



A-570-112
Investigation
Public Document
E&C/OVIII: SB/WH

May 22, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Collated Steel Staples from the People's Republic of
China: Issues and Decision Memorandum for the Final
Affirmative Determination of Sales at Less Than Fair Value

I. SUMMARY

The Department of Commerce (Commerce) determines that imports of certain collated steel staples (collated staples) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2018 through March 31, 2019.

As a result of our analysis, we have made certain changes for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

- Comment 1: Whether Critical Circumstances Exist
- Comment 2: Primary Surrogate Country Selection
- Comment 3: Whether to Accept Non-Verified Record Information as Verified
- Comment 4: Whether to Continue to Apply Adverse Facts Available (AFA) to Tianjin JXSL
- Comment 5: Whether to Use the Reported Factors of Production (FOP) Data of Tianjin Hweschun's Cooperative Toller
- Comment 6: Whether to Use the FOPs of Tianjin Hweschun's Cooperative Toller as Facts Available for the Uncooperative Toller



II. BACKGROUND

On January 8, 2020, Commerce published its *Preliminary Determination* in the antidumping duty (AD) investigation of collated staples from China.¹ We invited interested parties to comment. On January 18, 2020, Tianjin Hweschun Fasteners Manufacturing Co., Ltd. (Tianjin Hweschun), a mandatory respondent, filed a ministerial error allegation.² On January 29, 2020, we issued our response, disagreeing with Tianjin Hweschun's allegation.³ Due to the imposition of a Level 4 travel advisory in China, Commerce was unable to conduct verification⁴ Accordingly, pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce has determined that it will rely on "facts otherwise available" (*i.e.*, the facts upon which we based our *Preliminary Determination*) in reaching its final determination in this investigation.

Commerce received scope comments from interested parties for the final determination on March 6, 2020.⁵ On March 20, 2020, Commerce extended the deadline for interested parties to submit case and rebuttal briefs.⁶ On March 26, 2020, the following interested parties submitted case briefs: Kyocera Senco Industrial Tools, Inc. (the petitioner), PrimeSource Building Products Inc. (PrimeSource), an importer of collated staples, Tianjin Hweschun, and Tianjin Jin Xin Sheng Long Metal Products Co., Ltd. (Tianjin JXSL), the second mandatory respondent.⁷ On April 2 and 3, 2020, PrimeSource and the petitioner, respectively, submitted rebuttal briefs.⁸

¹ See *Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 882 (January 8, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Tianjin Hweschun's Letter, "Certain Collated Steel Staples from China: Allegation of a Significant Ministerial Error Contained in the Preliminary Determination," dated January 13, 2020.

³ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Collated Steel Staples from The People's Republic of China: Ministerial Error Allegations Regarding the Preliminary Determination," dated January 29, 2020.

⁴ See Memorandum, "Antidumping Investigation of Certain Collated Steel Staples from the People's Republic of China (China): Cancellation of Verification," dated March 16, 2020 (Verification Memorandum).

⁵ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Scope Comments Specific to 'Hog Rings'"; BeA's Letter, "Antidumping and Countervailing Duty Investigations on Certain Collated Steel Staples from the People's Republic of China: Scope Comments Concerning 'Hog Rings'"; and Best Nail's Letter, "Certain Collated Steel Staples from China: Scope Comments", all dated March 6, 2020.

⁶ See Memorandum, "Extension of Time to Submit Case and Rebuttal Briefs," dated March 20, 2020.

⁷ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Case Brief" (Petitioner Case Brief); PrimeSource's Letter, "Antidumping Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Letter in Lieu of Case Brief" (PrimeSource Case Brief); Tianjin Hweschun's Letter, "Certain Collated Steel Staples from the People's Republic of China: Submission of Administrative Case Brief" (Tianjin Hweschun Case Brief); and Tianjin JXSL's Letter, "Collated Steel Staples from the People's Republic of China: Case Brief" (Tianjin JXSL Case Brief), all dated March 26, 2020. PrimeSource, in its case brief, adopts and incorporates by reference, the arguments made by the respondents that do not conflict with PrimeSource's arguments.

⁸ See PrimeSource's Letter, "Antidumping Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Letter in Lieu of Rebuttal Case Brief," and Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Petitioner's Rebuttal Brief," both dated April 2, 2020; see also Memorandum, "April 3, 2020, Phone Call with Counsel for Petitioner," dated April 3, 2020, advising the petitioner that its rebuttal brief was incomplete and requesting that it be re-submitted.

All comments related to the scope of this investigation are addressed in the Final Scope Decision Memorandum.⁹

Based on our analysis of the comments received and consideration of the record, we have revised the dumping margin calculated for Tianjin Hweschun. The final rate for the China-wide entity and for Tianjin JXSL is based on adverse facts available (AFA) as in the *Preliminary Determination*, however, we revised this rate for the final determination.

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, we determined that critical circumstances exist for Tianjin Hweschun, the non-individually examined respondents, the China-wide entity, and Tianjin JXSL.¹⁰ Specifically, we determined that, based on Tianjin Hweschun's shipment data, Global Trade Access (GTA) import statistics for the non-individually examined respondents, and AFA for the China-wide entity and Tianjin JXSL, imports of subject merchandise were massive over a relatively short period.¹¹ As we continue to rely on the information used in the *Preliminary Determination* for the final determination, our findings with respect to the history of injurious dumping and knowledge of dumping, pursuant to sections 735(a)(3)(A)(i) and (ii) of the Act, respectively, also remain the same for the final determination.¹²

IV. CHINA-WIDE RATE

In the *Preliminary Determination*, because the China-wide entity did not respond to Commerce's requests for information, we found that it failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information.¹³ We also determined that Tianjin JXSL did not correct critical deficiencies in its reporting and that necessary information with respect to Tianjin JXSL was therefore missing from the record.¹⁴ Finally, we preliminarily assigned a China-wide rate based on facts available, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, applying an adverse inference, pursuant to 776(b) of the Act.

No parties commented on these preliminary findings with respect to the China-wide entity, and as there is no basis to reconsider our determination, we therefore continue to find that the China-wide entity failed to cooperate to the best of its ability in responding to Commerce's requests for information. Parties did provide comments on these preliminary findings with respect to Tianjin JXSL and we address, in Comment 4, why we continue to find that Tianjin JXSL failed to cooperate to the best of its ability in responding to Commerce's requests for information.

⁹ See Memorandum, "Certain Collated Steel Staples from the People's Republic of China: Final Scope Determination Decision Memorandum," dated concurrently with, and hereby adopted by, this final determination (Final Scope Decision Memorandum).

¹⁰ See *Preliminary Determination PDM* at 30; see also Comment 1.

¹¹ *Id.*

¹² See Verification Memorandum.

¹³ See *Preliminary Determination PDM* at 18 – 20.

¹⁴ *Id.*; see also Comment 3.

Therefore, for the final determination, we continue to apply AFA in determining weighted-average margins for the China-wide entity and Tianjin JXSL.

In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁵ Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition; or (b) the highest calculated dumping margin of any respondent in the investigation.¹⁶

In the *Preliminary Determination*, Commerce used the margin preliminarily calculated for Tianjin Hweschun as the AFA rate for the China-wide entity because it was higher than the highest petition rate.¹⁷ For the reasons discussed in Comments 5 and 6, Commerce has recalculated Tianjin Hweschun's margin and it is no longer higher than the highest petition rate.

Section 776(c) of the Act provides that, when Commerce relies on secondary information, such as the LTFV petition, in making an adverse inference rather than information obtained in the course of an investigation, it must corroborate to the extent practicable that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁸ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information used has probative value.¹⁹ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an "alleged commercial reality" of the party.²⁰ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of an antidumping proceeding when applying an adverse inference, including the highest of such margins.²¹ If Commerce is unable to corroborate the

¹⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

¹⁶ See, e.g., *Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum (IDM).

¹⁷ See *Preliminary Determination PDM* at 19.

¹⁸ See SAA at 870.

¹⁹ *Id.*; see also 19 CFR 351.308(d).

²⁰ See section 776(d)(3) of the Act; see also, 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).

²¹ See sections 776(d)(1)-(2) of the Act.

highest petition margin using individual transaction-specific margins, Commerce may use the component approach.²²

In attempting to corroborate the highest petition margin of 122.55 percent²³ we compared this rate to Tianjin Hweschun's highest transaction-specific dumping margins and found the petition rate to be within the range of the highest calculated transaction-specific dumping margins.²⁴ Therefore, we were able to corroborate the highest petition margin to the extent practicable within the meaning of section 776(c) of the Act. Accordingly, we assigned to the China-wide entity and to Tianjin JXSL a dumping margin of 122.55 percent in the final determination.

V. SEPARATE RATES

Commerce preliminarily determined that Tianjin Hweschun, Tianjin JXSL, China Staple (Tianjin) Co., Ltd., Shanghai Yueda Nails Co., Ltd., Shijiazhuang Shuangming Trade Co., Ltd., Tianjin Jinyifeng Hardware Co., Ltd., Unicorn Fasteners Co., Ltd., and Zhejiang Best Nail Industrial Co., Ltd. are eligible for separate rates.²⁵ No parties commented on this preliminary finding and thus there is no basis to reconsider our determinations with respect to these companies. Therefore, we continue to grant separate rates to these companies in this final determination.

VI. ADJUSTMENTS FOR COUNTERAVAILABLE EXPORT SUBSIDIES

In the *Preliminary Determination*, we determined that Tianjin Hweschun, Tianjin JXSL, and the non-individually examined respondents benefitted from export subsidies and adjusted their cash deposit rates for export subsidies.²⁶ For the final determination, we have made an export subsidy adjustment of 10.54 percent to the cash deposit rates for Tianjin Hweschun and the non-individually examined respondents.²⁷ For the China-wide entity and Tianjin JXSL, which are receiving an AFA rate in the final determination, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, Commerce has adjusted the AD cash deposit rate for the China-wide entity and Tianjin JXSL by the only export subsidy rate determined for any party in the companion CVD proceeding, which is 10.54 percent.

As no party commented on these preliminary findings, we have continued to apply the above adjustments to the cash deposit rates in this final determination.

²² See *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

²³ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Collated Steel Staples from Korea, the People's Republic of China, and Taiwan," dated June 6, 2019 (Petition).

²⁴ See Memorandum, "Collated Steel Staples from the People's Republic of China: Final AFA Rate," dated concurrently with this memorandum.

²⁵ See *Preliminary Determination PDM* at 10 – 14.

²⁶ *Id.* at 31.

²⁷ See unpublished *Federal Register* notice, "Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination," dated concurrently with this memorandum.

VII. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our analysis of the comments submitted by interested parties, we made the following changes to the *Preliminary Determination*:

- We used the FOPs reported by Tianjin Hweschun’s cooperative unaffiliated toller, “Toller 2”;²⁸
- We used, as facts available, Toller 2’s FOPs for Tianjin Hweschun’s uncooperative, unaffiliated toller’s (“Toller 1’s”) un-reported FOPs;²⁹ and
- We revised the AFA rate applied to the China-wide entity and Tianjin JXSL to 122.55 percent.³⁰

VIII. DISCUSSION OF THE ISSUES

Comment 1: Whether Critical Circumstances Exist³¹

*Petitioner’s Arguments:*³²

- Commerce should determine that, for Tianjin Hweschun and the non-individually examined respondents, all statutory and regulatory requirements for an affirmative final determination of critical circumstances are satisfied based on the record in this proceeding.
- Based on the magnitude of the margins found in the *Preliminary Determination*, which significantly exceeded Commerce’s 25 percent threshold for export price transactions, importers knew or should have known that Chinese suppliers were selling collated staples at LTFV and that there would be material injury by reason of such sales.³³
- The U.S. International Trade Commission’s (ITC) preliminary material injury determination also supports Commerce’s finding that importers had sufficient knowledge of injury.³⁴
- Commerce found in its preliminary affirmative determination of critical circumstances, and then again in the *Preliminary Determination*, that the record data plainly establish that there have been massive imports. The record of this investigation remains

²⁸ See Comment 5; and Memorandum, “Collated Steel Staples from the People’s Republic of China: Final Determination Margin Calculation for Tianjin Hweschun Fasteners Manufacturing Co., Ltd.,” dated concurrently with this memorandum (Tianjin Hweschun Final Calculation Memorandum).

²⁹ See Comment 6; and Tianjin Hweschun Final Calculation Memorandum.

³⁰ See Section IV. China-Wide Rate.

³¹ See also Comment 3, addressing critical circumstances as applicable to Tianjin JXSL.

³² See Petitioner Case Brief at 3 – 8.

³³ *Id.* (citing *Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015), and accompanying PDM at 29-30; *1,1,1,2-Tetrafluoroethane From the People’s Republic of China: Antidumping Duty Investigation, Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 30817 (May 29, 2014), and accompanying PDM at 5).

³⁴ *Id.* (citing *Refillable Stainless Steel Kegs from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 84 Fed. Reg. 57010 (Oct. 24, 2019), and accompanying IDM at 5-6).

unchanged as Commerce announced that it “intend{ed} to rely on the information submitted on the record, which we relied on in making our preliminary determination, as facts available in making our final determination.”³⁵

*PrimeSource’s Arguments:*³⁶

- Commerce’s affirmative determination of critical circumstances was flawed as Commerce did not consider seasonal trends and domestic consumption accounted for by the imports as required by 19 CFR 351.206(h)(1).
- Seasonality, in particular, may be an important factor as building products may be driven by the building season.
- As Commerce has not considered the seasonality factor, interested parties have not been afforded an opportunity to examine that analysis or provide briefing on that analysis and Commerce’s preliminary critical circumstances determination is, therefore, unsupported by substantial evidence or otherwise contrary to law.

*Tianjin JXSL Arguments:*³⁷

- Commerce’s affirmative critical circumstances decision as to Tianjin JXSL, based on its AFA determination, is not in accordance with law as Tianjin JXSL’s FOP reporting has nothing to do with its shipments after the filing of the Petition which Commerce reviewed.

*Petitioner Rebuttal Arguments:*³⁸

- Commerce properly found that there were “massive surges” in the volumes of imports for Tianjin Hweschun and the non-individually examined respondent and record evidence has not changed.
- No party made a seasonality argument for the preliminary critical circumstances determination, despite ample opportunity to do so, and there was therefore no basis for Commerce to find any seasonal trends that would discount the massive increases in import volumes.
- PrimeSource has not met its burden of demonstrating any seasonal trends.³⁹
- PrimeSource’s seasonality argument is purely speculative and Commerce has rejected such arguments.⁴⁰

³⁵ *Id.* at 7 (citing Verification Memorandum).

³⁶ *See* PrimeSource Case Brief at 2 – 3.

³⁷ *See* Tianjin JXSL Case Brief at 9 – 10.

³⁸ *See* Petitioner Case Brief at 25 – 30.

³⁹ *Id.* at 26 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People’s Republic of China*, 68 FR 55589 (September 26, 2003), and accompanying IDM at Comment 2; *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 FR 237767 (May 23, 2019) (*Quartz Surface Products from China*), and accompanying IDM at Comment 2).

⁴⁰ *Id.* at 29 (citing *Quartz Surface Products from China* IDM at Comment 2).

- Commerce is not required to consider domestic consumption and has rejected this notion.⁴¹
- With respect to Tianjin JXSL’s arguments regarding Commerce’s affirmative finding of critical circumstances as to Tianjin JXSL, Tianjin JXSL’s myriad reporting failures, resulting from its carelessness and inadequate recordkeeping, taint the entirety of the respondent’s reporting including Tianjin JXSL’s reported U.S. shipment volumes and value.

Commerce Position: Commerce agrees with the petitioner that, with respect to Tianjin Hweschun and the non-individually examined respondents, all statutory and regulatory requirements for an affirmative final determination of critical circumstances are satisfied based on the record in this proceeding. The facts upon which Commerce based its analysis of the knowledge of dumping and massive imports have not changed since the *Preliminary Determination*.

With respect to PrimeSource’s argument that Commerce’s determination is flawed because it did not consider seasonality and domestic consumption, we disagree. Specifically, with respect to massive imports analysis, Commerce’s long standing practice is to compare import volumes.⁴² While 19 CFR 351.206(h)(1) states that Commerce will *normally* (emphasis added) examine the volume and value of the imports, seasonal trends, and the domestic consumption accounted for by the imports, this regulation does not require that Commerce review all three factors or any particular factor when there are no data on the record related to that factor, and PrimeSource has not cited to precedent that instructs otherwise. In fact, PrimeSource raised concerns with respect to seasonality and domestic consumption for the first time in its case brief, and provided no record evidence in support. The burden of developing the record in this regard lies with the interested parties.⁴³ Accordingly, there was no record evidence regarding seasonality and/or domestic consumption for which Commerce was required to, or even could, examine.⁴⁴

For these reasons, Commerce continues to find that critical circumstances exist in the final determination with respect to Tianjin Hweschun and the non-individually examined respondents.

Finally, for this final determination, we continue to make an adverse inference that Tianjin JXSL and the China-wide entity dumped “massive imports” over a “relatively short period,” in accordance with sections 735(a)(3) and 776(a) and (b) of the Act and 19 CFR 351.206. This is our standard practice, consistent with our determination to apply a final dumping margin based on total AFA to these entities,⁴⁵ and Tianjin JXSL has not provided a reason for us to deviate from it given its lack of cooperation in this investigation.

⁴¹ *Id.* (citing *Carbon and Alloy Steel Wire Rod from the United Kingdom: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 83 FR 13252 (March 28, 2018) (*Wire Rod from UK*), and accompanying IDM at Comment 1).

⁴² *Id.*

⁴³ See *Quartz Surface Products from China* IDM at Comment 2.

⁴⁴ See Memorandum, “Certain Collated Steel Staples from the People’s Republic of China: Preliminary Massive Imports Analysis,” dated October 31, 2019.

⁴⁵ See, e.g., *Non-Oriented Electrical Steel from the People’s Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 79 FR 29421 (December 6, 2013),

Comment 2: Primary Surrogate Country Selection

*Tianjin Hweschun's Arguments:*⁴⁶

- Commerce stated in the *Preliminary Determination* that it selected Mexico instead of Russia as the surrogate country because it preferred the GTA import data submitted for Mexico over other sources of import statistics, namely, International Trade Centre (ITC) import data, submitted for Russia. However, Commerce raised no issues with the ITC data itself.
- Commerce has simply expressed a preference for GTA data to value material inputs, without regard to whether the Russian import statistics from ITC are more likely to render the most accurate dumping margin for Tianjin Hweschun.⁴⁷
- Although Commerce has discretion to select the best information available to value FOP data, it is obligated to calculate AD margins as accurately as possible.⁴⁸ Commerce should use the Russian ITC import data, as it is more reflective of Tianjin Hweschun's actual production experience, and should not dismiss these import data just because they were not sourced from GTA.⁴⁹

*Petitioner's Rebuttal Arguments:*⁵⁰

- By arguing that Commerce should use the Russian ITC import data instead of the Mexican GTA import data, Tianjin Hweschun is simply expressing a preference for a different outcome.⁵¹
- Tianjin Hweschun is not claiming that Commerce's selection of Mexico as the primary surrogate country was unreasonable, unsupported by substantial evidence, or contrary to law.⁵²
- In selecting Mexico as the primary surrogate country in this investigation, Commerce selected the strongest data source, and this selection should remain unchanged for the final determination.⁵³

Commerce Position: We agree with the petitioner and continue to use GTA-sourced Mexican import data to value the FOP material inputs in the final determination. With respect to whether Commerce should rely on ITC import data from Russia to value its reported FOP material inputs, Tianjin Hweschun provides no explanation why these data are better or more reflective of its actual production experience than the GTA import data from Mexico. Therefore, Tianjin

and accompanying PDM at "Critical Circumstances," unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).

⁴⁶ See Tianjin Hweschun Case Brief at 7-8.

⁴⁷ *Id.*

⁴⁸ *Id.* at 8 (citing *Amanda Foods (Vietnam) Ltd. et al v. United States*, 714 F. Supp. 2d 1282, 2181 (CIT 2010)).

⁴⁹ *Id.* at 8.

⁵⁰ See Petitioner's Rebuttal Brief at 24-25.

⁵¹ *Id.* at 25.

⁵² *Id.*

⁵³ *Id.*

Hweschun provides no basis for Commerce to reconsider its decision that Mexico is the most appropriate surrogate country in this case.

Moreover, Commerce finds no basis to use ITC-sourced Russian import data rather than GTA-sourced Mexican import data to value the FOP material inputs in this case. The respondent is correct that Commerce's preference is to use import pricing data from GTA as they have been used in prior cases involving non-market economy countries, and provides broad market average pricing.⁵⁴ As noted in the *Preliminary Determination*, GTA data provide pricing in the currency of the country of importation for purposes of valuing the FOP material inputs.⁵⁵ In this case, the respondents provided ITC-sourced import pricing data not only from Mexico but also from other potential surrogate countries. However, for all countries, the respondent reported their ITC-sourced data in U.S. dollars and not in the currency of the country of importation. Therefore, because the GTA-sourced Mexican import data are reported in the currency of the country of importation, and we have no reason to depart from its usage, we have continued to use the GTA-sourced data, rather than the ITC-sourced Russian data, to value the FOP material inputs in the final determination.

Comment 3: Whether to Accept Non-Verified Record Information as Verified

*Tianjin Hweschun Arguments:*⁵⁶

- In the *Preliminary Determination*, Commerce found that Tianjin Hweschun's unaffiliated Toller 2 "failed to support its reported FOPs and admitted that it does not track yield loss." On this basis, Commerce determined that Toller 2's FOPs were not usable and would likely understate the consumption of the primary steel inputs, and were therefore not verifiable.
- Commerce decided not to conduct an on-site verification of Tianjin Hweschun and its cooperative toller due to travel restrictions in place in response to the COVID-19 pandemic. Had Commerce conducted an on-site verification of Tianjin Hweschun and its toller's FOPs, Commerce would be able to verify that the reported FOPs did not understate consumption. In the absence of an on-site verification in this investigation, Commerce should accept Tianjin Hweschun's submitted FOP data as verified.

The petitioner did not comment on this issue.

Commerce Position: In the *Preliminary Determination* we considered the facts available on the record and determined Mexican GTA import statistics were best to value FOPs in the normal value (NV) calculations. Commerce preliminarily valued galvanized wire received from Tianjin Hweschun's tollers rather than the FOP information provided by Toller 2. We later determined that verification was not possible because of the U.S. State Department's Level 4 travel advisory

⁵⁴ See *Large Residential Washers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 90776 (December 15, 2016), and accompanying IDM at Comment 6.

⁵⁵ See *Preliminary Determination PDM* at 27.

⁵⁶ See Tianjin Hweschun Case Brief at 1 - 2.

and that we would rely on the record evidence as facts available for the final determination.⁵⁷ While Commerce has the discretion to reconsider its decision, and has determined to use the reported FOPs from Tianjin Hweschun's Toller 2 for the production of galvanized wire in the calculation of NV in the final determination (*see* Comment 5), Commerce is under no obligation to accept information on the record as "verified" in the absence of an on-site verification. For the final determination, we relied on the facts available on the record of this investigation in calculating a dumping margin for Tianjin Hweschun.

Comment 4: Whether to Continue to Apply AFA to Tianjin JXSL

*Tianjin JXSL Arguments.*⁵⁸

- In applying total AFA to Tianjin JXSL, Commerce held Tianjin JXSL to an unfair and unreasonable standard and did not acknowledge specific limitations identified by Tianjin JXSL.
- Courts have explained that application of total AFA requires a two-part inquiry. First, in applying facts available, Commerce must determine that a respondent withheld requested information, failed to provide the information in a timely form and manner, significantly impeded the investigation, or provided unverifiable information.⁵⁹ Further, Commerce must provide the respondent with notice and an opportunity to remedy or explain the deficiency.⁶⁰ Next, in drawing an adverse inference, Commerce must find that the respondent "failed to cooperate by not acting to the best of its ability to comply with a request for information..."⁶¹ Specifically, Commerce "needs to articulate why it concluded that a party failed to act to the best of its ability," and explain why the absence of this information is of significance.⁶² Commerce has inappropriately conflated these two prerequisites and did not evaluate whether Tianjin JXSL acted to "the best of its ability." Specifically:
 - Tianjin JXSL consistently reported that it was unable to track raw material consumption data on a control number (CONNUM)-specific basis, as requested by Commerce, as Tianjin JXSL did not maintain records on either a product- or a batch-specific basis. Rather, Tianjin JXSL's cost accounting system was very basic and only records material purchase invoice records, material in-out stock records, monthly total production cost records, and finished product in-out stock records.
 - Tianjin JXSL attempted to provide CONNUM-specific FOP data it believed were the most reasonable and, while not exact, were not inaccurate, unreasonable, or not credible. Commerce did not explain why Tianjin JXSL's reporting was inaccurate, distortive, or incomplete.

⁵⁷ *See* Verification Memorandum.

⁵⁸ *See* Tianjin JXSL Case Brief at 5-9.

⁵⁹ *See* Tianjin JXSL Case Brief at 3 (citing *Mueller Comercial de Mex., S. de R.L. de C.V. v. United States*, 753 F. 3d 1227, 1231-32 (CAFC 2014); and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1381 (CAFC 2003) (*Nippon Steel*)).

⁶⁰ *Id.* (citing section 782(d) of the Act).

⁶¹ *Id.* (citing *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1329 (CIT 1999)).

⁶² *Id.* at 4 (citing *Mannesmannrohen-Werke AG v. United States*, 77 F. Supp. 2d 1302, 1313-14 (CIT 1999)); *Id.* at 8 (citing *Borden Inc. v. United States* 4 F. Supp. 2d 1221, 1246 (CIT 1988)).

- Commerce suggested a specific methodology which Tianjin JXSL should use and Tianjin JXSL complied, while noting that this methodology would not result in a per-unit consumption amount for auxiliary materials; thus, Commerce’s request was not valid. Accordingly, Tianjin JXSL proposed alternative methodologies which Commerce did not acknowledge. Specifically:
 - A single average consumption rate for auxiliary materials was reasonable because the amount consumed was so small that there were no meaningful variations that could be discerned on a CONNUM-specific basis.
 - As an alternative, the use of a single average consumption rate adjusted by a CONNUM-specific weighting adjustment factor based on the CONNUM-specific diameter. The diameter criteria was a reasonable way to allocate auxiliary materials because staples with smaller diameters would have a smaller surface area and thus consume more auxiliary materials on a per-unit basis than staples with larger diameters.
 - Tianjin JXSL provided a worksheet showing the total amount of steel wire delivered to, and received from, its unaffiliated toller. Based on this yield loss ratio, Tianjin JXSL was able to derive a reasonable calculation of the amount of “black wire” consumed in the production of staples.

*Petitioner’s Rebuttal Arguments*⁶³

- Tianjin JXSL does not challenge Commerce’s determination to apply facts available and has waived any argument, as a matter of law, concerning Commerce’s determination to disregard Tianjin JXSL’s data and resort to facts available.⁶⁴
- Regarding Tianjin JXSL’s purportedly limited internal records, Tianjin JXSL did not notify Commerce that it was “unable to submit the information requested in the requested form and manner,” along with “a full explanation and suggested alternative forms in which such a party is able to submit the information” pursuant to 782(c) of the Act. Accordingly, Tianjin JXSL’s arguments that Commerce failed to take into account any type of internal limitations appears baseless and should be rejected. With respect to providing a basis required to support an adverse inference, the Court of Appeals for the Federal Circuit (CAFC) has held that:

“Compliance with the ‘best of its ability’ standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.”⁶⁵

⁶³ See Petitioner Rebuttal Brief at 4 – 15.

⁶⁴ *Id.* at 6 (citing *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F. 3d 1312, 1319 (CAFC 2006); *Novosteel SA v. United States*, 284 F. 3d 1261, 1273-74 (CAFC 2002)).

⁶⁵ *Id.* at 6 (citing *Nippon Steel*, 337 F. 3d 1373, 1382 (CAFC 2003) (emphasis added)).

- Despite repeated requests, Tianjin JXSL failed to prepare a valid cost reconciliation and this reflects carelessness, given that the information to do so was entirely in the company's control. Accordingly, Tianjin JXSL's reported FOPs are unsupported and unreliable.
- Commerce has held, and the CAFC has affirmed, that failure to provide a cost reconciliation warrants the use of AFA.⁶⁶
- Tianjin JXSL's admitted failure to report any wire-drawing FOPs, and its admittedly inaccurate wire FOPs, reflects carelessness, inadequate recordkeeping, or both, and the FOPs for some of the most significant aspects of collated staple production was therefore missing from the record.
- Tianjin JXSL failed to provide CONNUM-specific FOPs, despite Commerce granting Tianjin JXSL opportunities to do so, and thus accurate price comparisons could not be made.
 - In Tianjin JXSL's first opportunity to remedy deficiencies, Tianjin JXSL reported a single set of FOPs (except for packing) for all CONNUMs and, further, did not support the calculation of the wire rod consumption.
 - In its subsequent opportunity, Tianjin JXSL revealed that it had understated certain FOPs and, instead of complying with Commerce's instructions, provided a new equally unreliable methodology that did not make sense (*i.e.*, that smaller diameters would have a smaller surface area and thus consume more auxiliary materials on a per-unit basis than staples with larger diameters).
 - Rather than fabricating a fundamentally unsound methodology, Tianjin JXSL should have relied upon such information as bills of materials and engineering designs to report its consumption amounts.

Commerce Position: For the final determination, Commerce continues to find that it is appropriate to apply total AFA to Tianjin JXSL because the company failed to act to the best of its ability in reporting product-specific FOPs and did not demonstrate that its reported data reconciled to its cost accounting system. As an initial matter, we agree with the petitioner that Tianjin JXSL does not contest Commerce's determination to rely on facts available pursuant to sections 776(a)(1) and (2) of the Act. Rather, Tianjin JXSL argues that, in relying on adverse inferences, Commerce did not adequately address the statutory requirement of evaluating whether Tianjin JXSL acted to the best of its ability pursuant to section 776(b) of the Act or explain why Tianjin JXSL's reporting was inaccurate, distortive, or incomplete. According to Tianjin JXSL, Commerce held Tianjin JXSL to an unfair and unreasonable standard. We disagree.

As summarized in the *Preliminary Determination*, Tianjin JXSL's questionnaire responses contained several deficiencies.⁶⁷ In particular, we noted that Tianjin JXSL reported the same set of FOP consumption rates for all products in its initial questionnaire response and supplemental

⁶⁶ *Id.* at 9 – 10 (citing *Finished Carbon Steel Flanges from Italy: Final Determination of Sales at Less Than Fair Value*, 82 FR 29481 (June 29, 2017), and accompanying IDM at Comment 6; and *Mukand, Ltd. v. United States*, 767 F. 3d 1300, 1306-08 (CAFC 2014)).

⁶⁷ *See, e.g., Preliminary Determination PDM* at 16.

questionnaire responses, thus disregarding any physical differences between its products.⁶⁸ Specifically, despite being granted numerous extensions for each questionnaire response, rather than correcting the critical deficiencies identified by Commerce in the supplemental questionnaires, with each response, Tianjin JXSL provided new information that raised yet more questions.⁶⁹

Tianjin JXSL reported in its initial questionnaire response that it used a “weighted-average method” to calculate the consumption of its FOPs for all types of collated staples because it could only account for one cost for all types of staples it produces.⁷⁰ By doing so, Tianjin JXSL reported a single consumption amount for all of its reported CONNUMs.⁷¹ Although this methodology did not comply with Commerce’s reporting instructions as clearly stated in its AD questionnaire, Commerce provided Tianjin JXSL with another opportunity to address this critical deficiency by instructing the company in the first section D supplemental questionnaire to devise a reasonable method for reporting its FOPs on a CONNUM-specific basis, as requested in the original questionnaire.⁷² We suggested that one way to accomplish this would be to use the net weight of each product.⁷³ The company disregarded this suggestion and failed to report CONNUM-specific consumption amounts as instructed. Despite this fact, in a second supplemental questionnaire, Commerce extended Tianjin JXSL yet another opportunity to submit CONNUM-specific consumption rates, providing specific instructions that Tianjin JXSL calculate consumption amounts by multiplying reported consumption ratios by the net weight of the finished product represented by each CONNUM.⁷⁴ In its second supplemental questionnaire response, Tianjin JXSL continued to disregard Commerce’s instructions and, instead, provided a new methodology, using a weighting factor based on wire diameter, the calculation of which the respondent neither explained nor supported. After two supplemental questionnaire responses, Tianjin JXSL had yet to provide a reliable methodology to serve as the basis for accurate NV calculations and NV to U.S. price comparisons. Thus, contrary to Tianjin JXSL’s assertion, Commerce explained why Tianjin JXSL’s reporting was entirely unusable, or “inaccurate, distortive, or incomplete.”⁷⁵

To better understand the reporting deficiencies resulting from each supplemental questionnaire, we provide a more detailed description of each critical deficiency which Tianjin JXSL failed to remedy below.

In the initial questionnaire, we provided Tianjin JXSL the following instructions:

⁶⁸ *Id.* at 16 – 17.

⁶⁹ *Id.*

⁷⁰ See Tianjin JXSL’s September 17, 2019 Section D Questionnaire Response (Tianjin JXSL September 17, 2019 DQR) at Exhibit 2.

⁷¹ *Id.*

⁷² See Commerce’s Letter, “First Supplemental Sections C and D for Tianjin JXSL,” dated October 7, 2019 (Tianjin JXSL October 7, 2019 First SCDQR).

⁷³ *Id.* at 5.

⁷⁴ See Commerce’s Letter, “Certain Collated Steel Staples from the People’s Republic of China: Extension Request to File Tianjin Hweschun’s 2nd Sections C and D Supplemental Responses,” dated November 18, 2019.

⁷⁵ See *Preliminary Determination PDM* at 16 – 17.

If you are not reporting... FOPs using actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis, please provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under investigation on a CONNUM-specific basis. Additionally, please provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under investigation on a CONNUM-specific basis and explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount.⁷⁶

In its initial section D questionnaire response, Tianjin JXSL stated that it could only account for one cost for all types of collated staples it produces and therefore could not report its FOPs on a CONNUM-specific basis as requested by Commerce.⁷⁷ However, Tianjin JXSL also reported that, in the normal course of business, it “keeps material purchase invoice, material in-stock and out-stock record, monthly total production cost record, and finish product in-stock and out-stock record” and, further, that it “maintains in-stock and out-stock records for steel wire rod, galvanized wire, wire board and nail.”⁷⁸ Because Tianjin JXSL reported that it maintains such production records, Commerce provided Tianjin JXSL guidance in its first supplemental questionnaire on how to devise a reporting methodology.⁷⁹ Specifically, we instructed Tianjin JXSL to (1) provide the FOPs for the inputs used by its unaffiliated toller to draw wire rod into black wire; and (2) support Tianjin JXSL’s revised reporting methodology by providing, *inter alia*, an explanation of how the weight of the finished product (*i.e.*, the staple) was accounted for in the reported FOPs (*i.e.*, black wire and inputs used to process the black wire into staples).⁸⁰

In its response, Tianjin JXSL did not provide the toller’s FOPs, stating instead that, “{Company X} is an unaffiliated Toller. {Tianjin} JXSL requests more time to negotiate with {Company X} to get detailed monthly consumption worksheets.”⁸¹ Here, rather than submitting a timely extension request of the deadline to submit this information as instructed by Commerce in its supplemental questionnaire,⁸² Tianjin JXSL reported what appeared to be CONNUM-specific consumption rates of drawn steel wire, *i.e.*, “black wire” (also referred to as the intermediate input). However, its revised factors database contained data for fewer CONNUMS than its original factors database, and still did not differentiate among CONNUMs with respect to the consumption of the auxiliary inputs such as zinc, liquid alkali, hydrochloric acid, zinc sulfate, glue, and natural gas.⁸³ Furthermore, Tianjin JXSL did not substantiate its revised reporting methodology for any of its inputs and did not account for the weight of the finished good in its FOP calculations.⁸⁴ With respect to Tianjin JXSL’s argument that a single average consumption rate for auxiliary materials was reasonable because the amount consumed was so small that there

⁷⁶ See Commerce’s Initial Questionnaire, dated July 31, 2019 (IQ) at D-2.

⁷⁷ See Tianjin JXSL September 17, 2019 DQR at Exhibit 3.

⁷⁸ *Id.* at 5.

⁷⁹ See Tianjin JXSL October 7, 2019 First SCDQR.

⁸⁰ *Id.*

⁸¹ See Tianjin JXSL’s October 30, 2019 Supplemental Sections C and D Questionnaire Response (Tianjin JXSL October 30, 2019 SCDQR) at 11.

⁸² *Id.* at 1.

⁸³ *Id.* at Exhibit SD-2.

⁸⁴ *Id.* at Exhibit SD-4.

were no meaningful variations that could be discerned on a CONNUM-specific basis, we disagree, as this reporting method does not distinguish usage rates for inputs used to produce unique CONNUMs in accordance with the explicit instructions noted in Commerce’s AD questionnaire.⁸⁵ We cannot assume that each unique product requires the same amount of material inputs, as there are significant differences in the physical characteristics among the CONNUMs. Nevertheless, we cannot determine if Tianjin JXSL’s methodology is reasonable because the consumption of each input is allocated equally to all CONNUMs without accounting for the finished weight of each CONNUM.

We provided Tianjin JXSL a third opportunity to remedy this (and other) critical deficiencies, requesting that Tianjin JXSL instead report its consumption of “black wire” (*i.e.*, the intermediate input) rather than the un-drawn steel wire, *i.e.*, wire rod, received from Tianjin JXSL’s unaffiliated toller, and also provided Tianjin JXSL specific instructions on how the company should calculate CONNUM-specific consumption rates using the finished product weights in order to comply with these instructions. In our second supplemental questionnaire, we stated:

JXSL must multiply the calculated allocation ratio by the net weight of the finished product represented by each CONNUM.... As Tianjin JXSL is able to identify the CONNUM-specific production quantities {for wire rod}, calculate CONNUM-specific consumption ratios for each of the auxiliary inputs {applied to the black wire}. Next, report in a revised FOP database, the consumption of the auxiliary inputs in the manner explained above, *i.e.*, multiply the CONNUM-specific consumption ratios by the CONNUM-specific net weights.”⁸⁶

With respect to the black wire, in its second supplemental questionnaire response, Tianjin JXSL noted that its revised black wire FOPs were not actual amounts and provided the following explanation, which was unsupported and thus contrary to Commerce’s instructions: “{T}he amounts reported are calculated and allocated with production-consumption rate, and such consumption rate per ton will be very close to the actual unit consumption amount.”⁸⁷ In addition, rather than using weights to differentiate CONNUMs, as instructed, Tianjin JXSL introduced yet another reporting methodology using an unsupported weighting adjustment factor based on its theory that:

{S}taples with smaller diameters will have a smaller surface area than staples with larger diameters with larger surface areas, and therefore smaller diameter staples will consume more auxiliary materials on a per-unit basis than staples with larger diameters. Any differences in leg length or crown width are so small and insignificant that they are not measurable on a per-unit basis and thus were not included in the weighting adjustment factor.⁸⁸

⁸⁵ See IQ at D-2

⁸⁶ See Tianjin JXSL’s November 12, 2019 Supplemental Sections C and D Questionnaire Response (Tianjin JXSL November 12, 2019 SCDQR) at 4.

⁸⁷ See Tianjin JXSL’s November 25, 2019 Supplemental Section D Questionnaire Response (Tianjin JXSL November 25, 2019 SCDQR) at 7.

⁸⁸ *Id.* at 6.

In proposing this new methodology, Tianjin JXSL did not demonstrate or explain how the weighting factor was calculated or applied to each CONNUM in accompanying worksheets, and the second revised FOP database continued to report a single usage rate for the auxiliary inputs which again disregarded physical differences between products.⁸⁹ Moreover, the company's derivation of its black wire usage amount to produce its staples was based on an estimated yield loss ratio which it stated was not based on its actual consumption records. In addition, Tianjin JXSL reported without explanation a different number of products (*i.e.*, CONNUMs) in its second revised FOP database.⁹⁰

As we noted in the *Preliminary Determination*, with each questionnaire response, Tianjin JXSL raised yet more questions about its reporting methodology than it answered.⁹¹ Thus, we continue to determine that Tianjin JXSL did not act to the “best of its ability” in this investigation, as Commerce provided this company with three opportunities to report product-specific FOP data, including specific guidance and instructions on how to comply with Commerce's request for necessary information. In each instance, as described above, Tianjin JXSL failed to comply with our instructions to employ a reporting methodology for FOPs that differentiated material input usage amounts on a CONNUM-specific basis. We also note that Commerce granted Tianjin JXSL multiple extensions of time in which to do so.⁹² Specifically, in order to provide this company every opportunity to comply with Commerce's reporting requirements and remedy critical deficiencies, we granted Tianjin JXSL multiple extensions for its deadlines to submit its initial questionnaire response and for each of its supplemental questionnaire responses.

Furthermore, as noted in the *Preliminary Determination*, in two supplemental questionnaires, we provided Tianjin JXSL opportunities to remedy its production cost reconciliation, but it failed to reconcile its reported production costs to either of its submitted section D databases.⁹³ This further impeded Commerce's ability to calculate a reliable margin for Tianjin JXSL. The burden of creating an adequate record is not on Commerce, but on respondents.⁹⁴ This includes establishing the linkage among the various databases submitted by respondents to demonstrate that the data respondents submit fully reconcile to their accounting records. Without a valid cost reconciliation, we find that the information that Tianjin JXSL provided is so incomplete that it cannot serve as a reliable basis for reaching a determination under section 782(e) of the Act. Additionally, Commerce has previously found that failure to provide a cost reconciliation warrants use of total AFA.⁹⁵ Accordingly, here too, Tianjin JXSL failed to act to the “best of its ability.”

⁸⁹ *Id.* at tab Exhibit SSS-3.

⁹⁰ *Id.* at tab Exhibit SSS-2.

⁹¹ See *Preliminary Determination* PDM at 16.

⁹² *Id.*

⁹³ See Tianjin JXSL October 30, 2019 SCDQR; Tianjin JXSL November 12, 2019 SCDQR; and Tianjin JXSL November 25, 2019 SCDQR.

⁹⁴ See, e.g., *Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226 (CIT 2011); *NSK v. United States*, 346 F. Supp. 2d 1312 (CIT 2004); and *Chia Far Indus. Factory Co. v. United States*, 343 F. Supp. 2d 1344 (CIT 2004).

⁹⁵ See, e.g., *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.

For these reasons, Commerce continues to determine that it is appropriate to apply total AFA to Tianjin JXSL in the final determination.

Comment 5: Whether to Use the Reported FOP Data of Tianjin Hweschun's Cooperative Toller

*Tianjin Hweschun Arguments*⁹⁶

- Commerce should calculate NV using the actual FOPs in the wire drawing and galvanizing stages of production (*i.e.*, wire rod, zinc, *etc.*) that were submitted on the record of the investigation for Tianjin Hweschun's Toller 2 instead of the semi-finished product of galvanized wire, as valued by the Mexican FOP data.
- Commerce misunderstood or ignored Tianjin Hweschun's explanations concerning Toller 2's yield loss and Tianjin Hweschun provided a reasonable methodology to account for all of the FOPs consumed by Toller 2.
- The payment Tianjin Hweschun made to Toller 2 would include the processing fees and the cost of the extra wire rod materials. When calculating the per-unit consumption of wire rod by Toller 2, Tianjin Hweschun used the total consumption of wire rod purchased by Toller 2 plus the wire rod provided to Toller 2 by Tianjin Hweschun. That sum was divided by the total production output of Toller 2, resulting in the per-unit consumption reported. Thus, the input-to-output ratio is actually greater than 1:1 as demonstrated in the FOP calculation worksheet in Exhibit S3-7.⁹⁷ Contrary to Commerce's assertion in the *Preliminary Determination*, this reasonable calculation methodology accounts for the total consumption of the wire rod input and does not understate consumption.
- The actual consumption rate was calculated based on data from the toller's books and records. Commerce should not reject this information, as it is reliable and verifiable, as Commerce would discover should it determine to verify the data.

*Petitioner's Rebuttal Arguments*⁹⁸

- The record fully supports Commerce's determination that Toller 2's FOPs are unreliable, and that calculating NV starting with Tianjin Hweschun's reported galvanized wire consumption FOPs yields a more accurate result.
- Tianjin Hweschun repeatedly failed to properly report, support, or explain Toller 2's yield loss in the form and manner requested by Commerce, understating the actual consumption of material inputs.
- After several supplemental questionnaires Commerce specifically noted in its second supplemental section D questionnaire that Tianjin Hweschun's responses were "non-responsive," and that "it appears that Hweschun continues to under-report its

⁹⁶ See Tianjin Hweschun Case Brief at 1-5.

⁹⁷ *Id.* at 3-5 (citing Tianjin Hweschun's Second Supplemental Sections C and D Response, dated November 22, 2019 (TJH Nov 22, 2nd SCD), at Exhibit S3-7).

⁹⁸ See Petitioner's Rebuttal Brief at 17-21.

consumption of stainless-steel wire”.⁹⁹ Tianjin Hweschun’s response to this was nearly identical to its previous explanations providing nothing new for Commerce to consider.

- Additionally, Tianjin Hweschun failed to report FOPs for certain materials it typically would treat as factory overhead, but which Commerce requires to be reported separately, despite two attempts by Commerce to elicit this information.
- Tianjin Hweschun’s main reason for not reporting these inputs was that these items are “not physically incorporated into the final product.” Commerce, however, has repeatedly rejected the argument that physical incorporation is the determinative factor when deciding whether to treat an input as a direct material or an overhead expense. In *Citric Acid AR2 Final*, Commerce valued certain items as material inputs, even though those materials were not present in the final product. Similarly, in *Steel Nails from the PRC* and *Steel Rod from the PRC*, Commerce considered both drawing powder used to facilitate the drawing of wire rod into wire, and the wire drawing dies themselves, used to draw wire rod into wire, to be direct materials. Neither drawing powder nor dies were physically incorporated into finished steel nails.¹⁰⁰
- In this investigation certain items Tianjin Hweschun considers overhead should have been included in the company’s reported FOPs. Due to Tianjin Hweschun’s failure to comply with Commerce’s instructions and report these FOPs, the record is missing information needed to accurately calculate NV.

Commerce Position: For the final determination, Commerce determines that it is appropriate to use the reported FOPs from Tianjin Hweschun’s Toller 2 for the production of galvanized wire in the calculation of NV. Upon further consideration, we agree with Tianjin Hweschun that the methodology it used to report Toller 2’s FOPs is reasonable and in accordance with the reporting instructions contained in Commerce’s AD questionnaire.

In the *Preliminary Determination*, we determined that Tianjin Hweschun’s Toller 2 FOPs for galvanized wire were unreliable. We made this decision primarily because the toller stated that it did not track yield loss and it appeared that the toller had not reported consumption rates on a CONNUM-specific basis. After issuing and receiving responses to two supplemental questionnaires, we believed that the narrative response did not adequately explain how the reported consumption rates and yield loss were accounted for or calculated. However, after a more cogent explanation by Tianjin Hweschun in its briefs and further analysis of the record, we have determined that the reporting methodology provided by Tianjin Hweschun’s Toller 2 is in accordance with the reporting requirements requested by Commerce and does account for all material inputs and yield loss appropriately.

⁹⁹ *Id.* at 18-19 (citing Commerce’s Second Supplemental Sections C and D Questionnaire, dated November 12, 2019, at question 5).

¹⁰⁰ *Id.* at 21 (citing *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74171 (December 13, 2012) (*Citric Acid AR2 Final*); *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*Steel Nails from the PRC*), and accompanying IDM at Comment 17; *Certain Steel Threaded Rod from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) (*Steel Rod from the PRC*), and accompanying IDM at Comment 2).

As explained in its brief, when calculating the per-unit consumption of wire rod by Toller 2, Tianjin Hweschun used the total consumption of wire rod purchased by Toller 2 plus the wire rod provided to Toller 2 by Tianjin Hweschun.¹⁰¹ That sum was divided by the total production output of Toller 2, resulting in the per-unit consumption reported. As demonstrated in the FOP calculation worksheet in Exhibit S3-7, the input and output ratio is not 1:1 (*i.e.*, reflecting no yield loss),¹⁰² as was initially reported by Tianjin Hweschun. Commerce's preliminary decision not to value the Toller 2 FOPs was based primarily on Tianjin Hweschun's statements that its toller did not keep track of yield loss and that it received galvanized wire from its tollers in a 1:1 ratio.¹⁰³ Unexplained in the narrative response was that Toller 2's consumption reporting methodology was inclusive of its own consumption and production, thereby accounting for yield loss to the best of its ability.¹⁰⁴ Additionally, because Commerce was unable to conduct a verification of this information, we have determined it is reasonable to rely on information submitted from the respondent and its toller's books and records as facts available for the final determination. We find no record evidence to dispute the reliability of the information provided for FOPs in the wire drawing and galvanizing stages of production that were submitted on the record of the investigation from Tianjin Hweschun's Toller 2.

Regarding the issue of whether certain minor inputs¹⁰⁵ should be considered overhead or direct materials, we find that Tianjin Hweschun was responsive, and we accept the facts on the record as the facts available. Despite the petitioner's claim that Commerce should consider these items as direct input FOPs, we find that there is no evidence on the record to support such a finding. Commerce generally considers four main factors when classifying inputs as either direct materials or overhead: (1) whether the material is physically incorporated into the final product; (2) the material's contribution to the production process and finished product; (3) the relative cost of the input; and (4) the way the cost of the input is typically treated in the industry.¹⁰⁶ The items of concern in this investigation meet criteria 1, 2, and 4, as they are not physically incorporated into the final product, concern production equipment typically considered overhead, and are recorded as overhead in the normal course of business. While there is insufficient information on the record to consider the relative cost of these inputs (criterion 3), three of the four factors (*i.e.*, 1, 2, and 4 above) that Commerce generally considers support the valuation of these inputs as overhead. Therefore, we find it is in accordance with our reporting requirements to consider them among overhead for the final determination.

Finally, we disagree with the cases cited by the petitioner as the facts of each of those cases differ from the facts of this record in the ways detailed below.

¹⁰¹ See Tianjin Hweschun Case Brief at 2-5.

¹⁰² See TJH Nov 22, 2nd SCD at Exhibit S3-7.

¹⁰³ See *Preliminary Determination PDM* at 15-16.

¹⁰⁴ See Tianjin Hweschun Case Brief at 2-5.

¹⁰⁵ See *Certain Collated Steel Staples from China: Submission of Tianjin Hweschun's Supplemental Section D Response*, dated October 29, 2019 (TJH Oct. 29 SDQR), at 5-6 and Exhibit S2-18.

¹⁰⁶ See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018), and accompanying IDM at Comment 4.

In the *Citric Acid AR2 Final*, Commerce relied on the fact that the input at issue, water, was a direct material shown to be used in significant amounts throughout the production process in the two preceding segments concerning citric acid, as well as the relevant segment.¹⁰⁷ In the *Citric Acid AR2 Final*, Commerce found that “the Department’s treatment of RZBC’s total consumption of water as a direct material input {was} consistent with the Department’s practice generally to treat an FOP as a direct material input when, as in this instant case, significant amounts of the FOP are continuously used in the production process of subject merchandise” Thus, in *Citric Acid AR2 Final*, Commerce had product-specific information on the record and precedent from the two preceding segments that the input in question was used in significant amounts throughout the production process. This information had been verified in the LTFV investigation of that product and was further corroborated by the respondent’s reporting. Therefore, in that proceeding, factors 2 and 4 of the four factors listed above definitively confirmed that the input should be considered a direct input FOP.

In the instant investigation, Commerce has no case history regarding the production of the collated staples covered by the scope of the investigation because this is the initial segment of the proceeding, and the other respondent’s FOP reporting has been found wholly unreliable. We also have no information on the record of this proceeding to support a finding that the materials in question were used throughout the production process in significant amounts. Therefore, unlike in *Citric Acid AR2 Final*, we have no evidence that the inputs at issue herein are definitively direct inputs rather than overhead items.

The petitioner also cites to Comment 17 from the *Steel Nails from the PRC* IDM.¹⁰⁸ The issue in that case concerned the selection of a surrogate value for wire drawing powder and there was no discussion of whether the input should be considered as a direct material input or as overhead. In addition, the petitioner cites *Steel Rod from the PRC* in support of its argument that drawing powder, as in *Steel Nails from the PRC*, was not considered overhead.¹⁰⁹ We find that this reference is inapposite and concerns a different issue entirely. In *Steel Rod from the PRC* the issue concerned double counting. The respondent argued that the surrogate financial statement already included drawing powder in its selling, general, and administrative expenses calculation, and it should therefore not be included as a direct material. Additionally, Commerce specifically noted in that case, as in *Steel Nails from the PRC*, that drawing powder was directly consumed in the production of subject merchandise.¹¹⁰ Thus, neither case cited by the petitioner supports its argument that the items at issue here should not be included in factory overhead.

¹⁰⁷ See *Citric Acid AR2 Final* IDM at Comment 1.

¹⁰⁸ See Petitioner’s Rebuttal Brief at 21.

¹⁰⁹ *Id.*

¹¹⁰ See *Steel Rod from the PRC* IDM at Comment 2

Comment 6: Whether to Use the FOPs of Tianjin Hweschun's Cooperative Toller as Facts Available for the Uncooperative Toller

*Tianjin Hweschun Arguments:*¹¹¹

- Commerce should apply neutral facts available to establish the FOPs missing from the record for Tianjin Hweschun's uncooperative unaffiliated Toller 1.
- As the major supplier of galvanized wire, Toller 2 was fully cooperative in the investigation and has provided its FOPs accurately. In addition, Toller 2 welcomes Commerce to verify its facility and its books and records. Commerce should therefore use, as neutral facts available, the reported FOPs of Toller 2 for Toller 1's missing FOPs.
- It is Commerce's administrative practice to use FOP data from tollers as a substitute for missing FOP data where: "(1) a respondent has a number of tollers; (2) a respondent identifies tollers in a timely manner; (3) a respondent documents its unsuccessful efforts to obtain FOPs from its tollers; and (4) non-reporting tollers account for only a portion of FOPs and there is usable FOP information from other suppliers that could serve as a substitute for the missing FOPs."¹¹²
- The data submitted by Tianjin Hweschun's major (cooperative) Toller 2 serve as a reasonable substitute for missing FOP data and it is appropriate for Commerce to use facts otherwise available without an adverse inference because the record shows that Tianjin Hweschun cooperated to the best of its ability. Here, Tianjin Hweschun: (1) had a number of tollers; (2) identified its tollers in a timely manner; (3) explained it was unable to obtain FOP data for the uncooperative toller; (4) Toller 1 accounted for a relatively minor portion of Tianjin Hweschun's tolling processes; and (5) Toller 2's FOP data were accurately reported and are verifiable.

*Petitioner's Rebuttal Arguments*¹¹³

- The cooperative Toller 2's reported FOPs are themselves unreliable as the basis for calculating NV, and the uncooperative Toller 1 produced unique types of wire, rendering Toller 2's FOPs inappropriate as a neutral facts available substitute.
- While Toller 1 processed a smaller amount of Tianjin Hweschun's galvanized wire than Toller 2, its share as a percentage of the wire drawing and galvanizing still represents a major portion of this input.
- Tianjin Hweschun's monthly inventory reports of galvanized wire from these tollers reveals that Toller 1 and Toller 2 supply significantly different types of wire to Tianjin Hweschun.
- In terms of the volume of galvanized wire entered into inventory during the POI, a majority of the wire sourced from Toller 1 was of different diameters than those sourced from Toller 2.

¹¹¹ See Tianjin Hweschun Case Brief at 5 - 7.

¹¹² *Id.* at 5-7 (citing *SolarWorld Americas, Inc. v. United States*, 234 F. Supp. 3d 1286, 1311 (CIT 2017) (*SolarWorld Americas*); and *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62474 (September 9, 2016), and accompanying IDM at Comment 10)).

¹¹³ See Petitioner's Rebuttal Brief at 22-24.

- Toller 1 appears to be a more specialized toller of distinguishable types of wire, whose production operations, inputs, and efficiencies would almost certainly be dissimilar from those of Toller 2. The two tollers appear to have different capabilities and fill different roles.
- In light of the apparent fundamental differences in these two tollers' operations, Commerce's determination to rely on Tianjin Hweschun's reported wire consumption amounts and the intermediate input methodology was reasonable and ensured the most accurate NV and margin calculations.

Commerce Position: We agree with Tianjin Hweschun. It is Commerce's practice to substitute a cooperative toller's FOPs for the missing FOPs of a non-cooperative unaffiliated toller when (1) a respondent has a number of tollers; (2) a respondent identifies tollers in a timely manner; (3) a respondent documents its unsuccessful efforts to obtain FOPs from its tollers; and (4) non-reporting tollers account for only a portion of FOPs and there is usable FOP information from other suppliers that could serve as a substitute for the missing FOPs.¹¹⁴ We find that all four of these criteria have been met in this investigation.¹¹⁵ In the *Preliminary Determination*, we found that the cooperative toller's FOP reporting was unreliable and resorted to the intermediate input methodology for all tollers due to that lack of reliable FOP reporting on the record.¹¹⁶ As described above, we find for the final determination that the FOP reporting of the cooperative toller is indeed reliable. Accordingly, we find that it is congruent with our practice to value the FOPs of Toller 1 with the FOPs reported by Toller 2 as facts available. This is consistent with our treatment of the two tollers in the *Preliminary Determination*, where we applied the same facts available to both tollers.

The petitioner argues that the two tollers make significantly different products and that each toller produces a significant portion of the total galvanized wire for the respondent, such that it is inherently inaccurate to account for one toller's manufacturing process with the other toller's FOPs.¹¹⁷ First, there is no established threshold for the "portion" of the total tolled material produced by any toller after which it is too large to be accurately accounted for using the FOPs of another toller as facts available. Threshold notwithstanding, Commerce has a practice of evaluating the fact pattern of each case individually in this regard. In the instant investigation, we find that Toller 2 accounts for a majority of the total tolled material.¹¹⁸ Additionally, we find that the manufacturing process is virtually identical for producing galvanized wire, regardless of the diameter of the galvanized wire end product. The available information does not indicate that there are any significant differences in manufacturing experience between the two tollers. The information available indicates that the two tollers produce a range of substantially similar products that overlap among the CONNUMs reported by Tianjin Hweschun in its FOP database.

¹¹⁴ See *SolarWorld Americas*, 234 F. Supp. 3d at 1311.

¹¹⁵ See *Certain Collated Steel Staples from China: Submission of Tianjin Hweschun's Section D Response*, dated September 16, 2019 (TJH Sept. 16 DQR), at D-10; and TJH Oct. 29 SDQR at 7 and Exhibit S2-21.

¹¹⁶ See *Preliminary Determination PDM* at 15-16.

¹¹⁷ See *Petitioner's Rebuttal Brief* at 22-24.

¹¹⁸ See TJH Sept. 16 DQR at 10; and TJH Oct. 29 SDQR at 7.

As the four criteria outlined above have been met in this case for purposes of valuing tolled inputs, we have substituted Toller 2's FOP data for Toller 1's unreported FOP data in this final determination.

IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final dumping margins for all the investigated companies in the *Federal Register*.

Agree

Disagree

5/22/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance