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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review of Seamless Refined
Copper Pipe and Tube from Mexico; 2012-2013

Summary

There are two respondents in the 2012-2013 administrative review of the antidumping duty order¹ on seamless refined copper pipe and tube from Mexico: GD Affiliates S. de R.L. de C.V. (Golden Dragon)² and Nacional de Cobre, S.A. de C.V. (Nacobre). For these final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we have made changes to the Preliminary Results.³ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties and to which we have responded:

Issues

1. Date of Sale for Consignment Sales
2. Imputed Credit Expense for Consignment Sales

¹ See Seamless Refined Copper Pipe and Tube From Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico, 75 FR 71070 (November 22, 2010) (Order).

² The Department has previously treated GD Affiliates S. de R.L. de C.V. as part of a single entity including: 1) GD Copper Cooperatief U.A.; 2) Hong Kong GD Trading Co. Ltd. (HKGD); 3) Golden Dragon Holding (Hong Kong) International, Ltd.; 4) GD Copper U.S.A. Inc.; 5) GD Affiliates Servicios S. de R.L. de C.V.; and 6) GD Affiliates S. de R.L. de C.V. (MXGD), which is collectively referred to as Golden Dragon. See, e.g., Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review: 2011-2012, 79 FR 36719 (June 30, 2014), and accompanying Issues and Decision Memorandum.

³ See Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review: 2012-2013, 79 FR 73028 (December 9, 2014) and accompanying Preliminary Decision Memorandum (Preliminary Results).



3. Reporting of Costs Related to Global Operations
4. Use of Updated Cost Database

Background

On December 9, 2014, the Department of Commerce (the Department) published the Preliminary Results of this administrative review.⁴ This review covers two producers/exporters, Golden Dragon and Nacobre. The period of review (POR) is November 1, 2012, through October 31, 2013.

We invited parties to comment on the Preliminary Results. We received timely case briefs from Golden Dragon, Nacobre, and the petitioners,⁵ and a timely rebuttal brief from Golden Dragon.⁶ On February 3, 2015, we received a submission from Nacobre in which it stated that it was withdrawing its case brief because: 1) no other party filed comments on the preliminary calculations performed for Nacobre; and 2) it received a preliminary dumping margin of 0.00 percent.⁷ Consequently, we have not addressed the issues Nacobre raised in its case brief in these final results.

After analyzing the comments received from Golden Dragon and the petitioners, we have changed the weighted-average margin for Golden Dragon from that calculated in the Preliminary Results.

Margin Calculations

We calculated constructed export price (CEP) and normal value using the same methodology stated in the Preliminary Results, except as follows:

- We revised the shipment date for Golden Dragon's U.S. consignment sales based on the date that the merchandise left the consignment warehouse, where possible. Where the warehouse withdrawal date was not available, we estimated this date using the information contained on the record for other consignment sales. See Comment 1.
- We revised the date of sale for Golden Dragon's U.S. consignment sales based on the earlier of invoice date or shipment date from the consignment warehouse. We also revised the date of sale for Golden Dragon's remaining U.S. sales based on the earlier of invoice date or shipment date from the factory in Mexico, consistent with our intentions as stated in the Preliminary Results. See Comment 1.

⁴ Id.

⁵ The petitioners are Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc.

⁶ See Golden Dragon's January 29, 2015 submission, Nacobre's January 29, 2015 submission, the petitioners' January 29, 2015 submission, and Golden Dragon's February 3, 2015, submission, respectively.

⁷ See Nacobre's February 3, 2015, submission.

- We recalculated imputed credit expenses for U.S. sales using the time period between the relevant shipment date noted above and the payment date. We also recalculated U.S. inventory carrying costs for the consignment sales using the time period between the entry of the merchandise into the United States and the date of shipment from the consignment warehouse. See Comment 2.
- We used Golden Dragon’s cost database presented to the Department at the cost verification in our final calculations. See Comment 4.

Scope of the Order

For purposes of the order, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (OD), regardless of wall thickness, bore (e.g., smooth, enhanced with inner grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of the order covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (ASTM) ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of the order are all sets of covered products, including “line sets” of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase “all sets of covered products” denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

“Refined copper” is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

<u>ELEMENT</u>	<u>LIMITING CONTENT PERCENT BY WEIGHT</u>
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8

Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of the order are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to the order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the order may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Discussion of the Issues

Comment 1: Date of Sale for Consignment Sales

During the POR, Golden Dragon sold copper pipe to one of its U.S. customers on a consignment basis, and it made other U.S. sales from its own inventory in Mexico. In the Preliminary Results, we stated that we based the date of sale for these transactions on the earlier of the date of shipment or invoice date, in accordance with our practice.⁸ However, the petitioners note that the Department's preliminary margin program included no programming language to implement this decision, and, thus, they claim that the Department made a ministerial error in its preliminary margin calculations for Golden Dragon.

The petitioners agree with the Department's decision to base Golden Dragon's U.S. date of sale on the earlier of shipment or invoice dates, noting that this decision is consistent with both the Department's regulations⁹ and its precedent,¹⁰ as well as with rulings by the Court of International Trade (CIT).¹¹ The petitioners maintain that, in this case, Golden Dragon has acknowledged that its price and quantity are fixed as of shipment date, and the Supply Agreement between Golden Dragon and its consignment customer confirm this.^{12, 13}

⁸ See Preliminary Results at 8. We note that this statement was not limited to consignment sales.

⁹ See 19 CFR 351.401(i), which provides that normally, invoice date determines the date of sale, but permits the Department to use a different date if such date better reflects the date on which the exporter or producer establishes the material terms of sale.

¹⁰ See Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value, 77 FR 17027 (March 23, 2012) and accompanying Preliminary Decision Memorandum at Comment 1; and Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review, 74 FR 16359, 16360 (April 10, 2009) (Purified Carboxymethylcellulose from Mexico), unchanged in Purified Carboxymethylcellulose From Mexico: Final Results of Antidumping Duty Administrative, 74 FR 52178 (October 9, 2009).

¹¹ See e.g., United States Steel Corp. v. United States, 953 F. Supp. 2d 1332, 1337 (CIT 2013) (US Steel); Mittal Steel Point Lisas Ltd. v. United States, 491 F. Supp. 2d 1222, 1231 (CIT 2007), aff'd, Mittal Steel Point Lisas Ltd. v. United States, 548 F. 3d 1375 (Fed. Cir. 2008) (Mittal Steel Point Lisas).

¹² Because Golden Dragon has claimed business proprietary treatment for the language in this agreement, we are unable to disclose it here. For further discussion, see Golden Dragon's February 26, 2014, Section A Response at Exhibit A-7 (Supply Agreement) and Golden Dragon's February 26, 2014, submission at A-15.

Finally, the petitioners contend that, the Department should use the date that the copper pipe is shipped from Mexico, rather than the date that it leaves the consignment warehouse in the United States, when determining the appropriate date of sale. The petitioners note that the Supply Agreement sets price using a formula which is linked, in part, to the month of shipment from Mexico, and the same “Example Agreement” also has a clause relating to the quantity.¹⁴ Thus, the petitioners contend that withdrawal date from the consignment warehouse has no bearing on the setting of price or quantity, and, as a result, the selection of this date cannot withstand judicial scrutiny. The petitioners conclude, therefore, that the appropriate date of sale is the date of shipment from Mexico.

Golden Dragon disagrees that the Department made a ministerial error when it used invoice date as Golden Dragon’s U.S. date of sale. Golden Dragon asserts that use of invoice date accurately reflects the facts of record in this review, and it is also consistent with the Department’s date of sale methodology for Golden Dragon in all prior reviews of this proceeding, as well as in the companion case from the People’s Republic of China (PRC).¹⁵

According to Golden Dragon, the Department’s regulations establish invoice date as the presumptive date of sale,¹⁶ and they direct the Department to deviate from this default date only where it is satisfied that the material terms of sale are set on a different date. Golden Dragon claims that, under the Department’s practice and court precedent, a party seeking to establish a date of sale other than invoice date bears the burden of proof that a different date is appropriate,¹⁷ and it argues that the petitioners have failed to meet this burden.

Golden Dragon maintains that its reported date of sale is based on a lengthy and complete record of factual information. Golden Dragon alleges that the petitioners selectively cited portions of this record to support their argument, but that they neglected other portions which detract from it. For example, Golden Dragon agrees that the Supply Agreement sets the price at the time of shipment;¹⁸ however, Golden Dragon disagrees that the same holds true for the setting of quantity. Golden Dragon notes that it described its sales process in its initial response to the questionnaire, and this description makes clear that sales quantity is unknown until the customer

¹³ The petitioners limited their argument to consignment transactions, indicating (in error) that Golden Dragon made no other type of sale during the POR.

¹⁴ Id.

¹⁵ Golden Dragon notes that the Department’s use of invoice date in the preliminary results is also consistent with its decision to use invoice date, instead of an earlier date, as Nacobre’s home market date of sale in the first review of this proceeding. See Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review: 2010-2011, 78 FR 35244 (June 12, 2013), and accompanying Final Decision Memorandum at 17, citing to Hornos Electricos de Venezuela, S.A. v. United States, 285 F. Supp. 2d 1353, 1367 (CIT 2003). (We note that Golden Dragon incorrectly cited the second administrative review; we have provided the correct cite here.)

¹⁶ See 19 CFR 351.401(i).

¹⁷ See Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1089 (CIT 2001) (Allied Tube).

¹⁸ See Supply Agreement at Art. 4.8(b).

withdraws the merchandise from the consignment warehouse, advises Golden Dragon of the withdrawal, and receives an invoice for it.¹⁹ Golden Dragon asserts that this description is consistent with the clause in the Supply Agreement cited by the petitioners, and the Department also found no issues with it at verification. According to Golden Dragon, the petitioners' interpretation of this clause is based on what could occur between Golden Dragon and its customer, instead of what did occur, and, thus, the Department should reject the petitioners' argument.

Finally, Golden Dragon disagrees that the precedent cited by the petitioners is controlling here, given that the Department's use of dates other than invoice dates is not at issue. Indeed, Golden Dragon notes that the CIT has recently held that the Department's practice of basing the date of sale on the earlier of shipment or invoice date conflicts with the regulations.²⁰ In any event, Golden Dragon notes that the Department has only applied that practice because the material terms of sale were set at that point; Golden Dragon argues that, because quantity is not set at shipment, that is not the case in this review.

Department's Position:

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the regulation provides that, in identifying the date of sale, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²¹ The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²²

In its U.S. sales listing, Golden Dragon reported two possible sale dates: 1) the date that the merchandise was shipped from Mexico, either to the consignment warehouse (for consignment sales) or to the customer (for direct shipments); and 2) the date that Golden Dragon issued the invoice to the U.S. customer. While we indicated in our Preliminary Results that we used the

¹⁹ See Golden Dragon's February 26, 2014, Section A Response at A-12.

²⁰ See, e.g., Union Steel Mfg. Co., v. United States, 968 F. Supp. 2d 1297, 1324 (CIT 2014) (Union Steel).

²¹ See 19 CFR 351.401(i); see also Allied Tube, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²² See, e.g., Purified Carboxymethylcellulose From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 49494 (August 21, 2014) (Purified Carboxymethylcellulose from the Netherlands) and accompanying Preliminary Decision Memorandum at 6, unchanged in Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 78395 (December 30, 2014); Purified Carboxymethylcellulose from Mexico, 74 FR at 16360; Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004) (Thai Shrimp) and accompanying Issues and Decision Memorandum at Comment 10; and Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany, 67 FR 35497 (May 20, 2002) (Steel Beams from Germany) and accompanying Issues and Decision Memorandum at Comment 2.

earlier of these dates as the U.S. date of sale for all CEP transactions,²³ in fact we used the invoice date. Thus, we agree with the petitioners that we made a ministerial error in our preliminary results, and we have corrected this error in our final calculations.

With respect to direct sales, we followed through on our stated intention in the Preliminary Results, and we based the U.S. date of sale for these transactions on the earlier of the shipment date to the customer or the date of the commercial invoice, in accordance with the practice set forth above.²⁴ With respect to consignment sales, however, we find that this method is not appropriate. While the price of the copper pipe may be fixed at the time that the merchandise leaves Mexico,²⁵ the sale itself has not yet been finalized.²⁶ Moreover, the specific quantity of the sale is unknown until the customer withdraws the merchandise from the consignment warehouse and ships it to its own customer.^{27, 28} Thus, contrary to the petitioners' assertions, the withdrawal date has a direct bearing on the setting of quantity in this case. Therefore, we determine that the appropriate date of sale for consignment sales is the warehouse withdrawal date.

While we did not require that Golden Dragon report these dates in its U.S. sales listing, many of them can be found in the sales documentation on the record of this administrative review. During the verification of Golden Dragon's U.S. sales data,²⁹ in the context of sales traces, we examined a number of Golden Dragon's invoices to its consignment customer, and these documents show the quantity of each shipment made from the consignment warehouse over the invoicing period.³⁰ Thus, for those consignment sales where the information is available, we have based the U.S. date of sale on the warehouse withdrawal date, consistent with the above practice, given that this date is, by definition, on or before the invoice date. For those

²³ See Preliminary Results at 8.

²⁴ See, e.g., Thai Shrimp at Comment 10, and Steel Beams from Germany at Comment 2.

²⁵ See the Supply Agreement at Art. 4.8(b).

²⁶ Id. at Art. 12.1. We disagree with the petitioners' argument that the final sentence in this Article is sufficient to establish the sales quantity. Verified information on the record shows that the fact pattern of concern to the petitioners did not occur during this POR.

²⁷ See Golden Dragon's February 26, 2014, Section A Response at A-12.

²⁸ For example, if Golden Dragon shipped the customer 100 units of copper pipe on November 1 at a known price, the customer may itself ship this pipe to its own customers in smaller amounts and in different months. Thus, if the customer shipped 5 units on November 10, 25 units on December 1, and 70 units on December 12, the material terms of sale for the reported transactions would not be established until November 10, December 1, and December 12, respectively (*i.e.*, the dates that the specific sales quantities are known and both Golden Dragon and the customer recognize that a sale has occurred).

²⁹ We note that this was our first verification of Golden Dragon's responses.

³⁰ See the January 7, 2015, Memorandum to The File from Elizabeth Eastwood and Dennis McClure, Senior Analysts, entitled "Verification of Golden Dragon in the 2012-2013 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from Mexico" at Verification Exhibits 24 through 26. See also Golden Dragon's February 26, 2014, Section A Response at Exhibit 6.

consignment sales where the information is not available, we have estimated a withdrawal date using the experience of Golden Dragon's other consignment sales.³¹

This determination is consistent with the Department's practice. For example, in Purified Carboxymethylcellulose from Mexico, the Department was faced with a fact pattern similar to the one here. In that case, we stated:

With regard to the invoice date, Amtex bills some of its sales via "delayed invoices" in both the home and U.S. markets. See Amtex Section A Response at A22. Delivery is made to the customer and a pro forma invoice is issued, but the subject merchandise remains in storage and continues to be the property of Amtex until withdrawn for consumption by the customer (usually at the end of a regular, monthly billing cycle), at which time a definitive invoice is issued. Id. In Amtex's normal books and records, it is this definitive invoice date, not the pro forma invoice date, that is recorded as the date of sale. Id. Therefore, the Department preliminarily determines that the definitive invoice date is the date of sale provided it is issued on or before the shipment date; and that the shipment date is the date of sale where the invoice is issued after the shipment date.³²

With respect to the precedent cited by the petitioners, we disagree that any of these cases is on point. We note that the petitioners failed to provide the Department with any support for using the shipment date from the factory as the date of sale for consignment sales.³³ In fact, all of the cases cited by the petitioners refer to situations where the product is shipped directly to the customer and not sold through consignment.

Finally, we disagree with Golden Dragon that invoice date is the appropriate date of sale. Because the quantity of the sales transaction is established when the merchandise is withdrawn from the consignment warehouse, we find that the material terms of sale (i.e., price and quantity) are set then. Thus, because the merchandise is withdrawn from warehouse either on or before the invoice date, we have used the warehouse withdrawal date as the U.S. date of sale in this administrative review.

Comment 2: Imputed Credit Expense Calculation for Consignment Sales

Golden Dragon calculated imputed credit expenses on its U.S. consignment sales using the period of time from the invoice date to the payment date, and we accepted this calculation in our preliminary results. The petitioners contend that the Department should recalculate these expenses using the period of time between shipment of the merchandise from Golden Dragon's facility in Mexico and payment, because this period more appropriately measures Golden

³¹ For further discussion, see Memorandum from Dennis McClure, Senior Analyst, to the File entitled, "Calculations Performed for GD Affiliates S. de R.L. de C.V. for the Final Results of the 2012-2013 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from Mexico" dated concurrently with this notice (Golden Dragon Calculation Memo).

³² See Purified Carboxymethylcellulose from Mexico, 74 FR at 16360 (emphasis added).

³³ See Union Steel.

Dragon's opportunity costs. According to the petitioners, their proposed recalculation is consistent with Department precedent,³⁴ as well as guidance provided in its Antidumping Duty Manual,³⁵ both of which define the credit period as the period between shipment and payment.

Alternatively, the petitioners request that, at a minimum, the Department begin the credit period on the date that the merchandise enters the United States. The petitioners assert that Department precedent exists for this methodology.³⁶ For example, the petitioners cite Stainless Steel Round Wire, where the Department treated the expense of holding inventory at the customer's warehouse as a direct expense. Although the petitioners assert that the Department's practice has been revised since that time, they claim that the rationale remains relevant here.³⁷

Golden Dragon disagrees that any change to its credit calculations is necessary. According to Golden Dragon, its reported data already fully capture the opportunity costs incurred on its U.S. sales, beginning with the time that the merchandise comes off the production line through the time that Golden Dragon receives payment from its customer.³⁸ Golden Dragon claims that the petitioners' arguments are based on a misreading of the Supply Agreement and, thus, they have provided no basis for expanding the credit period under either of the petitioners' proposed alternatives.

Department's Position:

We disagree with the petitioners that the Department should recalculate Golden Dragon's U.S. imputed credit expenses using either the date of shipment from Mexico or the date that the merchandise enters the United States. At both of these points, the merchandise has not yet been sold to the first unaffiliated customer, and thus it remains part of Golden Dragon's inventory. Moreover, as Golden Dragon correctly notes, Golden Dragon has captured the opportunity costs associated with these time periods in its inventory carrying periods (either in Mexico or in the United States), so recomputing U.S. credit expenses as the petitioners suggest would result in a double counting of the opportunity costs in question.

³⁴ See, e.g., Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value, 77 FR 64483 (October 22, 2012) and accompanying Issues and Decision Memorandum at Comment 15 (Circular Welded Carbon-Quality Steel Pipe) (where the Department stated that it calculates credit expenses "based upon the date the merchandise was shipped to the unaffiliated customer to the date on which the customer paid for the merchandise.")

³⁵ See Antidumping Manual, Chapter 8 at 27.

³⁶ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324 (April 9, 1999) and accompanying Issues and Decision Memorandum at Comment 8 (Stainless Steel Round Wire).

³⁷ However, the petitioners do not indicate what in the Department's practice has changed, nor do they explain why the rationale remains relevant.

³⁸ Specifically, Golden Dragon notes that it reported these opportunity costs as either domestic inventory carrying costs, U.S. inventory carrying costs, or U.S. imputed credit expenses. See Golden Dragon's March 31, 2014, Section C Response at C-43, C-44, and C-38, respectively.

With regard to the petitioners' cite to Circular Welded Carbon-Quality Steel Pipe, we agree that the Department normally begins the credit period with the shipment date.³⁹ The only question here is which of the shipment dates is appropriate. Given that the merchandise is no longer part of Golden Dragon's (virtual) inventory as of the date that it leaves the customer's warehouse, we find that it is appropriate to end Golden Dragon's U.S. inventory carrying period on the date that the merchandise is withdrawn from the warehouse and begin the imputed credit expense period from that point. We have recalculated these expenses accordingly for purposes of the final results.⁴⁰

Comment 3: Reporting of Costs Related to Global Operations

The petitioners argue that Golden Dragon used its multinational structure to hide its true costs, and, thus, Golden Dragon's reported information does not reflect its actual cost of production (COP). The petitioners contend that, because the Department used MXGD's fabrication costs and HKGD's acquisition price of copper which includes only a small portion of HKGD's overall expenses, the Department's calculation ignores the impact of Golden Dragon's global operations.

The petitioners argue that the general expenses included in the preliminary margin calculation are understated. Specifically, according to the petitioners, the Department multiplied MXGD's general and administrative (G&A) and interest expense ratios by the total cost of manufacture (TOTCOM) exclusive of copper costs. The petitioners argue that copper represents a significant part of the COP and therefore should not be excluded. In addition, the petitioners argue that HKGD's hedging gains and losses related to copper cathode purchases were not fully included (*i.e.*, HKGD only added the net hedging gains on copper transactions related to its Mexican operations). According to the petitioners, HKGD's operations are not limited to supplying cathodes to MXGD because HKGD has extensive copper trading with third parties, which affects the cost of producing and selling the merchandise in Mexico.

Finally, the petitioners claim that GD China and the other Golden Dragon members provide extensive support to the production of copper tube in Mexico and, therefore, the Department should use the related expenses in calculating the reported costs.⁴¹ The petitioners argue that the Department should take into account the expenses incurred at the highest consolidated level and

³⁹ This principle has also been recognized by the U.S. Court of Appeals for the Federal Circuit when it stated that "{c}redit expenses are the costs associated with carrying accounts receivable on the books and the expenses related to extending credit to purchasers for the interim between shipment and payment." See Mittal Steel Point Lisas Ltd., 548 F. 3d at 1385, citing AIMCOR v. United States, 141 F. 3d 1098, 1111 n.21. Apart from that, the Department notes that the Antidumping Manual is not a statement of the Department's policy and thus is not an authoritative source to represent Department practice.

⁴⁰ For further discussion, see Golden Dragon Calculation Memo.

⁴¹ According to petitioners, the affiliated nature of the Golden Dragon companies is not in dispute. In the Preliminary Results, the Department recognized that it "uses the name Golden Dragon when referring to the collective group of Golden Dragon companies, which includes: 1) GD Copper Cooperatief U.A.; 2) Hong Kong GD Trading Co. Ltd.; 3) Golden Dragon Holding (Hong Kong) International, Ltd.; 4) GD Copper U.S.A. Inc.; 5) GD Affiliates Servicios S. de R.L. de C. V.; and 6) GD Affiliates S. de R.L. de C.V."

apply those expenses to the entire cost of producing the merchandise under consideration in accordance with its established practice.⁴²

Golden Dragon argues that it accurately and fully reported its costs. Golden Dragon asserts that it based its reported copper costs on the weighted-average purchase price from all sources, not just on the purchases of copper HKGD made specifically for the Mexican market. In addition, Golden Dragon argues that HKGD's full operating costs are included in MXGD's reported costs as G&A, interest expense, or hedging gains/losses.

Golden Dragon maintains that MXGD calculated its financial expense ratio based on its own 2013 audited financial statements -- rather than on the highest consolidated financial statements in which it is a part -- because its ultimate parent company, GD China, operates in the PRC, a non-market economy (NME). Golden Dragon also notes that it applied the interest expense ratio of HKGD and GD Copper Cooperatief U.A. to their respective cost of inputs. Golden Dragon argues that MXGD compensated its affiliates for all services and support it received. As such, Golden Dragon argues that no adjustments are warranted for the final results.

Finally, Golden Dragon notes that its reported cost methodology is consistent with the methodology used in the last review which the petitioners did not dispute until now. Thus, Golden Dragon claims that the petitioners' arguments are not only inaccurate, they are also untimely.

Department's Position:

We disagree with the petitioners. Golden Dragon reported all costs incurred to produce the merchandise under consideration. Simply because Golden Dragon is a part of a larger group's global operations does not necessarily mean that automatically there are costs incurred by affiliated entities that should be included in the reported costs. In this case, Golden Dragon has identified and reported all costs incurred by its global companies that relate to the production of the merchandise under consideration, as discussed below. As such, no adjustment for unreported costs incurred by Golden Dragon's global operations is deemed appropriate.

We disagree with the petitioners that the general expenses included in the preliminary margin calculation are understated because MXGD's G&A and interest expense ratios were only applied to conversion costs and not to copper costs. In calculating the G&A and interest expense ratios for MXGD, the denominator included only conversion costs.⁴³ We note that the reported direct material costs were based on copper costs incurred by HKGD, and these costs included G&A

⁴² The petitioners cite to the Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada, 70 FR 73,437 (December 12, 2005) at Comment 9, in which the Department stated that "We normally include in the financial expense ratio calculation all foreign exchange gains and losses from the consolidated financial statements of the respondent's highest level parent company."

⁴³ The Department ensures that the denominator of the G&A and financial expense ratios are on the same basis as the cost to which the ratios are applied. In this case, Golden Dragon reported MXGD's conversion costs. Therefore, it used those conversion costs in the denominator of MXGD's G&A and financial expense ratios and applied the ratios to the conversion costs reported by MXGD.

and interest expenses based on HKGD's G&A and interest expense ratios. As a result, all G&A and interest expenses incurred by both MXGD and HKGD were included in the reported costs.

We also disagree with the petitioners that HKGD's hedging gains and losses related to copper cathode purchases were not fully included (*i.e.*, HKGD only added the net hedging gains on copper transactions related to its Mexican operations). Record evidence shows that Golden Dragon included all hedging gains and losses incurred by HKGD in calculating the per-unit hedging gain reported by MXGD.⁴⁴

Further, we disagree with the petitioners' argument that the Department should take into account the expense incurred at the highest consolidated level and that the Golden Dragon group provides MXGD with extensive support in the production of copper tube in Mexico for which it is not compensated. While it is the Department's normal practice to calculate the financial expense ratio based on the highest consolidated entity,⁴⁵ the ultimate parent company, GD China, operates in the PRC, a NME. Because we do not rely on the financial statements of companies operating in NMEs, we do not consider it appropriate to use GD China's consolidated financial statements for calculating the interest expense ratio. Therefore, the Department relied on the audited financial statements of the producer because no other consolidated financial statement was prepared by the Golden Dragon group.

Finally, record evidence shows that MXGD compensates its affiliates for the support it receives from them, including the professional fees it paid to GD China for technical assistance. While the petitioners made a blanket request that we increase Golden Dragon's COP for support received by its global affiliates, they have not given specific examples of what costs were under-reported. There is nothing on the record showing that any additional cost incurred by the other Golden Dragon entities should have been included in the COP. Thus, we have not adjusted Golden Dragon's COP for the final results other than to correct for the errors identified during the cost verification.⁴⁶

Comment 4: *Use of Updated Cost Database*

At the Department's sales verification conducted from September 22 through 26, 2014, we determined that Golden Dragon misreported the wall thickness (a component of the control

⁴⁴ See page 2 of Cost Verification Exhibit 8, where the total hedging profit/loss recorded on HKGD's audited financial statements for the year ended December 31, 2013, were used to calculate the per-unit hedging gain reported by MXGD.

⁴⁵ The Department's long-standing practice is to calculate a respondent's financial expense ratio based on the audited financial statements of the highest level of consolidation available. See, *e.g.*, Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (September 12, 2007) and the accompanying Issues and Decision Memorandum at 25; Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 21-22. This practice recognizes the fungible nature of invested capital resources (*i.e.*, debt and equity) within a consolidated group of companies. For all other expenses, we require the reporting of costs that relate to the entities involved in the production and sale of the merchandise under consideration.

⁴⁶ See Golden Dragon Calculation Memo.

number) for one of its products sold in the home market. Prior to the Preliminary Results, we asked Golden Dragon to revise its home market sales database to correct the product characteristics code and control number for this product; however, we did not make a corresponding request for a corrected cost database at that time.

Golden Dragon notes that it provided corrected cost information at the cost verification conducted in December 2014 (i.e., after the Preliminary Results),⁴⁷ and it requests that the Department rely on the verified costs to calculate Golden Dragon's final margin.

The petitioners did not comment on this issue.

Department's Position:

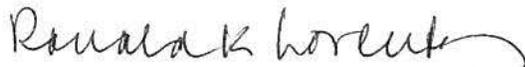
We agree that the Department should use the corrected cost information provided at verification in our final results because that information has been verified.⁴⁸ Therefore, we have used the cost data submitted as part of Golden Dragon's minor verification corrections on December 17, 2014, to calculate Golden Dragon's final margin.⁴⁹

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the positions above. If accepted, we will publish the final results of review and the final weighted-average dumping margins in the Federal Register.

Agree _____

Disagree _____



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 5, 2015
Date

⁴⁷ See Golden Dragon's December 17, 2014, Letter regarding Minor Corrections in Advance of Cost Verification at Attachment 1.

⁴⁸ See the January 14, 2015, Memorandum to The File from Laurens van Houten, Senior Accountant, entitled "Verification of the Cost Response of GD Affiliates S. de R.L. de C.V., Golden Dragon Precise Copper Tube Group, Inc., and GD Copper (U.S.A.), Inc. in the Antidumping Review of Seamless Copper Pipe and Tube from Mexico."

⁴⁹ See Golden Dragon Calculation Memo.