice value contained in one of the sales trace documents was different than the amount reported in the sales data, and we requested that Huatong include the commercial invoice value paid by the final U.S. customer (Invoice 2) in its sales data.¹⁶⁷ Huatong acknowledged the reporting mistake and responded that it "double checked the sales database for {these sales} and the U.S. value for {the purchase order} is corrected."¹⁶⁸ However, as noted above, the "corrected" invoice value identified in Huatong's narrative response neither matched the actual invoice value contained in the sale trace documents, nor did it match the supposedly corrected invoice value reported in its updated sales data.¹⁶⁹ Furthermore, the total invoice amount reported for Invoice 2 also does not match the commercial invoice value apparent in Huatong's sales trace documents. Commerce, therefore, met its statutory obligation by giving Huatong an opportunity to fix its reporting mistakes in a supplemental questionnaire response, which Huatong acknowledged but still failed to correct – and, in fact, compounded the discrepancies – in its reported data. The purpose of responding to Commerce's deficiency questions is to resolve reporting issues, not to create additional discrepancies on the record. Given the time limitations of Commerce's investigation, it cannot continually question new discrepancies which arise with each deficiency questionnaire.

¹⁶² See Southwire's letter, "Aluminum Wire and Cable from the People's Republic of China: Southwire Company LLC Pre-Preliminary Comments," dated May 6, 2019 (Southwire Pre-Preliminary Comments), at 4.

¹⁶³ See *Preliminary Determination* PDM at 17-18.

¹⁶⁴ See Huatong Case Brief at 18.

¹⁶⁵ See Initial Questionnaire at C-11; see also Memorandum, "Antidumping Duty Investigation of Aluminum Wire and Cable from the People's Republic of China: Huatong Preliminary Determination Analysis Memo – Public Version," (Huatong Preliminary Analysis Memo) at 1.

¹⁶⁶ For a full discussion on the export channel at issue, see Huatong Preliminary Analysis Memo.

¹⁶⁷ See *Preliminary Determination* PDM at 18.

¹⁶⁸ See Huatong ACSQR at 5.

¹⁶⁹ See *Preliminary Determination* PDM at 18; and Huatong Preliminary Analysis Memo at 1-2.

Huatong also argues that the reporting errors for the invoice values at issue are not a sufficient basis for Commerce to disregard Huatong's entire sales data.¹⁷⁰ However, we find that Huatong's failure to accurately and completely correct these mistakes, despite acknowledging the error and providing additional assurance that it "double checked" the accuracy of its reporting for the sales trace at issue, is an example of the kind of inattentiveness and carelessness that Commerce practice does not condone.¹⁷¹

Furthermore, Huatong's response to our supplemental questionnaire highlighted additional deficiencies in how Huatong reports the invoice values in the sales data (*e.g.*, the "corrected" invoice value in its narrative response neither matched the sales trace nor the updated sales data). As noted in Huatong's Preliminary Analysis Memo, we find it "particularly troubling that when given the opportunity to fix deficiencies in its response or explain discrepancies, Huatong commits additional errors or creates additional discrepancies."¹⁷²

In addition, it is important to consider the significance of the exemplary sales trace included in questionnaire response. The sales trace is intended to provide a template for Commerce to understand how sales through a particular export channel are structured. Based on an examination of the sales trace documents (which typically includes a purchase order or contract, an invoice, amended purchase orders, contracts and invoices, bills of lading and packing lists, payment receipts and bank slips, and accounting documents), Commerce can formulate meaningful questions concerning a respondent's sales through that particular export channel. The exemplary sales trace allows Commerce to evaluate how a particular type of transaction works, rather than having to rely on the respondent's narrative description of its sales process. In this investigation, after two supplemental questionnaires and subsequent responses to them regarding the sales trace at issue,¹⁷³ Commerce still did not have a reliable response or set of documents illustrating this type of transaction. The unreliability of the sales trace documents and Huatong's reporting of this information in its sales data is obvious from the fact that Commerce could not tie the invoice values in the documentation to either Huatong's narrative response or its sales data, which raises questions as to: 1) whether the correct documentation had been submitted; 2) whether additional documentation might have been omitted; and 3) whether Huatong had failed to disclose some sort of adjustment or conversion needed to tie the reported numbers to the documentation (discussed under the "methodological error" below). Thus, this error does not concern one sale, but is rather a failure on Huatong's part to provide necessary information concerning a whole category of sales to the United States.

We, therefore, continue to find that Huatong's failure to correct these reporting errors calls into question the reliability of Huatong's reporting for all invoice values in its sales data.

¹⁷⁰ See Huatong Case Brief at 20-23.

¹⁷¹ See, *e.g.*, *Nippon Steel*.

¹⁷² See Huatong Preliminary Analysis Memo at 2.

¹⁷³ See Huatong ASQR at Question 2; and Huatong ACSQR at Question 4.

- 2) Methodological error for reporting invoice values: Huatong claims that Commerce’s characterization of its flawed methodology in reporting invoice values for a particular sales trace is speculative and only based on comments made by the petitioners, as Commerce did not provide its own analysis regarding this issue.¹⁷⁴ We are, therefore, including a detailed analysis of this issue, which contains proprietary information, in the Huatong Final Analysis Memo.¹⁷⁵ While Huatong claims that the persistent reporting errors do not render all invoice values unreliable for the entire export channel, the methodological pattern is clear from our analysis: the sales trace at issue involves 16 sales observations in Huatong’s sales data, and the same equation is used to derive the individual invoice values for each observation (*i.e.*, the actual commercial invoice value in USD is never reported).¹⁷⁶ We, therefore, continue to find that Huatong’s failure to correct the reporting of invoice values for this particular sales trace (as described above) renders its sales data unreliable, especially regarding the export channel at issue, which accounts for 25 percent of Huatong’s sales data.

Huatong also argues that, because its methodology for reporting invoice values in its sales data was never specifically addressed in a supplemental questionnaire, Commerce should have provided yet another opportunity to address this issue, either through a supplemental questionnaire or at verification. However, it is the burden of respondents to create an accurate record.¹⁷⁷ In this investigation, Huatong’s response to our supplemental questionnaire regarding these invoice values not only failed to correct the errors (as described above), it also highlighted additional deficiencies in how it was reporting the gross values (*i.e.*, the commercial invoice values) of all sales in a particular export channel. Specifically, its response demonstrated that Huatong was not reporting the face value of the commercial invoice; rather, it was applying an equation to report a USD value from a related RMB invoice recorded for all observations within this sale.¹⁷⁸ Its request for an additional opportunity to address this issue effectively places the burden on Commerce to create a complete and accurate record by issuing questionnaire after questionnaire to remedy inadequate supplemental responses that place additional deficiencies on the record. Such a burden is not supported by the statute or practice.¹⁷⁹ Commerce has, therefore, met its burden under section 782(d) of the Act with respect to the original and deficiency questionnaires issued to Huatong.¹⁸⁰ Thus, the application of facts available is still warranted. Moreover, Huatong’s reporting behavior also warrants application of an adverse inference, because it failed to put forth its maximum effort to provide the requested information. Thus, Huatong failed to cooperate to the best of its

¹⁷⁴ See Huatong Case Brief at 25.

¹⁷⁵ See Memorandum, “Antidumping Duty Investigation of Aluminum Wire and Cable from the People’s Republic of China: Huatong Final Determination Analysis Memo,” dated concurrently with this memorandum (Huatong Final Analysis Memo).

¹⁷⁶ *Id.*

¹⁷⁷ See, e.g., *Power Transformers from Korea* IDM at Comment 4; and *Sinopec Sichuan*.

¹⁷⁸ See Huatong Final Analysis Memo at Attachment I.

¹⁷⁹ See, e.g., *Power Transformers from Korea* IDM at Comment 4.

¹⁸⁰ See, e.g., *Maverick Tube Corp.*, stating, “The respondent had already failed to provide the information requested in Commerce’s original questionnaire, and the supplemental questionnaire notified the respondent of that defect. §1677m(d) does not require more.”

ability and has prevented Commerce from completing this investigation with regard to Huatong.

Furthermore, the record does not support Huatong's argument regarding the eight "reference errors" that Commerce took issue with in a supplemental questionnaire.¹⁸¹ By "reference errors," we mean that certain observations in Huatong's sales data did not have an actual invoice value or gross unit price reported; rather, the Excel worksheet showed a calculation error where these values should be.¹⁸² Specifically, we requested that Huatong correct these "reference errors" in its sales data because, as noted in the PDM, Commerce cannot conduct an accurate dumping calculation when there are invalid invoice values (*i.e.*, invoice values that are not reported as actual numbers) in its sales data.¹⁸³ It does not matter that these were "offsetting entries" in Huatong's records; they should never have been included in its sales data, which is only meant to contain observations for each discrete sale to the first unaffiliated customer in the United States (not three entries for each sale at issue, which Huatong admits was the case).¹⁸⁴ We took issue with these reference errors because, in its pre-preliminary comments, Huatong attempted to explain the "methodological error" in its invoice reporting by claiming that deleting the observations with reference errors caused some data to become "unbalanced."¹⁸⁵ Huatong did not elaborate on how exactly the error occurred or what it meant by "unbalanced." As a result, we concluded that by Huatong's own admission, there was a methodological error in its reporting due to the continued existence of "unbalanced" sales data.¹⁸⁶ Huatong now claims that removing these observations in response to our supplemental questionnaire did not, in fact, have any effect on the overall sales data.¹⁸⁷ The inconsistencies in Huatong's explanation regarding this issue is another example of inattentiveness and carelessness in its submissions on the record and continued deficiencies in Huatong's record information.¹⁸⁸

- 3) Failure to provide product specification sheets: Huatong claims that because Commerce's request for specification sheets for two products was first referenced in a supplemental questionnaire, Huatong should be afforded another opportunity to provide the specification sheets at issue.¹⁸⁹ However, the record does not support Huatong's argument. The initial questionnaire instructed Huatong to "report each raw material used to produce a unit of the {subject merchandise}." As noted in the PDM, Commerce requested additional information in the form of specification sheets to check whether Huatong was "correctly reporting the aluminum grade, aluminum weight, and relevant aluminum inputs for its products."¹⁹⁰ In other words, Commerce was requesting the

¹⁸¹ See Huatong's letter, "Aluminum Wire and Cable from the People's Republic of China – Response to Second Section C Supplemental Questionnaire," dated April 10, 2019 (Huatong CSQR), at Question 2, part b.

¹⁸² See Huatong CSQR at Exhibit SC-1.

¹⁸³ See *Preliminary Determination* PDM at 18.

¹⁸⁴ See Huatong Case Brief at 29.

¹⁸⁵ See Huatong's letter, "Aluminum Wire and Cable from the People's Republic of China – Huatong's Rebuttal to Petitioners' Encore and Southwire Pre-Preliminary Comments," dated May 13, 2019, at 4.

¹⁸⁶ See *Preliminary Determination* PDM at 18.

¹⁸⁷ See Huatong Case Brief at 30.

¹⁸⁸ See, e.g., *Nippon Steel*.

¹⁸⁹ *Id.* at 33.

¹⁹⁰ See *Preliminary Determination* PDM at 18.

specification sheets as part of our effort to give Huatong the opportunity to remedy the lack of clarity and possible discrepancies in its reporting of materials consumed in the production of subject merchandise. Because Commerce could not understand Huatong's initial (and deficient) attempt to explain its material consumption, Commerce requested clarification and asked to see specification sheets for the subject merchandise at issue in order to better understand Huatong's explanations. Our request for Huatong to submit the specification sheets on the record was, therefore, entirely related to the reliability of Huatong's initial reporting of raw material usage rates in its FOP data, which Huatong failed to remedy. Therefore, Huatong has failed to accurately and completely report its usage of major input FOPs for the subject merchandise beginning with Commerce's original questionnaire. This issue did not require another, second supplemental questionnaire to further address Huatong's failed attempts to adequately respond to Commerce's request for FOP data.

We also disagree with Huatong's claim that, because it provided specification sheets in response to other questions in the same questionnaire, it was cooperating to the best of its ability.¹⁹¹ As noted in the PDM, this only shows that Huatong "clearly understands the difference between 'specifications' and 'specification sheets;'"¹⁹² its failure to provide the specification sheets for the products at issue is, therefore, another example of Huatong's inattentiveness and carelessness in its responses to Commerce's questions, which we cannot condone.¹⁹³ Furthermore, Huatong's request for an additional opportunity to provide the specification sheets at issue effectively places the burden on Commerce to create an accurate record by issuing questionnaire after questionnaire to remedy inadequate supplemental responses, which is not required by the statute or supported by our practice.¹⁹⁴ As stated above, Huatong appears to operate under the perception that Commerce must ask at least twice for information, including a request for something basic like product specification sheets, before Huatong feels that it is obligated to respond to Commerce's request. Commerce has met its burden under section 782(d) of the Act with respect to the questionnaires issued to Huatong. Thus, the application of facts available is still warranted. Moreover, Huatong's reporting behavior also warrants application of an adverse inference, because it failed to put forth its maximum effort, or even a modicum of effort, to provide the requested information. Without this additional information, Commerce was unable to resolve questions resulting from Huatong's incomplete and questionable reporting of its FOP data in its original section D response. Thus, Huatong has failed to cooperate to the best of its ability.

Huatong also argues that Commerce failed to explain why the absence of these specification sheets is a significant issue that renders Huatong's entire response unreliable.¹⁹⁵ As noted above and in the PDM, we find that the *totality* of deficiencies on the record renders Huatong's entire response unreliable.¹⁹⁶ Regarding this specific deficiency, Huatong's failure to provide the specification sheets at issue has denied

¹⁹¹ See Huatong Case Brief at 32-33.

¹⁹² See *Preliminary Determination* PDM at 18.

¹⁹³ See, e.g., *Nippon Steel*.

¹⁹⁴ See, e.g., *Power Transformers from Korea* IDM at Comment 4.

¹⁹⁵ See Huatong Case Brief at 34.

¹⁹⁶ See, e.g., *Preliminary Determination* PDM at 22.

Commerce the opportunity to 1) check the accuracy of its reported aluminum grade, aluminum weight, and aluminum inputs for the FOPs used to produce the subject merchandise; 2) better understand the characteristics of the inputs; and 3) better understand whether such inputs were properly allocated across the final products. This, in combination with other deficiencies in its FOP reporting (discussed below), renders its usage rates of aluminum input inputs entirely unreliable.

- 4) Failure to explain similar aluminum usage rates for different products: The record clearly demonstrates that all subject merchandise is made from either type 1350 or 8000 aluminum.¹⁹⁷ As noted in the PDM, Commerce found that Huatong failed to respond adequately to a supplemental questionnaire regarding why the mix of the four distinct aluminum input FOPs reported by Huatong in its FOP data are essentially the same across products made of different aluminum types (*i.e.* series 1350 and 8000).¹⁹⁸ Huatong claims that when its responses to other questions in the same questionnaire are considered, along with its response to another supplemental questionnaire, its answer is entirely responsive to the question at issue.¹⁹⁹ Specifically, it argues that because Huatong: 1) does not break out aluminum input FOPs by type (as noted in a separate questionnaire); and 2) was “discussing the weight of conductors as the basis for the difference in aluminum weights” throughout its response (in the same questionnaire), Commerce had the necessary information to deduce why its FOP reporting for the two products at issue was the same. However, it is unreasonable to expect Commerce to piece together answers in the manner Huatong suggests. It is incumbent upon a respondent to clearly and completely explain its basic cost reporting methodology. A respondent cannot simply submit data on the record without a clear narrative explanation regarding how the numbers were calculated, especially when it comes to something as important as determining product-specific costs, and expect Commerce to piece an answer together from information scattered across the record. In this instance, Huatong failed to provide an adequate narrative explanation in its initial questionnaire response, and then failed to reasonably answer the related deficiency question to clarify its inadequate original response.

Huatong also claims that Commerce’s question was ambiguous and, as a result, warrants an additional opportunity to respond.²⁰⁰ However, we continue to find that the question at issue was clear in its request for an explanation regarding the accuracy of Huatong’s aluminum inputs. Specifically, we asked: “Given that single rated Monmouth is made using 1350 aluminum alloy and triple rated Monmouth is made from 8000 series aluminum conductor, please *explain why* the mix of {four} aluminum FOP usage rates reported in Exhibit D-2...for the single-rated and triple-rated Monmouth products are essentially the same” (emphasis added).²⁰¹ Huatong’s deficient response, which clearly

¹⁹⁷ See Product Characteristics Memo at 3, instructing respondents to report “Aluminum Conductor Alloy Type” in field number 3.1 as “01” for Aluminum Alloy 1350 and “03” for Aluminum Alloy 8000 Series. Huatong did not report any products as “02” for Aluminum Alloy 6201 or “04” for Other.

¹⁹⁸ See *Preliminary Determination* PDM at 18-19.

¹⁹⁹ See Huatong Case Brief at 36.

²⁰⁰ See Huatong Case Brief at 37.

²⁰¹ See Huatong’s letter, “Aluminum Wire and Cable from the People’s Republic of China – Response to Section D Supplemental Questionnaire,” dated April 15, 2019 (Huatong DSQR), at 11.

did not address the question, further hindered Commerce’s ability to check the accuracy of its reported aluminum FOP usage rates and, as a result, calls into question the reliability of its FOP data. Huatong’s reporting behavior, therefore, warrants application of an adverse inference, because it failed to put forth its maximum effort to provide the requested information. Thus, Huatong failed to cooperate to the best of its ability to provide Commerce with accurate and complete information.

- 5) Unreliable reporting of aluminum weight: Huatong reported both the aluminum weight contained in the final product and the weight of aluminum input FOPs used to produce each product.²⁰² In a supplemental questionnaire, we requested that Huatong provide the equation used to calculate the final aluminum weights for two products.²⁰³ Huatong’s response was entirely deficient, as it did not provide an explanation regarding a “coefficient” used in the equation, nor did the equation actually generate results equal to the aluminum weights reported in its sales data.²⁰⁴ Huatong argues that because Commerce only asked for the equation, it was not required to provide an explanation for the coefficient used. However, we find it reasonable to expect that when Commerce specifically requests an equation from a respondent, an adequate response would include an explanation regarding all variables and parameters in the equation (*i.e.*, including all coefficients used). Huatong also does not address how or why the actual equations it provided do not match the final aluminum weights at issue. The purpose of soliciting the equation was to help Commerce understand how the reported amount of aluminum in a final product is determined and why that amount is higher than the reported amount of aluminum consumed during production. When the equation provided in response to the question generates a result that does not match the value reported (*i.e.*, the aluminum weight that Commerce is trying to understand), the formula not only fails to help clarify Huatong’s methodology, it also indicates that something is incorrect with how Huatong is calculating the aluminum weight of its finished products and/or the amount of aluminum FOPs consumed in the production of the same finished products. This is another example of Huatong’s supplemental responses creating additional deficiencies in Huatong reporting. Huatong’s reporting behavior, therefore, warrants application of an adverse inference, because it failed to put forth its maximum effort to provide the requested information. Thus, Huatong failed to cooperate to the best of its ability.

Concerning the same discrepancy, Commerce’s supplemental questionnaire also included a question requesting that Huatong “*explain why* the total aluminum FOP usage rates... is less than the ALUMWT {*i.e.*, aluminum weight reported for the final product}” for a certain CONNUM and product code pairing (emphasis added).²⁰⁵ Although Huatong explained that the aluminum weight reported for the final product was calculated using a “standard weight,”²⁰⁶ as noted in the *Preliminary Determination*, we found that Huatong frequently reported a “standard weight” that is higher than the reported actual aluminum

²⁰² See *Preliminary Determination* PDM at 19.

²⁰³ See Huatong DSQR at 4 (Question 6, Part b.).

²⁰⁴ See *Preliminary Determination* PDM at 19; and Huatong Prelim Analysis Memo at 2.

²⁰⁵ See Huatong DSQR at 7.

²⁰⁶ *Id.*

usage weights.²⁰⁷ Huatong argues that because the issue regarding its standard weight was raised for the first time in a supplemental questionnaire, it should be afforded an additional opportunity to address the question. However, the initial questionnaire clearly instructed Huatong to “report each raw material used to produce a unit of the {subject merchandise}.”²⁰⁸ Because we noted discrepancies between the reported finished aluminum weight and the (lower) consumed aluminum weights, we reasonably sought additional information by asking Huatong to explain one notable example of a difference between these reported weights to ensure that Huatong had properly reported the per-unit consumption of aluminum input FOPs as originally requested. Thus, the question sought to remedy a deficiency in the original questionnaire response, *i.e.*, unexplained discrepancies between the aluminum weights of individual final products and the weights of the inputs used to produce each of those products, specifically regarding why the final weight was higher than the input weight. We, therefore, met our statutory obligation under section 782(d) of the Act by issuing a supplemental questionnaire to Huatong regarding this issue, to which Huatong provided an inadequate and similarly deficient response. Thus, the application of facts available is still warranted. Huatong’s request for an additional opportunity to respond to this issue effectively places the burden on Commerce to create an accurate record by issuing questionnaire after questionnaire to mitigate inadequate supplemental responses, which is not supported by our statute or practice.²⁰⁹ Huatong’s reporting behavior therefore warrants application of an adverse inference because it failed to put forth its maximum effort to provide the requested information. Thus, Huatong failed to cooperate to the best of its ability.

Finally, Huatong argues that Commerce’s calculations regarding the difference between its reported standard and actual aluminum weights do not include an additional aluminum input (*i.e.*, aluminum wrapping) for 17 products; it claims that when this is considered, the discrepancies between reported aluminum weights are “greatly reduced” for these products.²¹⁰ Although Huatong does not provide any supporting data for this claim, we have included updated calculations that include the aluminum wrapping weight for these products.²¹¹ Our analysis continues to show that the vast majority of CONNUMs (*i.e.*, 96 percent) have a higher “standard weight” when compared to the reported aluminum usage rate. Huatong failed to explain this discrepancy in its supplemental questionnaire response, which, as noted in the Huatong Preliminary Analysis Memo, “raises the possibility that Huatong has not reported all aluminum consumption, that the product dimensions are incorrect, or that Huatong has otherwise erred in determining aluminum FOPs (usage rates) and the overall reliability of Huatong’s FOP database.”²¹²

²⁰⁷ See *Preliminary Determination* PDM at 19. As noted in the PDM, Commerce does not expect standard weights (which are expected or theoretical weights) to precisely match actual weights, but our concern was the frequency with which the standard weights exceeded the actual weights.

²⁰⁸ See *Initial Questionnaire* at D-6.

²⁰⁹ See, e.g., *Power Transformers from Korea* IDM at Comment 4.

²¹⁰ See *Huatong Case Brief* at 44.

²¹¹ See *Huatong Final Analysis Memo*.

²¹² See *Huatong Preliminary Analysis Memo* at 3.

- 6) Failure to match CONNUMs with reported physical characteristics: Commerce’s initial questionnaire requested Huatong to “assign a control number to each unique product reported in the...sales data file,”²¹³ by following specific instructions regarding how to construct unique CONNUMs from various product characteristics.²¹⁴ In a supplemental questionnaire, Commerce identified 136 CONNUMs in Huatong’s sales data that did not match the reported physical characteristics, and requested that Huatong correct these errors and ensure that there is one unique set of physical characteristics per CONNUM.²¹⁵

For example, if a product has three physical characteristics, with the first characteristic coded as 1, the second coded as 2, and the third coded as 3, Commerce would expect the CONNUM to be 123. In other words, the CONNUM is a concatenation of the codes reported for each of the physical characteristics. In Huatong’s response, however, what we see is the equivalent of CONNUMs coded as 123, when the physical characteristics are coded as 1, 3, and 4, or 1, 5, and 4. If Commerce knew with certainty which set of data was correct, we could potentially correct the issue. For example, if we knew the physical characteristic codes of 1, 3, and 4, were correct, we might revise the CONNUM to 134. Likewise, if we knew that a CONNUM coded as 123 was correct, we might revise the physical characteristic codes ourselves to 1, 2, and 3. However, there is no information on the record that clearly indicates which of the contradictory data properly describes the product.

We preliminarily found that Huatong failed to correct these errors in its supplemental response.²¹⁶ Huatong admits that due to “typing and clerical mistakes,” it inadvertently failed to correct the reporting for two CONNUM fields (*i.e.*, Field 3.8 and Field 3.9) for the products at issue.²¹⁷ However, it argues that Commerce should accept these mistakes as minor corrections, as they are insignificant (*i.e.*, they only affect four percent of its sales data, not 25 percent, as alleged in the *Preliminary Determination*).²¹⁸ Huatong also argues that Commerce did not explain how or why these CONNUM reporting errors have resulted in an inability to calculate an estimated weighted-average dumping margin.

Huatong’s allegation that these CONNUM and physical characteristic reporting errors are minor is not supported by the record, which shows that 25 percent of Huatong’s sales continue to have reported CONNUMs with more than one set of associated physical characteristics.²¹⁹ Accurate CONNUM reporting is the basis of any dumping margin calculation, as it serves as the concatenation of the significant physical characteristics that connect a respondent’s sales data with its input reporting and, as a result, affects our ability to match that sale price with the corresponding cost of production and normal value for the subject merchandise. For example, if an observation in the sales data is incorrectly coded as being made of bronze instead of gold, Commerce will end up

²¹³ See Initial Questionnaire at C-5.

²¹⁴ See Product Characteristics Memo.

²¹⁵ See Huatong CSQR at 1.

²¹⁶ See *Preliminary Determination* PDM at 19.

²¹⁷ See Huatong Case Brief at 46.

²¹⁸ *Id.*; see also *Preliminary Determination* PDM at 19.

²¹⁹ See Huatong Final Analysis Memo.

comparing that sale price to the cheaper bronze-based normal value instead of the more costly gold-based normal value. These CONNUM errors are, therefore, major, fundamental deficiencies on the record that hinder our ability to calculate accurate dumping margins for Huatong's reported U.S. sales. Furthermore, our question regarding this issue explicitly detailed the specific errors: not only did we list two examples of sales where the last three physical characteristics (including Field 3.8 and Field 3.9) did not match the reported CONNUM, we also provided an Excel worksheet listing all the CONNUMs and associated physical characteristics at issue.²²⁰ Now, Huatong admits that there continue to be reporting errors in Field 3.8 and Field 3.9, despite the opportunity we provided to correct them. This is, therefore, another example of the kind of inattentiveness and carelessness in Huatong's responses, where Huatong has failed to extend its maximum effort to provide complete and accurate information. Commerce cannot condone such actions.²²¹ Commerce has, therefore, met its burden under section 782(d) of the Act with respect to the questionnaires issued to Huatong. Thus, the application of facts available is still required. Moreover, Huatong's reporting behavior also warrants application of an adverse inference, because it failed to put forth its maximum effort to provide the requested information. Thus, Huatong failed to cooperate to the best of its ability.

- 7) Failure to match reported physical characteristics with product specifications: In a supplemental questionnaire, Commerce requested that Huatong fix a reporting error for the largest conductor size physical characteristic in a CONNUM/product code pairing.²²² However, as noted in the *Preliminary Determination*, there continue to be 250 observations with similar CONNUM coding errors in Huatong's sales data.²²³ Huatong claims that, because it was responding to a supplemental Section D questionnaire, there was "no direct instruction" from Commerce to correct these CONNUM errors in updated sales data submitted in response to a supplemental Section C questionnaire.²²⁴ It also argues that these errors are easily remedied with another supplemental questionnaire. However, the record clearly shows that Huatong acknowledged the CONNUMs at issue "should be revised,"²²⁵ but it failed to correct this mistake in its updated sales data. Huatong's claim that it was not required to correct the same error in subsequent supplemental questionnaire responses demonstrates a patent, conscious failure to cooperate in this investigation. The record shows that the errors in Huatong's CONNUM reporting were clear to both Commerce and Huatong. As a result, we are not persuaded by Huatong's claim that it was unaware that it should have fixed this mistake in its subsequent Section C deficiency response.

Huatong's failure to correct this error in subsequent submissions of its sales data is another example of the kind of inattentiveness and carelessness in Huatong's responses

²²⁰ See Huatong's letter, "Aluminum Wire and Cable from the People's Republic of China – Huatong Response to Third Section C Supplemental Questionnaire," dated May 1, 2019 (Huatong CSQR) at 1.

²²¹ See, e.g., *Nippon Steel*.

²²² See Huatong DSQR at 6 (Question 7).

²²³ See *Preliminary Determination* PDM at 19-20.

²²⁴ See Huatong Case Brief at 47-48.

²²⁵ See Huatong DSQR at 7.

that Commerce cannot condone.²²⁶ Commerce has, therefore, met its burden under section 782(d) of the Act with respect to the questionnaires issued to Huatong. Thus, the application of facts available is required, because necessary information is missing from the record. Moreover, Huatong's reporting behavior also warrants application of an adverse inference because it failed to put forth its maximum effort to provide the requested information in order to create a complete and accurate record. Thus, Huatong failed to cooperate to the best of its ability and impeded Commerce's ability to calculate Huatong's estimated weighted-average dumping margin. Furthermore, its request for an additional opportunity to address this issue effectively places the burden on Commerce to create an accurate record by issuing deficiency questionnaire after deficiency questionnaire to mitigate inadequate supplemental responses, which is not supported by our statute or practice.²²⁷

Based on the deficiencies described above, we continue to determine that, in accordance with section 776(a)(1) of the Act, the reliance on the facts otherwise available is required because necessary information from Huatong is not available on the record.

We also find that Huatong's failure to address the above issues prevents Commerce from: (1) determining dumping margins based on accurate invoice values; (2) confirming that FOP usage rates were correctly calculated; and (3) confirming that inputs were allocated among correctly defined CONNUMs. In addition, the number of errors and their pervasiveness calls into question the overall reliability of Huatong's response. Commerce has met its statutory responsibility in this investigation by identifying deficiencies in the respondent's submissions and providing Huatong several opportunities – including supplemental questionnaires as necessary about various issues and numerous deadline extensions – to remedy or adequately explain the deficiencies.

We find that Huatong's errors, as well as its failure to address them through supplemental questionnaires, are so pervasive that they become significant in the totality of circumstances and render Huatong's questionnaire responses unreliable. Because an accurate and reliable FOP data is necessary to determine the weighted-average dumping margin for a respondent, we cannot calculate a weighted-average dumping margin for Huatong using the information it reported. Commerce, therefore, continues to find that Huatong's failure to cooperate to the best of its ability warrants the application of facts available with an adverse inference, pursuant to section 776(b) of the Act.

Comment 3: Huatong's Eligibility for a Separate Rate

Huatong's Case Brief:

- In its *Preliminary Determination*, Commerce found that Huatong was ineligible for a separate rate, because of its purported failure to provide accurate pricing data.²²⁸ However, as detailed above, Commerce's conclusion that Huatong's entire sales data are unreliable is only based on reporting discrepancies for one sales trace. Commerce's conclusion also only relates to one observation of U.S. sales.

²²⁶ See, e.g., *Nippon Steel*.

²²⁷ See, e.g., *Power Transformers from Korea* IDM at Comment 4

²²⁸ See *Huatong Case Brief* at 55 (citing *Preliminary Determination* PDM at 13).

- Commerce’s finding that it cannot analyze whether there is an absence of *de facto* government control over Huatong’s export activities is not supported by the record and requires a verification to confirm whether the data at issue is correct. Commerce should, therefore, assign Huatong a separate rate because there is available information on the record.²²⁹

Encore’s Rebuttal Brief:

- Huatong’s argument that it is eligible for a separate rate because: 1) its pricing data is accurate; and 2) if its pricing data is deficient, these errors only relate to sales made through trading companies, is not supported by the law. The CAFC has “consistently upheld Commerce’s use of a rebuttal presumption of state control...unless {entities} demonstrate its eligibility for a separate rate.”²³⁰ In this investigation, Huatong has failed to demonstrate its eligibility for a separate rate given Commerce’s finding that its sales data are unreliable.²³¹
- In its *Preliminary Determination*, Commerce addressed Huatong’s argument that any errors in its sales data only affect sales made through trading companies by noting that the price discrepancies at issue relate to “Huatong’s inability to accurately indicate how prices may or may not change while the merchandise proceeds through a chain of transactions as it is exported from China.”²³² Commerce, therefore, should continue to deny Huatong a separate rate based on the evidence that Huatong’s sales prices are generally unreliable.

Southwire’s Rebuttal Brief:

- Commerce correctly rejected Huatong’s separate rate application due to insufficient information on the record for the purposes of determining whether *de facto* government control exists. Legal precedent places the burden on Huatong to prove the absence of *de facto* control, which Huatong failed to provide due to its unreliable pricing data. Specifically, Commerce has previously denied separate rate status when applicants have failed to meet the burden of affirmatively demonstrating an absence of *de facto* government control because their books and record were unreliable, “which also made the responses that relied on such books and records unacceptable as ‘accurate factual statements.’”²³³ In this investigation, Commerce has similarly found that the extent of the unreliable information submitted by Huatong impinges on Commerce’s ability to confirm whether there is an absence of *de facto* control.²³⁴ There is, therefore, no reason for Commerce to deviate from its practice by assigning a separate rate to Huatong.

Commerce Position: We agree with the petitioners that there continues to be insufficient information on the record for the purposes of determining whether *de facto* government control

²²⁹ *Id.*

²³⁰ See *Encore Rebuttal Brief* at 24 (citing *Hubbell Power Sys. V. United States*, 365 F. Supp. 3d 1302, 1306 (CIT 2019); and *Diamond Sawblades Mfrs. Coal. v. United States*, 866 F. 3d 1304, 1310-1311 (Fed. Cir. 2017)).

²³¹ *Id.* (citing *Preliminary Determination PDM* at 13).

²³² *Id.* at 25 (citing *Preliminary Determination PDM* at 13).

²³³ See *Southwire Rebuttal Brief on Huatong* at 15 (citing *Quartz from China IDM* at Comment 15).

²³⁴ *Id.* (citing *Preliminary Determination PDM* at 13).

exists and, as a result, whether Huatong is eligible for a separate rate. As noted in the *Preliminary Determination*, Commerce maintains a rebuttable presumption that all companies within an NME country are subject to government control, and, therefore, should be assessed a single weighted-average dumping margin.²³⁵ It is Commerce's policy to assign all exporters of subject merchandise in an NME country a single rate unless an exporter can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*).²³⁶ Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*²³⁷ and further developed in *Silicon Carbide*.²³⁸ According to this separate rate test, Commerce will assign a separate rate in an NME proceeding if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If Commerce determines that a company is wholly foreign-owned, the separate rate analysis is not necessary to determine whether that company is independent from government control and, therefore, eligible for a separate rate.

As described above, Commerce is continuing to find that the totality of the deficiencies in Huatong's questionnaire responses on the record calls into question the reliability of its responses and books and records in their entirety. Specifically, as noted in the *Preliminary Determination*, Huatong's failure to provide accurate pricing data is relevant to the *de facto* criteria discussed above.²³⁹ Commerce must first be able to establish what the correct sales prices are before it can attempt to verify or otherwise corroborate whether such prices are set independently of the GOC or whether the full amount of the relevant proceeds are retained by Huatong. Notably, the price discrepancies involve sales through trading companies and Huatong's inability to accurately indicate how such prices may or may not change while the merchandise proceeds through a chain of transactions as it is exported from China. Furthermore, the extent of the unreliability of record evidence impinges on our analysis of whether there is an absence of *de facto* government control of Huatong's export activities.

Furthermore, Commerce has previously denied separate rate status in situations where Commerce finds that a respondent's books and records are unreliable, as the submitted responses which rely on these accounting records for support (*i.e.*, the separate rate application) cannot be accepted as accurate factual statements.²⁴⁰ Specifically, under the *de facto* separate rates analysis, the majority of the criteria can be, in some way or another, supported (or refuted) by data recorded in a company's accounting system. A company's accounting system is the cornerstone of Commerce's *de facto* separate rates analysis, and a company must satisfy all the

²³⁵ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

²³⁶ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

²³⁷ *Id.*

²³⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

²³⁹ See *Preliminary Determination PDM* at 13.

²⁴⁰ See *Quartz from China* IDM at Comment 15 (citing *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) (*Hydro Blends from China*), and accompanying IDM at Comment 14).

criteria in order to demonstrate eligibility for a separate rate.²⁴¹ We continue to find that the significant deficiencies in the record-keeping practices of Huatong render its accounting systems so unreliable that the information recorded in these systems is unusable for a separate rate analysis. We also continue to find that we cannot conclude that Huatong sets its own price or retains export revenue.

We, therefore, continue to find that Huatong is not eligible for a separate rate, and, as a result, it treated it as part of the China-wide entity, in accordance with Commerce practice.

Comment 4: Application of Total AFA to Silin²⁴²

Comment 4a: Reliability of Silin's Sales Data and Sales Reconciliation

Silin's Case Brief:

- Commerce found that Silin's books and records were not reliable due to Silin's inability to provide a complete sales reconciliation.²⁴³ However, there is no basis to find that Silin failed to act to the best of its ability by merely presenting its books and records as they are maintained in the course of business. Specifically, Silin explained that the "minor" discrepancies in the sales reconciliation on the record were due to the pricing policy between Silin and its U.S. customer.²⁴⁴
- Silin's books and records comply with China's generally accepted accounting principles (GAAP), as evidenced by Silin's audited financial reports on the record.²⁴⁵ There is, therefore, no basis for Commerce to conclude that Silin's books records are improperly maintained, incomplete, or entirely unusable. Furthermore, Commerce's finding challenges the auditing ability of China's GAAP.²⁴⁶
- The sales revenue recorded in Silin's accounting system is based on the value contained in the VAT/proforma invoices, which are determined by the average aluminum price of the preceding month.²⁴⁷ Likewise, the commercial invoice value is based on the average aluminum price of the month preceding when the invoice was issued. Accordingly, the sales invoice value may differ from the sales revenue recorded by Silin when the VAT/proforma invoices and the commercial invoice are issued in different months. Silin provided sales trace and aluminum pricing documents to support this explanation.²⁴⁸
- Commerce takes Silin's statement that its gross revenue recorded in commercial invoices cannot be reconciled to the gross revenue booked in Silin's accounting system out of

²⁴¹ *Id.*

²⁴² We note that Silin and the petitioners' briefs combined the discussion of the application of total AFA with other issues in their briefs and rebuttal briefs. We therefore do not include a separate discussion of the application of total AFA here.

²⁴³ See Silin Case Brief at 2; see also *Preliminary Determination PDM* at 13 and 20-21.

²⁴⁴ See Silin Case Brief at 2 (citing, e.g., Silin's letter, "Aluminum Wire and Cable from the People's Republic of China – Section C Questionnaire Response," dated February 5, 2019 (Silin CQR), at 21-22 and Exhibit C-11).

²⁴⁵ *Id.* at 3 (citing Silin's letter, "Aluminum Wire and Cable from the People's Republic of China – Section A Response," dated December 4, 2018).

²⁴⁶ *Id.* at 3.

²⁴⁷ *Id.*

²⁴⁸ *Id.* (citing Silin's letter, "Aluminum Wire and Cable from the People's Republic of China – Supplemental Sections A & C Questionnaire Response," dated April 2, 2019 (Silin SQR)).

context in the *Preliminary Determination*.²⁴⁹ Understood properly, Silin was merely observing the obvious point that although the two revenue values do not exactly match, the discrepancy is “minor” and “immaterial.” Commerce’s conclusion that Silin’s reconciliation and explanation of minor discrepancies were “wholly inadequate” is therefore an overstatement.²⁵⁰

- Although the *Preliminary Determination* states that “Silin failed to provide a complete U.S. sales reconciliation,” this is not the situation.²⁵¹ In fact, Silin provided a full sales reconciliation that was based on the VAT/proforma invoices value, not the commercial invoice.²⁵² Commerce, therefore, had all the necessary information to demonstrate the accuracy of the quantity and value of subject merchandise reported in Silin’s sales data, but simply refused to do so because Silin’s accounting system did not report invoices in the manner that Commerce preferred (*i.e.*, from commercial invoices).²⁵³
- Commerce also misinterpreted Silin’s questionnaire responses when it stated that Silin provided “inconsistent” explanations for the differences between VAT/proforma and commercial invoice values.²⁵⁴ In fact, Silin consistently explained that these differences were due to the average aluminum price of the month preceding each of these invoices. Although Silin also discovered some “typographical errors” for certain transactions, these discrepancies are minor for the sales data as a whole.²⁵⁵ Because Commerce and the respondents’ understanding of data in a proceeding evolves through the question and answer process, Commerce’s reliance on AFA for these discrepancies indicates that Commerce will apply AFA in any proceeding “where an understanding is deepened with new meaning as the proceeding progresses.”²⁵⁶
- Silin acted to the best of its ability in this investigation, which Commerce has previously found “does not require perfection” in questionnaire responses.²⁵⁷ As Commerce is aware, parties make minor corrections discovered during an investigation. These minor corrections are not grounds to doubt the integrity of Silin’s reporting. CONNUM construction is the type of exercise performed by Commerce during verification.

Encore’s Rebuttal Brief:

- Commerce was prevented from establishing whether Silin correctly reported its U.S. sale prices during the POI due to Silin’s failure to provide a complete sales reconciliation and its failure to adequately explain inconsistencies in its reporting.²⁵⁸ Silin merely repeats the same arguments that Commerce has already considered and rejected in its *Preliminary Determination* (*i.e.*, that the sales invoice value differs from its reported sales revenue due to monthly fluctuations in aluminum price).

²⁴⁹ *Id.* at 4; *see also Preliminary Determination* PDM at 20; and Silin SQR at 9-10.

²⁵⁰ *See* Silin Case Brief at 4 (citing Memorandum, “Antidumping Duty Investigation of Aluminum Wire and Cable from the People’s Republic of China: Silin Preliminary Determination Analysis Memo,” Public Version (Silin Preliminary Analysis Memo), at 2).

²⁵¹ *Id.* at 4 (citing *Preliminary Determination* PDM at 20-21).

²⁵² *Id.* at 5 (citing Silin CQR).

²⁵³ *Id.* at 5.

²⁵⁴ *Id.*; *see also* Silin Preliminary Analysis Memo at 2.

²⁵⁵ *See* Silin Case Brief at 6.

²⁵⁶ *Id.*

²⁵⁷ *Id.* (citing *Nippon Steel*).

²⁵⁸ *See* Encore Rebuttal Brief at 29.

- Silin fails to address why some invoices issued in the same month contain discrepancies that fall outside of its explanation regarding monthly aluminum prices.²⁵⁹ Silin explained that these discrepancies were due to typing errors in a supplemental questionnaire, and it is not suggesting that its response was consistent with prior statements; rather, Silin claims that the typing errors are merely a different explanation for a different discrepancy.²⁶⁰ However, this is incorrect; in fact, Silin was specifically responding to Commerce’s request for an explanation regarding differences between the VAT/proforma and commercial invoice values (*i.e.*, the same issue).²⁶¹
- The CIT has previously held that a respondent’s failure to provide a sales reconciliation is sufficient grounds for applying AFA.²⁶² Contrary to Silin’s allegation, Commerce did not request that the respondent to “keep its books and records in a certain way;”²⁶³ rather, Commerce requested that Silin reconcile “the booking value and the sales revenue in Silin’s accounting system to the total gross sales revenue reported in the U.S. sales database.”²⁶⁴ Silin has therefore provided no reason to alter Commerce’s *Preliminary Determination*.

Southwire’s Rebuttal Brief:

- The CAFC has found that in determining whether an adverse inference is warranted, Commerce needs only to conclude that the respondent “fail{ed} to put forth maximum efforts to investigate and obtain the request information from its records.”²⁶⁵ Commerce is not required to judge the respondent’s intention, as “the statute does not contain an intent element.”²⁶⁶ In this investigation, Silin failed to establish a link between its reported gross unit price for each transaction (*i.e.*, the price based on the commercial invoice, which is the true value of concern in dumping calculations) and the company’s accounting system, despite several requests from Commerce to do so.²⁶⁷ Commerce has previously found that “an incomplete {sales} reconciliation is not a reconciliation” for purposes of a dumping analysis,²⁶⁸ and has applied total AFA in these instances.²⁶⁹
- There are additional concerns regarding the reliability of information submitted by Southwire, which make a complete sales reconciliation all the more important in this investigation: 1) the sales revenue recorded in Silin’s accounting system is different from the revenue actually received from its U.S. customer; 2) Silin does not track or reconcile the difference between recorded and actual revenues; and 3) the recorded revenue is

²⁵⁹ *Id.* at 29.

²⁶⁰ *Id.* (citing Silin Case Brief at 2).

²⁶¹ *Id.*

²⁶² *Id.* at 30 (citing *Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349, 1357-58 (Ct. Int’l Trade 2009)).

²⁶³ *Id.*

²⁶⁴ *Id.* (citing *Preliminary Determination PDM* at 20).

²⁶⁵ See *Southwire Rebuttal Brief on Silin* at 2 (citing *Nippon Steel* at 1373, 1375).

²⁶⁶ *Id.* (citing *Nippon Steel* at 1383).

²⁶⁷ *Id.* at 4.

²⁶⁸ *Id.* at 5 (citing *Certain Steel Nails From Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018), and accompanying IDM at Comment 2).

²⁶⁹ *Id.* (citing, *e.g.*, *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 IDM at Comment 6).

inaccurate due to typing errors in the reporting of VAT/proforma invoices.²⁷⁰ Commerce has previously found that these facts are sufficient to establish Silin’s “practice of recording inaccurate information in its accounting system.”²⁷¹

- Commerce correctly concluded that the deficiencies in Silin’s sales data are not “minor.”²⁷² Because Commerce conducts its dumping analysis on a transaction-by-transaction basis, it has previously found that even small errors at a macro level can render reported information unreliable.²⁷³ Whether Silin’s financial records are compiled at a macro level in accordance with Chinese GAAP has no bearing on Commerce’s finding that Silin’s sales reconciliation is deficient.²⁷⁴ Record evidence demonstrates that the discrepancy between the VAT/proforma invoice and the commercial invoice values are significant at the transaction (*i.e.*, micro) level and affects a large number of sales.²⁷⁵
- Silin’s argument that Commerce did not allow Silin to “perfect” its sales data is not based on facts on the record.²⁷⁶ In a supplemental questionnaire, Silin gave an incomplete response regarding the reported differences between VAT/proforma and commercial invoice values (*i.e.*, that differences were due to the fluctuation in monthly aluminum prices). Silin only discloses that these differences may be also due to typing errors in a subsequent questionnaire, which was extremely late in the investigation.²⁷⁷

Comment 4b: Reliability of Silin’s Reported CONNUMs

Silin’s Case Brief:

- Commerce also cited purportedly incorrect conductor sizes reported for 21 CONNUMs, which account for 34 percent of Silin’s total sales to the United States during the POR, as a secondary reason for applying total AFA to Silin in its *Preliminary Determination*.²⁷⁸ However, Commerce overstates the impact of this issue, as this is an easily remedied adjustment. Specifically, the way Silin reported conductor sizes within these CONNUMs is not an error, but rather due to how Silin converted its measurement of these sizes to fit the CONNUM instructions.²⁷⁹ Minor CONNUM mistakes are not unusual, and Commerce has not applied facts available or AFA due to similar issues in the past.²⁸⁰

²⁷⁰ *Id.* at 6 (citing Silin’s letter, “Aluminum Wire and Cable from the People’s Republic of China– Second Supplemental Section C Questionnaire Response,” dated May 1, 2019 (Silin Second CSQR), at Question 1, part c., at 3-4 and Exhibit 2SC-2).

²⁷¹ *Id.* (citing *Hydro Blends from China* IDM at Comment 13).

²⁷² See Southwire Rebuttal Brief on Silin at 1 (citing Silin Case Brief at 4).

²⁷³ *Id.* at 7 (citing *Hydro Blends from China* IDM at Comment 13, “{Commerce} performs its dumping analysis on a micro level. Therefore, while the overall magnitude of {the respondent’s} price differences is small, the fact that {the respondent} could not establish the accuracy of its U.S. sales prices means that {Commerce} cannot rely on {the respondent’s} reported information.”).

²⁷⁴ *Id.* at 7-8 (citing *Hydro Blends from China* IDM at Comment 13).

²⁷⁵ *Id.* at 8.

²⁷⁶ *Id.* at 9.

²⁷⁷ *Id.* (citing Silin Second CSQR at 2-4 and Exhibit 2SC-2).

²⁷⁸ *Id.* at 6 (citing *Preliminary Determination* PDM at 21).

²⁷⁹ *Id.* at 7.

²⁸⁰ *Id.* at 7 (citing, *e.g.*, *Drawn Stainless Steel Sinks From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (November 10, 2015) (*Drawn Steel Sinks from China*)).

Encore's Rebuttal Brief:

- In its response to a supplemental questionnaire, Silin claimed to have addressed the CONNUM coding errors identified by Commerce; however, it failed to actually correct any of the errors in its sales data.²⁸¹ Thus, regardless of the reason for the error in Silin's CONNUM coding, Silin failed to correct the deficiencies after given the opportunity to do so.
- Silin claims that Commerce allows parties to fix minor CONNUM coding errors by citing an instance in which CONNUM revisions were discovered and corrected during verification.²⁸² However, "verification is not a forum for Commerce to resolve issues that have not been resolved in questionnaire responses, especially when the issues pertain to the integrity and accuracy of the totality of the data."²⁸³ According, Silin was obligated to remedy the CONNUM errors in its questionnaire responses before verification, which it failed to do. Commerce, therefore, properly applied AFA to Silin because it failed to act to the best of its ability in this investigation.

Comment 4c: Cancellation of Verification of Silin

Silin's Case Brief:

- Commerce should have continued its investigation of Silin with verification of Silin's sales reconciliation and CONNUM construction.²⁸⁴ In previous situations, Commerce has continued its investigation of a respondent even if it relies on AFA in its preliminary determination. Specifically, at different times Commerce has met with respondents to discuss outstanding issues after a preliminary determination,²⁸⁵ and has issued additional supplemental questionnaires before conducting verification.²⁸⁶
- Silin has cooperated "to an extraordinary degree" of the course of this investigation deserves the opportunity to present its data at verification and show Commerce how it can trace all reported data to its books and records.²⁸⁷

Encore's Rebuttal Brief:

- As noted above regarding Huatong's request for verification, a "prerequisite to verification is that a selected mandatory respondent submit a substantially complete questionnaire response."²⁸⁸ Furthermore, verification "is not an opportunity for respondents to argue their positions."²⁸⁹ Commerce therefore "is under no duty to conduct verification," given that Silin failed to submit complete and accurate questionnaire and, as a result, failed to meet its burden of creating and adequate record.²⁹⁰

²⁸¹ *Id.* at 31 (citing *Preliminary Determination PDM* at 21).

²⁸² *Id.* (citing, e.g., *Drawn Steel Sinks from China*).

²⁸³ *Id.* (citing *Certain Steel Nails from China* IDM at Comment 4.2).

²⁸⁴ See *Silin Case Brief* at 8.

²⁸⁵ *Id.* (citing *Firth Rixson Special Steels Ltd. v. United States*, 27 CIT 873, 877 (CIT 2003)).

²⁸⁶ *Id.* (citing *Certain Plastic Decorative Ribbon Final Determination of Sales at Less Than Fair Value*, 84 FR 1055 (February 1, 2019) (*Plastic Decorative Ribbon from China Final*), and accompanying IDM at Comment 13).

²⁸⁷ *Id.* at 9.

²⁸⁸ *Id.* at 32 (citing *Galvanized Wire from China* IDM at Comment 1).

²⁸⁹ *Id.* (citing *OTR Tires from China* IDM at Comment 36).

²⁹⁰ *Id.* (citing *Tianjin Mach.*).

- Verification would be futile due to the serious deficiencies in the record, including: 1) the absence of a complete sales reconciliation, which prevents Commerce from establishing whether Silin properly reported its sales values; and 2) incorrect CONNUM coding, which affects 34 percent of Silin’s U.S. sales data.²⁹¹

Southwire’s Rebuttal Brief:

- Commerce’s decision is consistent with precedent, which has found that without a reliable “cost reconciliation” submitted information is unverifiable, as “verification is not the place to begin to reconcile figures.”²⁹² Like a cost reconciliation, the sales reconciliation is the starting point of any sales verification. Given that the record for Silin lacks a reconciliation between booked and invoice values, the missing critical information on the record would render verification futile.²⁹³
- Silin claims that Commerce has conducted verification of respondents after relying on AFA in the preliminary determination; however, the examples put forth by Silin in its argument for Commerce to conduct verification are distinguishable from this investigation.²⁹⁴ For example, in *Plastic Decorative Ribbon from China Prelim*, the respondent provided complete responses to Commerce’s questionnaires prior to verification. Silin, however, refused to adequately respond to Commerce’s requests for a complete sales reconciliation.²⁹⁵
- Silin’s argument should also be rejected because it seeks to usurp Commerce’s broad authority in deciding what information is proper for submission at verification and how to allocate its investigative resources in each situation.²⁹⁶ Silin is requesting verification so that it can present additional information to Commerce, although Commerce has previously found that “verification is not the appropriate venue for {a respondent} to perfect information already submitted or submit additional information onto the record.”²⁹⁷
- Commerce’s decision not to conduct verification is therefore consistent with the fundamental purpose of verification which, as explained by CIT, is “to test the accuracy of data already submitted, rather than to provide a respondent with an opportunity to submit a new response.”²⁹⁸ In this investigation, the record is so deficient that only a “new response” from Silin would provide a remedy.

²⁹¹ *Id.* (citing *Preliminary Determination PDM* at 20, 21, and 23).

²⁹² See Southwire Rebuttal Brief at 10 (citing *Certain Lined Paper Products from India: Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances*, 71 FR 45012 (August 8, 2006), and accompanying IDM at Comment 14).

²⁹³ *Id.* at 10-11.

²⁹⁴ *Id.* at 11.

²⁹⁵ *Id.* (citing *Certain Plastic Decorative Ribbon From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 39058 (August 8, 2018) (*Plastic Decorative Ribbon from China Prelim*) and accompanying PDM at 22, unchanged in *Plastic Decorative Ribbon from China Final*).

²⁹⁶ *Id.* at 13 (citing *Bridgestone Ams., Inc. v. United States*, 34 CIT 573, 581 (CIT 2010)).

²⁹⁷ *Id.* (citing *Corrosion-Resistant Steel Products Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016), and accompanying IDM at Comment 3; and *Marsan Gida Sanayi Ve Ticaret A.S. v. United States*, 931 F. Supp. 2d 1258,1280 (CIT 2013)).

²⁹⁸ *Id.* at 14 (citing *Tianjin Mach.*).

Commerce Position: We agree with the petitioners that the absence of a complete sales reconciliation and additional CONNUM reporting errors, as identified in the *Preliminary Determination*,²⁹⁹ are sufficient to warrant the application of facts available with an adverse inference, pursuant to sections 776(a) and (b) of the Act. Specifically, we continue to find Silin’s failure to adequately address these issues in supplemental questionnaire responses demonstrates a failure to put forth a satisfactory effort to provide full and complete answers to all inquiries, which thus constitutes a failure to cooperate under section 776(b) of the Act. Furthermore, a complete and accurate sales reconciliation is the foundation of a complete and accurate sales verification. Without such information on the record, Commerce continues to find the cancellation of verification to have been warranted and appropriate.

Silin claims that there is no basis for Commerce to find that it failed to act to the best of its ability by “merely presenting its books and records as they actually exist and are maintained.”³⁰⁰ Moreover, Silin claims that because its books and records comply with China’s GAAP, there is no basis from which to conclude that its accounting records are incomplete or unusable. As a result, Silin asserts that Commerce’s *Preliminary Determination* challenges the reliability of China’s GAAP.³⁰¹ However, the record does not support Silin’s argument, as Commerce did not request that Silin keep its books and records in a certain way, nor did it challenge China’s GAAP. On the contrary, our multiple supplemental questionnaires simply request that Silin “submit a revised sales reconciliation that reconciles the sales revenue from Silin’s accounting system to the total gross sales revenue in RMB reported in the sales database.”³⁰² Silin’s gross sales value, which is the basis for Silin’s gross unit price to the United States, is the basis of Commerce’s dumping margin calculations.³⁰³ The expectation that Silin reconcile its total gross sales value reported in the sales data to its accounting system was clear from the beginning of the investigation, in which our initial questionnaire instructed respondents to “provide a reconciliation of the sales reported in your U.S. sales database to the total sales listed in your financial statements.”³⁰⁴ If, as Silin claims, its accounting system does not in any way keep track of the actual revenue it receives (*i.e.* the commercial invoice values reported in its sales data), then Silin had ample time to provide a complete sales reconciliation in response to our multiple requests. Silin’s continued failure to do so, regardless of whether its accounting practices comply with China’s GAAP, negates the purpose of verification and warrants the application of an adverse inference, because it failed to put forth maximum effort to provide the requested information. Thus, Silin failed to cooperate to the best of its ability.

Insofar as Silin is suggesting that the discrepancy between the VAT/proforma invoices and the final commercial invoices is within some kind of GAAP-approved margin of error, Commerce finds this argument unpersuasive. Silin never indicated in its questionnaire responses that the discrepancy was due to an inadvertent, methodology error in recording invoice values. Rather, Silin reported that it has a policy of not recording final commercial invoices in its books and

²⁹⁹ See *Preliminary Determination* PDM at 20-21.

³⁰⁰ See Silin Case Brief at 2.

³⁰¹ *Id.* at 4.

³⁰² See Silin’s letter, “Aluminum Wire and Cable from the People’s Republic of China – Supplemental Sections A & C Questionnaire Response,” dated April 2, 2019 (Silin CSQR), at Question 4, part b; see also Silin Second CSQR at Question 1, part c.

³⁰³ See sections 771(35) and 772 of the Act.

³⁰⁴ See Initial Questionnaire at Appendix V.

records. Silin has not pointed to any record evidence substantiating its claim that Chinese GAAP allows for such intentional omissions of sales income. Furthermore, Commerce's goal is to calculate an accurate estimated weighted-average dumping margin for Silin; however, it is not able to reconcile its reported U.S. gross unit prices to confirm the accuracy of this information. As such, any implied "margin of error" allegedly permitted by Chinese GAAP is not relevant to Commerce's dumping calculations.

Silin also argues that Commerce overstated the discrepancies between the gross revenue recorded in commercial invoices and the gross revenue booked in its accounting system, which it believes are "minor" and "immaterial."³⁰⁵ However, as noted in the *Preliminary Determination*:

A complete U.S. sales reconciliation builds from individual commercial invoices and is meant to show the accuracy of the quantity and value of certain specific sales reported to Commerce in the U.S. sales database.... As such, tying the sales value reported in a respondent's accounting system with the commercial invoice values of individual reported sales is the basis of Commerce's ability to determine the accuracy of the quantity and value reported in a sales database.³⁰⁶

The overall discrepancy between its total gross sales revenue and the sales revenue recognized in its accounting system is therefore irrelevant; rather, we take issue with the fact that there is no way to confirm the accuracy of the individual commercial invoice values because, according to Silin, it cannot reconcile these values to its books and records.³⁰⁷ This is, therefore, not a minor issue, as it prohibits Commerce from determining whether Silin's sales data are reliable and accurate, which is necessary to conduct Commerce's dumping analysis. Moreover, Silin's repeated claim that the discrepancy is minor is unfounded and presumes that the values of the final commercial invoices Silin has reported as accurate. Commerce cannot determine whether the discrepancy is minor if we cannot tie the final commercial invoice values to Silin's financial statements. Commerce, therefore, has no satisfactory way of verifying the accuracy of Silin's reported U.S. sales values.

Silin also claims that its questionnaire responses were not "inconsistent" in explaining the differences between the booking and commercial invoice values.³⁰⁸ It further asserts that Commerce's finding "might indicate that in any case, investigation or review, where an understanding is deepened with new meaning as the proceeding progresses, the respondent – particularly a first-time respondent – will receive an AFA finding."³⁰⁹ The record, however, does not support Silin's claim. We issued a supplemental questionnaire requesting that Silin explain differences in the reported booking and commercial invoice values in its sales data; Silin responded that "the differences in the commercial invoice and {booking value} was due to prices for aluminum in the prior month."³¹⁰ In a subsequent supplemental questionnaire response, Silin

³⁰⁵ See Silin Case Brief at

³⁰⁶ See *Preliminary Determination* PDM at 21.

³⁰⁷ See Silin CSQR at 11.

³⁰⁸ See *Preliminary Determination* PDM at 21; and Silin Preliminary Analysis Memo at 2.

³⁰⁹ See Silin Case Brief at 5-6.

³¹⁰ *Id.* at 5; see also Silin CSQR.

“discovered certain errors that also contributed to the differences between commercial {booking} invoice amounts.”³¹¹ We find that Silin’s failure to recognize and report the additional errors in the first supplemental questionnaire response is an example of the kind of inattentiveness and carelessness that Commerce practice does not condone.³¹² Commerce has met its burden under section 782(d) of the Act with respect to the supplemental questionnaire issued to Silin. Thus, the application of facts available is warranted. Moreover, Silin’s reporting behavior also warrants application of an adverse inference because it failed to put forth its maximum effort to provide the requested information. Thus, Silin failed to cooperate to the best of its ability by refusing to comply with Commerce’s request for information in this investigation.³¹³

Regarding the errors in Silin’s CONNUM reporting, Silin argues that Commerce “overstates” the impact of this issue, as this issue “is an easily remedied adjustment.”³¹⁴ Silin acknowledges that these reporting errors are due to the conversion method used when complying with Commerce’s CONNUM designations, and that Commerce usually accepts corrections for minor CONNUM reporting errors at verification. However, the record does not support Silin’s argument. In this investigation, Commerce already provided an opportunity for Silin to correct the reporting errors at issue in a supplemental questionnaire.³¹⁵ In its response, Silin assured Commerce that “by further review {of the variables at issue}, the errors were corrected.”³¹⁶ However, as noted in the *Preliminary Determination*, CONNUM errors still exist for 34 percent of Silin’s total U.S. sales volume during the POI.³¹⁷ Silin’s failure to correct this error in its sales data is another example of the kind of inattentiveness and carelessness in Silin’s responses that Commerce cannot condone.³¹⁸ Commerce has met its burden under section 782(d) of the Act with respect to the supplemental questionnaire issued to Silin. Thus, the application of facts available is warranted. Moreover, Silin’s reporting behavior also warrants application of an adverse inference, because it failed to put forth its maximum effort to provide the requested information. Thus, Silin failed to cooperate to the best of its ability. Furthermore, its request for an additional opportunity to address this issue effectively places the burden on Commerce to create an accurate record by issuing questionnaire after questionnaire to mitigate inadequate supplemental responses, which is not supported by the statute or practice.³¹⁹

Lastly, we note that verification is not the appropriate place to collect new information which has been requested already, nor is it intended to resolve issues or argue for positions that should have been addressed in questionnaire responses;³²⁰ rather, the purpose of verification is to confirm the accuracy of the information already on the record of the investigation.³²¹ Furthermore, the CIT has also found that Commerce is under no duty to conduct a verification if a respondent does “not meet their preliminary burden of creating an adequate record.”³²² As described above, Silin

³¹¹ See Silin Case Brief at 5; see also Silin Second CSQR.

³¹² See, e.g., *Nippon Steel*.

³¹³ See, e.g., *Power Transformers from Korea* IDM at Comment 4

³¹⁴ See Silin Case Brief, at 7.

³¹⁵ See Silin CSQR, at Question 3.

³¹⁶ *Id.*

³¹⁷ See PDM, at 21.

³¹⁸ See, e.g., *Nippon Steel*.

³¹⁹ See, e.g., *Power Transformers from Korea* IDM at Comment 4

³²⁰ See, e.g., *OTR Tires from China* IDM at Comment 36.

³²¹ See, e.g., *Certain Activated Carbon from China* IDM at Comment 7.

³²² See, e.g., *Tianjin Mach*.

did not meet its burden of creating an accurate record. We therefore continue to find that our decision not to conduct verification was in accordance with law and Commerce practice.

Based on the deficiencies described above, we continue to determine that, in accordance with section 776(a)(1) of the Act, the reliance on the facts otherwise available is warranted because necessary information from Silin is not available on the record.

Silin's failure to address the above issues, despite being given the opportunity to remedy the deficiencies, prevents Commerce from ensuring correct invoice values and CONNUMs were reported. Thus, Commerce cannot accurately determine a dumping margin based on the information provided by Silin. Commerce has met its statutory responsibility in this investigation by identifying deficiencies in the respondent's submissions and providing Silin several opportunities – including supplemental questionnaires specifically requesting a complete sales reconciliation and deadline extensions for these questionnaires – to remedy or adequately explain the deficiencies.

Because an accurate and reliable sales database is necessary to determine the weighted-average dumping margin for a respondent, we cannot calculate Silin's estimated weighted-average dumping margin using the information it reported. Because Silin failed to provide a complete U.S. sales reconciliation and correct a significant CONNUM reporting error, we find that the record is seriously deficient, which supports our decision not to conduct verification. Commerce, therefore, continues to find that Silin's failure to cooperate to the best of its ability warrants the application of facts available with an adverse inference, pursuant to section 776 (b) of the Act.

Comment 5: Offset of Countervailable Benefits for Aluminum Rod

Silin's Case Brief:

- On September 9, 2019, Commerce released a post-preliminary decision in the companion CVD investigation finding that respondents benefitted from purchasing aluminum rod at LTAR, which has implications for this AD investigation.³²³ Pursuant to the Act, Commerce will make adjustments for countervailable export subsidies. In its double remedies questionnaire response, Silin explained that aluminum rod and wire have a significant impact on its pricing of subject merchandise.³²⁴ Furthermore, Silin explained that the selling price of its products is based on the market price of aluminum and copper in the preceding month. Therefore, in accordance with Commerce practice, any benefit from aluminum rod for LTAR programs must be offset from the AD cash deposit rate.
- Commerce practice demonstrates that it will offset LTAR benefits calculated in a CVD proceeding from the companion AD cash deposit rate for all parties.³²⁵ Commerce should, therefore, avoid double remedies in this investigation.

³²³ See Silin NSA Offset Request at 1.

³²⁴ *Id.* at 2 (citing Silin Double Remedies QR).

³²⁵ *Id.* at 2-3 (citing, e.g., *Certain Steel Trailer Wheels 12 to 16. 5 Inches From the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 84 FR 45952 (September 3, 2019), offsetting subsidies for all parties, including parties that received AFA or {China}-entity margins).

Encore's Case Brief:

- There is no record evidence to support an offset to the final estimated weighted-average dumping margin for a domestic subsidy received for a program such as aluminum rod for LTAR.³²⁶ Specifically, Silin's double remedy questionnaire response did not provide information demonstrating that the subsidies conferred to Silin's suppliers through the provision of aluminum rod for LTAR program actually passed through to Silin's U.S. prices.³²⁷
- Commerce initiated its investigation into the aluminum rod for LTAR program on March 22, 2019, which gave Silin ample time to have requested an opportunity to provide record information satisfying the statutory standard set forth in section 777A(f) of the Act.³²⁸ Furthermore, although Silin claims that it was only made aware of the countervailability of the program upon the release of Commerce's post-preliminary determination on September 9, 2019, Commerce regularly issues its double remedies questionnaire well before any affirmative determinations are made regarding countervailable programs in companion CVD investigations. Therefore, no good cause exists for requesting this offset so late in the proceeding.³²⁹

Commerce Position: We agree with the petitioners that there is no basis supporting an offset for any subsidies received in the aluminum rod for LTAR program. As noted in the "Adjustment Under Section 777A(f) of the Act" section, above, the information that Silin submitted in its double remedies questionnaire response is not applicable because we have not calculated a weighted-average dumping margin for Silin. Furthermore, as Commerce has found that Silin continues to be part of the China-wide entity, and the China-wide entity has not responded as a whole regarding the double remedy questions, there is no basis to support an offset for domestic subsidies for the China-wide entity.³³⁰ We are, therefore, not granting an offset for subsidies received under the aluminum rod for LTAR program to establish a cash deposit rate for the China-wide entity.

³²⁶ See Encore NSA Offset Rebuttal at 1.

³²⁷ *Id.* at 1-2 (citing Silin Double Remedies QR at 8).

³²⁸ *Id.* at 2.

³²⁹ *Id.* at 2-3.

³³⁰ See, e.g., *Quartz from China* IDM at 11, stating, "In light of {the AFA} determination, we have disregarded the information {the respondents} submitted in their responses to the double remedies questionnaire."

X. RECOMMENDATION

We recommend approving all the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree

10/18/2019

X *Carole Showers*

Signed by: Carole Showers

Carole Showers
Executive Director, Office of Policy
Policy & Negotiations
Enforcement and Compliance