March 14, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing non-exclusive the duties and functions of
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing non-exclusive the duties and functions of
Deputy Assistant Secretary for Enforcement and Compliance


SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by the petitioners\(^1\) and the respondents\(^2\) in the 13\(^{th}\) administrative review of the antidumping duty order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam). Following the Preliminary Results,\(^3\) and the analysis of the comments received, we made changes to the margin calculations for the final results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

CASE ISSUES

Comment 1: Assignment of AFA Rate to GODACO
Comment 2: Assignment of GODACO’s Rate to the Separate Rate Respondents

\(^1\) The Catfish Farmers of America and individual U.S. catfish processors (collectively, the petitioners).
\(^2\) Case and/or rebuttal briefs were filed by the following respondents: GODACO Seafood Joint Stock Company (GODACO); Cantho Import-Export Seafood Joint Stock Company (Caseamex); Golden Quality Seafood Corporation (Golden Quality); Green Farms Seafood Joint Stock Company (Green Farms); Hung Vuong Group (HVG); NTSF Seafoods Joint Stock Company (NTSF); and, Vinh Quang Fisheries Corporation (Vinh Quang).
Comment 3: Assignment of Partial AFA to Hoang Long and CADOVIMEX II
Comment 4: Whether to Rescind the Review with Respect to Golden Quality
Comment 5: Golden Quality’s Reporting of CONNUM-Specific FOPs
Comment 6: Golden Quality’s Separate Rate
Comment 7: Preliminary Results Publication Errors
Comment 8: CBP Instructions

BACKGROUND


SCOPE OF THE ORDER

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species Pangasius Bocourti, Pangasius Hypophthalmus (also known as Pangasius Pangasius) and Pangasius Micronemus.

Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets) and boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape.

Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole, dressed fish are beheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species Pangasius, including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (HTSUS).

4 See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 81 FR 71061 (October 14, 2016) (Initiation Notice).
7 See the February 5, 2018, submissions of the petitioners, GODACO, HVG, CASEAMEX, Green Farms, Golden Quality, NTSF and Vinh Quang; and the February 15, 2018, submissions by Petitioners and GODACO.
8 Until June 30, 2004, these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043
The order covers all frozen fish fillets meeting the above specifications, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

SEPARATE RATES

In the Preliminary Results, we determined that the following nine companies met the criteria for separate rate status: (1) Cadovimex II Seafood Import-Export and Processing Joint Stock Company (Cadovimex II) (2) CASEAMEX; (3) Green Farms; (4) Hoang Long Seafood Processing Co., Ltd. (Hoang Long); (5) HVG; (6) NTSF; (7) Vinh Quang; (8) Cuu Long Fish Joint Stock Company (CL-Fish); and (9) Dai Thanh Seafoods Company Limited (DATHACO).\(^9\)

With respect to these companies, we have not received any information or argument since the issuance of the Preliminary Results that provides a basis for reconsideration of these determinations. Therefore, Commerce continues to find that Cadovimex II, CASEAMEX, Green Farms, Hoang Long, HVG, NTSF, Vinh Quang, CL-Fish, and DATHACO meet the criteria for a separate rate.

In its Preliminary Results, Commerce inadvertently omitted Southern Fishery Industries Company, Ltd. (South Vina) from its separate rate analysis and, consequently, did not include South Vina in its list of separate rate companies. South Vina filed a request to be reviewed (which it did not withdraw) and, therefore, Commerce included South Vina in its Initiation Notice.\(^10\) On July 26, 2017, Commerce issued a supplemental questionnaire to all separate rate applicants with an active review request, including South Vina, to which South Vina responded. As such, for the final results, South Vina has been granted a separate rate.

DISCUSSION OF THE ISSUES

Comment 1: Assignment of AFA Rate to GODACO

GODACO’s Arguments

- The application of AFA is unlawful as an adverse inference cannot be applied unless it is appropriate to use facts otherwise available, and Commerce has made no showing that facts otherwise available is appropriate to fill gaps in information, or otherwise complete the data provided. Further, none of the statutory criteria for adverse inferences has been met.
- GODACO reported all sales and FOP data on a CONNUM-specific basis. However,
Commerce takes issue with GODACO’s construction of its CONNUMs, specifically, the net weight field (NETWGTU). Commerce claims the net weight CONNUM field must include all ice, water, glazing, moisture gained or lost in processing, which is untrue.

- The Section C questionnaire instructs to report NETWTGU “as sold” in the United States. All of GODACO’s sales were made on a 100 percent net weight basis, thus it properly reported only added ice (glazing), in this field, as glazing is not inherent in the sales weight of the product sold to the United States; instead, it is added as an outer protective layer around the fillet that drains away upon thawing. This 100 percent net weight is reflected in all subsequent CONNUMs and FOPs for both the U.S. and FOP databases, and both are reported on the identical net weight basis. GODACO could not, and did not, report moisture gains or losses in its NETWGTU field because it made its sales inclusive of all added water weight.
- Commerce, ironically, upholds GODACO’s CONNUM reporting in the Preliminary Results BPI Memo, as Commerce stated that 100 percent net weight should be reported as “00.” Commerce further accepted this basis for reporting GODACO’s sales, as a supplemental questionnaire instructed GODACO to report all FOPs net of glazing or ice, not net of all moisture added and lost to the fillet during processing, which is the basis on which GODACO made its sales. While GODACO’s definition of NETWGTU leads to the inclusion of de minimis amounts of certain non-U.S. product in the FOPs for only two CONNUMs, the inclusion of this non-U.S. product had no material impact on the reported FOPs.
- GODACO did not fail to provide moisture levels (water gains or losses), as it submitted all weights for all added ice, water, glazing, soaking, etc. at every stage of production for all CONNUMs in the FOP database. Moreover, it submitted all pre- and post-soaking (net) weights for each CONNUM in the U.S. sales database. Thus, even if Commerce rejects GODACO’s reporting, it can readily allocate the data over any weight basis it chooses based on record evidence.
- At no point did Commerce request that GODACO revise its NETWGTU field for net moisture gains or losses. The Department requested only that GODACO report a new non-CONNUM-specific field, called NETWTG2U, in the U.S. sales database, which GODACO reported. If Commerce determined that the record was still deficient after the Preliminary Results, it provided no notice to GODACO of any further deficiencies and no opportunity to amend such deficiency, as required under section 782(d) of the Tariff Act of 1930 (the Act), but did so to the other respondents.
- At no point did GODACO withhold information or fail to submit any data in the format requested as Commerce claims. Commerce’s conclusions as to the reconciliation of its reported FOPs was based on a single exhibit, which covered only two days of sample production, and thus, should not be used to corroborate and reconcile FOPs for the full period. Further, the alleged deficiencies are based on incomplete or incorrect calculations and misinterpretations.
- Other than this exhibit, no other specific exhibits, data, calculations, formulas, allocations or reconciliations are cited as having any anomalies or deficiencies. In fact, all relevant data and all relevant formulas are provided in the other spreadsheets submitted.
- Commerce’s rejection of GODACO’s rebuttal comments was contrary to law as it was timely filed and clearly was covered under 19 CFR 351.301(c)(2)(vi), where an interested party is permitted one opportunity to submit factual information in rebuttal. The filing,
However, contained no new information or data and was based entirely on record evidence.

- Finally, the applicable regulation requires verification of data and information submitted in a review where the requirements have been met. In this case, all of these prerequisites have been met, yet Commerce has failed to meet this obligation.
- Thus, at no point did GODACO fail to cooperate, and in fact, fully cooperated to the best of its ability and in accordance with its U.S. sales terms, record keeping and normal business practices. It did so by providing full explanations, with hundreds of supporting documentation and spreadsheet files. GODACO provided its full cooperation despite the complex nature of its operations, *i.e.*, thousands of production runs during the POR, the different types of products processed by the respondent, and the fully integrated nature of its operations.

**The Petitioners’ Arguments**

- AFA is fully justifiable as GODACO failed to cooperate to the best of its ability and because it withheld information. Furthermore, non-adverse facts available is not possible, as GODACO’s data, notwithstanding, is either overstated, understated, or distorted.
- GODACO’s definition of the NETWGTU field as properly being “as sold” and its claim that it should not include water weight gain clearly flies in violation of Commerce’s express requirement that all water should be reported in this field. Moreover, GODACO’s claim that its U.S. sales term of 100 percent net weight does not include soaking water weight gain is false, as its sales documentation establishes otherwise. Furthermore, even if GODACO could have reported the water weight gain, the record shows that GODACO’s information is distorted by the inclusion of non-subject products.
- Commerce did not uphold GODACO’s CONNUM reporting in the *Preliminary Results* BPI Memo. Commerce merely stated that GODACO was inconsistent with its reporting. In addition, because Commerce requested in one supplemental question that reporting be net of glazing, this in no way validates GODACO’s erroneous conflated definition of “as sold.” Moreover, GODACO’s reporting did not result in an immaterial impact as even what it did report was not CONNUM-specific and suffered from other significant distortions.
- Commerce’s rejection of GODACO’s attempts to provide untimely new allocation methodologies and new wholesale outcomes has been sustained by the Courts, *i.e.*, *Tri Union* and *Sugiyama*. Furthermore, such late proposals would prejudice the petitioners in the administrative process.
- Regarding GODACO’s claim that Commerce never requested that it revise its NETWGTU field, Commerce repeatedly asked GODACO to provide such information in the supplemental questionnaire and even included a whole section devoted to “NETWGTU.” Furthermore, Commerce did provide early notice to GODACO that it could have readily sought guidance regarding the proper understanding of any variable, including NETWTGTU, but it did not do so.
- GODACO’s attempts to provide new explanations at a late stage that the incomplete, incorrect or misunderstood calculations are, that it claims, readily explained in other spreadsheets is not a substitute for a timely and adequate explanation as requested.
- Per Commerce’s practice, it is under no obligation to verify information it has deemed as unusable.
- As detailed above, GODACO failed to cooperate to the best of its ability and withheld
information, accordingly, GODACO should not be rewarded by anything less than an adverse facts available rate in accordance with section 776(b) of the Act. The adverse margin of $3.87/kg, which is the highest rate calculated in any prior segment of this proceeding. Alternatively, Commerce should continue to assign GODACO the rate of $2.39/kg as a facts available rate pursuant to section 776(a) of the Act, albeit with an adverse inference to deter future acts of non-cooperation.

Commerce’s Position:

Application of Facts Available and Use of Adverse Inference

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

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

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

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Further, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that Commerce may employ an
adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.

A. Application of Facts Available

Commerce finds that the use of facts otherwise available is warranted with respect to GODACO, pursuant to section 776(a) of the Act.

1. GODACO Withheld Necessary Requested Information

In order to compare NVs to U.S. prices on an apples-to-apples basis, the Act instructs Commerce to determine the NV of the subject merchandise based on the FOPs utilized in producing the merchandise. To achieve this end, Commerce utilizes a CONNUM which defines the key physical characteristics of the subject merchandise as those that are commercially meaningful in the U.S. marketplace, and impact costs of production. In NME proceedings in particular, Commerce requires respondents to report FOPs that are specific to each CONNUM sold to the United States “to construct the value of the product sold by {the respondent} company in the United States.”

Commerce has consistently requested CONNUM-specific FOP information in each questionnaire issued in every segment of this case since the investigation. In fact, the agency’s requirement for CONNUM-specific FOPs is explicitly set forth in Commerce’s standard NME questionnaire, which has been publicly available on Commerce’s website for years. Although the respondents participating in the original investigation were excused from reporting CONNUM-specific FOPs, Commerce recognized the inaccuracies that could result in future administrative reviews if respondents did not report CONNUM-specific FOPs. As a result, in the investigation, Commerce placed respondents on notice that in future segments it would

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12 See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000) (SSS Hollow Products); Antidumping Duties, Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997); and Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (Nippon Steel).
13 See sections 773(a) and (b) of the Act.
14 See, e.g., Large Residential Washers from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation, 81 FR 1398, 1399 (January 12, 2016) (Washers Initiation) and Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review, 73 FR 12950 (March 11, 2008) and accompanying IDM at Comment 1 (where Commerce stated that, consistent with Department practice, model-matching criteria were developed to account for the salient characteristics of the subject merchandise and not the specific experience of any one respondent).
15 See Commerce’s original antidumping duty questionnaires at D-1.
16 See http://enforcement.trade.gov/questionnaires/questionnaires-ad.html.
require CONNUM-specific FOPs. In the 8th AR Final, Commerce reminded respondents of their obligation to report CONNUM-specific FOPs, noting that Commerce “may require Vinh Hoan and other respondents to report {their} FOPs on a CONNUM-specific basis...” In the 11th AR Final, Commerce applied facts available to the respondents because they failed to report their FOPs on a CONNUM-specific basis. In the subsequent NSR Final, Commerce applied facts available to the respondent for again failing to report its FOPs on a CONNUM-specific basis.

In the original questionnaire response, GODACO stated that it was able to report CONNUM-specific factors for the whole fish input based on daily CONNUM-specific recordation of consumption for each production lot, and that the company totals the weight of fish consumed at each processing step for each CONNUM and creates CONNUM-specific total weights.

Subsequently Commerce asked GODACO to revise and provide production records substantiating that its reported FOPs have the same physical characteristics as those that entered the United States. In response, GODACO provided an explanation with an attached worksheet, as an example, of the daily consumption of whole live fish on a CONNUM-specific basis. GODACO then explained that the amount of whole live fish consumed for that CONNUM is based on an allocation of the finished production quantity of that CONNUM in relation to all products produced. However, a review of the worksheet reveals that the numbers reported in the worksheet do not correspond to the number generated by its allocation methodology. Further, because GODACO withheld the allocation formulas in the worksheets, Commerce was unable to: 1) determine whether the allocations were done on a CONNUM-specific basis; and 2) link/reconcile the daily worksheets to the POR totals.

2. GODACO’S Explanations for Not Providing the Requested Data Are Unavailing

18 Id.
19 See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013) (8th AR Final) and accompanying IDM at Comment XXII.
22 See GODACO April 19, 2017, submission at 22.
23 See GODACO July 17, 2017, submission at 12-13 and Exhibit S-16.
24 Id.
25 See BPI Memo.
26 Commerce noted further discrepancies such as the description of the CONNUM in the worksheet does not match the reported CONNUM with regard to net weight, further casting doubt as to the reliability of the data. Also, GODACO reported that it only produced a very limited number of sizes that day, when it has been Commerce’s experience that many sizes are generated given even a small amount of input, e.g., 100kg. See BPI Memo at Attachment 2.
Commerce’s CONNUM is comprised of seven characteristics, and one of them is “Net Weight Factor” (NETWGTU). GODACO argues that the Section C questionnaire instructs to report NETWGTU “as sold” in the United States and that all of GODACO’s sales and factors of production (FOP) were properly reported on a 100% net weight basis, i.e., net of any soaking water or ice at the glazing stage of production. However, in the original questionnaire, we asked GODACO to report the percentage of weight as sold accounted for by any added ice, water, glazing, soaking etc., in both the FOP and U.S sales databases. Commerce also stated that, for example, if the product is soaked with a weight gain additive and additional water weight accounts for 15 percent of the weight of the merchandise as sold, report the numeric characters “15” in this field. In response, GODACO stated that only the percentage of glazing was reported in this field. Thus, GODACO only partially answered this question and failed to report the amount of water weight gain due to any soaking (which is by far the largest contributor to the weight gain of a fillet). Furthermore, GODACO’s claim that the “as sold” subject merchandise does not include any soaking added water weight is clearly contradicted by record evidence.

Regarding GODACO’s claims that Commerce upheld GODACO’s NETWGTU reporting in the Preliminary Results BPI Memo, this is untrue. The statement cited was made by Commerce in the preliminary results to point out that GODACO was inconsistent even in its own faulty interpretation of NETWGTU. GODACO further claims that Commerce instructed it in a supplemental questionnaire to report all FOPs net of glazing or ice, not net of moisture (water pick up or loss), i.e., as sold. However, the questions at issue asked for: 1) an explanation if the weights in the U.S. sales database were inclusive or exclusive of glazing; and 2) to revise all per unit FOP calculations to account for only production of frozen fish fillets having the same physical characteristics as the subject fillets entered into the United States. In sum, the first question asked for an explanation and the second question asked that the revised FOP calculations be on a CONNUM-specific (same physical characteristics) basis, and thus, in no way requests that it not include soaking water weight.

GODACO claims that at no point did Commerce request that GODACO revise its NETWGTU field for net moisture gains or losses. However, Commerce issued GODACO a supplemental questionnaire, including a specific section devoted to “NETWGTU,” asking it to revise all per-unit FOP calculations to account for only the production of frozen fish fillets having the same physical characteristics (including NETWGTU, which includes any added ice, water, glazing, soaking etc.) as the fillets subject to the Order. In response, GODACO provided an

27 This characteristic should be reported uniformly on both the FOP and U.S. sales databases for proper matching purposes, and this characteristic is percentage-specific and not ranged.
28 See Commerce’s original antidumping duty questionnaire dated February 24, 2017 (Original Questionnaire), at C-6 and D-7.
29 Id.
30 See GODACO’s April 13, 2017, submission at 12.
31 See BPI Memo.
32 See GODACO’s July 17, 2017, submission at 7 (question 20).
33 Id. at Questions 16 and 37.
34 Id.
35 See Commerce’s supplemental questionnaire (Supplemental Questionnaire), dated June 13, 2017, at question 37.
explanation of how it calculated its claimed “CONNUM-specific” FOPs, but it did not address whether it had revised its FOPs to reflect and include the amount of water weight gain by soaking in the NETWGTU field. In fact, GODACO did not revise its FOP database with regard to NETWGTU, which is evident because the original and supplemental databases are the same in this regard.36

GODACO further claims that Commerce provided no notice to GODACO that its responses were deficient, and provided no opportunity to seek guidance and amend such deficiency. However, Commerce provided more than adequate notice beginning in the original questionnaire wherein Commerce stated that “If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge before preparing your response to this section of the questionnaire.”37 In addition, Commerce submitted a lengthy supplemental questionnaire wherein it provided GODACO an opportunity to correct its deficiencies, including an entire section devoted to NETWGTU.

GODACO argues that even if Commerce has issues with GODACO’s construction of NETWGTU, it submitted all weights for all added ice, water, glazing, soaking, etc. at every stage of production for all CONNUMs in the FOP database and that it submitted all pre- and post-soaking (net) weights for each CONNUM in the U.S. sales database. However, even if it did submit these general aggregate weights, these were not submitted on a CONNUM-specific basis, and by definition, were not reported properly given GODACO’s definition of NETWGTU. Furthermore, Commerce has no way to deconstruct and reconstruct data when the original data were mis-reported. Moreover, GODACO stated that the CONNUMs are further not specific with regard to NETWGTU, as the company confirmed that non-subject merchandise which have higher amounts of water added by soaking were included in the CONNUMs, given GODACO’s misreporting in the first place.38 Thus, GODACO’s claims that it resulted in the inclusion of small amounts of products that had no material impact is untrue, again based on its faulty definition of NETWGTU. As such, given the above, GODACO failed to report its FOP information to Commerce as requested.

This failure carries over to the U.S. sales database as well, given that each observation therein is misreported on a glazing-only NETWGTU basis, i.e., sales are grouped/matched by glazed weight only and not by the total amount of water weight gain, including soaking, as requested. Thus, GODACO’s failure prevents Commerce from properly matching any U.S. sales to a proper and accurate NV, and, accordingly calculating an accurate margin.39

36 See GODACO’s April 19, 2017, and July 17, 2017, submissions.
37 See Original Questionnaire at D-1
39 Although GODACO claims that the applicable regulation requires verification in this instance, because the record is missing necessary, accurate and reliable data, Commerce is under no obligation to verify the incomplete data on the record or use them in its margin calculations. See, e.g., Certain Steel Threaded Rod from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2013-2014, 80 FR 26222 (May 7, 2015) and accompanying PDM at “Application of Facts Available and Use of Adverse Inference,” unchanged in Final Results, 80 FR 69938 (November 12, 2015) and accompanying IDM at Comment 1; Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 82 FR 3284 (January 11, 2017) and accompanying IDM at Comment 1.
With respect to Commerce’s conclusion that as a result of the withholding of the requested data, it cannot determine whether GODACO’s allocations were done on a CONNUM-specific basis or link/reconcile the daily worksheets to the POR total, GODACO claims that this conclusion was based on a single exhibit, for only two days of sample production and, thus, should not be used to corroborate and reconcile FOPs for the full period. However, Commerce originally asked GODACO to provide more extensive information, but GODACO requested that Commerce significantly reduce the reporting to just two days. Moreover, GODACO stated that it used the same methodology for the other FOPs, e.g., preservatives. The information regarding the other FOP exhibits demonstrate the same pattern of missing formulas and numbers that do not reconcile to the reported allocation methodology.

Accordingly, given the totality of the above, Commerce finds that it is missing accurate, complete, and reliable sales and FOP databases to calculate an accurate margin for GODACO. Without these two critical pieces of information, Commerce finds that GODACO’s reported databases are so incomplete with respect to necessary elements of the calculation that they cannot be relied upon in the calculation of an accurate antidumping duty margin. Accordingly, because Commerce finds it does not have complete, accurate, and reliable sales and FOP information to calculate a margin, we determine that the application of facts available pursuant to sections 776(a)(1) and (2)(A), (B) and (C) of the Act to all of GODACO’s information is warranted.

By withholding the necessary, requested information in the form and manner requested by Commerce, despite Commerce’s repeated requests for that data, GODACO significantly impeded Commerce’s ability to determine whether GODACO’s reported FOPs reconcile to its reported allocation methodology, pursuant to section 776(a) of the Act. Furthermore, because GODACO stated that the total amounts for the POR were derived from these daily amounts, and Commerce could not reconcile the information, this further undermined the reliability of GODACO’s reported FOPs.

Finally, GODACO argues that Commerce’s rejection of GODACO’s rebuttal to the petitioner’s deficiency comments was contrary to law as it was timely filed. However, we rejected this submission because we found certain databases and worksheets and the narrative portion pointing to the new databases and worksheets constituted untimely filed new factual information. We further explained that pursuant to 19 C.F.R. 351.305(1)(v), its rebuttal comments should have been limited to rebutting, clarifying or correcting information and comments Petitioners raised in their August 1, 2017, submission, and that it was not an opportunity to submit new information, such as databases, worksheets or comments, more

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40 See GODACO’s June 20, 2017, submission (Request to Streamline Supplemental Questionnaire).
41 Id. at 13, and Exhibit-S-16.
42 See BPI Memo.
43 See Lightweight Thermal Paper from Germany: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 23220 (April 18, 2013) and accompanying IDM at Comment 1.
44 See GODACO’s August 14, 2017, submission.
appropriately responsive to the Department’s supplemental questionnaire, issued on July 3, 2017, and amended on July 5, 2017. As such, we rejected this submission because the new reporting methodologies and substantive revisions to GODACO’s calculations were substantive and untimely.

Application of Facts Available to GODACO

Pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act, Commerce determines that the use of facts otherwise available is warranted with respect to GODACO. During the course of this review, Commerce discovered that GODACO withheld key information that was requested by Commerce for calculating an accurate margin for GODACO. Specifically, GODACO failed to provide in the form and manner requested by Commerce the following necessary information: (1) an accurate, reliable factors of production (FOP) database that is reported on a CONNUM-specific basis; (2) a sales database reported on a CONNUM-specific basis; and (3) complete farming FOPs. As such, GODACO significantly impeded the proceeding by not providing this necessary information.

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

Here, the requests for information were clear and GODACO elected not to provide the requested information. Therefore, Commerce finds that the application of facts available to GODACO, pursuant to sections 776(a)(1) and (2), is warranted.

B. Use of Adverse Inference

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

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46 Id.
48 See Original Questionnaire and Supplemental Questionnaire.
49 See Tung Mung Dev. Co. v. United States, 25 CIT 752, 758 (July 3, 2001) (Tung Mung); Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent’s obligation to create an accurate record and provide Commerce with the information requested).
50 See Tung Mung, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all the five enumerated criteria of 782(e)).
51 See section 776(b) of the Act.
such a case, the Act permits Commerce to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.\footnote{Id.; see also SAA at 870.} Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”\footnote{See SAA at 870.} The Court of Appeals for the Federal Circuit (CAFC), in Nippon Steel, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.\footnote{See Nippon Steel, 337 F.3d at 1382.} The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.\footnote{Id. at 1380.} Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.\footnote{Id. at 1382.} The CAFC further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.\footnote{Id.}

Selection of AFA Rate

In applying an adverse inference, pursuant to section 776(b)(2) of the Act, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.\footnote{See section 776(b) of the Act. On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.\footnote{See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice). The text of the TPEA may be found at https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.} In selecting an AFA rate, Commerce selects 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.\footnote{See SAA at 870.} Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.\footnote{See section 776(b)(1)(B) of the Act.} Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate 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, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. However, under the new section 776(d) of the Act, Commerce may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that, when selecting facts available with an adverse inference (i.e., AFA), Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated, or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding, and 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.

The highest margin applied in a separate segment of this proceeding and currently in effect is $3.87/kg. Accordingly, we determine that the AFA rate is the $3.87/kg for purposes of this review. In accordance with section 776(c)(2) of the Act, this rate does not need to be corroborated because it is a calculated rate applied in a prior segment of this proceeding.

Comment 2: Assignment of GODACO’s Rate to the Separate Rate Respondents

Separate Rate Companies’ Arguments

- The Act and the SAA make clear that if the “expected method” is not feasible or produces a result that is not “reasonably reflective,” Commerce may use any “reasonable method” to establish the estimated all-others rate.
- Commerce’s reliance on a non-cooperative and punitive total AFA rate for the separate rate respondents was neither feasible nor reasonably reflective because: 1) the separate rate companies were fully cooperative and, thus, the rate is not accurate and fair; 2) the rate is much higher than originally calculated rates for the separate rate respondents; 3) it causes fully cooperative companies to suffer for GODACO’s failure; and, 4) it is not a contemporaneous rate, i.e., from five reviews prior.
- Furthermore, the expected method is not feasible as Commerce cannot weight-average as required by this method, i.e., there is no volume data, or accurate/contemporaneous rates in the review from which to base the “expected method” on.

61 See also 19 CFR 351.308(d).
62 See SAA at 870.
63 See section 776(d)(1)(B) and 776(d)(2) of the Act.
64 See section 776(d)(3)(B) of the Act.
65 See section 776(c)(2) of the Act.
66 See section 776(d)(1)(2) of the Act.
68 Our decision to apply this AFA rate to GODACO does not affect its separate rate eligibility.
• Section 735(c)(5)(A) of the Act prohibits the calculation of an all-others rate based entirely on facts available.
• The *Albemarle* decision does not even involve a situation or fact pattern relying on total AFA or any type of “adverse” inference as in the instant review.
• Even then, *Albemarle* does not prohibit pulling forward rates from prior periods and there is no evidence that the rate applied to non-selected respondents in the prior segment had changed, and thus, is reasonably reflective. As such and consistent with Commerce’s well-established practice of using a reasonable, fair and accurate method, Commerce should continue to use this practice and apply the much more contemporaneous rate of $0.69/kg, which was not based on facts available.
• In two recent post-*Albemarle* cases, *Stainless Steel Sinks* and *Tapered Roller Bearings*, Commerce applied the pull forward rate when the mandatory respondents in those cases were assigned the country-wide rate.69
• Commerce has voluntarily submitted data from Hoang Long and should apply its calculated rate for the separate rate respondents.
• Commerce could have solicited further information from the separate rate respondents, but chose not to do so.

**The Petitioners’ Arguments**

• Commerce properly assigned $2.39/kg to the separate rate respondents. This rate is reasonably reflective of the separate rate respondents’ POR dumping behavior.
• Commerce properly rejected the pull-forward separate rate of $0.69/kg because as outlined in *Albemarle*, the Court underscored that Commerce cannot simply assume that the underlying facts of calculated dumping margins remain the same from period to period, and if Commerce has available contemporaneous data, that data will provide a better approximation of the separate rate respondents’ dumping margins than outdated, non-contemporaneous data.
• The $2.39/kg preliminary rate is not a punitive adverse rate, as it was calculated directly from a mandatory respondent’s sales and FOP data without the use of any adverse inference.
• Commerce has applied adverse inferences rates to separate rate companies in prior proceedings, e.g., *Grain-Oriented Electrical Steel from China*, where Commerce determined to assign an AFA rate as the “all others” rate.70
• The $2.39/kg rate is reasonably reflective as it is consistent and corroborated with record information from the respondents’ own contemporaneous quantity and value data.
• As such, there is no need for Commerce to pull forward the $ 0.69/kg rate as the separate rate. Moreover, as accuracy and fairness are Commerce’s primary objectives, Commerce should continue to rely on $2.39/kg as the separate rate for the final results.
• Regarding Hoang Long, in the *Preliminary Results*, Commerce determined that it did not have the requisite resources to examine Hoang Long’s voluntarily submitted data. Even

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70 See *Grain-Oriented Electrical Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 59221 (October 1, 2014) and accompanying IDM at 10-14.*
then, Hoang Long’s voluntary responses are not viable as they are not CONNUM-specific and suffer from distortions. Moreover, Commerce’s regulations direct Commerce to exclude the margins calculated for voluntary respondents.

- Finally, it would be impracticable to solicit information from the separate rate respondents at such a late stage.

**Commerce’s Position:** We agree with the petitioners. Although the fact pattern in *Albemarle* did not involve the application of adverse inferences, we find the CAFC’s reasoning in *Albemarle* to be applicable to the respondents in this proceeding.

In *Albemarle*, Commerce assigned *de minimis* margins to the two individually examined exporters in an administrative review of an antidumping order. Commerce then assigned margins to the non-examined separate rate respondents that were “pulled forward” from a prior segment of the proceeding instead of averaging the two *de minimis* margins to calculate a separate rate.

The United States argued at the CAFC that Commerce’s approach was a permissible interpretation of Section 735(c)(5) of the Act. This statutory provision states that Commerce must calculate separate rates by averaging the margins for the individually investigated exporters and producers. This provision, however, also provides exceptions to this rule allowing Commerce to use “any reasonable method” to establish separate rates in certain circumstances, including when all the individually investigated exporters received *de minimis* margins. The United States argued that Commerce was permitted to resort to “any reasonable method” to calculate the separate rates because both individually examined exporters had received *de minimis* margins.

The CAFC in *Albemarle* rejected these arguments. The court cited to the SAA, which states that the statute “assumes that...reviewing only a limited number of exporters will enable Commerce to reasonably approximate the margins of all known exporters.” Based on this provision of the SAA, the Court determined that averaging the rates of individually examined exporters and producers is the “expected methodology” for calculating separate rates. The CAFC furthermore placed the burden on Commerce when deviating from the expected methodology to establish based on “substantial evidence” that “there is a reasonable basis for concluding that the separate respondent’s dumping is different” from the dumping of the individually examined exporters and producers.

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71 See *Albemarle Corp. & Subsidiaries v. United States*, 821 F. 3d 1345, 1349-1350 (Fed. Cir. 2016) (hereinafter *Albemarle*).
72 *Id.* at 1349.
73 See Section 735(c)(5) of the Act.
74 *Id.*
75 See *Albemarle* at 1353.
76 *Id.* at 1353.
77 *Id.* at 1349.
78 *Id.* at 1353.
The CAFC determined that the statute would not permit Commerce from pulling forward rates from a prior segment of the proceeding under the circumstances before it -- finding that “{t}here is no basis to simply assume that the underlying facts or calculated dumping margins remain the same from period to period.”\(^{79}\) The CAFC found that there are two limited circumstances where data from a prior period may otherwise be permissible: (1) where there is “consistency with respect to the dumping margins of the individually examined respondents throughout the reviews,” and (2) when Commerce is selecting an AFA margin for a non-cooperating individually examined exporter.\(^{80}\)

The separate rate respondents argue that the CAFC’s decision in \textit{Albemarle} does not apply in situations where the margins for all the individually examined exporters and producers are based on facts available. We disagree. Section 735(c)(5)(B) of the Act permits Commerce to also deviate from the expected methodology when the margins of all individually examined exporters and producers were based on either zero or \textit{de minimis} rates or rates based on facts available.\(^{81}\) As in \textit{Albemarle}, the facts in this proceeding warrant the ability of Commerce to deviate from the “expected methodology” and rely on “any reasonable method” to calculate separate rates under Section 735(c)(5)(B) of the Act. The logic of the CAFC is in no way distinguished just because it had before it two \textit{de minimis} rates rather than two rates based on facts available. The separate rate respondents point to no persuasive arguments that the limitations on Commerce’s ability to deviate from the expected methodology, as laid out by the court in \textit{Albemarle}, also do not apply to this proceeding.

With respect to the separate rate respondents’ proposal to “pull forward” a margin from a prior segment of the same proceeding, they point to no convincing evidence that the “underlying facts or calculated dumping margins” have remained the same throughout prior proceedings, or that there is “consistency” from prior reviews with respect to the margins of the individually examined exporters. This proceeding likewise does not implicate any of the exemptions that the CAFC carved out from the prohibition on “pulling forward.”

We also disagree with the separate rate respondents’ argument that Commerce may deviate from the expected methodology in this proceeding because the use of the methodology is not “feasible.” In \textit{Albemarle}, the CAFC did not make findings with respect to whether the use of the expected methodology was feasible, noting that that particular issue was not contested in that case.\(^{82}\) However, the provision of the SAA cited by the CAFC indicates that Commerce may use “other reasonable methods” if the expected methodology is not feasible.\(^{83}\) The respondents in this proceeding argue that the expected methodology is not feasible because there are no contemporaneous rates for Commerce to average. Section 735(c)(5) of the Act, however, does not impose a requirement to average contemporaneous rates when employing the expected methodology. This provision instead states only that the separate rates “shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for

\(^{79}\) \textit{Id.} at 1356.

\(^{80}\) \textit{Id.} at 1357.

\(^{81}\) See Section 735(c)(5) of the Act.

\(^{82}\) \textit{See Albemarle} at 1349.

\(^{83}\) \textit{Id.} at 1351, fn. 5.
The AFA rate established for the individually investigated exporter in this proceeding is a weighted-average dumping margin that was calculated during a prior new shipper review, and therefore meets the requirements of this provision. There is no evidence that the calculation of a rate based on Section 735(c)(5)(B) is not “feasible” in this proceeding.

Finally, we also reject the separate rate respondents’ argument that Commerce “pulled forward” a margin for separate rate respondents in two similar post-Albemarle proceedings, and therefore should do so here. The proceedings cited by the respondent are two recent administrative reviews in Stainless Steel Sinks from China and Tapered Roller Bearings from China. In both those reviews, Commerce neither calculated any individual rates nor assigned any rates based on facts available. Those two situations are therefore not analogous to this proceeding, where Commerce has assigned a rate to the mandatory respondent based on facts available.

Comment 3: Assignment of Partial AFA to Hoang Long and Cadovimex II

The Petitioners’ Arguments

- Cadovimex II and Hoang Long are both subject to this review as non-selected separate rate respondents and were obligated to comply with Commerce’s requests for information.
- During the course of this review, Commerce requested substantive information from Cadovimex II and Hoang Long to determine, inter alia, whether these companies engaged in antidumping duty reimbursement agreements with their U.S. importers/consignees/customers and substantial record evidence suggested that Cadovimex II may have engaged in a duty reimbursement scheme during a prior review.
- However, as neither company responded to Commerce’s supplemental questionnaires, Commerce should apply an AFA rate to Cadovimex II and Hoang Long to compel these respondents’ cooperation in future segments.

No other party commented on this issue.

Commerce’s Position: We agree with the petitioners, in part. The petitioners placed credible evidence on the record that Cadovimex II and its close affiliate, Hoang Long, had engaged in a duty reimbursement scheme in a past review period. Cadovimex II and Hoang Long are affiliated companies, and in its voluntary response Hoang Long stated that the two companies are majority owned by family members, and provided a combined questionnaire response in the event Commerce collapsed the two companies. In the Preliminary Results we stated that the petitioners placed on the record public information which indicates that Cadovimex II may have engaged in a duty reimbursement scheme during a prior review. The information placed on the record by the petitioners includes a contract, signed by the General Director of Cadovimex II,

84 See Section 735(c)(5) of the Act.
85 See Caseamex’s Case Brief at 12-13.
86 See Sinks, 83 FR at 659; TRBs, 83 FR at 1239.
87 See Hoang Long’s March 17, 2017 submission at 3 and Exhibit 6.
88 See PDM at 10.
which states that Cadovimex II will reimburse importers for antidumping duties.\textsuperscript{89} We noted in the \textit{Preliminary Results} that after this information was placed on the record, Commerce issued supplemental questionnaires to Cadovimex II and Hoang Long covering the current POR and prior review periods,\textsuperscript{90} to which these companies partially responded.\textsuperscript{91} After the \textit{Preliminary Results}, we issued Cadovimex II and Hoang Long supplemental questionnaires on the reimbursement issue.\textsuperscript{92} Unlike the previous supplemental questionnaires, where Cadovimex II and Hoang Long provided partial responses, neither company responded to the second supplemental questionnaire.

As noted above, Cadovimex II and Hoang Long are affiliated companies which provided a combined questionnaire response.\textsuperscript{93} In our supplemental questionnaires to Cadovimex II and Hoang Long, Commerce noted that, for example, record evidence indicates that Cadovimex II has engaged in contracts, or agreements, which compel it to reimburse U.S. importers/customers for “importation fees” such as antidumping duties (cash deposits due), U.S. Customs and Border protection fees, U.S. Food and Drug Administration fees, handling fees, trucking fees and storage fees.\textsuperscript{94} Moreover, record evidence indicates that the contracts, or agreements, Cadovimex II engaged in make clear that retroactive dumping duties (assessed duties) are the liability of Cadovimex II and will be borne by Cadovimex II.\textsuperscript{95} Commerce requested that Hoang Long and Cadovimex II provide copies of every such type of contract/agreement in effect from 8/1/2007 to the present for each of their customers/importers. Neither Cadovimex II nor Hoang Long provided any of the requested contracts. In addition, we asked Cadovimex II to provide information on the amounts of duties for which it reimbursed its importers, since the duty

\textsuperscript{89} See, e.g., the petitioners’ April 26, 2017 submission at Attachment I, Central District of California (Southern Division) Court Case - \textit{Oceanwide Seafood LLC v. Cadovimex II, US Cado Holdings, Inc.}, at Exhibit A “AGREEMENT (Reference no.: CADIOWUS-10),” Articles 5, 9 and 10.

\textsuperscript{90} See the May 25, 2017 letter to Cadovimex; the May 25, 2017 letter to Hoang Long.

\textsuperscript{91} See Cadovimex’s June 15, 2017 submission; Hoang Long’s June 15, 2017 submission.

\textsuperscript{92} See the January 25, 2018 letter to Cadovimex; the January 25, 2017 letter to Hoang Long.

\textsuperscript{93} See Hoang Long’s March 17, 2107 submission at 3 and Exhibit 6.

\textsuperscript{94} See, e.g., the petitioners’ April 26, 2017 submission at Attachment I, Central District of California (Southern Division) Court Case - \textit{Oceanwide Seafood LLC v. Cadovimex II, US Cado Holdings, Inc.}, at Exhibit A “AGREEMENT (Reference no.: CADIOWUS-10),” at Article 5: Importation Fees (“Any and all of fee(s)/expense(s) in connection with importation of the merchandise, included but not limited: anti-dumping duty, US Customs fees, FDA clearance fee, handling fees trucking fees, cold storage fees; subsequently referred to as “Importation Fees” shall be paid by {Cadovimex II} according to actual invoice(s) provided by {the importer/consignee/or customer} to {Cadovimex II}.”) and at Article 9: Customs Bond (“The {importer/consignee/or customer} agrees to furnish and deliver to {Cadovimex II} a good and sufficient customs bond issued by a surety company to insure the performance of this agreement. {Cadovimex II} will reimburse all money was deposited by {the importer/consignee/or customer} for this performance from the first {of Cadovimex II’s} products imported {into the} USA. {The importer/consignee/or customer} will assign all right(s) to use of these funds to {Cadovimex II}. Both Parties are implements and processes all these steps within 15 days of the signing date of this agreement Both Parties are also co-operate to file the necessary documents/or requires by U.S. Customs for the refund upon it is released.

\textsuperscript{95} Id. at Article 10: Retroactive Duty (“The retroactive duty (if any) of the merchandise during performance of this agreement shall be liable and borne by {Cadovimex II}. {Cadovimex II} will reimburse these retroactive duties (if any) to {the importer/consignee/or customer} according to the provisions of U.S. law on these duties and any other incurred costs/expenses (if any) due to error or delay caused by {Cadovimex II}, {Cadovimex II} will bear full responsibility.”).
reimbursement contract clearly states that “monthly written accounting reports” will be kept.\textsuperscript{96} Cadovimex II did not provide this information.

As noted above, section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act, Commerce determines that the use of facts otherwise available is warranted with respect to Cadovimex II and Hoang Long. We find that by not responding to the supplemental questionnaires Cadovimex II and Hoang Long withheld key information that was requested by Commerce, and failed to provide in the form and manner requested by Commerce, necessary information concerning the duty reimbursement schemes in which they participated.

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when Commerce has determined that a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for information.”\textsuperscript{97} By not responding to Commerce’s questionnaires with respect to duty reimbursement, we find that Cadovimex II and Hoang Long failed to cooperate to the best of their ability in this review.\textsuperscript{98} Therefore, we determine that an adverse inference is warranted with respect to Cadovimex II and Hoang Long in selecting from the facts otherwise available pursuant to section 776(b) of the Act.\textsuperscript{99} For the final results, as partial AFA, Commerce has determined that Cadovimex II and Hoang Long engaged in a duty reimbursement scheme during the POR.

Under Commerce’s regulation on reimbursement, if a producer agrees to reimburse all antidumping duties, then the entire amount of the antidumping duties to be assessed will be added in determining the dumping margin pursuant to 19 CFR 351.402(f), regardless of whether a larger or smaller deposit of estimated antidumping duties has been posted. Thus, if a producer

\textsuperscript{96} Id. at Article 11: Accounting Reports (“The {importer/consignee/or customer} shall perform a monthly written accounting reports and provide {Cadovimex II} a with copy of same, to reflect the exact amount of “Importation Fees”, together with delivery(ies) of the merchandise to the {Cadovimex II}’s customer(s). Those monthly written accounting reports must be kept account books and records giving complete information as to all transaction in connection with the sales and delivery(ies) of the merchandise to the {Cadovimex II}’s customer(s). Such books and records shall be open at all reasonable times to inspection by {Cadovimex II} or any duly-authorized representative of {the importer/consignee/or customer}. These reports can be sent via fax or email; but no later than 10 days, {the importer/consignee/or customer} must to send an official one confirmed and officially signed by the legal representative of {the importer/consignee/or customer.}”).

\textsuperscript{97} See section 776(b) of the Act; Xanthan Gum from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, Final Partial Rescission, 82 FR 11434 (February 23, 2017) (Xanthan Gum) and accompanying IDM at Comment 1.

\textsuperscript{98} See Xanthan Gum at Comment 1.

\textsuperscript{99} See, e.g., Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 18369 (April 11, 2005), unchanged in Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review, 70 FR 37759 (June 30, 2005).
or reseller agrees to reimburse all antidumping duties, then the entire amount of the antidumping
duties to be assessed, as reflected in the initial calculation of whether dumping is occurring in
that POR, will be added in determining the dumping margin for final assessment, pursuant to 19
CFR 351.402(f). As discussed above, record evidence indicates that Cadovimex II and Hoang
Long participated in a duty reimbursement scheme, and thus, Commerce’s regulation concerning
reimbursement would apply. Also, as discussed above, Cadovimex II and Hoang Long declined
to answer Commerce’s questions concerning this issue; therefore, as partial AFA, we determine
that both companies engaged in reimbursement, and have doubled the rate they received as
separate rate respondents ($3.87/kg) to $7.74/kg.100

Comment 4: Whether to Rescind the Review with Respect to Golden Quality

Golden Quality’s Arguments
- Both the petitioner and Golden Quality submitted withdrawal of review requests for Golden
  Quality.101 Despite Golden Quality’s withdrawal request being submitted 11 days after the
deadline by which all requests should be submitted, Commerce should not deny such a
request.102
- While the Initiation Notice stated that “{Commerce} does not intend to extend the 90-day
deadline unless the requestor demonstrates that an extraordinary circumstance has prevented
it from submitting a timely withdrawal request,”103 Glycine & More invalidated Commerce’s
review rescission practice.104
- In Glycine & More, the CAFC determined that Commerce unlawfully changed its standards
from 1996 to 2011 in which withdrawal requests past the 90-day deadline required
extraordinary circumstances preventing it from submitting a timely withdrawal request.105
- Accordingly, Glycine & More compels Commerce to grant a respondent-specific rescission
of Golden Quality since the petitioner submitted a timely withdrawal, and Golden Quality
submitted a withdrawal within two weeks of the 90-day deadline.106

The Petitioners’ Arguments
- Golden Quality’s premise that Commerce relied on its extraordinary circumstances
requirement when it rejected Golden Quality’s withdrawal review request is incorrect.

100 See, e.g., See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results of Antidumping Duty
Administrative Review, 65 FR 81827 (December 27, 2000) at Comment 1 (where Commerce doubled the
antidumping duties for a respondent which engaged in a duty reimbursement scheme). Commerce normally
instructs the CBP to require that importers provide a reimbursement statement, as described in section 351.402(f)(2),
prior to liquidation, and to double the antidumping duty if the importer certifies that it has an agreement to be
reimbursed. In this review, however, Commerce has already determined as adverse facts available that Cadovimex
II and Hoang Long engaged in reimbursement. As a result, Commerce will publish the doubled margin for
Cadovimex II and Hoang Long in the Federal Register notice, and will modify its standard instructions to CBP
accordingly.
101 See Golden Quality’s Case Brief at 1.
102 Id. at 2.
103 Id., citing Initiation Notice.
104 Id. at 3-4, citing Glycine & More, Inc. v. United States, 880 F.3d 1335 (Fed. Cir. 2018) (Glycine & More).
105 Id. at 4-8.
106 Id. at 8.
Specifically, Commerce did not invoke the extraordinary circumstances when it denied Golden Quality’s untimely rescission request but rejected the request because it was untimely. As such, Golden Quality’s reliance on Glycine & More is not the appropriate authority to reference when discussing Commerce’s rejection of untimely requests. 107

- Pursuant to section 351.213(d)(1) of Commerce’s regulations, it is within Commerce’s discretion whether to extend the deadline for Golden Quality’s request, which the Courts have repeatedly acknowledged. 108
- It is within Commerce’s discretion to set and enforce its deadlines and the Courts have deferred to the judgement of the agency regarding developing its records. 109
- Golden Quality had the opportunity to request an extension of the deadline for withdrawal, but both failed to do so, and failed to allege any circumstance that prevented it from requesting an extension. 110
- Allowing Golden Quality to withdraw its review request after having learned of the petitioners’ and Vietnamese competitors’ withdrawal gives Golden Quality an unfair advantage. As it is Commerce’s obligation to protect the integrity of its proceedings, rejecting the untimely request prevents the manipulation of Commerce’s administrative proceedings and is well within Commerce’s discretion. 111

**Commerce’s Position:** We agree with the petitioners. With respect to withdrawal of review requests, the *Initiation Notice* stated:

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when Commerce will exercise its discretion to extend this 90-day deadline, interested parties are advised that Commerce does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

On January 23, 2017, eleven days after day 90 from the publication of the *Initiation Notice*, Golden Quality submitted a withdrawal of review request. 112 Notably, it did not submit a request for an extension to this deadline, nor did it indicate there were extraordinary circumstances surrounding its withdrawal of review after the deadline. 113 On February 2, 2017, Commerce selected Golden Quality as a mandatory respondent. 114 On February 28, 2017, Commerce issued

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107 See the petitioners’ Rebuttal Brief at 55.
108 Id. at 56.
109 Id. at 58.
110 Id. at 57.
111 Id. at 58.
112 See Golden Quality’s January 23, 2017 submission.
113 Id.
the antidumping duty questionnaire to Golden Quality. On March 7, 2017, Golden Quality stated it would not respond to Commerce’s February 28, 2017 questionnaire, and reiterated its withdrawal of review request. In its March 7, 2017, letter, Golden Quality did not indicate it encountered any extraordinary circumstances which would warrant extending the deadline for a review withdrawal for Golden Quality, but did state that Commerce had changed FOP reporting requirements in recent years, which would deprive Golden Quality of a “fair and judicious administrative determination” which would bar it from participating in this review. Golden Quality made similar arguments in the last administrative review, which we addressed extensively then, and do so here, below. In sum, Golden Quality’s assertion that it will not receive a “fair and judicious administrative determination” which would bar it from participating is patently false.

On January 23, 2018, the CAFC issued it decision in Glycine & More. This case, relied extensively on by Golden Quality in its case brief, concerned Commerce’s regulation at 19 CFR 351.213(d)(1). Specifically, this regulation provides Commerce wide discretion, using the facts and circumstances of a case, to extend the deadline for filing a withdrawal of review request. In 2011, Commerce amended this regulation, noting that only “extraordinary circumstances” could be used to grant an extension to this deadline. There are significant factual differences between the case at issue in Glycine & More and the instant review. In that case, the glycine respondent, Baoding Mantong, requested an extension of the 90-day period to file its withdrawal of review request. Baoding Mantong claimed that extraordinary circumstances existed and asserted that it learned of the petitioner’s withdrawal of review request only after the 90-day period expired. Moreover, in that case Baoding Mantong did not learn of the results of the prior administrative review until after the 90 day deadline. In that case, Commerce rejected Baoding Mantong’s request because it had not demonstrated an extraordinary circumstance warranting an extension of the 90-day period.

In this case, Golden Quality did not request an extension of the 90 day withdrawal period in either its submissions of January 23 or March 7, 2017. Moreover, Golden Quality’s withdrawal of review requests did not coincide with the issuance of the final results in the prior review, which were published March 27, 2017. In Glycine & More, the CAFC recognized Commerce’s authority to grant or deny extensions to the 90 day deadline, stating “the regulation was understood to provide the Secretary with wide discretion, to use judgment regarding the

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116 See Golden Quality’s March 7, 2017 submission.
118 See Glycine & More at 1335; see also Antidumping or Countervailing Duty Order, Finding, Or Suspended Investigation; Opportunity to Request Administrative Review, 76 FR 45773 (August 1, 2011).
119 See Glycine & More at 1341.
120 Id.
121 Id.
122 Id.
123 See Golden Quality’s January 23, 2107 submission; Golden Quality’s March 7, 2107 submission.
124 See 12th AR Final at Comment 2.
facts and circumstances presented, and to apply a reasonableness test in making the decision whether to extend the deadline for filing a withdrawal notice." In this case, Commerce could not reach a decision as to whether it should grant Golden Quality an extension in submitting a request to extend the 90 day deadline, because it made no such request. As such, for the final results, we have not rescinded the review with respect to Golden Quality.

Comment 5: Golden Quality’s Reporting of CONNUM-Specific FOPs

Golden Quality’s Arguments
- Commerce did not notify respondents of its requirement that FOPs must be reported on a CONNUM-specific basis until four months before the current POR concluded. In requiring CONNUM-specific reporting, Commerce failed to justify its reasoning for this change in practice. The CIT previously found if Commerce cannot provide reasonable explanation for changing a practice it has consistently followed, such a change is unacceptable agency practice; moreover, Commerce must provide sufficient notice prior to imposing a new AD methodology.

The Petitioners’ Arguments
- Since the original investigation, Commerce has consistently required CONNUM-specific FOP information in each questionnaire issued in every segment of this proceeding, and has notified parties of this requirement in many administrative reviews.

Commerce’s Position: Although Golden Quality has challenged Commerce’s CONNUM-specific reporting requirement, and submitted nearly identical arguments in the last administrative review, because it ceased participating in the review, this issue is moot.

Comment 6: Golden Quality’s Separate Rate

The petitioner’s Arguments
- Given Golden Quality’s failures as a mandatory respondent, Commerce is permitted to apply adverse facts available to Golden Quality.

Commerce’s Position: We disagree with the petitioners. The Initiation Notice states: “For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.” While Golden Quality submitted a separate rate certification, it was selected as a mandatory respondent and did not respond to the original questionnaire. As

125 See Glycine & More at 1345.
126 See Golden Quality’s Case Brief at 13.
127 Id.
128 See the petitioners’ Rebuttal Brief at 62.
129 Id. at 70-71.
130 See Initiation Notice, 81 FR 71061, 71062.
131 See Golden Quality’s November 10, 2016 submission.
such, Golden Quality has not demonstrated that it is separate from the Vietnam-wide entity, and is not eligible for a separate rate.

Comment 7: Preliminary Results Publication Errors

The Petitioners’ Arguments

- In its Preliminary Results, Commerce inadvertently omitted Southern Fishery Industries Company., Ltd. from its list of separate rate companies and should include it for the final results.
- An Giang Agriculture and Food Import-Export Joint Stock Company (Agifish) and An Giang Agriculture and Food Import-Export Joint Stock Company (Afiex) should be separately identified in the list of respondents on which Commerce initiated an administrative review, and Afiex should be included in Commerce’s list of companies for which it rescinded its review.

Commerce’s Position: We agree with the petitioners and will make these corrections for the final results. We also note that Commerce inadvertently did not include Bien Dong Seafood Co., Ltd. (Bien Dong) and Vinh Hoan Corporation (Vinh Hoan) in the list of rescinded companies in the Preliminary Results. As such, we are now rescinding the review on Bien Dong and Vinh Hoan and these companies are included in the U.S. Customs and Border protection (CBP) partial rescission instructions.

Comment 8: CBP Instructions

The Petitioners’ Arguments

- Cash Deposit Instructions: GODACO and South Vina should be included in these instructions. Further, the Vietnam-wide entity paragraph should include Anvifish Joint Stock Company (Anvifish), given that Anvifish did not demonstrate its eligibility for a separate rate in this review
- Separate Rate Liquidation Instructions: South Vina should be included in these instructions.
- Vietnam-Wide Liquidation Instructions: Anvifish should be included in these instructions.
- Partial Rescission Instructions: Afiex should be included in these instructions

Commerce’s Position: We agree and will make these corrections for the final results.
RECOMMENDATION
Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

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_________________________  _____________________
Agree                        Disagree

3/14/2018

Signed by: gary taverman

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance