

May 28, 2010

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Steel Grating from the People's Republic of China: Issues
and Decision Memorandum for the Final Determination

SUMMARY

We have analyzed the comments submitted in the antidumping duty ("AD") investigation of certain steel grating ("steel grating") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from Certain Steel Grating From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 847 (January 6, 2010) ("Preliminary Determination").

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this AD investigation for which we received comments on the Preliminary Determination.

General Issues

Comment 1: Whether the Department Can Concurrently Apply Antidumping and Countervailing Duties to Non-Market Economy Producers and Exporters

Comment 2: Whether the Department Should Recalculate the Petition Margins with Updated Surrogate Values

Ningbo Jiulong¹ Specific Issues

Comment 3: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon its Knowing Submission of False Information Regarding its Steel Inputs

¹Ningbo Jiulong Machinery Manufacturing Co., Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory (collectively "Ningbo Jiulong")

Comment 4: Whether the Department Should Rely Upon Documents Obtained from U.S. Customs and Border Protection (“CBP”) in the Final Determination

Comment 5: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon the Failure to Report the Correct Customer

Comment 6: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon Unreported Sales

Comment 7: Whether the Department Should Apply Partial Adverse Facts Available to Ningbo Jiulong’s Packing Inputs

Comment 8: Whether the Department Should Revise Ningbo Jiulong’s Steel Scrap Offset

Surrogate Value Issues for Specific Factors of Production

Comment 9: Whether the Department Should Revise the Surrogate Value for the Steel Coil Input

Comment 10: Whether the Department Should Revise the Surrogate Value for the Wire Rod Input

Comment 11: Whether the Department Should Revise the Surrogate Value for Galvanizing Services

Surrogate Financial Ratio Calculation Issues

Comment 12: Whether the Department Should Use the Financial Statement of Greatweld Steel Grating Private Limited to Calculate Surrogate Financial Ratios

Comment 13: Whether the Department Should Use the Financial Statements of Comparable Merchandise Producers to Calculate Surrogate Financial Ratios

Separate Rate Applicant Rate Issues

Comment 14: Whether the Department Should Revise the Rate Assigned to Separate Rate Applicants

DISCUSSION OF THE ISSUES

General Issues

Comment 1: Whether the Department Can Concurrently Apply Antidumping and Countervailing Duties to Non-Market Economy Producers and Exporters

Ningbo Jiulong argues that the U.S. Court of International Trade (“CIT”) has ruled that Congress did not intend for countervailing duties (“CVDs”) and ADs to be imposed concurrently on the same imports from a non-market economy (“NME”) respondent, citing GPX Int’l Tire Corp. v. United States, 645 F. Supp. 2d 1231 (CIT 2009). Ningbo Jiulong contends that the CVD statute does not make reference to NMEs, because Congress did not consider CVD law to be relevant to NMEs, and that the concurrent application of NME AD methodology with CVD methodology causes a double-remedy. Further, Ningbo Jiulong states that the Department of Commerce (“Department”) in the past has stated that pervasive government involvement in the marketplace of NMEs has made it impossible to separate a subsidy from a company’s own resources. Finally, Ningbo Jiulong asserts that the Department’s imposing CVDs on NME imports violates the Administrative Procedure Act (“APA”), because the Department has instituted the practice without following rulemaking procedures.

The Government of the People’s Republic of China (“GOC”) argues that the Department should (1) treat the PRC as a market economy country in this proceeding or, alternatively, (2) make adjustments to the AD margin calculations to offset the CVD rates sufficiently to avoid double counting and the imposition of dual remedies. The GOC argues that the CVD law predates the Department’s application of CVD law to NMEs, and it is therefore silent with respect to potential offsets for NME CVD cases. The GOC states that the silence with regard to domestic subsidies and potential offsets for NME CVD cases could not have been an implicit affirmation that such an offset is not required; rather, it could only be an affirmation of the status quo at the time the statute was written- that no methodologies are required because the Department’s practice is not to apply the CVD law to NMEs. The GOC contends that, regardless of whether a subsidy affects product prices, manufacturing costs, salaries, environmental cleanup, selling, general and administrative expenses (“SG&A”), or profit, these effects are all removed by the surrogate value (“SV”) NME methodology, rendering a countervailing remedy duplicative, unnecessary and unlawful. The GOC asserts that while it is theoretically possible that a domestic subsidy could affect a company’s factor usage rates, no such subsidy program is involved with respect to the companion CVD case here. The GOC also states that the Department should offset the AD margin by the full amount of the domestic subsidy rate. The GOC claims that by applying this offset, the Department would not be acknowledging or concluding that domestic subsidies affect price, pro rata, but, rather, would be recognizing the competitive advantage remedied by the application of CVDs and would be addressing that advantage in exactly the same manner - by decreasing (instead of adding to) the U.S. export price by the ad valorem CVD rate because that advantage is already remedied in the CVD case.

Fisher & Ludlow and Alabama Metal Industries Corporation (hereafter referred to as

“Petitioners”) argue that the contentions of Ningbo Jiulong and the GOC, contending that the Department may not apply CVDs to NME producers and exporters subject to ADs, because it amounts to a double-remedy, are meritless, and further are appropriate only to the CVD proceeding. Petitioners state that GPX Int’l Tire Corp. v. United States holds that the Department can indeed apply CVDs to NME respondents, if the Department avoids double-counting. Petitioners state that the Department accomplishes this through Section 772(c)(1)(C) of the Tariff Act of 1930, as amended (“the Act”), where the Department increases the export price or constructed export price by “the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy.” Petitioners contend that the GOC speculates on Congress’ intent in arguing that Congress included no domestic subsidy offset because it was ratifying the practice of not applying CVD law in the NME context. Petitioners state that, furthermore, the GOC’s arguments that double-counting can be avoided only by including an offset for domestic subsidies rest on flawed assumptions with respect to how such subsidies affect prices and, presuming domestic subsidies automatically lower export prices, pro-rata, would be speculative. Petitioners argue that the GOC’s argument that the application of SVs removes the effects of subsidies from normal value (“NV”) is not accurate, since SVs correct both for artificially low and artificially high prices, and domestic subsidies can impact factors of production (“FOP”) consumption amounts and non-FOP portions of NV.

In rebuttal to Ningbo Jiulong’s argument that the Department’s application of CVD law to NME respondents without notice-and-comment rulemaking violate the APA, Petitioners assert that Ningbo Jiulong has not cited any instance of past Department practice to support this claim. Further, Petitioners state that applicable portion of the APA is that which pertains to adjudications (such as AD investigations and reviews), not rulemaking, and thus the Department has the authority to develop practices, methodologies, and legal interpretations that serve as precedents for the determination of subsequent adjudications. Finally, Petitioners argue that the respondents’ due process rights are maintained in these adjudications, just as Ningbo Jiulong pursues its claims in the instant investigation.

Department’s Position: The Department disagrees with Ningbo Jiulong and the GOC that the concurrent application of AD duties calculated under the Department’s NME methodology and CVDs creates a double remedy. The AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With one exception, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

The GOC admits that there are no provisions in the Act that require the Department to make adjustments to AD duties to account for the application of CVDs. The various theories advanced by respondents in prior cases to support their requests for an automatic 100-percent offset of AD duties determined under the NME methodology by any CVDs are based on mistaken premises.

Accordingly, the Department has consistently and properly rejected these claims.²

Moreover, in determining NV in NME cases, the Department does not exclusively use factor quantities in the NMEs valued in the surrogate, market economy (“ME”) country. Some factor values are based on the prices of imported inputs (priced in the currency of the country from which the inputs were obtained or in U.S. dollars). Given that the input suppliers in these countries are often competing with Chinese suppliers of those same inputs, it is incorrect to assume that those prices are not influenced by subsidies in the PRC.

Additionally, in at least some cases, the NME exports of the subject merchandise will account for a significant share of the world market, enough to influence prices in world markets. In such cases, particularly where the industry is export oriented or has excess capacity (a chronic problem in the PRC), subsidies could increase output and exports from the PRC, which, in turn, would reduce the prices of the good in question in world markets. These lower prices would reduce profits for producers selling in these markets which, in turn, would reduce the profit the Department derives from their financial statements (used as surrogates for the Chinese producers) and, thus, reduce NV.

Ningbo Jiulong and the GOC also argue that concurrent AD and CVD proceedings against NME countries automatically result in the application of a double remedy. Ningbo Jiulong and the GOC claim that countervailable subsidies are passed through to, and picked up by NV calculations under the Department’s unique NME methodology. In other words, Ningbo Jiulong and the GOC assert that the NME methodology already provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is unnecessarily duplicative.

It appears that the general premise of this argument is that concurrent ADs and CVDs do not create automatic double remedies in ME proceedings, because subsidies automatically lower NV, and hence the dumping margins, pro rata. The NME AD methodology, on the other hand, produces an NV that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. We reject this proposition.

There are several reasons why subsidies in ME cases would not necessarily lower the NV calculated by the Department, pro rata, below what it would have been absent any subsidies. Subsidies often come with conditions attached that reduce the cost savings to the recipient below the nominal amount of the benefit received. For example, subsidy recipients may be required to retain redundant workers, maintain higher levels of production than would be optimum, remain in economically disadvantageous locations, reduce pollution, obtain supplies from favored sources, and so forth. Even if subsidies come with no strings attached, there is no guarantee that they will result in a lower cost of production. Subsidies could be paid out as dividends, used to

² See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 7.

increase executive pay, or wasted in any number of ways.

Moreover, the Act provides that NV in ME cases is to be based on home market prices, where possible. Where NV is based on prices, the relationship of subsidies to NV becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs uncertain but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third-country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly.

Finally, to the extent that domestic subsidies lower NV in ME cases, they may lower export prices commensurately, so that the dumping margins may not change. Thus, it is not safe to conclude that subsidies in MEs automatically reduce dumping margins, still less that they automatically reduce dumping margins, pro rata.

The counterpoint to the argument that domestic subsidies automatically lower NVs (and, thus, dumping margins) in ME cases, pro rata, is that domestic subsidies have no effect whatsoever on NVs (and, thus, dumping margins) determined under the NME methodology. Respondents argue that domestic subsidies do not affect NV in NME cases because NV is essentially imported from surrogate, ME, countries. As explained above, this premise is also incorrect, as there are several ways in which subsidies can lower NME NVs.

Moreover, the whole idea of comparing AD margins under the NME methodology to the theoretical margins that the Department would find if it treated the PRC as an ME country is dependent upon other things being equal, so that any actual difference could be attributed to the difference in the distortion from subsidies. But this is not the case. The most obvious difference between NVs determined in ME and NME situations involves exchange rates. In ME proceedings, NVs are converted from the home-market currency to the currency of the importing country at prevailing exchange rates. In NME proceedings, however, NVs are derived from the actual FOPs that are valued based on information from the surrogate country using the currency of that surrogate country. Thus, NVs in NME proceedings are not influenced by the exchange rate between the exporting country and the importing country. How the different roles that currencies play in NME and ME AD proceedings affect any difference in dumping margins calculated under the two methodologies is uncertain, and highly complex. What is certain, however, is that this key difference would prevent any simple comparison of NME and ME AD margins.

The Department is charged with calculating dumping margins as accurately as possible. Ningbo Jiulong and the GOC fail to identify any item in the dumping margin calculation that is being counted twice. Thus, even if the NV and export price have been determined accurately, Ningbo Jiulong and the GOC contend that the difference between these amounts should not be treated as the margin of dumping. Rather, because the respondents argue that the CVD law cannot be applied concurrently with the NME AD methodology, they would argue that the margin of dumping would be determined as the difference between the NV and export prices (or

constructed export price), less the amount of the CVD determined in a concurrent investigation of subsidies. Contrary to their assertions, nothing is being double counted in the dumping margin calculation. Accordingly, the accurately calculated dumping margin should be collected in full as the remedy for pricing at less than NV.

The theory advanced by Ningbo Jiulong and the GOC would not result in a reduction in AD or CVD assessed in concurrent proceedings by some fraction of the CVD. The theory is that the NME AD methodology entirely replaces subsidized, below market, costs with purely market-determined costs, creating a double remedy to that full extent. Thus, accepting this theory would result in the complete nullification of CVDs for the PRC, as long as the NME methodology is applied. The Department does not accept this premise.

Additionally, Ningbo Jiulong's and the GOC's reliance on GPX Int'l Tire Corp. v. United States is misplaced. This decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. Even if reliance on GPX Int'l Tire Corp. v. United States were not misplaced, GPX Int'l Tire Corp. v. United States does not support the positions attributed to it by them. GPX Int'l Tire Corp. v. United States did not find a double remedy necessarily occurs through concurrent application of the CVD statute and NME provision of the AD Act, only that the "potential" for such double counting may exist.

Regarding Ningbo Jiulong's argument that the Department's imposing CVDs on NME imports violates the APA, we disagree. The APA's notice-and-comment requirements do not apply "to interpretive rules, general statements of policy or procedure, or practice."³ Indeed, courts have specifically recognized the Department's discretion to modify its practice or policies on a case-by-case basis rather than by rulemaking.⁴ Prior decisions by the Department not to apply the CVD law to NMEs where it was impossible to identify subsidies, involved the Department's practice, not a rule.⁵ In applying the CVD law to the PRC, the Department may therefore change this practice through "ad hoc litigation" rather than APA rulemaking.

Comment 2: Whether the Department Should Recalculate the Petition Margins with Updated Surrogate Values

Ningbo Jiulong argues that, if the Department relies on the petition NV calculation in any respect to assign a dumping margin to Ningbo Jiulong, it must update the petition margin to: (1) calculate the petition margin using an SV for hot-rolled strip, which Ningbo Jiulong consumed; (2) eliminate the scrap ratio, since Ningbo Jiulong generates very little production scrap; and (3) calculate financial ratios without relying on the Mekins Agro Products Limited ("Mekins") financial statement.

Department's Position: The Department sees no reason to vary from its standard practice of

³ See 5 U.S.C. 553(b)(3)(A).

⁴ See Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990).

⁵ See Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d 1274, 1282 (CIT 2007) (citing SEC v. Chenery Corp., 332 U.S. 194, 203 (1947)).

using initiation rates (*i.e.*, the revised rates from the petition as specifically revised at the Department's request) as the rates for applying adverse facts available ("AFA"). Additionally, we have corroborated the application of the highest initiation rate as AFA for Ningbo Jiulong (*see* Comment 3 below). Further, the Department has found that it cannot rely on any information submitted by Ningbo Jiulong (*see* Memorandum from Thomas Martin to John M. Andersen, regarding: Application of Total Adverse Facts Available for Ningbo Jiulong Machinery Manufacturing Co., Ltd. in the Antidumping Duty Investigation of Certain Steel Grating from the People's Republic of China, dated May 28, 2010 ("Ningbo Jiulong AFA Memo")) in this proceeding, and any adjustments for hot-rolled strip or the scrap ratio would thus be inappropriate.

Ningbo Jiulong Specific Issues

Comment 3: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon its Knowing Submission of False Information Regarding its Steel Inputs

Petitioners argue that Ningbo Jiulong's own admission, that the mill test certificates submitted to the Department are false, supports a finding that the record is unreliable with respect to Ningbo Jiulong's primary inputs, whether or not the culpability for the false documents rests with Ningbo Jiulong or its suppliers. Petitioners state that mill test certificates provide proof of the physical characteristics of purchased steel and, for this reason, the Department requested supporting mill test certificates for Ningbo Jiulong's hot-rolled steel and wire rod inputs in its supplemental questionnaires and at verification. Petitioners state that they alerted the Department when they analyzed these mill test certificates and discovered many irregularities that suggested that the certificates were false documents. When the Department sought further information from both Petitioners and Ningbo Jiulong regarding the mill test certificates, Petitioners state that Ningbo Jiulong confirmed that the mill test certificates were unreliable, and provided a large number of deliberately withheld mill test certificates from the period of investigation ("POI").

Furthermore, Petitioners state that Ningbo Jiulong's contention that mill test certificates quantities typically cannot be matched to specific purchases because they are production documents is not accurate, because the object of mill test certificates is to provide all subsequent purchasers of steel produced from a given heat with traceable and accurate quality control information. Petitioners state that Ningbo Jiulong admits that the lack of such traceable certificates requires it to issue its own certificates that do not reflect the actual characteristics of the product sold. Moreover, Petitioners state that Ningbo Jiulong has admitted that its hot-rolled steel mill test certificates are prepared with information taken from prior mill test certificates, or have typing errors, and that its wire rod mill test certificates are fabrications. According to Petitioners, Ningbo Jiulong claims that it is completely unaware of how its steel inputs are produced, was unaware of any discrepancies and errors on the mill test certificates it received, that it conducts virtually no independent or internal testing, and that it is completely unaware of the chemical and physical requirements of the standard and grades of steel that it purchases.

Petitioners state that Ningbo Jiulong's statements are doubtful, because Ningbo Jiulong has also stated that it has occasionally notes instances where certificates indicate poor quality, and arranges for independent testing. Further, Petitioners state that Ningbo Jiulong demonstrates knowledge of steel characteristics in making its arguments, *i.e.*, that it monitors carbon content, acknowledges typical manganese levels, possesses steel grade manuals that it has submitted to the record, and claims that it produces to ANSI⁶ and NAAMM⁷ standards. Petitioners argue that the excuses for the inaccuracy of the mill test certificates provided by both Ningbo Jiulong and its suppliers are insufficient, given the full range and frequency of errors and discrepancies apparent in the mill test certificates. Petitioners contend that Ningbo Jiulong's suppliers' admissions do not reach the full range of errors in the certificates, and that the most logical conclusion is that Ningbo Jiulong itself altered the documentation it received from the suppliers in order to influence the outcome of the AD proceeding. Petitioners contend that, even if Ningbo Jiulong's excuses for submitting the false mill test certificates are based upon truth, the Department still should apply AFA since Ningbo Jiulong delayed submitting the certificates, and failed to review the certificates prior to submitting them. Moreover, Petitioners state that contradictory grade and carbon content information between the supplier certificates and the certificates made by Ningbo Jiulong supports a conclusion that both sets of certificates are inaccurate. According to Petitioners, Ningbo Jiulong's failures have caused false information to be placed on the record that calls into question the nature of the most important FOPs.

In conclusion, Petitioners state that total AFA are warranted because Ningbo Jiulong withheld key documentation supporting its most important FOPs until the Department took steps to obtain them by other means. Petitioners cite Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 11085 (March 16, 2009) and the accompanying Issues and Decision Memorandum at Comment 1 (where the respondent placed false information regarding market economy purchases on the record), Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review, 71 FR 11590 (March 8, 2006) and the accompanying Issues and Decision Memorandum at Comment 1 (where the respondent placed false U.S. price information on the record), and Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) and the accompanying Issues and Decision Memorandum at Comment 11 (where the respondent did not fully report U.S. sales and FOP data), arguing that, in instances similar to this case, where the respondent has placed false documents on the record, the Department has applied total AFA. Additionally, Petitioners add that even if a respondent's data is initially verified, as is the case in this instance, such verification should not affect the application of adverse inferences where, as here, the post-verification record shows that the respondent provided inaccurate, incomplete, and falsified information to the Department, such that its reported sales and cost data are unreliable (citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, 70 FR 7475, 7477 (February 14, 2005) and Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative

⁶ American National Standards Institute ("ANSI").

⁷ National Association of Architectural Metal Manufacturers ("NAAMM").

Review and New Shipper Reviews, 68 FR 68868, 68871 (December 10, 2003)).

Ningbo Jiulong rebuts Petitioners' arguments by stating: (1) the "customer mill certificates" issued by Ningbo Jiulong are not documents that it received from its suppliers; (2) Ningbo Jiulong submitted to the Department in the course of the investigation the actual supplier mill certificates provided to Ningbo Jiulong as Ningbo Jiulong received them; (3) Petitioners may have identified discrepancies in certain mill certificates, but the specifications (gauge, width, thickness), and grades are consistent with a volume of other record evidence, and Petitioners have carefully avoided attacking the certificates on these points. Ningbo Jiulong states that, if all alleged discrepant information were eliminated from the mill test certificate, the remaining record is consistent with what all parties have suggested is consumed in producing the subject merchandise actually under investigation.

Ningbo Jiulong states that there is no record evidence that the it forged or altered their steel input manufacturers' mill certificates, and the Department lacks a factual predicate for the application of an adverse inference against Ningbo Jiulong with respect to these certificates. Ningbo Jiulong argues that there is no evidence on the record that Ningbo Jiulong's steel inputs are anything other than low carbon steel wire rod and low carbon hot-rolled strip/coil made in the PRC. Ningbo Jiulong states that two sets of verifiers have walked through Ningbo Jiulong's workshops and saw full inventories of low/mild carbon steel wire rod and hot-rolled narrow coil/strip being manufactured into steel grating. Ningbo Jiulong contends that there is no record evidence of returns to the suppliers of raw materials or of finished merchandise from Ningbo Jiulong's customers. Ningbo Jiulong states that Petitioners have never disputed the grade of steel that Ningbo Jiulong actually uses, noting the purchase orders, supplier invoices, delivery notes, warehouse-in slips on the record, and occasional independent tests. Ningbo Jiulong states that even information placed on the record by Petitioners supports the type of steel reported by Ningbo Jiulong is used to make steel grating. Ningbo Jiulong argues that Petitioners' contention that Ningbo Jiulong altered the mill test certificate to indicate a higher carbon content than it actually used were true, then the SV for the steel inputs should actually be lower than some documents suggest. However, Ningbo Jiulong states that the available record SVs actually cover the entire range of carbon steels and, therefore, the discrepancies noted by Petitioners are not material. Ningbo Jiulong also suggests that the Department could value its steel inputs using its actual purchase prices in the PRC, because these prices were found to be close international benchmarks in the companion CVD investigation.

Ningbo Jiulong rebuts that the mill certificates that it makes for its clients only pertain to steel coil and not wire rod, *i.e.*, only one of two steel inputs, and are not probative of the type of steel since Ningbo Jiulong did not form the liquid steel. Ningbo Jiulong also states that the mill test certificates that it makes for its clients do not contradict other information on the record with respect to the steel grade, and cannot be linked back to specific purchases of steel coil. Ningbo Jiulong states that the record is clear that it used low carbon steel to make the merchandise under consideration, and the mill test certificates at issue are extraneous documents containing immaterial alleged discrepancies. Ningbo Jiulong further states that no mill test certificates were provided for entry, as CBP does not require it. Ningbo Jiulong argues that the Department has

allowed Petitioners to place new facts on the record, and that the Department itself has placed new facts on the record, at a point so late in the investigation that prejudices Ningbo Jiulong. Ningbo Jiulong states that it was not the importer of record that made entry of the merchandise into the United States, and therefore it should have been allowed to rebut the entries placed on the record by the Department.

Regarding the supplier mill test certificates, Ningbo Jiulong argues that the function of a mill test certificate in an NME AD case is to provide corroborating information concerning the nature and dimensions of the steel purchased and ultimately consumed by the respondent, and establish the identity of the respondent's supplier. Ningbo Jiulong states that it is with this understanding that it provided the supplier mill test certificates at the Department's request, as well as Petitioners' request. Ningbo Jiulong states that the record reflects that Petitioners were only interested in supplier mill test certificates from the original producer, until seeing the customer mill test certificates obtained from CBP.

Ningbo Jiulong contends that it did not impede the proceeding by omitting the mill certificates that it prepares for its clients in its questionnaire responses, or at verification, because Ningbo Jiulong provided the mill test certificates when the Department specifically requested them late in the proceeding. Ningbo Jiulong contrasts this with a recent final determination in Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010), where mill test certificates were required by CBP upon entry for the merchandise under consideration, and the steel input classification was dependent upon steel type. Ningbo Jiulong states that the exact carbon content of the steel grating steel inputs is not captured in any SV available to the parties to this investigation. Therefore, any discrepancies identified with respect to heat results in mill certificates are simply not material. Ningbo Jiulong states that the record shows that it consumed low carbon steel, and there is no discrepancy in their consumption records, the Department must rely upon their consumption records and final SVs in calculating the final determination margin.

Department's Position:⁸ We find that reliable information necessary to calculate a margin is not available on the record with respect to Ningbo Jiulong for the final determination in this investigation. As the Department finds that necessary information is not on the record, and that Ningbo Jiulong withheld information that had been requested, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (C), and (D) of the Act, the Department is using the facts otherwise available. Further, because the Department finds that Ningbo Jiulong failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying facts available ("FA") in this investigation. In addition, we have concluded that the nature and extent of these unreliable submissions calls into question the reliability of the questionnaire responses submitted by Ningbo Jiulong in this investigation with

⁸The Department's full analysis of this comment involves extensive examination of business proprietary information and, therefore, is contained in the Ningbo Jiulong AFA Memo, which is incorporated herein by reference, and summarized in a form that may be publicly released below.

respect to Ningbo Jiulong's claim of eligibility for separate rate status. Thus, we find that Ningbo Jiulong is part of the PRC-wide entity for purposes of this investigation.

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record, or if an interested party: withholds information that has been requested by the Department, significantly impedes a proceeding under the AD statute, or provides information but the information cannot be verified. The determination to use facts otherwise available is subject to section 782(d) of the Act.

We find that Ningbo Jiulong withheld material information requested by the Department within the meaning of section 776(a)(2)(A) of the Act. The issue of the specifications of the coil used by Ningbo Jiulong to produce the merchandise under consideration has been a focal point of the investigation. Indeed, Petitioners commented on the issue extensively both before and after our Preliminary Determination. In the Department's supplemental questionnaires, the Department requested specific supporting documentation that Ningbo Jiulong's steel strip corresponds to the description, "flat rolled product of non-alloy steel of a width of 600MM or less, not further worked than hot-rolled, of thicknesses that are both less than 4.75MM, and greater than 4.75MM," that it reported.⁹ The Department requested such specific evidence for a quantity of Ningbo Jiulong's POI purchases of steel coil.¹⁰ The Department specifically requested supporting mill test certificates.¹¹ Ningbo Jiulong has maintained throughout the investigation that it used only narrow steel strip in coils for the production of the bearing bars of the merchandise under consideration. It was for this reason that the Department requested documentation supporting the description of Ningbo Jiulong steel inputs at verification. At no point during the verification, or in any of its submissions to the Department (until after CBP obtained additional information from CBP) did Ningbo Jiulong acknowledge that it maintained two versions of its mill test certificates for steel coil.

Based on Ningbo Jiulong's own admissions and the statements of its suppliers, Ningbo Jiulong's supporting documents defining its consumption of steel inputs (i.e., hot-rolled steel strip and wire rod) for the merchandise under consideration, clearly contain false information. Ningbo Jiulong only admitted that it submitted false documents to the Department after the Preliminary Determination, and after verification, when the Department questioned it further through supplemental questionnaires. When comparing the suppliers' mill test certificates from our verification exhibits to mill test certificates we obtained from CBP, we found material mismatches. In its response to the Department's supplemental questionnaire, Ningbo Jiulong explained that Ningbo Jiulong creates its own mill test certificates, but admitted that these mill test certificates are unreliable.¹² The Department finds that Ningbo Jiulong's admissions regarding the unreliability of the mill test certificates that it created indicate that Ningbo Jiulong knew its suppliers' mill test certificates were erroneous even during the POI.¹³ Though Ningbo

⁹ See the Department's supplemental Section D questionnaire, dated November 4, 2009, at 6.

¹⁰ Id.; see also Ningbo Jiulong's Section D Questionnaire Response, dated September 22, 2009 at Exhibit D-4.

¹¹ See the Department's supplemental Section D questionnaire, at 6.

¹² See Ningbo Jiulong's March 19, 2010, submission at 6-7.

¹³ The basis of the Department's conclusion includes Ningbo Jiulong's business proprietary information; for further

Jiulong suggests that only certain aspects of the mill test certificates contain false information and that the mill test certificates may still be used to verify specifications and grades for steel inputs, the admission of Ningbo Jiulong's suppliers that these mill test certificates contain false information undermines any probative value that these mill test certificates might have.

Additionally, the first product characteristic for the reported steel grating models is "Steel Type," *i.e.*, the respondent is required to identify whether the merchandise under consideration is made of non-alloy or alloy steel.¹⁴ Without a reliable mill test certificate on the record, the Department does not have sufficient information on the record to know whether or not Ningbo Jiulong has correctly reported U.S. sales models with an accurate control number ("CONNUM"), and further determine whether each U.S. sales observation is correctly reported with respect to quantity. No other document on the record, such as purchase invoices or inventory slips, contains this information.

Accordingly, it was clear early in this investigation that the steel coil specifications, and the mill test certificates supporting the steel coil, were central issues in this case. Based on our examination of record evidence, Ningbo Jiulong withheld from the Department the mill test certificates provided to its customers with its sales of steel grating. Moreover, these mill test certificates contain information materially different from the supplier mill test certificates Ningbo Jiulong provided to the Department prior to, and at verification.¹⁵ Thus, Ningbo Jiulong was aware that its supplier mill test certificates were false documents. The Department concludes that Ningbo Jiulong withheld material information requested within the meaning of section 776(a)(2)(A) of the Act.

Notwithstanding information on record regarding the composition and specifications of Ningbo Jiulong's steel inputs, the Department finds that Ningbo Jiulong failed to inform the Department throughout this proceeding that it maintained two sets of contradictory mill test certificates, and that the supplier mill test certificates it provided to the Department prior to, and at verification, did not correspond to mill test certificates Ningbo Jiulong provided to its U.S. customers of steel grating.¹⁶ Ningbo Jiulong further impeded this proceeding by denying the existence of mill test certificates that it provides its clients, only to produce them after the importer of record submitted them to CBP. In particular, on March 18, 2010, Ningbo Jiulong responded to the Department's March 10, 2010, request for specific mill test certificates by stating that (1) Ningbo Jiulong could not link steel coil mill test certificates to the U.S. sales of steel grating in which the steel coil was used in production,¹⁷ and (2) Ningbo Jiulong in practice did not provide mill test certificates to its customer for most sales, despite the "legalistic terms in the small print" of its purchase orders.¹⁸ Ningbo Jiulong responded a day later by submitting multiple POI mill test certificates provided to its customers that demonstrate, on their face, that the mill test certificates

details, *see* Ningbo Jiulong AFA Memo at 11.

¹⁴ *See* Ningbo Jiulong's Section C Questionnaire Response, dated September 22, 2009, at 9.

¹⁵ *See* Ningbo Jiulong's March 19, 2010, submission at Exhibit 4 and 7.

¹⁶ *See* Ningbo Jiulong AFA Memo at 5.

¹⁷ *See* Ningbo Jiulong's March 18, 2010, submission at 2-3.

¹⁸ *See* Ningbo Jiulong's March 18, 2010, submission at 3.

previously provided to the Department have false information. In other words, not only did Ningbo Jiulong not divulge the existence of the two sets of contradictory mill test certificates at verification, but it did not inform the Department that it knew that the mill test certificates that it did provide to the Department at verification were false documents. Further, when asked by the Department to provide the mill test certificates, which are specifically referenced in certain documents obtained at verification, Ningbo Jiulong again failed to disclose that it had in fact furnished its customers with mill test certificates until after the Department had already been given samples of this documentation from CBP. Accordingly, we determine that Ningbo Jiulong's withholding of this information, and the affirmative steps taken to conceal the conflicting sets of mill test certificates significantly impeded this proceeding with the meaning of section 776(a)(2)(C) of the Act.

By discovering the existence of a second set of mill test certificates at this late stage of the proceeding, the Department is effectively deprived from any meaningful opportunity to examine, request additional information or verify any of the factual information Ningbo Jiulong submitted in response to the Department's post-verification requests. The Department cannot begin to discern the composition and specifications of Ningbo Jiulong's steel inputs at this late stage of the proceeding. Therefore, the Department cannot properly value Ningbo Jiulong's major steel inputs for producing steel grating and thus construct an accurate and reliable margin. Moreover, Ningbo Jiulong's recent admission that it maintains two sets of contradictory mill test certificates, a fact the Department was unable to discern at verification, now calls into question the veracity of other information the Department viewed at verification, in particular the separate rates information. Accordingly, Ningbo Jiulong's recent admission to contradictory sets of mill test certificates is information that cannot be verified within the meaning of section 776(a)(2)(D) of the Act, and Ningbo Jiulong's actions and omissions during the proceeding and at verification do not permit the Department to treat any of Ningbo Jiulong's submitted information as verified.

The deficiencies and irregularities arising from the false information on the record regarding Ningbo Jiulong's steel inputs, taken together with Ningbo Jiulong's failure to report the false information to the Department despite the fact that it was aware of the false information even during the POI, establishes a pattern of behavior that undermines the reliability and credibility of Ningbo Jiulong's questionnaire responses. The authenticity of Ningbo Jiulong's claimed specifications for its steel coil and its designation as steel strip, and the mill test certificates submitted at verification, are unverifiable. Accordingly, the Department is unable to identify a SV for Ningbo Jiulong's steel inputs, which represent the majority of the manufacturing cost of steel grating, and thus there is no reasonable basis upon which to determine NV. Because this information is necessary to calculate an accurate AD margin for Ningbo Jiulong, the Department finds that the necessary information is not available on the record within the meaning of section 776(a)(1) of the Act.

Based on the analysis above, the Department determines that the information submitted by Ningbo Jiulong for this investigation is unreliable because the Department is unable to determine at this point the actual types of steel consumed by Ningbo Jiulong in its production of steel grating, which is the first product characteristic in the Department's CONNUM. Finally,

because it is not possible to determine NV, or the correct model and transaction sales quantity for U.S. sales reporting using information on the record of this investigation in accordance with section 751(a)(2) of the Act, the Department is unable to perform any NV comparisons to U.S. prices. Also, in this instance, the composition of the product's two most significant inputs is the first product characteristic in the CONNUM, meaning a key identifying characteristic of the U.S. sales models is unsupported on the record. The Department's practice in such situations is to apply total FA to a respondent.¹⁹

In accordance with section 776(b) of the Act, the Department determines that Ningbo Jiulong has failed to cooperate by not acting to the best of its ability to comply with our requests for information. To examine whether an interested party cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the interested party has hindered the calculation of accurate dumping margins.²⁰ Compliance with the "best of its ability" standard is determined by assessing whether the interested party has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.²¹ To conclude that a party has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the Department examines two factors: (1) that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations; and (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to respond fully is the result of the respondent's lack of cooperation in either (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.²² While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element.²³

The Department finds that Ningbo Jiulong failed to cooperate to the best of its ability in accordance with section 776(b) of the Act. Ningbo Jiulong did not act to the best of its ability to cooperate when it did not disclose the existence of the mill test certificates that it provides to its clients to the Department, due to the fact that these documents revealed Ningbo Jiulong's awareness that other information submitted to record was false. In accordance with Nippon Steel, we find that Ningbo's pattern of behavior in failing to promptly alert the Department to problems in its supporting documentation or even the existence of certain mill certificates

¹⁹ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326, 30329 (June 14, 1996), Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of 2005-2006 Administrative Review, 73 FR 43684 (July 28, 2008) ("Hand Trucks") and accompanying Issues and Decision Memorandum at Comment 1, and Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66089 (December 14, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5554, 5567 (February 4, 2000).

²¹ See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("Nippon Steel").

²² See Nippon Steel.

²³ Id.

evinces a failure to put forth its maximum effort. The Department is especially troubled by what appears to have been deliberate concealment²⁴ on the part of Ningbo Jiulong with respect to the mill test certificates issued for U.S. sales.

Thus, the Department finds that the application of FA with an adverse inference is warranted. In cases where the FOP data is found to be unusable because the producer failed to cooperate to the best of its ability, and thus NV cannot be reasonably determined, the Department's practice is to apply total AFA.²⁵

Furthermore, in our Initiation Notice,²⁶ the Department informed PRC companies exporting steel grating to the U.S. of the requirements for completion of the separate rate application required to receive consideration for separate rate status. The Department has concluded that the nature of Ningbo Jiulong's unreliable submissions, and failure to cooperate by not acting to the best of its ability to comply with our requests for information, calls into question the reliability of the separate rates questionnaire responses submitted by Ningbo Jiulong in this investigation. Ningbo Jiulong's actions and omissions impeded this investigation when it stated on the record that in practice it did not provide mill test certificates to its customers,²⁷ and a day later admitted that it did provide its customers with mill test certificates, when compelled by the Department's request

²⁴Further, the mill test certificates that Ningbo Jiulong obtained from two different suppliers have the same types of errors and other discrepancies. As opposed to its suppliers, Ningbo Jiulong has a strong interest in providing data that would lead the Department to assigning a specific SV. Providing such information would allow Ningbo Jiulong to steer the Department toward particular SVs for two key inputs. Submission of such information, in essence, allows Ningbo Jiulong far greater control in the calculation of its eventual margin. Moreover, Ningbo Jiulong provided no explanation concerning why the same types of errors appear in the mill test certificates submitted for two independent suppliers. While Ningbo Jiulong would clearly stand to benefit from the application of unreliable information concerning the composition and specifications of its steel inputs, Ningbo Jiulong has offered no explanation as to why two independent suppliers would benefit from the inclusion of such unreliable data. Thus, beyond deliberate concealment, these anomalies in the suppliers' mill test certificates suggest that Ningbo Jiulong itself may have fabricated at least some of the supplier mill test certificates.

²⁵ See, e.g., Hand Trucks, and accompanying Issues and Decision Memorandum at Comment 1 (determining that the respondent's behavior at verification of refusing to answer the Department's questions, withholding documents, altering documents, and preventing the Department from conducting a full verification warranted the application of total AFA); Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review, 72 FR 1982 (January 17, 2007) and accompanying Issues and Decision Memorandum at Comment 7 (explaining that multiple revisions and contradictory explanations at verification resulted in a finding that information on the record was unreliable and the application of total AFA was warranted); Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 24641 (April 26, 2006) and accompanying Issues and Decision Memorandum at Comment 2 (finding that total AFA were warranted because the respondent failed to cooperate to the best of its ability by failing to disclose information regarding its affiliate, and the Department discovered the unreported affiliate by finding the company's license during verification); Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005), and accompanying Issues and Decision Memorandum at Comment 9 (determining that the respondent failed to act to the best of its ability when it did not timely notify the Department of verification issues involving its supplier and failed to supply an alternative, verifiable methodology which justified resort to total AFA).

²⁶ See Certain Steel Grating from the People's Republic of China: Initiation of Antidumping Duty Investigation, 74 FR 30273, 30277 (June 25, 2009) ("Initiation Notice")

²⁷ See Ningbo Jiulong's March 18, 2010, submission at 3.

to CBP. As stated above, Ningbo Jiulong acknowledged, at a late stage in this investigation, and not until the Department obtained information independently from CBP, that it made a second mill test certificate for its steel coils using information other than from its supplier mill test certificates, demonstrating that Ningbo Jiulong knew the supplier mill test certificates contained false information. Ningbo Jiulong failed to divulge key information to the Department on its own despite knowledge of its material nature. Because of Ningbo Jiulong's failure to divulge the information on its own or when requested by the Department (e.g., during our sales trace at verification), Ningbo Jiulong effectively deprived the Department of the opportunity to verify the information.

Ningbo Jiulong's actions in regard to submitting to the Department false mill test certificates from its supplier, and omissions in not providing the documentary evidence in its possession demonstrating its knowledge of the falsehood of the supplier mill test certificates, impeded this investigation. These acts and omissions are further highlighted by Ningbo Jiulong's specific actions to cover up the fact that the mill test certificates it provided to the Department were false documents, even up to the day prior to making an admission of such.²⁸ As the Department concluded above, Ningbo Jiulong's pattern of behavior calls into question the reliability of all of Ningbo Jiulong's submitted data necessary for the calculation of the dumping margin and determination of separate rate status. Accordingly, the Department finds that Ningbo Jiulong is part of the PRC-wide entity for purposes of this investigation, as Ningbo Jiulong, by its action (and inaction) has failed to demonstrate that it operates free of government control. Thus, the Department finds that Ningbo Jiulong is not entitled to a separate rate.²⁹

Accordingly, the Department has applied total AFA to Ningbo Jiulong. In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Federal Circuit and the Court of International Trade have consistently upheld the Department's practice of selecting the highest prior margin.³⁰

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."³¹ The Department's practice also ensures "that the

²⁸ Id.

²⁹ See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 11085 (March 16, 2009).

³⁰ See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990) ("Rhone Poulenc"); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55% total AFA rate, the highest available dumping margin from a different respondent in a less than fair value investigation); see also Kompass Food Trading Int'l v. United States, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); Shanghai Taoen International Trading Co., Ltd. v. United States, 2005 Ct. Int'l. Trade 23 *23; Slip Op. 05-22 (February 17, 2005) (upholding a 223.01% total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

³¹ See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory

party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³² In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.”³³ Consistent with the Department’s practice and the purposes of section 776(b) of the Act, the Department is applying 145.18 percent, the highest margin from the Initiation Notice of this investigation, as AFA to Ningbo Jiulong (as part of the PRC entity).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA³⁴ as “information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³⁵ The SAA provides that to “corroborate” means simply that the Department will satisfy itself that the secondary information to be used has probative value.³⁶ The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.³⁷ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.³⁸

As total AFA, the Department preliminarily selected the rate of 145.18 percent from the Initiation Notice,³⁹ i.e., a margin from the petition as revised by the Department through supplemental questionnaires. Petitioners’ methodology for calculating the export price and NV in the petition is discussed in the Initiation Notice.⁴⁰ At the Preliminary Determination, in accordance with section 776(c) of the Act, we corroborated our AFA margin by comparing it to

Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

³² See Statement of Administrative Action (“SAA”) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004); See also D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (Fed. Cir. 1997).

³³ Rhone Poulenc, 899 F.2d at 1190.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

³⁹ See Preliminary Determination, 75 FR at 852.

⁴⁰ See Initiation Notice, 74 FR at 30277.

the CONNUM margins we found for the mandatory respondent. We found that the margin of 145.18 percent had probative value because it was in the range of CONNUM model margins we found for the only participating mandatory respondent, Ningbo Jiulong. Accordingly, we found that the rate of 145.18 percent was corroborated within the meaning of section 776(c) of the Act.

Because there are no cooperating mandatory respondents to corroborate the 145.18 percent margin used as AFA for the PRC-wide entity, to the extent appropriate information was available, we revisited our pre-initiation analysis of the adequacy and accuracy of the information in the petition. See Antidumping Investigation Initiation Checklist: Certain Steel Grating from the People's Republic of China, dated June 18, 2009 ("Initiation Checklist"). We examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioners prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and NV in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition (e.g., Global Trade Atlas, and Petitioners' experience with selling and producing the merchandise under consideration), which corroborated key elements of the export price and NV calculations. See Initiation Checklist at 7-12. We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to Ningbo Jiulong (as part of the PRC-wide entity).

Thus, we continue to find that the margin of 145.18 percent has probative value. Accordingly, we find that the rate of 145.18 percent is corroborated within the meaning of section 776(c) of the Act, and we have assigned the PRC-wide entity a rate of 145.18 percent, the highest margin from the Initiation Notice of this investigation.

Comment 4: Whether the Department Should Rely Upon Documents Obtained from CBP in the Final Determination

Petitioners state that Ningbo Jiulong has severely impeded this proceeding by contradicting itself with respect to the existence of documents, making factual claims that it has later withdrawn or which have been shown to be inaccurate, by inappropriately delaying the submission of requested information, by failing to provide accurate and complete data, and by providing false documents and certifications to the Department. Specifically, Petitioners contend that Ningbo Jiulong impeded the investigation by withholding from the Department mill test certificates that it provided to its U.S. customers, and also documentation regarding its direct export sale customers, until the Department took steps to obtain the documentation from CBP. According to Petitioners, purchase orders obtained at verification indicated that Ningbo Jiulong's ultimate U.S. customer had requested that mill test certificates accompany all purchased merchandise. Petitioners state that, on March 17, 2010, Ningbo Jiulong filed a submission indicating that such mill test certificates did not exist, and could not link any mill test certificates to its U.S. sales, but between March 16 and March 18, 2010, the Department obtained these mill test certificates from

CBP. According to Petitioners, Ningbo Jiulong reversed itself after learning that the Department had obtained documentation from CBP, and submitted the mill test certificates to the Department. Petitioners contend that, although Ningbo Jiulong argues that the mill test certificates at issue are unreliable and irrelevant, the documents relate to the critical issue of the type of the steel that Ningbo Jiulong uses to produce the merchandise under consideration.

Ningbo Jiulong argues in rebuttal that the Department should not draw an adverse inference with respect to Ningbo Jiulong's entire U.S. sales file based on information obtained from CBP. Ningbo Jiulong states first that it was not the importer of record for any of the shipments at issue, and therefore it was not responsible for the information provided to CBP. Ningbo Jiulong states that it is not responsible for compliance with U.S. laws governing entry. Further, Ningbo Jiulong states since the entries obtained from CBP were released by the Department under administrative protective order ("APO"), the entry documents cannot be examined by Ningbo Jiulong for rebuttal. Ningbo Jiulong also notes that the Department explicitly did not allow Ningbo Jiulong to rebut the entry documents with new factual information to clarify the entry documents in this AD proceeding, but allowed such rebuttal in the companion CVD proceeding, and allowed Petitioners to rebut also. Ningbo Jiulong cites CBP regulations arguing that, as an exporter, it had no standing to be importer of record. Thus, Ningbo Jiulong contends that it should have been allowed to present a full rebuttal. Ningbo Jiulong states, however, that all of its sales invoices, sales contracts, bills of lading and packing lists have been presented to the Department, and have been linked to its audited financial statement and PRC tax returns. Ningbo Jiulong states that, in contrast, the entries at issue are only a handful of documents submitted to CBP by a third party.

The GOC claims that the Department denied Ningbo Jiulong the chance to respond to CBP entry summary documentation placed on the record, while allowing Ningbo Jiulong to respond to the very same information in the companion CVD case and allowing Petitioners to respond. The GOC finds this to be unfair, as the information obtained from CBP by the Department contained documents provided by an unaffiliated U.S. importer and was not possessed, submitted, or reviewed, by Ningbo Jiulong. The GOC states that the Department should have let Ningbo Jiulong respond even if the Department did not identify how these documents render any of Ningbo Jiulong's response "deficient." The GOC urges the Department to allow Ningbo Jiulong to submit documentation and/or comments to rebut the filing of the CBP documentation.

Department's Position: The Department notes that all of the mill test certificates that the Department obtained from CBP, were submitted to the record by Ningbo Jiulong itself along with other mill test certificates,⁴¹ subsequent to the Department's receipt of the mill test certificates from CBP.⁴² Because the Department need not rely on the copies of the mill test certificates obtained from CBP for the final determination, but rather can rely on the copies submitted by Ningbo Jiulong itself, the issue of whether the Department can rely on the mill test certificates obtained from CBP is moot.

⁴¹ See Ningbo Jiulong's March 19, 2010, submission at Exhibit 7.

⁴² See Memorandum from Thomas Martin to The File, dated March 22, 2010.

Regarding all other CBP entry information on the record of the proceeding pertaining to Ningbo Jiulong's shipments, beyond mill test certificates, the Department has not relied upon or referenced in any instance this information for the final determination. Thus, any issue relating to Ningbo Jiulong's and the GOC's contention that Ningbo Jiulong was somehow prejudiced by its inability to submit new factual information in rebuttal is also moot. However, we further note that the submission of CBP entry information became necessary only in light of the false information submitted by Ningbo Jiulong on the record of this proceeding (*i.e.*, supplier mill test certificates and assertions that Ningbo Jiulong did not provide customers with mill test certificates), information within Ningbo Jiulong's control. Further, Ningbo Jiulong was provided an opportunity to comment on these submissions, and it provided clarifying/rebuttal arguments in its case brief.

Finally, we note that the CVD investigation of steel grating is a separate proceeding which has no bearing on the Department's actions in this proceeding. The Department's decisions regarding factual submissions and commentary in the CVD investigation are driven by the facts on the record of that proceeding, which are not identical to the record in this AD proceeding. Thus, the Department determined that Ningbo Jiulong's opportunity to comment in its case brief was sufficient based upon the facts of the AD proceeding.

Comment 5: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon the Failure to Report the Correct Customer

Petitioners contend that documents in the entry packages that the Department obtained from CBP contradict other information placed on the record by Ningbo Jiulong indicating that Ningbo Jiulong was a seller and exporter of steel grating to the United States. Petitioners note that the commercial invoices used to enter Ningbo Jiulong's steel grating are not the Ningbo Jiulong invoices submitted to the Department, but rather the invoices of a Hong Kong trading company. Petitioners contend that either the U.S. sales information provided to the Department, or the Hong Kong trading company invoices provided to CBP for the same U.S. customer, must be fraudulent. According to Petitioners, if the invoices provided to the Department are fraudulent, then the universe of U.S. sales for the Department's calculations is inaccurate; if the invoices provided to CBP are fraudulent, then dumping duties cannot be assessed accurately. Further, Petitioners contend that the sales channel set forth in the documents obtained from CBP, and in the Department's verification exhibits, indicates that Ningbo Jiulong's direct sales are to the Hong Kong trading company, which in turn sells to the U.S. customer. Petitioners claim that, if the Hong Kong trading company is Ningbo Jiulong's direct customer, and not the U.S. customer, then Ningbo Jiulong either reported the wrong universe of sales, or does not qualify as a respondent in this proceeding. Petitioners state that, if Ningbo Jiulong made sales to the Hong Kong trading company in U.S. dollars, then the sales to the Hong Kong trading company should have been the sales included in the universe of U.S. sales reported to the Department, rather than the sales to the U.S. customer. In such case, Petitioners contend that the Department does not have information on the record regarding U.S. price adjustments and expenses to calculate the correct net U.S. price.

Petitioners further assert that the quantity and value of certain sales by the Hong Kong trading company at issue do not match the quantity and value of the upstream sale between Ningbo Jiulong and the Hong Kong trading company at issue, and in particular, certain products appearing in the Hong Kong trading company's invoice do not appear in the Ningbo Jiulong invoice, suggesting a likelihood of unreported U.S. sales. Petitioners also argue that if Ningbo Jiulong had no knowledge that its merchandise was destined for the U.S., or if its transactions were invoiced in renminbi ("RMB"), then the Hong Kong trading company is the exporter, and also the appropriate respondent. For the foregoing reasons, Petitioners contend that the record is wholly unreliable with respect to information that is key to the AD calculation.

Ningbo Jiulong states in rebuttal that it believed that the trading agent, with whom it corresponded for all transactions with one of its U.S. customers, had contracted with the U.S. customer as a buying agent, and such agents typically add a buying commission to the invoice value. Ningbo Jiulong argues that it does not know what the importer and buying agent do with Ningbo Jiulong's sales documents after the goods are shipped. Ningbo Jiulong states that, in its sales ledger and accounts receivable, as well as its sales documentation, it treated the buying agent and the U.S. customer as if it were the same party. Ningbo Jiulong states that the amounts invoiced tie to the amounts paid and booked. Regarding invoices in RMB currency, Ningbo Jiulong states that it had previously reported to the Department invoiced its customers in RMB, but the invoices were payable in the U.S. dollar equivalent at the time of payment, to safeguard Ningbo Jiulong against the possible devaluation of the U.S. dollar.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA based upon Ningbo Jiulong's lack of cooperation regarding the composition and specifications of its steel inputs in this investigation, we find no need to address this comment.

Comment 6: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon Unreported Sales

Petitioners argue that unreported sales to the United States of galvanized product that the Department obtained at verification indicate that Ningbo Jiulong may have additional unreported U.S. sales. Petitioners contend that in such instances the Department has applied total AFA, citing Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China, 65 FR 34660 (May 31, 2000) and the accompanying Issues and Decision Memorandum at Comment 1. Petitioners state that, at a minimum, the Department should apply partial AFA to the unreported U.S. sale, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From Malaysia, 65 FR 81825 (December 27, 2000) and the accompanying Issues and Decision Memorandum at Comment 12.

Ningbo Jiulong contends that the single unreported sale found at verification does not warrant an adverse inference, and does not raise the suggestion of other unreported sales. Ningbo Jiulong claims that the Department does not have a uniform practice of applying an adverse inference

concerning corrections identified through the verification process, and that the Department does not require perfection from respondents. Ningbo Jiulong suggests a specific similar model to match to the unreported sale model, and states that if the Department does apply an adverse inference to the sale, it must be corroborated and representative of Ningbo Jiulong's experience.

Ningbo Jiulong also states that the Department should apply the FA, but not AFA, to a single unreported sale to the United States found during the Department's verification. Ningbo Jiulong states that the sale was geographically distinct from its other U.S. sales, and that the Department could either ignore the sale, or match the sale to the nearest similar model.

Regarding the one unreported sale of galvanized merchandise found at verification, Petitioners argue in rebuttal that neutral FA is not sufficient, as there is evidence of the possibility of more unreported sales of galvanized and other steel grating products.

Ningbo Jiulong states in rebuttal that the specific items identified by Petitioners on the invoices from the entries obtained from CBP are examples of Ningbo Jiulong's "split" shipments, whereby a piece of steel grating creating is purchased complete, but cut, and then shipped in part and stored in part for shipping at later date. Ningbo Jiulong argues that it had fully reported this practice to the Department, and it is an explanation for why an article shipped at one point may not be sold at the same time. Ningbo Jiulong states that the merchandise noted by Petitioners are not unreported sales because they are split shipment sales specifically examined by the Department in Exhibit 17 of the verification exhibits.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA based upon Ningbo Jiulong's lack of cooperation regarding the composition and specifications of its steel inputs in this investigation, we find no need to address this comment.

Comment 7: Whether the Department Should Apply Partial Adverse Facts Available to Ningbo Jiulong's Packing Inputs

Petitioners argue that, because Ningbo Jiulong reported using cold-rolled steel bands to pack steel grating for shipment, but instead manufactured packing bands out of rejected slit hot-rolled coil, the Department could apply partial AFA for this unreported packing FOP, and the packing labor required to produce it. Petitioners cite Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews, 71 FR 32923, 32926 (June 7, 2006), as prior example of partial AFA applied to unreported packing FOPs. Petitioners state that the Department may apply partial AFA by applying the SV for wide coil to Ningbo Jiulong's steel strip.

Ningbo Jiulong states that the Department should either not add an FOP for steel packing braces made from production scrap for the final determination, or add both the FOP and an offsetting adjustment cancelling the FOP, because the steel packing brace consumption is already captured in the steel strip usage ratio for the product itself. Ningbo Jiulong argues that, should the

Department add a packing brace FOP, it should also not include other reported packing materials that would duplicate the function of the packing braces.

Ningbo Jiulong states that the Department should not apply partial AFA for an additional steel packing brace FOP because Ningbo Jiulong manufactures the packing braces out of steel scrap, and the consumption rate of the packing braces is thus captured in the hot-rolled steel, labor and electricity FOPs, and the POI totals have been fully allocated and verified against Ningbo Jiulong's accounting records. Ningbo Jiulong also contends that Petitioners proposed partial AFA of using the Indian SV for wide coil to value packing braces is not supported by the record, which provides no evidence of the use of such steel coil.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA based upon Ningbo Jiulong's lack of cooperation regarding the composition and specifications of its steel inputs in this investigation, we find no need to address this comment.

Comment 8: Whether the Department Should Revise Ningbo Jiulong's Steel Scrap Offset

Petitioners argue that Ningbo Jiulong's steel scrap offset should be calculated using an SV based upon HTS⁴³ 7204.49 rather than 7204.41, or an average of the two subheadings, due to the size of the generated scrap pieces.

Ningbo Jiulong states that the Department should make no adjustment to the scrap offset for the final determination, because the quantity of scrap that the Department noted in its verification report as withdrawn from inventory but not sold should be considered to be product sold, based upon the accrual method of accounting. Ningbo Jiulong cites its financial statement, arguing that it uses this accounting method, and argues that allowing the offset as reported is consistent with Department practice.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA based upon Ningbo Jiulong's lack of cooperation regarding the composition and specifications of its steel inputs in this investigation, we find no need to address this comment.

⁴³ Harmonized Tariff System ("HTS")

Surrogate Value Issues for Specific Factors of Production

Comment 9: Whether the Department Should Revise the Surrogate Value for the Steel Coil Input

Petitioners argue that, if the Department does not apply total AFA to Ningbo Jiulong, the Department should apply partial AFA to Ningbo Jiulong's steel inputs, due its lack of cooperation regarding the mill test certificates, and the false information that the certificates contain. Petitioners suggest valuing the hot-rolled steel input using Indian import average unit values of other types of hot-rolled steel sheet and strip. Petitioners further note that the slit "narrow" coils that Ningbo Jiulong reported as an FOP are a value-added steel coil product, and the lower SV that the Department applied to the FOP in the Preliminary Determination is aberrantly low when compared to World Trade Atlas ("WTA") import statistics for other hot-rolled steel products imported into other countries. Petitioner argues that, if the Department does not eliminate the aberrantly low SV, then it should eliminate certain transactions that are secondary or misclassified merchandise from the calculation of the SV, according to InfoDriveIndia. However, Petitioners also note that if the Department eliminates these transactions, the remaining quantity is miniscule.

Ningbo Jiulong argues in rebuttal that Petitioners' assertion the SVs used by the Department to value the hot-rolled steel FOP in the Preliminary Determination are aberrantly low, may be based upon Petitioners' own production experience, but does not relate to the practice and experience elsewhere in the world, such as the PRC, India, or Europe. According to Ningbo Jiulong, steel strip can be produced by hot-rolling semi-finished products such as billets, as well as by slitting wide coil. Further, Ningbo Jiulong asserts that the TradStat pricing data put forth by Petitioners as a basis of comparison for SVs used in the Preliminary Determination should not be considered by the Department because it is not publicly-available, and appears to be a custom-made report of deduced import statistics from countries at different levels of economic development from the PRC. Ningbo Jiulong asserts also that the InfoDriveIndia analysis put forth by Petitioners to examine the data making up the SVs used in the Preliminary Determination is based upon: (1) undefined terminology (i.e. "seconds"); (2) assumptions regarding the accuracy of manifest descriptions; (3) assumptions regarding the accuracy of Petitioners' preferred HTS classifications; and (4) data that actually contradicts rather than corroborates the data making up the SVs. Further, Ningbo Jiulong contends that the specificity on the record of this case regarding the characteristics of Ningbo Jiulong's hot-rolled strip inputs, and the precision with which the input is classified in accordance with the Indian tariff schedule and the corresponding WTA import statistics, supports the continued application of the SVs used in the Preliminary Determination.

Yantai Xinke Steel Structure Co., Ltd. ("Xinke")⁴⁴ argues in rebuttal that the record shows the tariff provision that expressly covers Ningbo Jiulong's input should not be rejected because of the proposition that narrow strip is "normally" made by slitting wide strip, which is cheaper, and import statistics that suggest the contrary are aberrational. Xinke argues that this argument is

⁴⁴ Xinke is a separate rate applicant.

based upon production experience in the United States and not India. Xinke further states that the value differences between different tariff subheadings may also be attributable to different sub-sets of underlying materials. Xinke states that any analysis of Indian steel prices based upon comparison with prices in other countries is irrelevant where India is designated as the surrogate country, and Petitioners have not argued for a different surrogate country.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA obtained from the margins set forth in the Initiation Notice,⁴⁵ and there are no other mandatory respondents participating in this investigation, we find no need to address this comment.

Comment 10: Whether the Department Should Revise the Surrogate Value for the Wire Rod Input

Petitioners state that, if the Department continues to use domestic pricing information available from the Indian Joint Plant Committee ("JPC") to value Ningbo Jiulong's wire rod, it should not adjust the pricing for excise and value-added tax, since there is insufficient information on the record regarding these taxes.

Ningbo Jiulong argues in rebuttal that the Department should not revise its methodology for calculating tax-exclusive JPC prices, as the Department's practice is well-established, the JPC prices are plainly tax-inclusive.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA derived from margins in the petition, and there are no other mandatory respondents participating in this investigation, we find no need to address this comment. We note specifically that the domestic pricing information for wire rod from the JPC was not used to calculate the margins in the Initiation Notice.

Comment 11: Whether the Department Should Revise the Surrogate Value for Galvanizing Services

Ningbo Jiulong argues that, since every financial statement on the record that can be used for calculating surrogate financial ratios contains evidence of galvanizing services, to include a separate adjustment for galvanizing services double-counts the expense. Ningbo Jiulong further argues that, should the Department continue to adjust for galvanizing services, the correct SV is Rs. 8,000 per metric ton rather than Rs. 80,000 per metric ton, which the Department used in the Preliminary Determination.

Petitioners argue in rebuttal that the Department should not remove galvanizing service fees from any surrogate financial ratio calculations to avoid double-counting, since (1) there is no information on the record regarding the precise expenses included in the Department's galvanizing services SV, and (2) Ningbo Jiulong has refused to report its tolling expenses related

⁴⁵ See Initiation Notice, 74 FR at 30277.

to galvanization, to identify an overhead portion.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA based upon Ningbo Jiulong's lack of cooperation regarding the composition and specifications of its steel inputs in this investigation, we find no need to address this comment. We note specifically that no SV for galvanizing services was used to calculate the margins in the Initiation Notice.

Surrogate Financial Ratio Calculation Issues

Comment 12: Whether the Department Should Use the Financial Statement of Greatweld Steel Grating Private Limited to Calculate Surrogate Financial Ratios

Petitioners argue that the financial statement of Greatweld Steel Grating Private Limited ("Greatweld") is the best available source of surrogate financial ratios on the record, because Greatweld is an Indian producer of steel grating with a production process similar to Ningbo Jiulong's process, and further, its financial statement on the record is contemporaneous with the POI, fully audited, and publicly available. According to Petitioners, the Greatweld financial statement, as well as financial data found on the statement, is available through many public sources, despite the fact that Greatweld is a private corporation. Petitioners contend that the Department consistently has used this type of financial information to calculate surrogate financial ratios. Further, Petitioners state that, should the Department use the Greatweld financial statement, the Department should treat Greatweld's consumables (indirect materials) and contract labor (which is likely to be galvanizing services) as overhead, rather than as raw materials or labor.

In rebuttal, Ningbo Jiulong argues that the Greatweld financial information has never been provided to the public, and that Ningbo Jiulong's counsel has been unable to obtain it from Petitioners' claimed sources, possibly because Petitioners obtained the information illegally. Regarding Petitioners' calculations of surrogate financial ratios based upon the Greatweld data: (1) Petitioners' inclusion of contract labor in overhead is an error, and the amount should be included in direct labor, because Indian companies hire ordinary laborers under fixed term contracts to gain labor flexibility; and (2) Petitioners' inclusion of consumable stores in overhead is an error, and the amount should be included in raw materials, because the suspiciously high reported value suggests that Greatweld has shifted raw materials to this category to drive up costs for tax purposes.

Ningbo Jiulong contends that Petitioners likely possessed the Greatweld financial statement at the time of the Petition filing, but chose not to submit the document with the Petition, but instead waited until the deadline for filing such information. Further, Ningbo Jiulong states that, when the Department requested that Petitioners support their claim that the Greatweld financial statement is publically-available, Petitioners did not answer a specific question asking how and when they obtained the document. Additionally, Ningbo Jiulong contends that Petitioners disregarded the Department's instructions to identify subsidies on the two financial statements

they placed on the record, despite indications of such subsidies in the documents. For these reasons, Ningbo Jiulong argues that the Department should make an inference adverse to Petitioners by applying the lowest financial ratios on the record to Ningbo Jiulong, specifically those of Nezone Tubes, Ltd.

Ningbo Jiulong also argues that the Greatweld financial statement should not be considered for calculating surrogate financial ratios for Ningbo Jiulong, because the financial statement is not publicly available. Rather, Ningbo Jiulong claims that the Greatweld financial statement was not filed with the Government of India, Ministry of Company Affairs because Greatweld is a private company and, therefore, it cannot be obtained by members of the public. Ningbo Jiulong states Petitioners did not answer the Department's request for an explanation of how Petitioners obtained the document, but instead placed additional Greatweld financial information on the record obtained from a financial services firm called Brisk Intelligence, India, effectively providing themselves with an extension to the deadline for submitting new factual information. Although Ningbo Jiulong notes that the Department allowed rebuttal of this new factual information, Ningbo Jiulong maintains that the Department should remove the new factual information from the record. Ningbo Jiulong states that Brisk Intelligence, India, itself makes no claim that the information it report is public information. Ningbo Jiulong contends that the Department does not use financial information for calculating surrogate financial ratios that is not fully available from public sources, citing First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 2b.

Ningbo Jiulong also contends that the Greatweld financial statement is not complete enough for the Department to use to calculate surrogate financial ratios, as it contains no sales revenue schedule that could potentially identify a countervailable subsidy, and contains no information regarding an affiliate that appears to supply hot-rolled steel, wire rod, and galvanization services to Greatweld. Ningbo Jiulong claim that the affiliate's tolling operations completed for Greatweld give Greatweld understated raw material, labor and energy costs, while still bearing overhead and SG&A costs. Ningbo Jiulong states that, if the Department calculates surrogate financial ratios with the Greatweld financial statement, it should: (1) include Greatweld's itemized contract "labor charges" in the raw material, labor and energy total (denominator) rather than overhead (numerator); (2) remove "other income" from its profit (numerator), (3) include "consumables" in raw materials (denominator); and (4) average the calculated financial ratios with those of other Indian companies on the record, to obtain more representative financial ratios. Xinke also argues that contract labor should be moved from overhead to labor.

Petitioners argue in rebuttal that the Greatweld financial statement is the only complete and contemporaneous financial statement on the record in this investigation from an Indian producer of subject merchandise. Petitioners argue that since Greatweld is the only producer of identical merchandise to the merchandise under consideration whose financial statement is on the record of the investigation, the Department should follow its practice, and use the information from the identical merchandise producer exclusively for calculating surrogate financial ratios. Petitioners

state that the fifteen financial statements that Ningbo Jiulong submitted pertain to companies that manufacture goods as diverse as hot-rolled steel, steel nails, fabricated buildings, and automotive parts, but none of them produce products comparable to steel grating.

Petitioners state that Ningbo Jiulong's claim that the Greatweld financial statement is not available to the public is flawed and unsupported. Petitioners contend that the Department has derived surrogate financial ratios from the financial statements of privately held companies that did not include their fully audited financial statements on the Government of India's Ministry of Company Affairs website, citing several AD proceedings. Petitioners state that the information that they provided from market research firms was only meant to corroborate the public availability of the information in the financial statement. Petitioners assert that the Department only required Greatweld's permission to submit its financial statement to the record of this proceeding if Petitioners received the financial statement through direct contact with Greatweld, but that Petitioners obtained the financial statement through a third party. Petitioners state that Ningbo Jiulong's claim that it could not obtain Greatweld's financial statement upon request cannot be evaluated because the request is not on the record.

Petitioners state that the respondent's argument that the Greatweld financial statement is incomplete is lacking, as it only cites the absence of a schedule explaining sales revenue. Petitioners contend that the Greatweld financial statement is complete, and is as detailed as any financial statement placed in the record by the respondent. Petitioners further contend that the Greatweld statements demonstrate that Greatweld produced and sold steel gratings, that it possesses substantial plant and equipment assets, and that the level of its sales functions are equivalent to those of other companies. Petitioners state that the respondent's argument that Greatweld's financial information cannot be considered without that of Anand Teknow Aids Engineering India Ltd. ("Anand Teknow") because they are fully integrated, is unsupported because Anand Teknow was not producing steel strip during the fiscal year at issue. In addition, Petitioners state that Greatweld's website indicates that it manufactures steel strip and wire rod inputs, serrates bearing bars, but does not galvanize.

Regarding Ningbo Jiulong's arguments about specific aspects of Petitioners' surrogate financial ratio calculation, Petitioners state that: (1) the Department often categorizes other direct expenses such as Greatweld's "labor charges" in overhead; (2) Greatweld includes labor expenses apart from direct expenses in a separate category; and (3) there is not a sufficient factual basis to exclude "other income" from the surrogate profit calculation.

Xinke argues that the Department should not calculate surrogate financial ratios using the financial statement of Greatweld because it is a non-public financial statement that may have been obtained by ethically questionable means, and the additional information regarding Greatweld placed on the record by Petitioners is the only information derived from non-public information. Xinke also contends that Greatweld may not be a steel grating producer, but rather may be a shell for another affiliated company, Anand Teknow, which performs rolling and galvanizing services, and sells steel grating. Xinke states that the operations of Greatweld and its affiliate are intertwined, such that the financial information of one cannot be considered

independently from the other.

Xinke also argues in rebuttal that the Greatweld financial statement should not be used to calculate surrogate financial ratios because Petitioners have been unable or unwilling to demonstrate that the financial statement is, in its entirety, public information. Xinke further argues that the webpages submitted to the record by Petitioners indicate that Greatweld and Anand Teknow share the same personnel, and the record is not clear on whether the two companies have separate production capacities or sales channels. Xinke also argues that Greatweld's "consumables" should be included in the surrogate financial ratio calculation as a direct material, and "contract labor" should be included with direct labor, because Greatweld's only activity is steel grating production.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA margins from the Initiation Notice, and there are no other mandatory respondents participating in this investigation, we find no need to address this comment.

Comment 13: Whether the Department Should Use the Financial Statements of Comparable Merchandise Producers to Calculate Surrogate Financial Ratios

Petitioners argue that, should the Department not use the Greatweld financial statement to calculate financial ratios, the Department should use the financial statement of Mekins because Mekins produces comparable merchandise, specifically, welded load-bearing steel products that require both hot-rolled steel coil and steel wire rod, as does steel grating. Petitioners state that the Mekins financial statement is also contemporaneous with the POI, publicly available, fully audited, and contains no direct evidence that Mekins received a countervailable subsidy. Petitioners also contend that the Department should not use the financial statement of Rama Steel Tubes Limited ("Rama"), because Rama manufactures different steel products not used in weight bearing applications, using a very different type of welding equipment, and also trades in the steel coil raw material.

Ningbo Jiulong states that, in the Preliminary Determination, the Department used the Mekins financial statement despite evidence of Mekins receiving subsidies, despite over 80 combined points of ratios, and despite Mekins' practice of taking 40 percent depreciation, when the Department should have declined to use it. Ningbo Jiulong asserts that the 40 percent depreciation contravened Indian law and accounting principles, and was the largest contributor to the overhead numerator. Ningbo Jiulong states that the Department should have investigated Petitioners' claim that the Mekins financial statement was the only publicly available statement to them at the time the petition was filed. Ningbo Jiulong also contends that Mekins makes many different products that are neither identical nor comparable to steel grating, and are much more complex than wire decking. According to Ningbo Jiulong, these products are made using "high tech" equipment that raises SG&A expenses, rendering Mekins unrepresentative compared to other Indian companies on the record that manufacture articles using the same raw materials as Ningbo Jiulong. Ningbo Jiulong also contends that the lack of detail in the Mekins financial statement regarding energy and selling expenses causes an overallocation of these expenses to

overhead and SG&A, respectively.

Ningbo Jiulong also contends that the Mekins' financial statement contains evidence that Mekins obtained countervailable subsidies, specifically a government "sales tax deferment," an unspecified "state subsidy," countervailable "packing credits," and countervailable research and development grants. Ningbo Jiulong states that since there is insufficient information in the Mekins statement to adjust for these subsidies, the Mekins financial statement should be disregarded. If the Mekins financial statement is not disregarded entirely, Ningbo Jiulong states that the Department should average it with the financial ratios of pipe producers on the record, arguing that pipe is comparable merchandise due to the consumption of hot-rolled steel during production.

Xinke argues that the Department should not calculate surrogate financial ratios using the financial statement of Mekins because Mekins is a recipient of countervailable subsidies, specifically packing credits and a sales tax deferment. Xinke also argues that Mekins financial statement is not detailed enough to identify Mekins' key raw materials and expenses, and utilizes an inconsistent accounting method with respect to depreciation.

Petitioners argue in rebuttal that, should the Department for any reason decline to use the Greatweld financial statement, the Department should use the Mekins financial statement because Mekins' product i.e., wire decking: (1) more closely resembles steel grating than any of the products made by other companies whose statements are on the record (barring Greatweld); (2) is produced similarly, and thus is produced with similar expenses; and (3) has similar customers. Petitioners also contend that there is no indication in the Mekins financial statement that Mekins benefited from countervailable subsidies such as packing credits (because it is unclear if Mekins had sufficient exports and a high enough commercial interest rate for the packing credit to take effect), deferred tax credits (because the Department has not found it countervailable), and the Duty Entitlement Passbook scheme. Petitioners state that Mekins' depreciation expenses do not disqualify the Mekins financial statement, as they are only seven percent of its cost of production.

Petitioners state in rebuttal that, of the fifteen financial statements placed on the record by Ningbo Jiulong, none make merchandise comparable to steel grating. Further, Petitioners argue that seven of these companies have benefited from countervailable subsidies, two use more advanced steel processing for their products than Ningbo Jiulong, and two are primary steel producers. For one company, Nasco Steels Pvt. Ltd., not enough is known about what the company produces, and its production processes, to use for surrogate financial ratios.

Regarding the Mekins financial statement, Ningbo Jiulong argues in rebuttal that the Mekins statement provides no clues as to whether the company consumes raw materials and produces products representative of Ningbo Jiulong, and also contains evidence of numerous countervailable subsidies. Ningbo Jiulong further contends that the Mekins' plant and equipment depreciation rate is contrary to Indian law and accounting practice. Ningbo Jiulong states that it has submitted a significant cross section of comparable industry financial statements, and that the

Department should apply a simple average of all comparable industry financial ratios, as Ningbo Jiulong's surrogate financial ratios.

Department's Position: Because the Department has determined to assign to Ningbo Jiulong a rate based on total AFA obtained from the margins set forth in the Initiation Notice, and there are no other mandatory respondents participating in this investigation, we find no need to address this comment.

Separate Rate Applicant Rate Issues

Comment 14: Whether the Department Should Revise the Rate Assigned to Separate Rate Applicants

Xinke and Ningbo Haitian International Co. Ltd. ("Haitian")⁴⁶ argue that, should the Department assign a margin to the mandatory respondent that cannot be used to assign a separate rate to the separate rate applicants in the proceeding, it should calculate a rate for separate rate applicants based on the separate rate applicant's own quantity and value submissions to calculate U.S. price, and on the petition data modified with other SVs on the record for NV. Specifically regarding NV, Xinke and Haitian argue that the NV should be recalculated using the SVs for financial ratios, material inputs, energy, and packing materials that have been submitted for the record in this case. Xinke and Haitian contend that, even if these values would not otherwise be considered for the mandatory respondent, using these SVs to calculate a separate rate more accurately reflects the rate of duty which would have applied to the separate rate applicants had they been directly reviewed.

Haitian argues that, since there is no information on the record that it sold galvanized steel grating, the Department should not assign a rate that includes a galvanizing services FOP. If the Department does include a galvanizing services FOP in Haitian's margin it should use no more than the rate of 8 Rupees per kilogram, according to Haitian. Haitian states that if the mandatory respondent should receive a zero or de minimis margin, then Haitian should receive the same margin, contending that it would have received the same margin if specifically investigated.

Petitioners argue in rebuttal that in investigations in which the mandatory respondents receive either de minimis or adverse rates, the Department's practice is to assign non-mandatory respondents a rate based on an average of the initiation or petition rates (131.51 percent to 145.18 percent) for separate rate respondents.

The GOC states in rebuttal that since Petitioners argue for application of AFA, and that there is only one participating respondent in this case, the Department may not have a usable rate for separate rate applicants. The GOC argues that the Department's refusal to select a replacement mandatory respondent when one mandatory respondent, Shanghai DAHE Grating Co., Ltd. ("Shanghai DAHE"), withdrew from participation cannot be justified based on staffing issues. The GOC argues that the goal of selecting a "sample" is to determine a sample rate that is

⁴⁶ Haitian is a separate rate applicant.

representative of market conditions. Additionally, the GOC contends that a company-specific punitive rate cannot be considered representative, and cannot be applied to separate rate applicants. Therefore, the GOC argues that the Department must select a minimum of three respondents in each investigation, noting also that this eliminates the ability of a mandatory respondent to reverse-engineer the POI quantity of exports of the other mandatory respondents, which is information subject to APO.

Department's Position: At the outset, we note that no party, including the Department, has identified any information which would cause the Department to re-evaluate its preliminary decision to grant Xinke and Haitian a separate rate. Therefore, the Department continues to find that both Xinke and Haitian merit a separate rate.

Section 735(c)(5)(B) of the Act provides that, where the weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exports not individually investigated. This provision contemplates that the Department may use weighted-average margins other than zero, de minimis, and facts available margins to establish the "all others rate." Where the data do not permit weight-averaging such rates, the statute and the SAA explain that we may use other reasonable methods.⁴⁷

As noted above and in the Ningbo Jiulong AFA Memorandum, the Department is applying total AFA to the only mandatory respondent who participated in this investigation. As a result, there is no calculated margin on the record. Because the petition contained five price-to-NV dumping margins, the Department has determined to create the rate for the separate rate respondents, including Xinke and Haitian, using the simple average of these rates, pursuant to its normal practice.⁴⁸ The application of this methodology in NME investigations in which the individually investigated rates are based entirely on AFA has been upheld by the CIT.⁴⁹ There is no need, in this case, to revise the initiation margins, as suggested by Xinke and Haitian, because, as noted, the methodology used by the Department is a reasonable method, as required by section 735(c)(5)(B) of the Act.⁵⁰

Regarding Haitian's specific argument that its assigned rate should not include the Department's selected SV for galvanization services, we note that none of the five price-to-NV dumping margins in the petition included galvanization in the NV calculation.

Regarding the GOC's argument that the Department should select a minimum of three

⁴⁷ See SAA at 873.

⁴⁸ See e.g., Amended Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China, 73 FR 22130, 22133 (April 24, 2008) (results unchanged in final determination); Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China, 73 FR 6479 (February 4, 2008) and the accompanying Issues and Decision Memorandum at Comment 2.

⁴⁹ See Bristol Metals L.P. v. United States, SLIP OP. 2010-44, at 19-21 (CIT 2010).

⁵⁰ Id.

respondents in each investigation, we note that, section 777A(c)(2) of the Act allows the Department to limit its examination of exporters and producers if “[i]t is not practicable to make individual weighted average dumping margin determinations...because of the large number of exporters or producers involved in the investigation.” There were six potential respondents in this investigation,⁵¹ a number that we consider large, such that individual examination of each would not have been practicable. In such situations, the Department may limit the number to either a statistically valid sample, or “exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.” See section 777A(C)(2)(A)-(B) of the Act. Further, the U.S. Court of Appeals for the Federal Circuit has recognized that “agencies with statutory enforcement responsibilities enjoy broad discretion in allocating investigative enforcement resources.” See Torrington v. United States, 68 F.3d 1347, 1351 (1995) (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)).

In its Initiation Notice, the Department solicited comments from interested parties on its respondent selection methodology.⁵² On July 17, 2009, Petitioners filed comments on respondent selection.⁵³ The GOC, however, did not submit comments on this issue. On July 31, 2009, we issued our respondent selection memorandum, stating that we are selecting the top two firms by volume. As our rationale for selecting only two firms, we pointed to the heavy caseload of Office 4, AD/CVD Operations, citing numerous concurrent cases assigned to the office.⁵⁴ As stated in the Respondent Selection Memo, in selecting mandatory respondents for this investigation, the Department carefully considered its resources, including its current and anticipated workload and deadlines coinciding with this investigation, and came to the conclusion that selecting the top two producers/exporters by volume as mandatory respondents was the greatest number of respondents that could be reasonably examined.⁵⁵ Further, the Department selected two PRC producers and/or exporters that together represented the great majority of the reported volume of exports to the U.S. market.⁵⁶ We also note that, after Shanghai DAHE filed a letter stating that it would not participate as a mandatory respondent in this investigation, no interested parties submitted a voluntary response to the Department’s full AD questionnaire.⁵⁷ Thus, Department’s respondent selection methodology in this investigation is fully in compliance with 777A(c)(2)(B) of the Act.

⁵¹ See Memorandum to the File, from Thomas Martin, International Trade Compliance Analyst, through Robert Bolling, Program Manager, to Abdelali Elouaradia, Director, Office 4, regarding Selection of Respondents for the Antidumping Investigation of Certain Steel Grating from the People’s Republic of China, dated July 31, 2009 (“Respondent Selection Memo”), at 1.

⁵² See Initiation Notice, 74 FR at 30277.

⁵³ See Letter from Petitioners to The Honorable Gary F. Locke, “Certain Steel Grating from the People’s Republic of China: Comments on Respondent Selection,” dated July 17, 2009.

⁵⁴ See Respondent Selection Memo at 3.

⁵⁵ See Respondent Selection Memo at 3.

⁵⁶ See Respondent Selection Memo at 4.

⁵⁷ See 19 CFR 351.204(d).

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions. If accepted, we will publish the final determination and the final dumping margin in the Federal Register.

AGREE _____ DISAGREE _____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date