

DATE: September 24, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Antidumping Duty Investigation of Seamless Refined Copper
Pipe and Tube from the People's Republic of China

SUMMARY

The Department of Commerce (the "Department") has analyzed the case and rebuttal briefs, and other comments, submitted by interested parties in the above-referenced investigation. As a result of this analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a list of the issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether the Department should revise its labor rate calculation
- Comment 2: Whether the Department should revise its calculation of the surrogate financial ratios
- Comment 3: Whether the Department should issue cash deposit instructions that contain ad valorem rates or specific rates

Issues Specific to Golden Dragon Precise Copper Tube Group, Inc.

- Comment 4: Whether the Department should treat copper cathode purchases by Golden Dragon from a certain supplier in the People's Republic of China as non-market economy purchases
- Comment 5: Whether the Department should recalculate Golden Dragon's copper cathode cost based on the bonded and general trade copper cathode purchases during the period of investigation
- Comment 6: Whether the Department should revise the surrogate value for plywood batten consumed by Golden Dragon
- Comment 7: Whether the Department should consider solvent consumed by Golden Dragon to be a direct material input

- Comment 8: Whether the Department should include salaries paid to two employees of Golden Dragon who worked in the United States during the period of investigation as indirect U.S. selling expenses
- Comment 9: Whether the Department should adjust the factor of production for electricity for 7 mm and 9 mm inner-grooved tube products
- Comment 10: Whether the Department should make certain minor corrections

Issues Specific to Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hong Kong Hailiang Metal Trading Limited

- Comment 11: Whether to use facts available with regard to the Hailiang Group's line set sales
- Comment 12: Whether to use facts available with regard to the Hailiang Group's factors of production
- Comment 13: Whether to correct the water usage factor of production used in the Preliminary Determination
- Comment 14: Whether the Department should accept the post-preliminary correction of the consumption of Shanghai Hailiang's wooden crates
- Comment 15: Whether to continue considering certain raw materials as factors of production or exclude them from the calculation of the Hailiang Group's normal value
- Comment 16: Whether to continue using the actual weight reported by the Hailiang Group in its United States sales database
- Comment 17: Whether to include two additional categories of indirect labor as labor inputs
- Comment 18: Whether the Department should make certain minor corrections

BACKGROUND

On May 12, 2010, the Department published its Preliminary Determination in the investigation of seamless refined copper pipe and tube ("copper pipe and tube") from the People's Republic of China ("PRC").¹ The Department invited parties to comment on the Preliminary Determination. Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Company, Inc. (collectively, "Petitioners"), Golden Dragon Precise Copper Tube Group, Inc. ("Golden Dragon"), and Zhejiang Hailiang Co., Ltd. ("Zhejiang Hailiang"), Shanghai Hailiang Copper Co., Ltd. ("Shanghai Hailiang"), and Hong Kong Hailiang Metal Trading Limited (collectively, the "Hailiang Group") submitted case briefs on July 2, 2010.² On July 9, 2010, Petitioners, Golden Dragon, and the Hailiang Group filed rebuttal briefs.³ At parties' request, the Department conducted a public hearing on August 4, 2010.

¹ See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 26716 (May 12, 2010) ("Preliminary Determination").

² See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China; Investigation; Case Brief of Petitioners" (July 2, 2010) ("Petitioners' Case Brief"); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China" (July 2, 2010) ("Golden Dragon's Case Brief"); Letter from the Hailiang Group to the Secretary of Commerce, "Seamless Refined Copper Pipe & Tube from the People's Republic of China: The Hailiang Group – Administrative Case Brief" (July 2, 2010).

³ See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China; Investigation; Rebuttal Brief of Petitioners" (July 9, 2010); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China" (July 9, 2010) ("Golden Dragon's Rebuttal Brief"); Letter from the Hailiang Group to the Secretary of Commerce,

On August 3, 2010, the Department notified parties that as a result of the recent decision in Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) (“Dorbest”), issued by the United States Court of Appeals for the Federal Circuit (“CAFC”) on May 14, 2010, the Department would be reconsidering its valuation of the labor wage rate in this investigation. The Department placed export data on the record of the investigation and gave parties an opportunity to comment on the narrow issue of the labor wage value in light of the CAFC’s decision.⁴ On August 9, 2010, Petitioners and Golden Dragon submitted comments regarding the wage rate issue.⁵

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department should revise its labor rate calculation

- Petitioners argue that the CAFC ruled in Dorbest that the Department’s practice for determining the surrogate value for labor in non-market economy (“NME”) cases is inconsistent with the antidumping statute.
- Petitioners propose that the Department use publically available data for the average annual wages in India for the group of industries that includes copper pipe and tube producers from the Annual Survey of Industries for 2007-08 from the Government of India Ministry of Statistics and Program Implementation to derive an alternative labor surrogate value of \$1.307 per hour.
- Petitioners believe that the most industry-specific data available should be used because the wage rate varies significantly across industries in India. Moreover, Petitioners argue that their data should be used because it is from a period closer to the period of investigation (“POI”) than the data proposed by the Hailiang Group.
- The Hailiang Group argues that, in accordance with Dorbest, the Department should base the surrogate value for labor solely on the wage rate for India, as calculated based on International Labour Organization (“ILO”) earnings data.
- According to the Hailiang Group, there is no legal or rational justification for the Department to rely on a country other than India to value labor because the Department determined that India is the only significant producer of comparable merchandise for which the Department has reliable data to use in valuing the factors of production (“FOP”).
- The Hailiang Group asserts that the Department has available wage data for India calculated on the basis of ILO earnings data.
- Golden Dragon argues that the Department should reject Petitioners’ alternative Indian wage rate calculation methodology. Golden Dragon states that Petitioners offer no justification for their proposed wage rate calculation and do not articulate any reason for the Department to deviate from its standard practice of calculating a national average

“Seamless Refined Copper Pipe & Tube from the People’s Republic of China: Rebuttal Brief of the Hailiang Group” (July 9, 2010).

⁴ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, “Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Wage Data” (August 3, 2010) (“Wage Data”).

⁵ See Letter from Petitioners to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from China; Petitioners’ Comments on the Surrogate Value for Labor” (August 9, 2010); Letter from Golden Dragon to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Golden Dragon Precise Copper Tube Group, Inc.” (August 9, 2010).

wage rate. Additionally, Golden Dragon asserts that Petitioners' methodology is unreliable because it mixes data from different sources and periods.

- Golden Dragon agrees with the Hailiang Group that the most appropriate method for the Department to value surrogate wage rates is to apply the same criteria that it uses for other FOPs. Golden Dragon contends that using average Indian wage rates is consistent with the approach taken to value every other FOP in this proceeding.
- If the Department determines that it must rely on the wage data from multiple countries, Golden Dragon argues that the Department should rely on its definition of significant production in the Surrogate Country Selection Memorandum,⁶ in which the Department indicated that Thailand and India were significant producers of comparable merchandise.

Department's Position:

As a consequence of the CAFC's ruling in Dorbest, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). While continuing to evaluate options for determining labor values in light of the recent CAFC decision, the Department, for this final determination, has calculated an hourly wage rate to use in valuing Golden Dragon's and the Hailiang Group's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

The Department disagrees with Golden Dragon and the Hailiang Group that the Department should use the hourly wage rate for India from the ILO as an alternative to the previous regression-based wage rate. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and gross national income ("GNI"). While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economies. As a result, the Department finds reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with per-capita GNIs between U.S. dollars ("USD") 1,040 and USD 3,990), the wage rate spans from USD 0.48 to USD 2.37.⁷ Additionally, although both India and Guatemala have GNIs at or below USD 2,680, and both could be considered

⁶ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Selection of a Surrogate Country" (March 23, 2010) ("Surrogate Country Selection Memorandum").

⁷ See Wage Data at Attachment 1; With regard to the Honduran wage rate provided by the ILO, the Department is rejecting this wage rate since the Department determined in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum ("Frozen Warmwater Shrimp") at Comment 9, that this wage rate is inaccurate, possibly due to an ILO reporting error. As explained in Frozen Warmwater Shrimp, the effective Honduran minimum wage during the same year as the underlying ILO data (2006) is USD 91.99 per month. With the assumption that the current reported ILO wage rate is USD 0.18, a worker would earn an average monthly wage of USD 34.56, nearly a third of the minimum wage rate. Therefore, consistent with the Department's determination in Frozen Warmwater Shrimp, the Department finds that the reported wage rate for Honduras is unreliable and is rejecting the Honduran wage rate for the purposes of averaging surrogate wage rates in this investigation.

economically comparable to the PRC, India's observed wage rate is USD 0.48, as compared to Guatemala's observed wage rate of USD 1.23 – over double that of India.⁸ There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, the Department has employed a methodology that relies on a larger number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

Furthermore, the Department disagrees with Petitioners that the record supports valuing labor using data for the group of industries that includes copper pipe and tube producers from the Annual Survey of Industries for 2007-08 from the Government of India Ministry of Statistics and Program Implementation. First, for the reasons outlined in the paragraph above, the Department finds reliance on wage data from a single country to be unreliable and arbitrary. Second, although at first glance the information that Petitioners propose using to calculate the wage rate may appear to be rather specific, in fact, this information is rather broad and ambiguous. For example, the proposed industry group-specific category (*i.e.*, Indian National Industrial Classification category 272 – manufacture of basic precious and non-ferrous metals) used by Petitioners to derive the average annual wage per worker includes a broad range of products unrelated to the merchandise in this review (*e.g.*, aluminum wires, brass flakes, zinc foil, platinum, gold, silver, etc.) and also contains an undefined basket provision for “{o}ther non-ferrous metal industries n.e.c. (*e.g.*, lead, nickel, manganese etc.).”⁹ Similarly, the source from which Petitioners derive the average number of hours worked per week by Indian workers (*i.e.*, United Nations International Standard Industrial Classification category 37 – basic metals industry - in the International Labor Organization Laborstat database) includes many iron and steel industries and non-ferrous metal industries.¹⁰

Therefore, to achieve a labor value that is based on the best available information for this final determination, the Department has relied on labor data from several countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Selection Memorandum.¹¹ Early in this investigation, the Department selected six countries for consideration as the surrogate country for this investigation. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary

⁸ See Wage Data at Attachment 1.

⁹ See Petitioners' Case Brief at 3; Letter from Petitioners to the Secretary of Commerce, “Petitioners' Submission of Publicly Available Information for the Calculation of Normal Value; Seamless Refined Copper Pipe and Tube from the People's Republic of China” (June 21, 2010) (“Petitioners' Publicly Available Information Submission”) at Attachment 2.

¹⁰ See Petitioners' Publicly Available Information Submission at Attachment 5.

¹¹ See Surrogate Country Memorandum at 1-2.

emphasis on GNI.¹² The Department relied on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this investigation, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Thailand, Ukraine, and Peru. The Department used the high- and low-income countries identified in the Surrogate Country Memo list as “bookends” and then identified all countries in the World Bank’s World Development Report for 2010 with per capita incomes that placed them between these “bookends.” This resulted in 43 countries, ranging from India with a per-capita GNI of USD 1,040 to Peru with USD 3,990.¹³

Regarding the second criterion of “significant producer,” the Department identified all countries which have exports of comparable merchandise (defined as Harmonized Tariff Schedule (“HTS”) 741110, 740710, 741999, and 841590) between 2007 and 2009.¹⁴ After screening for countries that had exports of comparable merchandise, the Department found that 26 of the 43 countries designated as economically comparable to the PRC are also significant producers. In this case, the Department has defined a “significant producer” as a country that has exported comparable merchandise from 2007 through 2009. The Department disagrees with Golden Dragon that, because the Department indicated that Thailand and India were significant producers of comparable merchandise in the Surrogate Country Selection Memorandum, only India and Thailand can be considered to be significant producers of comparable merchandise for purposes of the final determination. The Department’s final determination that 26 countries, including India and Thailand, are significant producers of comparable merchandise is consistent with its determination in the Surrogate Country Selection Memorandum that India and Thailand are significant producers of comparable merchandise. While the Surrogate Country Selection Memorandum stated that the Department “determined Thailand and India to be significant producers,” it neither limited the universe of significant producers to only Thailand and India nor determined that any country was not a significant producer.¹⁵ Additionally, the antidumping statute and regulations are silent in defining a “significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information.¹⁶ Moreover, while the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter,”¹⁷ it does not preclude reliance on additional or alternative metrics. In practice, the Department has relied on other indices for determining whether a country is a significant producer. For example, in Wooden Bedroom Furniture 2010 NSR Prelim,¹⁸ the Department relied on production data for selecting the primary surrogate country. In this case, the Department has relied on countries with exports of comparable merchandise as significant producers.

For purposes of valuing wages in this investigation, the Department determined the following 26

¹² See 19 CFR 351.408(b).

¹³ See Wage Data at Attachment 1.

¹⁴ The export data is obtained from the Global Trade Atlas. See Wage Data at Attachment 1.

¹⁵ See Surrogate Country Selection Memorandum at 6.

¹⁶ See section 733(c) of the Tariff Act of 1930, as amended (“the Act”).

¹⁷ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988) (“OTCA Conference Report”).

¹⁸ See Wooden Bedroom Furniture from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 75 FR 9581, 9584 (March 3, 2010) (“Wooden Bedroom Furniture 2010 NSR Prelim”), unchanged in Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 75 FR 44764 (July 29, 2010).

countries to be both economically comparable to the PRC and significant producers of comparable merchandise: Albania, Bolivia, Cape Verde, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Morocco, Nicaragua, Nigeria, Paraguay, Peru, Philippines, Samoa, Sri Lanka, Swaziland, Syria, Thailand, Tunisia, and Ukraine.¹⁹

From the 26 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B data “earnings”, if available and “wages” if not.²⁰ The Department used the most recent data within five years of the base year and adjusted to the POI using the relevant Consumer Price Index (“CPI”).²¹ Of the 26 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, eight countries (i.e., Bolivia, Cape Verde, Morocco, Nigeria, Samoa, Swaziland, Syria, and Tunisia) were not used in the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the last five years.²²

The Department relied on data from the following countries to arrive at its wage rate in this final determination: Albania, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, India, Indonesia, Jordan, Nicaragua, Paraguay, Peru, Philippines, Sri Lanka, Thailand, and Ukraine. The Department calculated a simple average of the wage rates from these 17 countries.²³ This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC’s ruling in Dorbest and the statutory

¹⁹ See Wage Data at Attachment 1.

²⁰ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 26 countries, the Department found that its long-standing preference for a robust basket outweighs its exclusive preference for “earnings” data. The Department notes that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a “wage” rate. Thus, if earnings data is unavailable from the base year of the previous five years for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) (“Antidumping Methodologies”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

²¹ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which the Department could draw from two years’ worth of data was still significantly larger than the pool from which the Department may now draw using five years’ worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary, albeit adjusted using the CPI. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Wage Data at Attachment 1.

²² See ILO’s Yearbook of Labour Statistics.

²³ Honduras is not included among these 17 countries for reasons specified above. See supra fn 9.

requirements of section 773(c) of the Act.²⁴

Comment 2: Whether the Department should revise its calculation of the surrogate financial ratios

- Petitioners urge the Department to continue to base the calculation of the surrogate financial ratios on the financial statements of the same three companies that were used to calculate the surrogate financial ratios in the Preliminary Determination (i.e., Mehta Tubes Limited (“Mehta”), Multimetals Limited (“Multimetals”), and Nissan Copper Limited (“Nissan”)), stressing that these companies operate at a level of integration that is similar to that of Golden Dragon and the Hailiang Group.
- Petitioners argue that the Department should not include the financial statements of Uttranchal Metals Pvt. Ltd. (“Uttranchal”) in the calculation of the surrogate financial ratios because Uttranchal’s financial statements do not contain an income statement and do not provide specific information on labor costs.
- Petitioners also state that it is unclear from the administrative record whether Jugal Tubes Private Limited (“Jugal”) operates at a level of integration that is similar to Golden Dragon and the Hailiang Group.
- Golden Dragon agrees with Petitioners that it is unclear whether Jugal operates at a level of integration that is similar to Golden Dragon and the Hailiang Group.
- Golden Dragon further states that Jugal’s financial statement should be disregarded.
- The Hailiang Group agrees with Petitioners that the financial statements of Jugal should not be used in the calculation of the financial ratios because the record contains no indication of whether Jugal is an integrated producer and, thus, operates at a level similar to the Hailiang Group.
- The Hailiang Group and Golden Dragon disagree with Petitioners that Uttranchal’s financial statements should be disregarded. The Hailiang Group and Golden Dragon argue that the omission of an income statement does not preclude the Department from calculating financial ratios using a different expense format. The Hailiang Group and Golden Dragon further assert that there is no indication from Uttranchal’s financial statements that the labor costs are not included in the total costs reported by the company.
- Petitioners contend that the Department made several errors in calculating the surrogate financial ratios in the Preliminary Determination.
- Petitioners argue that the Department erroneously added both the beginning and ending inventory amounts, thereby artificially increasing the denominators of the surrogate financial ratios. Petitioners state that the Department should correct this error by subtracting the ending inventory amounts for work-in-process and finished goods from the beginning inventory amounts.
- Petitioners argue that the Department double-counted the “Workmen & Staff Welfare Expenses” for Nissan by including this item in both labor and factory overhead. The Petitioners urge the Department to remove “Workmen & Staff Welfare Expenses” from labor expenses when calculating the surrogate financial ratios for Nissan.

²⁴ See Memorandum to the File from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, “Investigation of Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Final Surrogate Value Memorandum,” (September 24, 2010) (“Final Surrogate Value Memorandum”) at 2, Attachment 3.

- Petitioners urge the Department to deal consistently with excise duty in the calculation of all financial ratios. Petitioners argue that if the Department excludes excise duties from the calculation of selling, general, and administrative (“SG&A”) expenses for Nissan, then it should similarly exclude excise duties from the calculation of materials, labor, and energy (“MLE”) for Mehta.
- Golden Dragon and the Hailiang Group also assert that the Department made several errors in calculating the surrogate financial ratios in the Preliminary Determination.
- For Multimetals, Golden Dragon and the Hailiang Group contend that:
 - “Profit on sale of fixed assets” and “Interest Received...From Bank {and} From Trade Debtors/others” are income items that should be offset against SG&A expenses rather than treated as SG&A expenses;
 - “Repairs to: Building” and “Others,” as well as depreciation items, “Lease Hold Land” and “Building on Lease Hold Land,” should be treated as SG&A expenses rather than as overhead expenses because “Repairs to: Plant and Machinery” and the depreciation line item for “Plant and Machinery” are already accounted for as overhead expenses; and
 - “Rents Recovered” should be included as an offset to SG&A because there is no evidence that it is not related to the normal operations of the company.
- For Mehta, Golden Dragon and the Hailiang Group assert that:
 - “Foreign Exchange Income” and “Interest Income” are income items and should be counted as offsets against SG&A rather than charged as SG&A expenses; and
 - the Department should subtract Rs 5,450,373 of SG&A costs from the profit calculated in the Preliminary Determination.
- For Nissan, Golden Dragon and the Hailiang Group argue that:
 - the Department entered the incorrect figure and overstated “Processing Charges” in the Preliminary Determination;
 - “Repairs and Maintenance” to “Building” and “Others” should be treated as SG&A expenses because the “Repairs and Maintenance to Plant and Machinery” is already accounted for as part of overhead expense;
 - excise duty should be excluded;
 - “Brokerage, Commission & Discounts” are sales specific expenses which, if applicable, are already included in Golden Dragon’s and the Hailiang Group’s U.S. sales databases and, therefore, should be excluded;
 - depreciation items “Factory Buildings/Sheds,” “Plant & Machinery,” “Electrical Installation,” and “Dies & Tools” should be included as overhead, while “Furniture & Fixture,” “Laboratory Equipments,” “Computers, Printers & Software,” “Office Equipments,” and “Vehicles” should be included as SG&A expenses; and
 - “Freight, Clearing and Handling Expenses” are inward freight expenses related to raw materials and production that should be included in the cost of materials.

Department’s Position:

The Department has determined to base the final calculation of the surrogate financial ratios on the financial statements of the same three companies that were used to calculate the surrogate

financial ratios in the Preliminary Determination (i.e., Multimetals, Mehta, and Nissan).²⁵ Section 773(c)(1) of the Act directs the Department to base the valuation of FOPs on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate.” In valuing such factors, Congress indicated that the Department should “avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”²⁶ The Department also will normally value manufacturing overhead, SG&A expenses, and profit using “non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.”²⁷ Additionally, it is the Department’s preference to not use non-contemporaneous data where reliable, publicly available contemporaneous data from producers of comparable merchandise are available.²⁸ Moreover, the Department has an established practice of rejecting incomplete financial statements²⁹ and financial statements of surrogate producers whose production processes are not comparable to the production process of the respondents.³⁰ Therefore, in complying with the statute and the regulations, the Department prefers to base its financial ratio calculations on complete, contemporaneous, publicly available, subsidy-free financial statements of companies from the surrogate country that produce comparable merchandise in a manner comparable to that of the respondents.

In the instant case, the Department has found that while the financial statements of Multimetals, Mehta, and Nissan meet all of the Department’s preferred financial statement criteria, the financial statements of Utranchal and Jugal do not. The Department did not rely on the financial statements of Utranchal because its financial statements do not contain an income statement. Therefore, the Department has determined that Utranchal’s financial statements are incomplete.³¹ Additionally, the Department agrees with Petitioners, Golden Dragon, and the Hailing Group that Jugal’s financial statements should not be used in the final calculation of the financial ratios because the record contains no indication of whether Jugal is an integrated producer and, thus, it is unclear whether Jugal’s production process is comparable to the production process of the respondents. Therefore, for the reasons above, the Department has determined to continue to base the calculation of the surrogate financial ratios on the financial statements of only Multimetals, Mehta, and Nissan.

The Department has further determined to make several changes to the calculation of the surrogate financial ratios of Multimetals, Mehta, and Nissan.³²

²⁵ See Preliminary Determination, 75 FR at 26725.

²⁶ See OTCA Conference Report at 590.

²⁷ See 19 CFR 351.408(c)(4).

²⁸ See Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 73 FR 21904 (April 23, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

²⁹ See Certain Tissue Paper Products From the People’s Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 74 FR 52176 (October 9, 2009) (“Tissue Paper”) and accompanying Issues and Decision Memorandum at Comment 5.

³⁰ See Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

³¹ See Tissue Paper, 74 FR 52176 and accompanying Issues and Decision Memorandum at Comment 5.

³² See Final Surrogate Value Memorandum at 2, Attachment 4.

Multimetals, Mehta, and Nissan

The Department agrees with Petitioners that, in the Preliminary Determination, the Department erroneously added both the beginning and ending inventory amounts, thereby artificially increasing the denominators of the surrogate financial ratios of Multimetals, Mehta, and Nissan. The Department's practice is to 1) adjust the MLE expenses for changes in work-in-process inventories and 2) adjust the MLE and factory overhead expenses included in the denominator of the SG&A and profit ratios for changes in finished goods inventories.³³ Therefore, for the final determination, the Department will correct this error by subtracting the ending inventory amounts for work-in-process and finished goods from the beginning inventory amounts.

Multimetals

First, the Department agrees with Golden Dragon and the Hailiang Group that "Profit on sale of fixed assets" and "Rent recovered" should be offset against Multimetals' SG&A expenses rather than treated as an SG&A expense. It is the Department's practice to include miscellaneous revenues as an offset to SG&A when the Department cannot determine that the revenues are related to specific manufacturing or selling activities.³⁴ In this instance, the Department has not found any information in Multimetals' financial statements or other record information to indicate that the categories above are not related to the general operations of the company or related to specific manufacturing or selling activities. Therefore, for the final determination, the Department has treated these items as offsets to SG&A in Multimetals' financial ratio calculations.

Second, the Department agrees with Golden Dragon and the Hailiang Group that "Interest Received...From Bank {and} From Trade Debtors/others" should be offset against Multimetals' SG&A expenses rather than treated as SG&A expenses. The Department's practice is to disaggregate interest income between short-term and long-term income and to only offset interest expense with the short-term interest revenue earned on working capital.³⁵ It is the Department's practice to exclude income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company.³⁶ Accordingly, the Department will reduce interest and financial expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature.³⁷ After reviewing Multimetals' financial statements, the Department has determined that all of Multimetals' assets that generated interest income are classified in the balance sheet as current (i.e., short-term) assets. Therefore, the interest income generated from these assets is short-term interest income. Accordingly, for the final determination, the Department has offset the interest income from the items above against Multimetals' SG&A

³³ See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008) ("PET Film") and accompanying Issues and Decision Memorandum at Comment 3.

³⁴ See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("Tires") and accompanying Issues and Decision Memorandum at Comment 18; PET Film, 73 FR 55039 and accompanying Issues and Decision Memorandum at Comment 3.

³⁵ Id.

³⁶ Id.

³⁷ Id.

expenses.

Third, the Department disagrees with Golden Dragon and the Hailiang Group that “Repairs to: Building” and “Others,” as well as depreciation items, “Lease Hold Land” and “Building on Lease Hold Land,” should be treated as part of Multimetals’ SG&A expenses rather than as overhead expenses. The Department followed its practice of treating such items as overhead expenses because these items relate to Multimetals’ factory buildings and repairs typically done on production facilities.³⁸ Therefore, for the final determination, the Department did not make any adjustments for the items above in the surrogate financial ratio calculations.

Mehta

First, the Department agrees with Petitioners that the Department should exclude excise duties from the calculation of Mehta’s MLE. It is the Department’s practice to exclude excise duties from the calculation of surrogate financial ratios.³⁹ More broadly, it is also the Department’s practice to use tax exclusive values as surrogates in NME cases when they are available and otherwise appropriate for use.⁴⁰ Moreover, the Department has found in previous cases involving products from India that excise duties and/or taxes paid by Indian producers were refundable to the producer by the Indian government.⁴¹ Therefore, for the final determination, the Department removed excise duties from the calculation of Mehta’s surrogate financial ratios.

Second, the Department agrees with Golden Dragon and the Hailiang Group that the Department miscalculated Mehta’s profit in the Preliminary Determination by not taking SG&A costs into account. Therefore, for the final determination, the Department subtracted the SG&A costs to arrive at a corrected profit total.

Third, the Department agrees with Golden Dragon and the Hailiang Group that “Foreign exchange” income should be offset against Mehta’s SG&A expenses rather than treated as an SG&A expense. It is the Department’s practice to include miscellaneous revenues as an offset to SG&A when the Department cannot determine that the revenues are related to specific manufacturing or selling activities.⁴² In this instance, the Department has not found any information in Mehta’s financial statement or other record information to indicate that the

³⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China, 70 FR 24502 (May 10, 2005) (“Chlorinated Isocyanurates”) and accompanying Issues and Decision Memorandum at Comment 7; Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 16.

³⁹ See Polyvinyl Alcohol From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991 (May 15, 2006) (“Polyvinyl Alcohol”) and accompanying Issues and Decision Memorandum at Comment 7.

⁴⁰ See Helical Spring Lock Washers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008) (“Lock Washers”) and accompanying Issues and Decision Memorandum at Comment 2.

⁴¹ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of 2003- 2004 Administrative Review and Partial Rescission of Review, 71 FR 2517 (January 17, 2006) (“Tapered Roller Bearings”) and accompanying Issues and Decision Memorandum at Comment 5.

⁴² See Tires, 73 FR 40485 and accompanying Issues and Decision Memorandum at Comment 18; PET Film, 73 FR 55039 and accompanying Issues and Decision Memorandum at Comment 3.

category above is not related to the general operations of the company or related to specific manufacturing or selling activities. Furthermore, it is the Department's practice to offset a surrogate company's SG&A expenses with foreign exchange gains or losses.⁴³ Therefore, for the final determination, the Department has treated this item as an offset to SG&A in Mehta's financial ratio calculations.

Fourth, the Department agrees with Golden Dragon and the Hailiang Group that "Interest Income" should be offset against Mehta's SG&A expenses rather than treated as SG&A expenses. The Department's practice is to disaggregate interest income between short-term and long-term income and to only offset interest expense with the short-term interest revenue earned on working capital.⁴⁴ It is the Department's practice to exclude income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company.⁴⁵ Accordingly, the Department will reduce interest and financial expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature.⁴⁶ After reviewing Mehta's financial statements, the Department has determined that all of Mehta's assets that generated interest income are classified in the balance sheet as current (i.e., short-term) assets. Therefore, the interest income generated from these assets is short-term interest income. Accordingly, for the final determination, the Department has offset the interest income against Mehta's SG&A expenses.

Nissan

First, the Department agrees with Petitioners that the Department double-counted the "Workmen & Staff Welfare Expenses" for Nissan by including this item in both labor and factory overhead. Under Department practice, staff welfare expenses are considered to be a factory overhead item.⁴⁷ Therefore, for the final determination, the Department removed "Workmen & Staff Welfare Expenses" from labor expenses when calculating the surrogate financial ratios for Nissan.

Second, the Department agrees with Golden Dragon and the Hailiang Group that the Department overstated Nissan's "Processing Charges" in the Preliminary Determination. Therefore, the Department corrected the "Processing Charges" figure in the final determination.

Third, the Department disagrees with Golden Dragon and the Hailiang Group that "Repairs and Maintenance" to "Building" and "Others" should be treated as part of Nissan's SG&A expenses rather than as overhead expenses. The Department followed its practice of treating such items as overhead expenses.⁴⁸ Therefore, for the final determination, the Department did not make any

⁴³ See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) ("Wooden Bedroom Furniture Final Determination") and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ See Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 27074 (May 14, 2007) and accompanying Issues and Decision Memorandum at Comment 5.

⁴⁸ See Chlorinated Isocyanurates, 70 FR 24502 and accompanying Issues and Decision Memorandum at Comment

adjustments for the items above in the surrogate financial ratio calculations.

Fourth, the Department agrees with Golden Dragon and the Hailiang Group that the Department should exclude excise duties from the calculation of Nissan's surrogate financial ratios. It is the Department's practice to exclude excise duties from the calculation of surrogate financial ratios.⁴⁹ More broadly, it is also the Department's practice to use tax exclusive values as surrogates in NME cases when they are available and otherwise appropriate for use.⁵⁰ Moreover, the Department has found in previous cases involving products from India that excise duties and/or taxes paid by Indian producers were refundable to the producer by the Indian government.⁵¹ Therefore, for the final determination, the Department removed Nissan's excise duties from the calculation of the surrogate financial ratios.

Fifth, the Department agrees with Golden Dragon and the Hailiang Group that "Brokerage, Commission & Discounts" should be excluded from the calculation of Nissan's surrogate financial ratios because these expenses are, in part, already included in the Golden Dragon and the Hailiang Group's U.S. sales databases.⁵² Specifically, both Golden Dragon and the Hailiang Group reported that they incurred brokerage and handling expenses.⁵³ Therefore, for the final determination, the Department excluded "Brokerage, Commission & Discounts" from the calculation of Nissan's surrogate financial ratios.

Sixth, the Department agrees with Golden Dragon and the Hailiang Group that Nissan's depreciation items 1) "Factory Buildings/Sheds," "Plant & Machinery," "Electrical Installation," and "Dies & Tools" should be included as overhead expenses, and 2) "Furniture & Fixture," "Laboratory Equipments," "Computers, Printers & Software," "Office Equipments," and "Vehicles" should be included as SG&A expenses. The Department followed its practice of allocating depreciation costs between factory overhead and SG&A based on the value and function of the assets.⁵⁴ Therefore, for the final determination, Nissan's depreciation items "Factory Buildings/Sheds," "Plant & Machinery," "Electrical Installation," and "Dies & Tools" will be included as overhead expenses and "Furniture & Fixture," "Laboratory Equipments," and "Computers, Printers & Software," "Office Equipments," and "Vehicles" will be included as SG&A expenses.

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⁴⁹ See Polyvinyl Alcohol, 71 FR 27991 and accompanying Issues and Decision Memorandum at Comment 7.

⁵⁰ See Lock Washers, 73 FR 4175 and accompanying Issues and Decision Memorandum at Comment 2.

⁵¹ See Tapered Roller Bearings, 71 FR 2517 and accompanying Issues and Decision Memorandum at Comment 5.

⁵² See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

⁵³ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Analysis Memorandum for Golden Dragon Precise Copper Tube Group Inc." (May 5, 2010) at 3-4; Memorandum from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Analysis Memorandum for the Hailiang Group" (May 5, 2010) ("Hailiang Group's Preliminary Analysis Memorandum") at 4.

⁵⁴ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 62 FR 6189, 6206 (February 11, 1997).

Seventh, the Department agrees with Golden Dragon and the Hailiang Group that Nissan's "Freight, Clearing and Handling Expenses" are inward transportation expenses related to raw materials and production that should be included in the cost of materials. The Department's practice is to include inward transportation expenses in the cost of materials included in the surrogate financial ratios.⁵⁵ Because the "Freight, Clearing and Handling Expenses" item above is included in Nissan's "Materials and Manufacturing Expenses," this item most likely includes inward transportation expenses. Therefore, the Department included these expenses in the cost of materials in the final determination.

Comment 3: Whether the Department should issue cash deposit instructions that contain ad valorem rates or specific rates

- Golden Dragon requests that the Department develop specific per-pound cash deposit rates based on dollars-per-pound of imported copper pipe and tube.
- Golden Dragon argues that because 1) the price of copper cathode is quoted as the price listed on one of the worldwide copper exchanges and 2) the cost of copper cathode is passed-through from manufacturers to buyers at the price it was purchased, ad valorem deposit rates would allow the price of copper cathode to have an enormous impact on the amount of money that Golden Dragon and other U.S. importers must deposit.
- Golden Dragon contends that per-pound rates, unlike ad valorem rates, have a direct linkage to the margin of dumping because they would not vary with the swings in copper cathode prices and would, therefore, more accurately reflect the duties owed.
- Golden Dragon asserts that it does not set the price of copper cathode and, therefore, it would be unfair and punitive to attribute the variations in the price of copper cathode to Golden Dragon's pricing policies. Golden Dragon states that this is consistent with the Department's policy of investigating the party that sets the price of the sale for export to the United States.⁵⁶
- Golden Dragon argues that, like in DRAMS,⁵⁷ where, according to Golden Dragon, it would have been unfair to assess antidumping duties on non-subject merchandise, it would be improper and unfair to require deposits for, and to assess antidumping duties on, merchandise for which Golden Dragon had no control over the price.
- Petitioners argue that the Department should continue to use ad valorem deposit rates and claim that it is the Department's practice in both investigations and administrative reviews to determine deposit rates on an ad valorem basis.
- Petitioners state that whatever special circumstances may have existed in DRAMS do not exist in the instant investigation.
- Petitioners assert that it is impossible to know whether the ad valorem deposit rates will actually be distorted in relation to future assessment rates because the future changes in copper prices are unknown.
- Petitioners claim that the collection of deposits on an ad valorem basis causes no

⁵⁵ 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, 73 FR 14437 (March 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁶ Golden Dragon cites generally to Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) ("AD Assessment").

⁵⁷ See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467 (March 23, 1993) ("DRAMS").

prejudice to importers of copper pipe and tube because deposit rates establish estimated antidumping duty deposits and any amount that the estimated deposit amount exceeds the amount of duty ultimately assessed will be refunded to the importer of record with interest.

- Petitioners argue that per-unit deposit rates are likely to provide greater opportunity for distortion in the collection of estimated antidumping duty deposits because the reporting of weights is highly suspect in the copper pipe and tube industry.

Department's Position:

The Department agrees with Petitioners that the Department should establish ad valorem cash deposit rates for imports of copper pipe and tube from the PRC. The Department's normal practice is to establish cash-deposit rates on an ad valorem basis.⁵⁸ While the Department has departed from this practice on occasion, it has done so almost exclusively in administrative reviews when special circumstances have arisen, such as where there was a pattern of significant differences between the weighted-average margin and the assessment rate⁵⁹ or where there were substantial differences between the reported U.S. prices and the entered value, in addition to a history of companies undervaluing the subject imports.⁶⁰ Because this is an investigation, these special circumstances do not exist in this case.

The record of this investigation contains neither any documentation nor citations to any documentation that indicate that the Department has ever deviated from its normal practice of establishing cash-deposit rates on an ad valorem basis in an investigation. The only instance that Golden Dragon cites as such a circumstance is DRAMS.⁶¹ However, it is unclear from the evidence on the record whether the Department established the deposit rates in DRAMS on a basis other than ad valorem. Golden Dragon did not identify where in DRAMS the Department indicated that deposit rates would not be established on an ad valorem basis. Moreover, Golden Dragon neither placed any documentation on the record of this investigation nor cited to any document that explains the Department's decision-making regarding the type of deposit rate established in DRAMS.

Furthermore, the Department disagrees with Golden Dragon that the establishment of an ad valorem deposit rate would unfairly and punitively attribute the variations in the price of copper cathode to Golden Dragon's pricing policies. First, while Golden Dragon may not control the price of one of its direct material inputs (*i.e.*, copper cathode), the company possesses the ultimate and independent authority to sign sales contracts and negotiate prices for its copper pipe and tube.⁶² Second, the collection of deposits on an ad valorem basis does not necessarily cause

⁵⁸ See, e.g., Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 2909 (January 18, 2006) and accompanying Issues and Decision Memorandum at Comment 6.

⁵⁹ Id.

⁶⁰ See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 6.

⁶¹ See DRAMS, 58 FR at 15467; see also Transcript from Neal R. Gross, Court Reporters and Transcribers, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Public Hearing" (August 11, 2010) at 84.

⁶² See Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from

prejudice to importers of copper pipe and tube because deposit rates establish estimated antidumping duties and any amount that the estimated deposit amount exceeds the amount of duty ultimately assessed will be refunded to the importer of record with interest. Third, Golden Dragon's citation to AD Assessment is misplaced because AD Assessment specifically states that it "does not apply to imports of merchandise from non-market-economy countries."⁶³

For the reasons above, the Department has established ad valorem cash deposit rates for imports of copper pipe and tube from the PRC.

ISSUES SPECIFIC TO GOLDEN DRAGON PRECISE COPPER TUBE GROUP, INC.

Comment 4: Whether the Department should treat copper cathode purchases by Golden Dragon from a certain supplier in the People's Republic of China as non-market economy purchases

- Golden Dragon argues that a certain PRC-based supplier acted as an agent for an upstream market economy source with respect to that PRC supplier's sales of copper cathode to Golden Dragon. Therefore, according to Golden Dragon, the Department should treat Golden Dragon's copper cathode purchases from that supplier as market economy purchases and include these purchases in the valuation of copper cathode.
- Golden Dragon argues that the most accurate description of the agent-supplier relationship between the supplier and the upstream market economy source is the first-hand account of the relationship provided by the representative of the PRC supplier at verification, as recorded in the Golden Dragon Verification Report.⁶⁴ Golden Dragon asserts that the information provided and statements made by the PRC supplier's representative at verification made clear that the Japanese yen payments are directly linked by invoice, quantity, brand, and price from the market economy source to the PRC supplier to Golden Dragon. Golden Dragon contends that these linkages are similar to those found in Tires as sufficient to support a finding of an agency relationship.
- Golden Dragon argues that there is no requirement that the market economy source's name expressly appear on invoices from the PRC supplier to Golden Dragon for an agency relationship to exist between the upstream market economy source and the PRC supplier. Nevertheless, according to Golden Dragon, the invoices between Golden Dragon and the PRC supplier at issue clearly indicate that the purchases are for a particular brand of copper, which is only sold by the PRC supplier's market economy source.
- Petitioners argue that the Department should continue to treat all of Golden Dragon's copper cathode purchases from the PRC supplier as NME transactions.
- Petitioners contend that there is no document on the record that identifies the PRC supplier as an agent of the upstream market economy source or in any way states that the PRC supplier is acting on behalf of the market economy source or any other party with

the People's Republic of China" (January 5, 2010) at 14.

⁶³ See AD Assessment, 68 FR at 23961.

⁶⁴ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Verification of the Questionnaire Responses of Golden Dragon Precise Copper Tube Group, Inc." (June 15, 2010) ("Golden Dragon's Verification Report") at 28.

respect to copper cathode sales to Golden Dragon. Specifically, Petitioners note that the record does not contain any kind of agency agreement or contract. Furthermore, Petitioners state that there is no amount shown on any invoices from the market economy source to the PRC supplier to indicate any agency relationship.

- Petitioners argue that Golden Dragon has repeatedly made clear that the PRC supplier acted on its own account and not as an agent. Petitioners assert that the terms of the purchase contract demonstrate that Golden Dragon and the PRC supplier are the only parties to the contract and that the seller's obligations under the contract are performed by the PRC supplier.
- Petitioners further argue that evidence indicating that the PRC supplier did not act as an agent of a market economy seller is found in 1) the letters of credit and 2) the invoices for the sales from the PRC supplier to Golden Dragon.

Department's Position:

The Department agrees with Golden Dragon that its copper cathode purchases from the PRC supplier in question should be treated as market economy purchases because record evidence indicates that an agency relationship exists between the PRC supplier and an upstream market economy source. In past cases, the Department has accepted prices of market economy purchases sourced through NME trading companies if the respondent demonstrated that the NME party was an agent acting on behalf of a market economy supplier by providing full document traces indicating that the prices, including any agent fee or commission, paid by the respondent were set by the market economy supplier.⁶⁵ In the instant case, the Department has determined that the record contains document traces and evidence from verification demonstrating that the copper cathode invoices from the market economy source to Golden Dragon's PRC supplier can be matched by quantity, brand, and price to the copper cathode invoices from the PRC supplier to Golden Dragon.⁶⁶ At verification, a representative of the PRC supplier presented documentation related to Golden Dragon's copper cathode purchases from the PRC supplier during the POI.⁶⁷ The representative of the PRC supplier explained that the copper cathode sold to Golden Dragon was subject to an arrangement between the PRC supplier and the upstream market economy source, whereby the PRC supplier acted as an agent for its market economy source's sales of copper cathode to Golden Dragon.⁶⁸ The representative further explained that after the PRC supplier received the proceeds, in Japanese yen or USD, from the copper cathode sales to Golden Dragon, it then returned these proceeds, in Japanese yen or USD, to the market economy source.⁶⁹ The representative stated that this arrangement was the same

⁶⁵ See Tires, 73 FR 40485 and accompanying Issues and Decision Memorandum at Comment 70 (citing Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (August 14, 2000) and accompanying Issues and Decision Memorandum at Comment 8; Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China, 69 FR 34130 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 4; 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, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 55581 (September 15, 2004) ("HFHT") and accompanying Issues and Decision Memorandum at Comment 10; Shandong Huarong Machinery Co., Ltd. v. United States, 31 C.I.T. 1815, 1827-1830 (2007) (affirming the Department's decision in HFHT)).

⁶⁶ See Golden Dragon's Verification Report at 28, Exhibit 29.

⁶⁷ Id.

⁶⁸ Id. at 28.

⁶⁹ Id.

for all sales of copper cathodes during the POI involving the upstream market economy source, the PRC supplier, and Golden Dragon.⁷⁰ These descriptions of this arrangement are supported by record evidence. Specifically, the record contains invoices from the PRC supplier to Golden Dragon which list copper cathode quantities and prices that can be matched to the quantities and prices set by the market economy source, as provided on the copper cathode invoices to the PRC supplier.⁷¹ Additionally, the copper cathode invoices also indicate that all copper cathodes purchased by Golden Dragon through the PRC supplier during the POI were a distinct brand, which is a type of copper cathode sold only by the market economy source.⁷²

While the Department agrees with Petitioners that Golden Dragon has stated that the PRC supplier does not act as an agent, the Department notes that these statements were made with reference to the PRC supplier's relationship with its parent company rather than its relationship with its market economy copper cathode supplier.⁷³ Golden Dragon, however, has been consistent in its position that its PRC supplier acted as the agent for an upstream market economy source with respect to the PRC supplier's sales of copper cathode to Golden Dragon.⁷⁴ Furthermore, the Department agrees with Golden Dragon that there is no requirement that the upstream market economy source's name expressly appear on the invoices from the PRC supplier to Golden Dragon or that the record contain an explicit agency agreement between the market economy source and the PRC supplier for an agency relationship to exist. As explained above, record evidence indicates that all copper cathodes purchased by Golden Dragon through the PRC supplier during the POI were purchased from an upstream market economy source and the record sufficiently demonstrates that the copper cathode invoices from that market economy source to the PRC supplier in question are directly linked by invoice, quantity, brand, and price to the copper cathode invoices from the PRC supplier to Golden Dragon.

Therefore, for the final determination, the Department has determined to treat Golden Dragon's copper cathode purchases from the PRC supplier at issue as market economy purchases because the weight of the evidence on record indicates that an agency relationship exists between that PRC supplier and an upstream market economy source.⁷⁵

Comment 5: Whether the Department should recalculate Golden Dragon's copper cathode cost based on the bonded and general trade copper cathode purchases during the period of investigation

- Golden Dragon argues that the Department's calculation of the average copper cathode price should consider only Golden Dragon's purchases of bonded copper.

⁷⁰ Id.

⁷¹ Id. at 28, Exhibit 29; Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Analysis Memorandum for Golden Dragon Precise Copper Tube Group, Inc." (September 24, 2010) ("Golden Dragon's Final Analysis Memorandum") at 1-2 (provides business proprietary discussion).

⁷² See Golden Dragon's Verification Report at 28, Exhibits 13, 29; see Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China" (May 7, 2010) ("Golden Dragon's 4th Section D Supplemental Response") at Exhibit SSSSD-2.

⁷³ See Golden Dragon's 4th Section D Supplemental Response at 4.

⁷⁴ See Golden Dragon's Rebuttal Brief at 5-9; Golden Dragon's Case Brief at 5-7; Golden Dragon's Verification Report at 28.

⁷⁵ See Golden Dragon's Final Analysis Memorandum at 1-2, Attachment 1.

- Golden Dragon states that it tracks the type of copper cathode in its production and accounting records through copper type codes, which Golden Dragon uses to identify the copper as bonded or general trade material.
- Golden Dragon asserts that all copper pipe and tube it exported to the United States during the POI, and nearly all of the exports of copper pipe and tube to other countries, were produced from bonded copper. Golden Dragon contends that, by using all purchases of bonded copper to value copper cathode, the Department would capture Golden Dragon's total exports to all markets.
- Golden Dragon further states that, while some of its purchases of general trade copper cathode were consumed internally, the purchases of general trade copper usually do not enter the physical inventory of the Xinxiang facility but are delivered directly to other plants or, in some cases, to unaffiliated companies.
- Golden Dragon argues that the Department's method of valuing Golden Dragon's market economy copper cathode in the Preliminary Determination produces a distortive mismatch whereby the copper cathode value calculated by the Department does not reflect the copper cathode prices confirmed in each sales invoice.
- Golden Dragon asserts that the Department should consider the timing of Golden Dragon's purchases and sales in order to accurately match the price and cost. Specifically, because the data show that, on average, the final price of a sale in one month was set based on copper cathode priced using the London Metal Exchange ("LME") price from at least one month prior, Golden Dragon requests that the Department shift the purchase period back by a certain number of days for export price ("EP") sales and constructed export price ("CEP") sales in order to correctly match the sales invoice with the specific copper cathode purchase dates fixed by the invoice.⁷⁶
- Golden Dragon further states that its situation is distinguishable from past cases in which the Department has decided to consider only purchases made during the POI.⁷⁷ First, in this case there is a clear linkage between the invoice price for the final product and the raw material price and date upon which the final product price is based. Second, rather than suggesting that the Department match raw material purchases with their date of consumption, Golden Dragon is requesting that the Department adjust the purchase period in order to match the sales invoice with the specific raw material purchase dates fixed by the invoice.
- Petitioners assert that the Department should continue to value Golden Dragon's market economy copper cathode purchases based on both bonded and general trade copper purchases.
- Petitioners claim that, contrary to Golden Dragon's arguments, the general trade copper cathode purchases were transferred to Golden Dragon facilities in the PRC that consumed the copper cathode in the production of copper tube for the domestic market and for third

⁷⁶ Golden Dragon states that, alternatively, the Department could shift the purchase period back by the number of days calculated by simple averaging the number of days suggested for EP and CEP sales. According to Golden Dragon, the Department should, at minimum, calculate Golden Dragon's weighted average copper cathode purchase price using purchase invoices from December 2008 to May 2009.

⁷⁷ See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) ("Hot-Rolled Carbon Steel") and accompanying Issues and Decision Memorandum at Comment 3; Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482 (February 12, 2002) ("Glass Windshields") and accompanying Issues and Decision Memorandum at Comment 33.

parties.

- Petitioners contend that all products, including products exported to the United States, contain both bonded and general trade copper cathode because Golden Dragon commingles in inventory all of its copper cathode purchases and also recycles a substantial portion of the purchased copper cathode by commingling copper cathode and recycled scrap.
- Petitioners state that the Department, by including both bonded and general trade copper cathode purchases in the calculation of the market economy copper cathode price in the Preliminary Determination, followed the Department's practice of using FOP information for all models or product types in the U.S. sales database, including that portion of the production that was not destined for the United States.
- Petitioners argue that the Department should continue to value Golden Dragon's market economy copper cathode purchases by using only those purchases made during the POI.
- Petitioners assert that Golden Dragon does not explain how the pricing mechanism used for its U.S. copper pipe and tube sales relates to the costs the company incurred in its copper cathode purchases. According to Petitioners, Golden Dragon fails to recognize that the pricing mechanism for the sale of copper pipe and tube only affects the calculation of U.S. price, and the prices paid for market economy copper cathode purchases only affect the calculation of normal value. Petitioners claim that the fact that Golden Dragon's U.S. sales invoices reference copper pricing at a time prior to the date of sale does not mean that the company's costs are in any way affected by that reference.
- Petitioners contend that it is the Department's practice to use only purchases that were made during the relevant POI.

Department's Position:

The Department disagrees with Golden Dragon that the calculation of the price of Golden Dragon's market economy copper cathode purchases should include only the bonded market economy copper purchases that match the specific copper cathode purchase dates fixed by the copper pipe and tube invoices.

First, the Department disagrees with Golden Dragon that the calculation of the price of Golden Dragon's market economy copper cathode purchases should include only bonded market economy copper purchases. In matching the FOPs reported by a responding party with available values from either surrogate values or market economy purchases, the Department first identifies the FOPs that were "utilized in producing the merchandise" during the POI or, if applicable, the period of review.⁷⁸ Once the Department determines that the FOPs reported are the factors that were actually utilized in the production of the subject merchandise, the Department then searches for the "best available information" regarding the values that match the FOPs.⁷⁹ In the instant case, the Department determined that Golden Dragon utilized both bonded and general trade copper cathodes to produce copper pipe and tube during the POI.⁸⁰ The Department further determined that the best available information to value Golden Dragon's copper cathode FOP is

⁷⁸ See section 773(c)(1)(B) of the Act.

⁷⁹ Id.; see also Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008) and accompanying Issues and Decision Memorandum at Comment 14.

⁸⁰ See Golden Dragon's Verification Report at 26.

the market economy purchases of both bonded and general trade copper cathodes because information reported by Golden Dragon demonstrates that 1) it purchased significant quantities (i.e., 33 percent or more) of copper cathodes from market economy suppliers⁸¹ and 2) both types of copper cathodes were used to calculate the reported copper cathode FOP.⁸² Specifically, in reference to the second point above, to calculate the copper cathode consumption FOP reported to the Department, Golden Dragon summed all of the copper cathode input amounts, including both bonded and general trade copper cathodes used to produce copper pipe and tube during the POI, and divided this amount by the total production of copper pipe and tube during the POI.⁸³ Golden Dragon has confirmed that this calculation produced FOP information that is based on the total production of each control number (“CONNUM”) reported in the U.S. sales database.⁸⁴

Moreover, in including both bonded and general trade copper cathode purchases in the calculation of the market economy copper cathode price, the Department followed its practice of using FOP information for all models or product types in the U.S. sales database, including that portion of the production that was not destined for the United States.⁸⁵ In this case, Golden Dragon used both bonded and general trade copper cathodes to produce copper pipe and tube during the POI for both export markets and the domestic market.⁸⁶

Second, the Department disagrees with Golden Dragon that the calculation of the price of Golden Dragon’s market economy copper cathode purchases should include only market economy copper cathode purchases that match the specific copper cathode purchase dates fixed by the copper pipe and tube invoices. Golden Dragon confuses the price of the merchandise under consideration with the cost of the copper cathodes purchased by Golden Dragon. Specifically, Golden Dragon fails to recognize that the pricing mechanism for the sale of copper pipe and tube only affects the calculation of U.S. price, and the prices paid for market economy copper cathode purchases only affect the calculation of normal value. Golden Dragon does not explain how the pricing mechanism used for its U.S. copper pipe and tube sales relates to the costs the company incurred for its copper cathode purchases. The fact that Golden Dragon’s U.S. sales invoices reference copper pricing at a time prior to the date of sale does not mean that the company’s costs are in any way affected by that reference. As an example of this disconnect, the Department notes that none of the LME dates or LME prices corresponding to Golden Dragon’s copper cathode purchases reflect the dates and prices specified in either the supply agreement between Golden Dragon and its primary customer or the sales invoices from Golden Dragon to that customer.⁸⁷

⁸¹ In selecting the values to be used, the Department considers market-economy input purchase prices to represent the best available information to value the entire input if market-economy input purchases are 33 percent or more of the total volume of an input. See Antidumping Methodologies, 71 FR at 61717.

⁸² See Golden Dragon’s Case Brief at 10; Golden Dragon’s Verification Report at 26.

⁸³ See Golden Dragon’s Verification Report at 26, Exhibit 12.

⁸⁴ See Letter from Golden Dragon to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China” (March 12, 2010) (“Golden Dragon’s 1st Sections C and D Supplemental Response”) at 15.

⁸⁵ See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Golden Dragon, “Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Request for Information” (December 4, 2009) at D-1.

⁸⁶ See Golden Dragon’s Case Brief at 7-9; Golden Dragon Verification Report at 26, Exhibit 12.

⁸⁷ See Letter from Golden Dragon to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China” (January 5, 2010) at Exhibit A-17; Letter from Golden Dragon to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China” (April 26, 2010) at

Further, by using the purchases of copper cathodes during the POI to value the copper cathode input, the Department followed its practice of including in the market economy purchases price calculation only market economy purchases that were contemporaneous with the POI.⁸⁸

For the reasons above, the Department has determined that the calculation of the price of Golden Dragon's market economy copper cathode purchases should include Golden Dragon's market economy purchases of bonded and general trade copper during the POI.⁸⁹

Comment 6: Whether the Department should revise the surrogate value for plywood batten consumed by Golden Dragon

- Petitioners argue that the Department should value plywood batten using Harmonized Tariff Schedule of the Republic of India (“Indian HTS”) subheading 4412.94.00 which is for “{p}lywood, veneered panels and similar laminated wood; blockboard, laminboard and battenboard.”
- Golden Dragon argues that the Department should continue to value plywood batten with the Indian HTS subheading used in the Preliminary Determination (i.e., 4412.39.90, which is for plastic laminated plywood).
- Golden Dragon states that it utilizes individual strips of simple plywood batten on the outside of level wound coils and these narrow strips are not comparable to battenboard, which is a type of exterior siding or interior paneling that has alternating wide boards and narrow strips of batten, nor are they comparable to veneered panels.

Department's Position:

The Department agrees with Golden Dragon that the Department should continue to value plywood batten with the Indian HTS subheading used in the Preliminary Determination (i.e., 4412.39.90). In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use the “best available information” from the appropriate market economy country. The Department considers several factors when choosing the most appropriate surrogate values, including the specificity, contemporaneity, and quality of the data.⁹⁰ While Indian HTS items 4412.94.00 (i.e., “blockboard, laminboard, or battenboard”) and 4412.39.90 (i.e., “plastic laminated plywood”) both provide the Department with data that is contemporaneous with the POI and of equal quality, the Department has determined that record information indicates that Indian HTS 4412.39.90 most specifically describes Golden Dragon's plywood batten. Particularly, Golden Dragon's descriptions and photographs of its plywood batten indicate that this plywood batten is most specifically described as plastic laminated plywood.⁹¹ Moreover, the Department did not

Exhibit SSSD-4.

⁸⁸ See Hot-Rolled Carbon Steel, 70 FR 34448 and accompanying Issues and Decision Memorandum at Comment 3; Glass Windshields, 67 FR 6482 and accompanying Issues and Decision Memorandum at Comment 33.

⁸⁹ See Golden Dragon's Final Analysis Memorandum at Attachment 1.

⁹⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 9.

⁹¹ See Golden Dragon's Rebuttal Brief at 4-5; Letter from Golden Dragon to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from the People's Republic of China” (April 7, 2010) (“Golden Dragon's 2nd Section D Supplemental Response”) at Exhibit SSD-14.

find any inconsistencies between Golden Dragon's descriptions of its plywood batten and the plywood batten examined at verification.⁹² Furthermore, the Department agrees with Golden Dragon that its individual narrow strips of simple plywood batten that are used on the outside of level wound coils are not comparable to battenboard, which is a type of exterior siding or interior paneling that has alternating wide boards and narrow strips of batten. For the reasons above, the Department has determined to continue valuing Golden Dragon's plywood batten with Indian HTS 4412.39.90 for the final determination.

Comment 7: Whether the Department should consider solvent consumed by Golden Dragon to be a direct material input

- Golden Dragon argues that solvent costs are already included in the surrogate overhead ratio and, therefore, solvent should not be included as a direct material input.
- Golden Dragon states that a small amount of solvent, which is filtered and recycled, is used in the level winding process to clean the outside of the tubes. Golden Dragon argues that its solvent is comparable to recycled water in Diamond Sawblades⁹³ because, even though it is used in the production process, the amount consumed is so small due to the recycling that it is not appropriately valued as a direct material input.
- Golden Dragon, citing to Brake Rotors,⁹⁴ asserts that because the financial statements of Mehta, Multimetals, and Nissan do not include a separate expense for solvents, there is insufficient information in the record to permit solvents to be valued as a direct material input without double counting.
- Petitioners argue that the Department should consider Golden Dragon's solvent FOP a packing expense rather than a direct material expense. Petitioners state that copper pipe and tube is bathed in mold oil throughout the production process and that the oil must be cleaned off with detergent or solvents in the finishing workshop as it is packed for shipment.
- Citing to Malleable Iron Pipe Fittings⁹⁵ and Brake Rotors,⁹⁶ Petitioners assert that it is the Department's practice to treat items that are consumed continuously with each unit of production as material inputs and an input need not be physically incorporated into the merchandise under consideration in order for it to be treated as a material input.

⁹² See Golden Dragon's Verification Report at 33, Exhibit 16.

⁹³ See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 70 FR 77121 (December 29, 2005) ("Diamond Sawblades"), unchanged in Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

⁹⁴ See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2005) ("Brake Rotors").

⁹⁵ See Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 37051 (June 29, 2006) ("Malleable Iron Pipe Fittings") and accompanying Issues and Decision Memorandum at Comment 18.

⁹⁶ See Brake Rotors, 71 FR 66304 and accompanying Issues and Decision Memorandum at Comment 7.

Department's Position:

The Department disagrees with Golden Dragon that the Department should not consider the solvent consumed by Golden Dragon to be a direct material input. For purposes of determining normal value in NME cases, the Department will typically value a material as a direct material input if it is 1) consumed continuously with each unit of production,⁹⁷ 2) required for a particular segment of the production process,⁹⁸ 3) essential for production,⁹⁹ 4) not used for “incidental purposes,”¹⁰⁰ or 5) otherwise a “significant input into the manufacturing process rather than miscellaneous or occasionally used materials.”¹⁰¹ Record evidence indicates that solvent is continuously consumed by Golden Dragon and is essential to Golden Dragon’s production process. Specifically, Golden Dragon uses solvent continuously in the level winding production process to clean the outside of the tubes before they can be annealed and packed.¹⁰² Additionally, the Department disagrees with Golden Dragon that the amount of solvent consumed is so small that it is not appropriately valued as a direct material input. Golden Dragon’s solvent was a material input that was not incidentally or occasionally consumed by Golden Dragon in production of the subject merchandise.¹⁰³ Moreover, unlike in Diamond Sawblades where a small amount of water was used for both production and non-production purposes, the solvent used by Golden Dragon was used solely in production of the merchandise under consideration.

Additionally, the Department disagrees with Golden Dragon’s contention that it is the Department’s responsibility to demonstrate that an input is not included in the surrogate company’s factory overhead. Both the Court of International Trade (“CIT”) and the CAFC have affirmed that the Department has broad discretion when valuing factory overhead and is not required to delve behind each element of factory overhead in the surrogate company’s financial information.¹⁰⁴

Moreover, there is no evidence on the record that the Department is double-counting in this investigation by valuing solvent separately. Unlike in Brake Rotors, where there was evidence on the record indicating that bentonite and coal powder were categorized as overhead materials

⁹⁷ See, e.g., Polyethylene Retail Carrier Bags from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 12762 (March 19, 2007) and accompanying Issues and Decision Memorandum at Comment 3.

⁹⁸ See, e.g., Tires, 73 FR 40485 and accompanying Issues and Decision Memorandum at Comment 27.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² See Golden Dragon’s 1st Sections C and D Supplemental Response at 27; Letter from Golden Dragon to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China” (February 2, 2010) (“Golden Dragon’s Sections C and D Response”) at Exhibit D-2.

¹⁰³ See Golden Dragon’s 1st Sections C and D Supplemental Response at Exhibit SD-13.

¹⁰⁴ See Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999) (“Magnesium Corp.”) (affirming the CIT’s decision and stating that factory overhead is composed of many elements and, in valuing the FOPs, section 773 of the Act provides the Department broad discretion to decide how to calculate factory overhead); Magnesium Corp. of Am. v. United States, 938 F. Supp. 885, 897 (Ct. Int’l Trade 1996) (Magnesium Corp 1996) (recognizing that when using financial statements of surrogate companies, the Department is not required to do an item-by-item analysis in calculating factory overhead); see also Tires, 73 FR 40485 and accompanying Issues and Decision Memorandum at Comment 27; Wooden Bedroom Furniture Final Determination, 69 FR 67313 and accompanying Issues and Decision Memorandum at Comment 6.

in the Indian surrogate financial ratios, the record of the instant investigation contains no evidence that solvents are included within the Indian surrogate financial ratios. Specifically, Golden Dragon does not indicate where the surrogate financial statements provide a schedule detailing the consumption of solvent or whether Indian accounting principles direct Indian companies to treat solvents in a particular manner.

Lastly, the Department disagrees with Petitioners that the Department should consider Golden Dragon's solvent FOP a packing expense rather than a direct material expense. Record evidence indicates that Golden Dragon does not use solvent in the packing stage.¹⁰⁵ Rather, Golden Dragon uses solvent in the level winding production process to clean the outside of the tubes.¹⁰⁶

Therefore, for the reasons above, the Department has continued to consider Golden Dragon's solvent to be a direct material expense for the final determination.

Comment 8: Whether the Department should include salaries paid to two employees of Golden Dragon who worked in the United States during the period of investigation as indirect U.S. selling expenses

- Golden Dragon argues that the Department should not include salaries paid to two employees of Golden Dragon who worked in the United States during the POI as indirect U.S. selling expenses, contending that because the salaries were established wholly within the context of the operations of Golden Dragon, an NME company, and paid for in renminbi ("RMB"), an NME currency, the Department cannot extract the salaries of these two individuals only and treat them differently from other salary expenses of Golden Dragon. To do so, according to Golden Dragon, would result in a distorted comparison of market-economy and NME expenses.¹⁰⁷
- Golden Dragon asserts that expenses similar to those of Golden Dragon's two employees are already accounted for in the SG&A expenses and, if the Department were to otherwise account for these expenses, they would be counted twice. Specifically, Golden Dragon notes that Multimetals' financial statements indicate that 1) export markets have been a focus for the company and 2) the company spent a significant amount of foreign currency.
- Petitioners argue that the Department should continue to deduct from CEP the wages that Golden Dragon paid to employees for selling activities in the United States.
- Petitioners claim that it is the Department's practice to have foreign producers report all direct and indirect selling expenses incurred in the United States related to CEP sales. Moreover, according to Petitioners, the Department has the authority to deduct indirect selling expenses that are associated with the sales of exports in the United States from CEP, whether incurred in the United States or the home market.
- Petitioners contend that there is no indication in Multimetals' financial statements that the expenditures noted above by Golden Dragon are related to export sales.

¹⁰⁵ See Golden Dragon's 1st Sections C and D Supplemental Response at 27; Golden Dragon's Sections C and D Response at Exhibit D-2.

¹⁰⁶ Id.

¹⁰⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China, 66 FR 58115 (November 20, 2001) and accompanying Issues and Decision Memorandum at Comment 5.

Department's Position:

In accordance with section 777A(a)(2) of the Act and 19 CFR 351.413, the Department has determined not to make certain adjustments to the calculation of indirect U.S. selling expenses for salaries paid to two employees of Golden Dragon who worked in the United States during the POI because these adjustments are insignificant in relation to the price of the merchandise. Section 777A(a)(2) of the Act provides the Department discretion in whether to disregard adjustments that are insignificant in relation to the price or the value of the merchandise. 19 CFR 351.413 states that “ordinarily under section 777A(a)(2) of the Act, an ‘insignificant adjustment’ is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be.” Information on the record demonstrates that adjusting the calculation of indirect U.S. selling expenses for the salaries paid to two employees of Golden Dragon who worked in the United States during the POI would have an insignificant ad valorem effect, consistent with 19 CFR 351.413, on Golden Dragon’s weighted-average CEP.¹⁰⁸ Therefore, for the final determination, the Department has not made certain adjustments to the calculation of indirect U.S. selling expenses for salaries paid to two employees of Golden Dragon who worked in the United States during the POI.

Comment 9: Whether the Department should adjust the factor of production for electricity for 7 mm and 9 mm inner-grooved tube products

- Petitioners argue that the Department should increase the FOP for electricity for 9 mm inner-grooved tube (“IGT”) products because Golden Dragon understated the electricity consumption for 9 mm IGT products by applying the calculated electricity consumption for 5 mm IGT products instead of that calculated for 9 mm IGT products.
- Petitioners also note that Golden Dragon failed to include one CONNUM under the 9 mm IGT section of Exhibit 14 of the Golden Dragon Verification Report.
- Golden Dragon asserts that the Department should reduce the FOP for electricity for 7 mm and 9 mm products because Golden Dragon inadvertently applied the rate for 5 mm tubes to all three sizes of IGT products.
- Golden Dragon agrees with Petitioners that Golden Dragon failed to include one CONNUM under the 9 mm IGT section of Exhibit 14 of the Golden Dragon Verification Report.

Department's Position:

The Department agrees with Golden Dragon that the Department should reduce the FOP for electricity for 7 mm and 9 mm products because Golden Dragon inadvertently applied the rate for 5 mm tubes to all three sizes of IGT products. The Department noted this error in the Golden Dragon Verification Report.¹⁰⁹ Because the production process from larger diameter tubes to smaller diameter tubes through additional drawing stages, 7 mm and 9 mm IGT products require less processing than 5 mm tubes.¹¹⁰ Accordingly, Golden Dragon overstated the FOP for 7 mm

¹⁰⁸ See Golden Dragon’s Final Analysis Memorandum at 2, Attachment 3.

¹⁰⁹ See Golden Dragon’s Verification Report at 30.

¹¹⁰ Id. at Exhibit 14.

and 9 mm products.

Furthermore, the Department agrees with both Petitioners and Golden Dragon that Golden Dragon failed to include one CONNUM under the 9 mm IGT section of Exhibit 14 of the Golden Dragon Verification Report.¹¹¹ Therefore, for the final determination, the Department has adjusted the FOP for this CONNUM to reflect the lower electricity usage rate for a 9 mm IGT product instead of the higher rate for a 7 mm product.¹¹²

Comment 10: Whether the Department should make certain minor corrections

- Golden Dragon and Petitioners request that the Department incorporate certain changes listed in Golden Dragon’s minor corrections, which were presented to the Department at verification, in the final margin calculation.

Department’s Position:

The Department agrees with Golden Dragon and Petitioners that, because the minor corrections were presented on the first day of verification, accepted by the Department, and properly served on Petitioners, the Department should consider those changes in its calculations of the company’s antidumping (“AD”) margin for the final determination. Therefore, for the final determination, the Department has considered the minor corrections in its calculation of Golden Dragon’s AD margin.¹¹³

ISSUES SPECIFIC TO ZHEJIANG HAILIANG CO., LTD., SHANGHAI HAILIANG COPPER CO., LTD., AND HONG KONG HAILIANG METAL TRADING LIMITED

Comment 11: Whether to use facts available with regard to the Hailiang Group’s line set sales

- Petitioners argue in their case brief that with regard to line sets, the Department should use facts otherwise available (“FA”) for the certain records in specific invoices by applying to those sales the highest margin calculated for any CONNUM.
- If the Department chooses not to apply FA, Petitioners suggest that the Department recalculate the quantity reported by adjusting the Hailiang Group’s factory weights using the ratio of the Department’s calculated theoretical weight divided by the Hailiang Group’s calculated theoretical weight.
- The Hailiang Group argues that it cooperated with all the Department’s requests regarding line sets and, therefore, the application of FA is not warranted.
- The Hailiang Group asserts that the Department need not use the calculation suggested by Petitioners because the record contains the actual data with respect to line sets.

Department’s Position:

According to Section 776(a) of the Act the Department shall apply FA if (1) necessary

¹¹¹ Id.

¹¹² See Golden Dragon’s Final Analysis Memorandum at 3.

¹¹³ See Golden Dragon’s Final Analysis Memorandum at 2-4.

information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

For the following reasons, the Department agrees with the Hailiang Group that the application of FA with respect to the line sets is not warranted. First, the record of this investigation contains the actual data with respect to line sets.¹¹⁴ Second, the Hailiang Group did not withhold information that was requested by the Department. In fact, the Hailiang Group provided information regarding the line sets at the Department's request and within the established deadlines, but incorrectly reported the quantity of line sets due to a lack of understanding of how to report the number of line sets per observation. This lack of understanding by the Hailiang Group did not significantly impede this proceeding. The Hailiang Group provided information that the Department was able to examine at verification. Moreover, during verification, the Hailiang Group corrected its reporting errors with regard to the quantity of line sets per observation. For the reasons stated above, the application of FA with respect to the reported quantity of line sets by the Hailiang Group is not warranted. Furthermore, because the actual data with respect to line sets is on the record and was examined by the Department, it is unnecessary for the Department to use the calculation suggested by Petitioners.¹¹⁵ For the final determination, the Department will use the corrected quantity of line sets reported by the Hailiang Group in its post-verification data submission.¹¹⁶

Comment 12: Whether to use facts available with regard to the Hailiang Group's factors of production

- The Hailiang Group argues that the Department improperly applied FA to the Hailiang Group's FOPs in the Preliminary Determination.
- The Hailiang Group asserts that facts available is not warranted because the Hailiang Group demonstrated that its production and accounting records do not allow the company to report actual FOP usages on a CONNUM-specific or product-specific basis and that any attempts to prepare product-specific FOP leads to less accurate and/or less specific FOPs. The Hailiang Group asserts that it reported its FOP usages on the most accurate and specific basis possible (i.e., by division).
- The Hailiang Group states that the only possible way to calculate an alternative set of FOPs would be to take the yield rates from the final production stages of each individual product and then work backwards through each stage, taking into account the various yield rates at each production stage. The Hailiang Group asserts that this action results in FOPs that are different for each product. However, according to the Hailiang Group, the

¹¹⁴ See Hailiang Group's Final FOP database.

¹¹⁵ See Memorandum from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the File, "Verification of the Sales and Factors Responses of Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Co., Ltd.; and Hong Kong Hailiang Co., Ltd. in the Antidumping Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (June 18, 2010) ("Hailiang Group's Verification Report") at 37.

¹¹⁶ See Hailiang Group's Final FOP database; Memorandum from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Analysis Memorandum for the Hailiang Group" (September 24, 2010) ("Hailiang Group's Final Analysis Memorandum") at 6.

resulting FOPs do not account for the actual differences in production processes for each product, which is the goal of reporting CONNUM-specific FOPs.

- The Hailiang Group points to several reasons why it does not believe that the “backward” methodology is accurate or that it reasonably accounts for differences in the production processes of each product. First, the company’s calculated yield rates are based on production stages and not on specific finished products until the last few stages of production. Second, the Hailiang Group claims that even when the yield rates do become product-specific at the very end stages of the production process there is no rational relationship between the yield rate and the “backward” calculation of individual FOPs.
- The Hailiang Group points out that, while it does not believe that the “backward” use of yield rates to derive individual FOPs is accurate or reasonable, it provided “alternative” FOP databases based on this methodology.
- The Hailiang Group argues that the use of adverse FA is not appropriate with regard to the Hailiang Group’s FOPs because the Department verified the division-specific FOPs along with the “alternative” database. The Hailiang Group further argues that the FOP data submitted by the Hailiang Group 1) met the Department’s established deadlines, 2) were verified, 3) were sufficiently complete to serve as a reliable basis for reaching the applicable determination without undue difficulties.
- The Hailiang Group asserts that all the information necessary for the Department to calculate an accurate margin for the Hailiang Group is on the record.
- Petitioners contend that the Department should again apply FA to recalculate the Hailiang Group’s FOPs in the final determination in order to properly reflect product-group specific production steps and the corresponding processing yields.
- Petitioners assert that, in the Preliminary Determination, the Department applied partial FA to recalculate Hailiang’s FOPs in order to properly reflect product-group specific production steps and the corresponding processing yields at each stage. Petitioners note that the Department’s recalculation resulted in FOPs that reflected the differences in processes and yields among broad groups of products.¹¹⁷
- Petitioners disagree with the Hailiang Group that the Department’s recalculations in the Preliminary Determination are flawed. Petitioners also disagree with the Hailiang Group that traceability of copper molecules from start to finish is necessary in order to calculate meaningful cascaded cumulative yields. In fact, according to Petitioners, the Hailiang Group’s data adequately allow for 1) the calculation of the yield in each workshop and 2) the identification of the workshops that process each product group. Thus, according to Petitioners, the Hailiang Group’s data, similar to those of Golden Dragon, are perfectly adequate to calculate meaningful cumulative yields.
- Petitioners disagree with the Hailiang Group’s assertion that FOPs reflecting differences in product groups are no better than uniform FOPs for all products reported by the Hailiang Group. Petitioners state that the Department found that such differences should be taken into account.

Department’s Position:

In the Preliminary Determination, the Department determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it was appropriate to base the Hailiang Group’s preliminary dumping

¹¹⁷ See Hailiang Group’s Preliminary Analysis Memorandum at 12.

margin, in part, on FA because 1) the Hailiang Group's own information on the record indicates that it had the ability to report its FOPs on a product-group specific basis,¹¹⁸ and 2) the Hailiang Group continued to report FOP values that are identical for all CONNUMs, despite the Department's multiple requests to provide this data on a more specific basis.¹¹⁹ For the final determination, the Department continues to find that the Hailiang Group's dumping margin should be based, in part, on FA. However, because the Department finds that the Hailiang Group failed to cooperate to the best of its ability with respect to the proper reporting of its FOPs, the Department now finds that, for the final determination, and pursuant to section 776(b) of the Act, an adverse inference is appropriate in selecting from among the facts otherwise available. Specifically, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department agrees with the Hailiang Group that the Department cannot require a company to report its FOP usages on a CONNUM-specific basis if the company demonstrates to the Department's satisfaction that its accounting system does not allow for it. However, the Department notes that in the Preliminary Determination the Department stated that "the record indicates that the Hailiang Group has the ability to report its FOPs on a product-group specific basis."¹²⁰ The Hailiang Group's failure to provide the requested information at the time of the Preliminary Determination "prevented the Department from calculating an accurate margin for the Hailiang Group."¹²¹

The Hailiang Group argues that it never ignored the Department's request to report CONNUM-specific FOPs. However, in responding to the Department's section D questionnaire, the Hailiang Group never provided a complete explanation regarding CONNUM-specific FOPs. For example, when answering question I.E. - "Reporting Factors of Production" - the Hailiang Group simply stated that it "has reported FOPs using actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis," while providing only one single

¹¹⁸ See Preliminary Determination, 75 FR at 26721-22; Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (March 18, 2010) ("Hailiang Group's March 18, 2010 Section D Supplemental Response") at Exhibit 6; Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (April 12, 2010) ("Hailiang Group's April 12, 2010 Section D Supplemental Response") at Exhibit 12.

¹¹⁹ See Preliminary Determination, 75 FR at 26721-22; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Third Supplemental Questionnaire" (April 28, 2010) ("Sections C&D Third Supplemental Questionnaire") at 2-3; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Second Supplemental Questionnaire" (March 29, 2010) ("Sections C&D Second Supplemental Questionnaire") at 5; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Supplemental Questionnaire" (February 26, 2010) ("Sections C&D Supplemental Questionnaire") at 8-9; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Zhejiang Hailiang, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Request for Information" (December 4, 2009) ("Zhejiang Hailiang's Antidumping Questionnaire") at D-2.

¹²⁰ See Preliminary Determination, 75 FR at 26721-22.

¹²¹ Id. at 26722.

consumption rate for each FOP for all CONNUMs produced.¹²² The Department finds that this type of reporting does not satisfy the requirement for CONNUM-specific FOPs. Additionally, the Hailiang Group completely ignored the part of the Department’s question which required the company to provide a detailed explanation of how it derived the estimated FOP consumption on a CONNUM–specific basis and to explain why the methodology selected is the best way to accurately calculate the consumption amount.¹²³ Thus, the Hailiang Group failed to respond to the Department’s questionnaire.

In its February 26, 2010, supplemental questionnaire, the Department explained that the Hailiang Group reported a single weighted-average factor usage for all CONNUMs which did not distinguish between the numerous CONNUMs produced.¹²⁴ In the same questionnaire, the Department requested that the company provide FOP usage rates for each plant and division that reflect different factors for materials, labor, energy and packing materials for each CONNUM as well as the weighted-average FOPs.¹²⁵ In response to this question the Hailiang Group, for the first time, stated that neither its accounting records nor production records allow the company to report FOPs on a CONNUM-specific basis.¹²⁶ In its explanation, the Hailiang Group stated that specific subject merchandise products can be differentiated only at the final step of the production process.¹²⁷ The Hailiang Group further explained that the company does not have records tracing copper from the time it enters the production process to when final products are produced from that copper and, for these reasons, it could not report CONNUM specific FOPs.¹²⁸ Additionally, the Hailiang Group again reported a single usage rate for the weighted-average factors usages.

In its March 29, 2010, supplemental questionnaire, the Department again (*i.e.*, for a third time) requested that the Hailiang Group provide CONNUM-specific FOPs.¹²⁹ In addition, the Department requested monthly reports for all workshops in all divisions and plants.¹³⁰ Because the Hailiang Group did not provide any explanation in its initial response to section D of the Department’s AD questionnaire as to why it reported one single FOP for all CONNUMs, but instead merely stated that it provided CONNUM-specific FOPs, the Department’s March 29, 2010, supplemental questionnaire represented the first chance to ask for the accounting records and production reports to support the Hailiang Group’s initial explanation from its March 18, 2010, supplemental questionnaire response. Only after the Hailiang Group submitted the numerous production reports in its April 12, 2010, submission was the Department able to determine that the Hailiang Group has the ability to calculate cumulative yields at different workshops which produced different types of products and, as a result, to calculate FOPs on a more specific basis. Based on numerous production reports in the Hailiang Group’s April 12, 2010, submission, Petitioners calculated individual cumulative yields for different products

¹²² See Letter from the Hailiang Group to the Secretary of Commerce, “Certain Seamless Refined Copper Pipe & Tube from the People’s Republic of China: Section D Questionnaire Response of Hailiang Group” (January 25, 2010) (“Hailiang Group’s January 25, 2010 Section D Response”) at 4.

¹²³ *Id.* at 4.

¹²⁴ See Sections C&D Supplemental Questionnaire at Question 31.

¹²⁵ *Id.*

¹²⁶ See Hailiang Group’s March 18, 2010 Section D Supplemental Response at 4.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See Sections C&D Second Supplemental Questionnaire at Questions 23-27.

¹³⁰ *Id.*

produced at different production stages and commented on the Hailiang Group's ability to report product-group specific FOPs for different production stages.¹³¹ Despite having opportunities to specifically address Petitioners' comments and yield calculations before and after the Preliminary Determination, the Hailiang Group did not rebut Petitioners' submissions. After analyzing Petitioners' calculations, the Department preliminarily determined that the Hailiang Group is able to use the production reports on the record to report product-specific FOPs for different production stages (i.e., product-group specific FOPs).¹³² Therefore, on April 28, 2010, the Department issued a questionnaire requesting that the Hailiang Group report product-specific FOPs for different production stages and, if the Hailiang Group believed that this were not possible, to comment on Petitioners' calculations.¹³³

In its response to the Department's questions submitted after completion of the Preliminary Determination, the Hailiang Group discussed the traceability of actual inputs to the final product and stated that the production reports were prepared based on a production stage basis rather than a final product basis.¹³⁴ However, the Hailiang Group neither addressed whether the cumulative yields based on the production stages for the specific products produced at these stages are

¹³¹ See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from China; Petitioners' Calculations on Hailiang Group Yield Data" (April 30, 2010) ("Petitioners' Yield Calculations") at Attachments 1-3; Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from China; Petitioners' Comments and Analysis of Hailiang Group Data for the Preliminary Determination" (April 23, 2010) at 2-6.

¹³² See Preliminary Determination, 75 FR at 26721-22.

¹³³ Specifically, in question 5 of this questionnaire, the Department stated:

We note, however, that the information the Hailiang Group provided in its April 12, 2010, response, appears to allow the Hailiang Group to determine processing yields at each production stage by the workshop of each division. This, in turn, would allow the Hailiang Group to calculate product-specific FOPs which, at a minimum, would account for the differences in production processes for each product. For example, metal balance reports and production reports for melting, extrusion, rolling, forging provided in exhibit 6 of March 18, 2010, submission, and exhibit 12 of April 12, 2010, submission, show input and output quantities at each production stage, which would allow the calculation of the yields at each production stage. See, for example, attachment 1 to Petitioner's comments filed on April 22, 2010, that show a sample calculation of production yields based on the information the Hailiang Group submitted. Attachment 1 of Petitioner's comments also shows an example of how product-specific FOPs (including labor, electricity, nitrogen and charcoal) can be calculated based on the product routing and the corresponding processing yields at each production stage. Therefore, please answer the following questions:

- a. Please revise the Hailiang Group's response and report the Hailiang Group's product-specific FOPs by taking into account the production stage-specific yields as described above.
- b. If the Hailiang Group believes such product-specific FOPs cannot be calculated based on the information maintained by the company in the normal course of business, explain in detail why this is the case, given that the production reports on the record show yields at each production stage.
- c. In light of Petitioners April 22, 2010 submission, if the Hailiang Group believes it cannot report product-specific FOPs, taking into consideration Petitioners April 22, 2010 submission, please provide a detailed explanation why the Hailiang Group cannot provide its product-specific FOPs.

See Sections C&D Third Supplemental Questionnaire at 2-3.

¹³⁴ See Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe and Tube from the People's Republic of China: Third Supplemental Section D Questionnaire & Part 1 of Post-Preliminary FOP Response of Hailiang Group" (May 11, 2010) ("Hailiang Group's Post-Preliminary FOP Response I") at 4-9.

incorrect nor explained why these cumulative yields cannot be applied in the calculation of product-group specific FOPs.¹³⁵ The Hailiang Group had multiple opportunities to explain why the cumulative yields that were calculated by Petitioners and used in the Preliminary Determination were flawed and could not be used in the final determination. The Hailiang Group, however, never provided an explanation.¹³⁶

Additionally, the Department disagrees with the Hailiang Group that the Department found evidence at verification that the company could not report product-specific FOP data. At verification, the Department merely requested that the Hailiang Group explain why it believes that it could not provide product-specific FOP data. While the Hailiang Group believes it explained why it could not provide product-specific FOP data, the Department never concluded from its examination of the Hailiang Group's books and records that the Hailiang Group was unable to provide product-group specific or product-specific data. The verification report simply explained the procedures the Department followed and recorded certain observations made during the plant tour.¹³⁷ Nowhere in the verification report does the Department state that the Hailiang Group is not able to provide product-group specific or product-specific FOP data.

The Department further disagrees with the Hailiang Group that the cumulative yields resulting from cascading the yields across individual workshops are meaningless. The Department agrees with Petitioners that the calculation of the cumulative yields depends on knowing 1) the yields in each workshop and 2) which workshops process each final product at each stage.¹³⁸ The Hailiang Group's data permit the calculation of yields in each workshop and, because it reports the source of the "allocation" into each workshop and destination of "output" from each workshop, the Hailiang Group's data also permit the identification of the numerous workshops that process each final product.¹³⁹ As a result, the cascaded cumulative yields for product groups (e.g., straight tube, pancake coil, IGT, etc.) that go through different workshops are meaningful. Therefore, contrary to Hailiang Group's assertion that traceability of copper molecules from start to finish is necessary to calculate meaningful cascaded cumulative yields, the Hailiang Group's data are adequate to calculate meaningful cumulative yields because the Hailiang Group's data are sufficient to 1) calculate the yield in each workshop and 2) identify the workshops that process each product group.

As stated in the Preliminary Determination, the Department requested on several occasions that the Hailiang Group provide its FOPs on a more specific basis (i.e., CONNUM-specific, plant/division-specific, or production-stage specific).¹⁴⁰ The Hailiang Group stated that it is not able to provide such information to the Department. The Department, however, has found that the Hailiang Group's own information on the record allows the company to report its FOPs on a

¹³⁵ Id.; Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe and Tube from China: Part 2 of Post-Preliminary FOP Response of the Hailiang Group" (May 14, 2010) ("Hailiang Group's Post-Preliminary FOP Response II").

¹³⁶ See Hailiang Group's Post-Preliminary FOP Response I at 4-9; Hailiang Group's Post-Preliminary FOP Response II at 1-6.

¹³⁷ Id.

¹³⁸ See Petitioners' Yield Calculations at Attachments 1-3.

¹³⁹ Id.

¹⁴⁰ See Preliminary Determination, 75 FR at 26721; Sections C&D Third Supplemental Questionnaire at 2-3; Sections C&D Second Supplemental Questionnaire at 5; Sections C&D Supplemental Questionnaire at 8-9; Zhejiang Hailiang's Antidumping Questionnaire at D-2.

production stage-specific basis. The Department disagrees with the Hailiang Group that any attempt to prepare product-specific FOPs would result in FOPs that are less accurate than FOP values that are identical for all CONNUMs. Record evidence indicates that the Hailiang Group incurs production yields at each major production stage (e.g., blank tube, straight tube, coil tube, pancake coil, IGT, insulated tubes, etc.) and the cumulative production yields at many of these stages are different. For example, if a final product is a coil tube, pancake coil, or insulated tube, its cumulative yields will be different from an IGT product.¹⁴¹ If these cumulative yields are taken into account in the calculation of the product-specific FOPs, the material usage for all products in the coil tube, pancake coil, and insulated tube group would be different than that of the IGT products. Thus, while such FOPs may not be “product-specific” in the sense that they do not account for the differences between individual products within certain product groups (e.g., coil tube, pancake coil, insulated tube, etc.), they nevertheless account for the differences in cumulative yields between certain groups of products (e.g., straight tube, pancake coil, IGT, etc.) and the resulting FOPs are more accurate than the reported identical FOPs for all products.

As part of its responses to the Department’s additional questions concerning FOPs, the Hailiang Group submitted an alternative database calculating “backward” yield rates. In submitting that alternative database, the Hailiang Group acknowledged its disagreement with its own methodology of applying those “backward” yields to derive individual FOPs for different products.¹⁴² The Department finds that the product-specific FOPs presented by the Hailiang Group in the alternative database, which were calculated by the “backward” use of the yield rates at the final production stage, are unreasonable and unreliable. The Department agrees with the Hailiang Group that a single differential yield at the final production stage may be radically different from the actual usages at each previous stage. Furthermore, there is no rational relationship between the production yields at the very end stages of the production process and its backward use in calculating individual FOPs. Therefore, the Department did not utilize the Hailiang Group’s alternative database for the final determination. Moreover, because the Hailiang Group never provided a weighted-average database for its alternative methodology, the Department does not have a complete final database to calculate an accurate margin based on the Hailiang Group’s alternative methodology.¹⁴³

As explained above, because the Hailiang Group has continued to report FOP values that are identical for all CONNUMs despite the Department’s multiple requests to provide this data on a more specific basis, all the information necessary for the Department to calculate an accurate dumping margin for the Hailiang Group is not on the record and available for use in the final determination. Since the Hailiang Group did not provide the requested FOPs on a product-group specific basis as was requested by the Department, even though the record indicates that the Hailiang Group has the ability to report its data on a more specific basis, this necessary information was not available on the record. Therefore, the Department has determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it continues to be appropriate to base the Hailiang Group’s dumping margin, in part, on FA. Moreover, the Department determines that, because the Hailiang Group has not acted to the best of its ability to comply with the Department’s requests to provide the FOPs on a product-group specific basis, the Hailiang Group

¹⁴¹ See Petitioners’ Yield Calculations at Attachments 1-3; Hailiang Group’s Preliminary Analysis Memorandum at 12-13; Hailiang Group’s April 12, 2010 Section D Supplemental Response at Exhibit 12.

¹⁴² See Hailiang Group’s Post-Preliminary FOP Response I at 7.

¹⁴³ *Id.* at Exhibit 1; Hailiang Group’s Post-Preliminary FOP Response II at Exhibit 1.

has failed to cooperate. After issuance of the Preliminary Determination, the Department afforded the Hailiang Group additional opportunities to provide its FOPs on a more specific basis or to explain why the cumulative yields calculated by the Petitioners and used in the Preliminary Determination could not be used in the final determination. The Hailiang Group did neither and, thus, did not act to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the Hailiang Group. Consequently, for the final determination, as partial AFA, the Department has selected the highest cumulative yield rate among product-group specific yields based on the Hailiang Group's available data and applied the highest cumulative yield rate to all reported FOPs for all CONNUMs by multiplying the FOPs by this yield rate.¹⁴⁴

Comment 13: Whether to correct the water usage factor of production used in the Preliminary Determination

- The Hailiang Group asserts that the per-unit FOP for water used by the Department in the Preliminary Determination was incorrect because the company inadvertently failed to convert water usage from a kilogram ("kg") basis to a cubic meter basis. The Hailiang Group references its May 11, 2010, post-preliminary submission in which the company converted the reported FOP to a per-cubic meter basis. According to the Hailiang Group, the FOP database on the record now properly reports water on a per-cubic meter basis and, therefore, this per-cubic meter FOP should be used in the final determination.

Department's Position: The Department disagrees with the Hailiang Group that it notified the Department that the company inadvertently failed to convert water usage from a kg basis to a cubic meter basis in its April 12, 2010, submission. In Exhibits 8 and 9 of its April 12, 2010, submission, the Hailiang Group reported cubic meters as the unit of measure for water.¹⁴⁵ The Department used the Hailiang Group reported information in the Preliminary Determination. However, based on the information provided in the Hailiang Group's May 11, 2010, post-preliminary submission,¹⁴⁶ the Department will use the FOP for water reported on a cubic meter basis for the final determination.

Comment 14: Whether the Department should accept the post-preliminary correction of the consumption of Shanghai Hailiang's wooden crates

- The Hailiang Group states that it followed the Department's request to report the wooden crate consumption of Zhejiang Hailiang on a cubic meter per kg basis, but inadvertently failed to convert the wooden crate consumption of Shanghai Hailiang into a cubic meter per kg basis and continued to report the factor on a kg per kg basis.
- The Hailiang Group asserts that in preparing for its May 14, 2010, submission the Hailiang Group discovered and corrected its error with respect to Shanghai Hailiang. According to the Hailiang Group, the corrected weighted-average per-unit FOP for wooden crate is set forth in Exhibit 9 of its May 14, 2010, submission.
- The Hailiang Group claims that during verification it demonstrated to the Department

¹⁴⁴ See Hailiang Group's Final Analysis Memorandum at 2, and Attachment II.

¹⁴⁵ See Hailiang Group's April 12, 2010 Section D Supplemental Response at Exhibits 8-9.

¹⁴⁶ See Hailiang Group's Post-Preliminary FOP Response I at 6, Exhibit 5; Hailiang Group's Final Analysis Memorandum at 2.

how the conversion factor of 475 kg/cubic meter was obtained from the internet. The Hailiang Group submits that its conversion factor of 475 kg/cubic meter was reasonable and was verified.

- Petitioners did not comment on this issue.

Department's Position: The Department agrees with the Hailiang Group that during verification the Department examined both the wooden crate consumption and the conversion factor (i.e., from kg to cubic meters). The Department observed that the Hailiang Group made an inadvertent error. For the final determination, the Department has determined to use the corrected weighted-average per-unit FOP for wooden crate reported in Exhibit 9 of the Hailiang Group's May 14, 2010, submission and its most recent FOP database.¹⁴⁷

Comment 15: Whether to continue considering certain raw materials as factors of production or exclude them from the calculation of the Hailiang Group's normal value

- The Hailiang Group asserts that none of the Indian financial statements on the record itemize the items discussed below and there is no evidence indicating that they are not captured as part of each producer's overhead cost.
- The Hailiang Group states that in determining whether an item is a part of overhead or is a raw material FOP, the Department normally takes into consideration: (1) whether the material is physically incorporated into the final product; (2) the material's contribution to the production process and finished product; (3) the relative cost of the input; and (4) the way the cost of the input is typically treated in the industry.¹⁴⁸ The Hailiang Group contends that because none of the items listed below are incorporated into the final product, the relative cost of all items is very low, all of these items are typically treated by the industry in the PRC as part of factory overhead, and some of them are used as a production machinery or lubrication, the Department should not treat any of these products as FOP in the final determination.

Dies and emulsion

- The Hailiang Group asserts that direct dies, indirect dies and emulsion usage should not be treated as raw materials because these items are clearly part of overhead expenses.
- Petitioners did not comment on this issue.

Scale-like graphite, Internal and External Mold Oil, Carbon Soot, and Hydrogen

- The Hailiang Group argues that scale-like graphite, carbon soot, mold oil, and hydrogen should not be considered direct materials in the Department's NV calculation because these items are part of overhead expenses.
- The Hailiang Group argues that the items above are included in the overhead expenses of the Indian surrogate producers because there is no evidence on the record that these items are not captured as part of the producers' overhead costs.

¹⁴⁷ See Hailiang Group's Post-Preliminary FOP Response II at Exhibit 9; Hailiang Group's Final Analysis Memorandum at 3.

¹⁴⁸ See Tires, 73 FR 40485 and accompanying Issues and Decision Memorandum at Comment 27.

- Petitioners argue that the Department should add carbon soot and mold oil as direct materials to the calculation for the final determination.
- Petitioners did not comment on hydrogen and scale-like graphite.

Polythene, colorant, and anti-aging master batch

- Petitioners argue that the Department should exclude polythene and colorant from the calculation of direct materials, and drop anti-aging master batch from the calculation of packing inputs for the final determination.
- The Hailiang Group agrees with Petitioners that polythene and colorant should be excluded from the calculation of direct materials, but did not address Petitioners' comment that anti-aging master batch should be excluded from the calculation of packing inputs.

Nitrogen

- The Hailiang Group argues that nitrogen constitutes an overhead item and should be classified in the Department's final determination accordingly.
- Petitioners disagree with the Hailiang Group, and claim that nitrogen is physically incorporated into the final product because, during the POI, the Hailiang Group sold a significant amount of copper tube that was charged (*i.e.*, pressurized) with nitrogen. According to Petitioners, those copper tubes were sealed and transported to the customer with the nitrogen charge inside the tube.
- Petitioners argue that, contrary to the Hailiang Group's claim, the cost of nitrogen is not "very low" in the context of this case.
- According to Petitioners, none of the Indian financial statements on the record separately itemize nitrogen and there is no evidence indicating that nitrogen is captured as part of each surrogate producers' overhead costs. Petitioners state that Nissan's financial statements indicate that nitrogen consumption is part of the power and fuel component that the Department classifies as energy expense and Multimetals' financial statements suggest that their treatment of nitrogen is the same as Nissan's.
- Petitioners argue that the Department mistakenly converted the rupees per cubic meter surrogate value for nitrogen. Petitioners request the Department correct the error and apply the surrogate value of nitrogen in rupees per cubic meter without further conversion into rupees per kg units.

Copper Tube Detergent

- The Hailiang Group argues that copper tube detergent constitutes an overhead item and should be classified in the Department's final determination accordingly.
- Petitioners assert that the Department properly included the FOP for copper tube detergent in the Hailiang Group's packing expense.¹⁴⁹
- Petitioners claim that the Department should continue to treat copper tube detergent as a direct packing FOP in the final determination.
- Petitioners argue that an input does not have to be physically incorporated into the

¹⁴⁹ See Hailiang Group's Preliminary Analysis Memorandum at Attachment II, lines 7449-51.

merchandise under consideration in order to be treated as a raw material. Similarly, according to Petitioners, in this case the Department knows that copper pipe and tube is bathed in mold oil throughout the production process and that the oil must be cleaned off with detergent or solvents in the finishing workshop as it is packed for shipment.

Kerosene and Charcoal

- The Hailiang Group argues that kerosene and charcoal constitute overhead items and that neither are incorporated into the finished product.
- Petitioners disagree with the Hailiang Group's argument that neither kerosene nor charcoal are incorporated into the finished product and, for this reason, should not be treated as direct inputs.
- Petitioners argue that while physical incorporation is sufficient for the Department to find that an input is a raw material, it is not necessary for that input to be a part of a product in order for it to be treated as a direct input. According to Petitioners, since both kerosene and charcoal were continuously consumed during the production of copper and tube and there is no evidence that they are accounted for elsewhere as energy inputs for the surrogate producers, they should be treated as energy inputs in the calculation of NV.

Department's Position:

Dies and emulsion

The Department agrees with the Hailiang Group that the Department should not include dies and emulsion as direct materials in the calculation of NV for the final determination because these items are part of overhead expenses. In the Preliminary Determination, the Department clearly stated that direct dies, indirect dies and emulsion were treated as overhead items and were not included as direct materials in the calculation of NV.¹⁵⁰ Therefore, for the final determination, the Department has continued to treat direct dies, indirect dies and emulsion as overhead items.

Scale-like graphite, Internal and External Mold Oil, Carbon Soot, and Hydrogen

The Department agrees with Petitioners that carbon soot and mold oil should be included in the calculation of NV as direct materials for the final determination. In Malleable Iron Pipe Fittings the Department stated, "{c}ooling and cleaning of fittings is essential to the production process, and significant amounts of water are used in the production of subject merchandise, i.e. water, is not incidentally or occasionally consumed in production of the subject merchandise but is a significant material input."¹⁵¹ Similar to water in Malleable Iron Pipe Fittings, carbon soot, internal and external mold oils, scale-like graphite and hydrogen are used intensively during the production process of carbon pipe and tube.¹⁵² Particularly, carbon soot and scale-like graphite are used to prevent oxidation of the copper's liquid surface, hydrogen is used to prevent oxidation of carbon pipe, and mold oils are used for lubrication of copper pipe and tube.¹⁵³ Thus,

¹⁵⁰ See Hailiang Group's Preliminary Analysis Memorandum at Attachment I.

¹⁵¹ See Malleable Iron Pipe Fittings, 71 FR 37051 and accompanying Issues and Decision Memorandum at Comment 18.

¹⁵² See Hailiang Group's Section D Supplemental Response at Exhibit 7.

¹⁵³ Id.

the Department disagrees with the Hailiang Group that carbon soot, internal and external mold oils, scale-like graphite and hydrogen should be considered as overhead items. Moreover, there is no evidence on the record that Indian surrogate financial statements captured these inputs as overhead items. The Department will treat carbon soot, scale-like graphite, hydrogen and mold oils as significant material inputs, because significant amounts of these materials are continuously used in the production process of copper pipe and tube. Therefore, for the final determination, the Department has included carbon soot, scale-like graphite, hydrogen, and mold oils as direct materials in its NV calculation.¹⁵⁴

Polythene, colorant, and anti-aging master batch

The Department agrees with Petitioners that polythene, colorant, and anti-aging master batch should be excluded from the Department's calculation of NV for the final determination. As explained by the Hailiang Group, polythene, colorant, and anti-aging master batch were used specifically for producing energy conserving copper water tube but should not be reported as FOPs because the Hailiang Group did not export any energy conserving copper water tube to the United States during the POI.¹⁵⁵ Therefore, for the final determination, the Department has excluded polythene, colorant, and anti-aging master batch from its NV calculation.¹⁵⁶

Nitrogen

The Department agrees with Petitioners that, contrary to the Hailiang Group's assertion, nitrogen is physically incorporated into the final product because the copper tubes were sealed and transported to the customer during the POI with the nitrogen charge inside the tube by the Hailiang Group.¹⁵⁷ Moreover, the Department disagrees with the Hailiang Group that none of the Indian financial statements separately itemize nitrogen and there is no evidence on the record that nitrogen is not captured as part of overhead costs in the surrogate financial statements. Nissan's and Multimetals' financial statements show that consumption of nitrogen is classified as a power and fuel component, which is a part of MLE expenses.¹⁵⁸ Therefore, the financial statements of Nissan and Multimetals demonstrate that these surrogate companies do not classify nitrogen as an overhead item.

Additionally, the Department disagrees with Petitioners' assertion that the Department mistakenly converted the rupees per cubic meter surrogate value for nitrogen into rupees per kg. According to the Hailiang Group's response, the nitrogen FOP was reported on a kg per kg basis.¹⁵⁹ Thus, in the Preliminary Determination, the Department correctly converted the surrogate value from rupees per cubic meter into rupees per kg and then into an USD per kg basis. For the reasons stated above, the Department has treated nitrogen as a direct energy input

¹⁵⁴ See Final Surrogate Value Memorandum at 3.

¹⁵⁵ See Hailiang Group's Verification Report at 3.

¹⁵⁶ See Final Surrogate Value Memorandum at 3.

¹⁵⁷ See Letter from Zhejiang Hailiang to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe and Tube from the People's Republic of China: Section C Questionnaire of Zhejiang Hailiang Co., Ltd." (January 25, 2010) at 11-12; Hailiang Group's March 18, 2010 Section D Supplemental Response at 9.

¹⁵⁸ See Final Surrogate Value Memorandum at Attachment 4; Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from China; Indian Surrogate Value Information and Comments" (February 16, 2010) at Exhibits 49, 50.

¹⁵⁹ See Hailiang Group's Section D Supplemental Response at Exhibits 8, 9.

for final determination and has continued to convert the Indian surrogate value for nitrogen obtained on rupees per cubic meter basis into a rupees per kg basis.¹⁶⁰

Copper Tube Detergent

The Department agrees with Petitioners that an input does not have to be physically incorporated into the merchandise in order to be treated as a raw material. In general, it is the Department's practice to treat items that are consumed continuously during the production of each unit as raw materials.¹⁶¹ The Hailiang Group used the copper tube detergent to clean the subject merchandise during the packing process and it did not use this raw material incidentally or occasionally.¹⁶² Rather, because it had to clean all mold oil from the copper pipes and tubes before they are packed for shipment, the Hailiang Group used a substantial amount of copper tube detergent. Thus, the Department has determined that the Hailiang Group used copper tube detergent continuously during the packing process. Therefore, for the final determination, the Department has continued to treat the copper tube detergent as a direct packing FOP.

Kerosene and Charcoal

The Department agrees with Petitioners that both kerosene and charcoal should be treated as energy inputs in the calculation of NV. As explained by the Hailiang Group, "During the POI the energy inputs utilized by the Hailiang Group were electricity, natural gas, charcoal and kerosene."¹⁶³ In the Preliminary Determination, the Department classified kerosene and charcoal as packing factors. However, as stated above, the Department found at verification that both kerosene and charcoal were used by the Hailiang Group as energy inputs. Therefore, for the final determination, the Department has treated kerosene and charcoal as direct energy inputs.¹⁶⁴

Comment 16: Whether to continue using the actual weight reported by the Hailiang Group in its United States sales database

- The Hailiang Group requests that the Department continue to use actual weight (AWFACTORY), and the corresponding unit prices (UPAW), for the final determination because the actual weight is on the record, was verified, and it would be without precedent for the Department to reject the use of actual weight in favor of a less accurate theoretical weight.
- The Hailiang Group points out that throughout this investigation the Hailiang Group asserted that its U.S. sales database calculations should be based on actual weights and not on any party's theoretical weight formulas.
- The Hailiang Group claims it reported actual, verifiable weights, even for product sold in feet, pieces, and coils where actual weights are not reported on the commercial invoice. The Hailiang Group points out that its actual weight data was taken from two different sources - weigh-slips and from Chinese Customs Export Declarations ("CCED"). Both of which, according to the Hailiang Group, report the same weight. In addition, the

¹⁶⁰ See Final Surrogate Value Memorandum at 3.

¹⁶¹ See Brake Rotors, 71 FR 66304 and accompanying Issues and Decision Memorandum at Comment 7.

¹⁶² See Hailiang Group's Section D Supplemental Response at Exhibit 7; Hailiang Group's Final FOP database.

¹⁶³ See Hailiang Group's Verification Report at 30.

¹⁶⁴ See Hailiang Group's Final Analysis Memorandum at 4.

Hailiang Group notes that these sources were examined and verified by the Department at verification.

- Petitioners argue that, for the final determination, the Department should rely on a combination of invoice weights and American Society for Testing and Materials theoretical weights, and use the unit prices derived these weights, instead of using the unit price derived from the Hailiang Group’s “factory weights” listed in its U.S. sales database.
- Petitioners assert that information provided in Exhibit 34 of the Hailiang Group Verification Report confirms that the CCED forms do not sufficiently corroborate the weigh-slip data. Petitioners point to examples where the CCED forms and the invoice data are completely at odds with one another.
- Petitioners contend that acceptance of the Hailiang Group’s AWFACTORY and UPAW data fields will allow the Hailiang Group to manipulate unit price data in future administrative reviews.

Department’s Position:

The Department disagrees with Petitioners that CCED forms do not sufficiently corroborate the weigh-slip data. The Department was able to corroborate the weight of each invoice for all pre-selected and surprise sales traces that were reviewed during verification. Specifically, the Department tied the quantity, in pieces, from the factory invoices to the quantity, in pieces, with the corresponding weights shown on packing lists, to the weights shown on the weigh slips and the weights shown on the CCED forms.¹⁶⁵ For these reasons, the Department has used the actual factory weights (AWFACTORY) and the corresponding unit prices (UPAW) reported by the Hailiang Group in its post-verification sales database for the final determination.¹⁶⁶

Comment 17: Whether to include two additional categories of indirect labor as labor inputs

- The Hailiang Group states that it categorized all of its workers (i.e., direct, indirect, and “other”) in the “categorization chart” submitted in Exhibit 12 of the Hailiang Group’s January 25, 2010, section D response. The Hailiang Group also states that it reported the labor hours for these “other” employees (except for chairman and board members) in two new fields in the FOP database submitted on May 14, 2010.
- The Hailiang Group argues that the Department should continue to treat this “other” labor as an overhead item that would typically be covered by surrogate financial ratios.
- The Hailiang Group states that “other” labor hours consist of two major groups of workers and include the following hours: 1) hours worked by individuals in the Administration Department (e.g., sales people, accountants, etc.); and 2) hours worked by individuals at the specific divisions that were previously not classified as direct or indirect.
- The Hailiang Group argues that all of the workers listed in the “other labor” category are classified in the company’s accounting records as “administrative” labor and not as direct or indirect labor.¹⁶⁷ Therefore, the Hailiang Group asserts, the Department should not

¹⁶⁵ See Hailiang Group’s Verification Report at 23, Exhibits 32-35.

¹⁶⁶ See Hailiang Group’s Final Analysis Memorandum at Attachment II.

¹⁶⁷ See Hailiang Group’s January 25, 2010 Section D Response at Exhibit 12.

include these “other” labor hours in the calculation of the Hailiang Group’s NV for the final determination.

- The Hailiang Group claims that “other” labor is included in the SG&A values calculated by the Department. Therefore, according to the Hailiang Group, by including all of these “other” classified labor hours as direct or indirect labor hours in the calculation of normal value, the Department is creating a situation of double-counting with reported labor hours and the surrogate financial ratios on the record in this investigation.
- The Hailiang Group argues that this case is similar to Frozen Fish Fillets 2010 NSR,¹⁶⁸ where the Department treated labor for cleaning, security, laundry, and canteen personnel as overhead items covered by the surrogate financial ratios. The Hailiang Group asserts that the Department should follow the same analysis in this investigation.
- Petitioners assert that these two additional categories of “other” labor should be included as labor inputs for the final determination.
- Petitioners disagree with the Hailiang Group that the Department will “double count” these workers if they are treated as direct or indirect labor because such cost is treated as factory overhead or SG&A in the Indian surrogate financial ratios. Petitioners assert that the payments for labor services that are either in factory overhead or SG&A categories are limited to 1) director’s remuneration, 2) auditor fees, 3) legal fees and 4) other professional fees.
- Petitioners assert that the Department already instructed the Hailiang Group to omit director’s hours from its labor FOPs. With respect to auditors, legal, and other professional fees, Petitioners understand that both PRC and Indian companies must be audited by outside auditors. Therefore, according to Petitioners, those expenses will not be double counted, unless the Hailiang Group has in-house professionals that perform these professional services.
- Petitioners state that the Department’s original questionnaire instructs the respondent to report all production workers’ hours, inspection/testing workers, relief workers, and any other workers directly involved in producing the merchandise as direct labor hours. With respect to the reporting of indirect labor, Petitioners further state that the Department’s original questionnaire instructs respondent to report labor hours for all workers not previously reported who are indirectly involved in the production of the merchandise under the consideration. Therefore, according to Petitioners, the Department instruction to the Hailiang Group to report the FOPs for all the workers listed in the category “other,”¹⁶⁹ except “chairman” and “board member,” seems reasonable.

Department’s Position:

The Department agrees with Petitioners that it was reasonable for the Department to request that the Hailiang Group report all FOPs for all the workers listed in the category “other,” except for “chairman” and “board member,” because, in accordance with the Department’s original questionnaire, all workers listed under category “other,” in Exhibit 12 of the Hailiang Group’s section D response, should be classified as direct or indirect labor.¹⁷⁰ The Department disagrees

¹⁶⁸ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) (“Frozen Fish Fillets 2010 NSR”) and accompanying Issues and Decision Memorandum at Comment 3.

¹⁶⁹ See Hailiang Group’s January 25, 2010 Section D Response at Exhibit 12.

¹⁷⁰ Id.

with the Hailiang Group's assertion that the Department will "double count" the labor hours of workers included in the category "other" if they are treated as direct or indirect labor because such cost is treated as factory overhead or SG&A in the Indian surrogate financial ratios. Contrary to the Hailiang Group's classification of all workers included in the "other" labor category in its own accounting system as "administrative labor," the only labor services captured by Indian surrogate financial statements in their factory overhead or SG&A categories are 1) director's remuneration, 2) auditor fees, 3) legal fees, and 4) other professional fees.¹⁷¹ Because the Hailiang Group excluded the director's and board member's hours from the reported labor hours, and there were no in-house auditor, legal, or professional fees reported by the Hailiang Group, the Department will not double count labor hours by including the labor hours reported in the two additional indirect labor fields from the Hailiang Group's most recent sales database in its NV calculation.

Furthermore, the Department disagrees with the Hailiang Group that the Department should follow the analysis in Frozen Fish Fillets 2010 NSR. Unlike the instant case, the respondent in Frozen Fish Fillets 2010 NSR argued that the labor for cleaning, security, laundry, and canteen personnel should be treated as overhead items covered by the surrogate financial ratios. In the instant investigation, the category "other" labor includes many other categories of labor related to the production process.¹⁷² Unlike in Frozen Fish Fillets 2010 NSR, the Hailiang Group's "other" labor category includes workers that are clearly indirect labor, such as a storekeeper, equipment department staff, quality inspectors, flaw detection operators, mechanics, and electricians.

For the reasons stated above, the Department has included the labor hours reported in the two additional indirect labor fields from the Hailiang Group's post-verification sales database in the calculation of NV for the final determination.¹⁷³

Comment 18: Whether the Department should make certain minor corrections

- The Hailiang Group requests that the Department incorporate all changes from the Hailiang Group's minor corrections, which were presented at verification and properly served on Petitioners, into the final margin calculation.
- Petitioners did not comment on this issue.

Department's Position:

The Department agrees with the Hailiang Group that, because the minor corrections were presented on the first day of verification, accepted by the Department, and properly served on Petitioners, the Department should consider those changes in its calculations of the company's AD margin for the final determination. Therefore, for the final determination, the Department will consider the minor corrections in its calculation of the Hailiang Group's AD margin.¹⁷⁴

¹⁷¹ See Hailiang Group's Final Analysis Memorandum at Attachment I.

¹⁷² See Frozen Fish Fillets 2010 NSR, 75 FR 38985 and accompanying Issues and Decision Memorandum at Comment 3.

¹⁷³ See Hailiang Group's Final Analysis Memorandum at 4.

¹⁷⁴ Id.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of this investigation in the Federal Register.

Agree _____

Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date