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DATE: June 5, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Administrative Review of Seamless Refined Copper Pipe and Tube  
from the People's Republic of China; 2010-2011

### Summary

The Department of Commerce (“the Department”) has analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced administrative review. As a result of our analysis, we have made changes to the weighted-average dumping margins for the final results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

### Background

On August 7, 2012, the Department published in the Federal Register the Preliminary Results of the administrative review of the antidumping duty order on seamless refined copper pipe and tube (“copper pipe and tube”) from the People’s Republic of China (“PRC”) for the period November 20, 2010 through October 31, 2011.<sup>1</sup> We invited parties to comment on our Preliminary Results. On September 5, 2012, Luvata Alltop (Zhongshan) Ltd. and Luvata Tube (Zhongshan) Ltd., (collectively, “Luvata”) filed comments on the Preliminary Results. The separate rate respondent Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd. (collectively, “Hailiang”), and Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, “Petitioners”) submitted case briefs on September 13 and 14, 2012, respectively. On September 21, 2012, Petitioners and the mandatory respondent Golden Dragon Precise Copper Tube Group, Inc., (“Golden Dragon”), filed rebuttal comments. On April 23, 2013, the

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<sup>1</sup> See Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Preliminary Results of the First Antidumping Duty Administrative Review, and Intent To Rescind in Part, 77 FR 47030 (August 7, 2012) (“Preliminary Results”).

Department requested additional documentation from Golden Dragon,<sup>2</sup> which was submitted on April 24, 2013. On May 2, 2013, Petitioners and Golden Dragon submitted comments pursuant to Golden Dragon’s April 24, 2013 submission. On May 6, 2013, Petitioners and Golden Dragon submitted rebuttal comments.

**Scope of the Order**

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

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

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

| <u>ELEMENT</u> | <u>LIMITING CONTENT PERCENT BY WEIGHT</u> |
|----------------|---|
| Ag - Silver    | 0.25                                      |
| As - Arsenic   | 0.5                                       |
| Cd - Cadmium   | 1.3                                       |
| Cr - Chromium  | 1.4                                       |
| Mg - Magnesium | 0.8                                       |
| Pb - Lead      | 1.5                                       |
| S - Sulfur     | 0.7                                       |
| Sn - Tin       | 0.8                                       |
| Te - Tellurium | 0.8                                       |
| Zn - Zinc      | 1.0                                       |
| Zr - Zirconium | 0.3                                       |

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<sup>2</sup> See Memorandum from Christian Marsh to the File, “Telephone Conversation with Counsel for Golden Dragon Precise Copper Tube Group, Inc. et al.,” dated April 23, 2013

Other elements (each)

0.3

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

### **List of the Issues**

Issue 1: Whether the Department should rescind the administrative review with respect to Luvata

Issue 2: Whether Golden Dragon’s U.S. sales listing is accurate

Issue 3: Whether the Department should make an adjustment to Golden Dragon’s reported U.S. prices.

Issue 4: Whether the Department should use the financial statement of Kobelco or Furukawa

Issue 5: Whether the Department should use a different rate for Hailiang as a non-examined, separate rate respondent

### **Discussion of the Issues**

#### **Comment 1: Whether the Department should rescind the administrative review with respect to Luvata**

- Luvata states that it filed a timely notification to the Department that it had no exports, sales, or entries of subject merchandise during the period of review (“POR”). Luvata contends that the Department should have included in the Preliminary Results explicit notice of its intent to rescind the administrative review with respect to Luvata.

#### **Department’s Position:**

The Department is rescinding the administrative review for Luvata, but on different grounds. Pursuant to 19 CFR 351.213(d)(1), the Department is to rescind an administrative review, in whole or in part, if the party that requested a review withdraws that request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners requested the administrative review of Luvata and timely filed a withdrawal of that request.<sup>3</sup> Thus, we are rescinding the administrative review with respect to Luvata in accordance with 19 CFR 351.213(d)(1).<sup>4</sup>

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<sup>3</sup> See Letter from Petitioners to The Honorable John E. Bryson, “Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Withdrawal of Request for Antidumping Administrative Reviews,” dated February 6, 2012.

<sup>4</sup> The Department notes that, in the Preliminary Results, the Department stated incorrectly that Luvata did not have a separate rate, and that Luvata was considered part of the PRC-wide entity. See Preliminary Results, 77 FR at 47031. However, Luvata does have a separate rate, and is not part of the PRC-wide entity. See Seamless Refined Copper Pipe and Tube From Mexico and the People’s Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico, 75 FR 71070, 71071 (November 22, 2010)

## **Comment 2: Whether Golden Dragon’s U.S. sales listing is accurate**

- Petitioners state that Golden Dragon’s U.S. sales listing is unsupported by record evidence because (1) two commercial invoices that Golden Dragon submitted to support the U.S. sales that do not match the U.S. sales listing, and (2) one commercial invoice submitted to support the U.S. sales omits surcharges that should have been reported.
- In rebuttal, Golden Dragon states that (1) the date errors in the two commercial invoices are obvious typographical errors; and (2) there is no evidence of the surcharges alleged by Petitioners for the U.S. sales at issue.

### **Department’s Position:**

The Department agrees with Golden Dragon, in part, and Petitioners, in part. Regarding the two commercial invoices that Golden Dragon submitted to support the U.S. sales that do not match the U.S. sales listing, other information in the commercial invoices supports the invoice dates that Golden Dragon reported in its U.S. sales listing.<sup>5</sup> Regarding the Petitioners’ allegation of unreported surcharges, there is no evidence on the record that the U.S. sales transactions at issue incurred these surcharges. Due to the proprietary nature of the relevant factual information and the Department’s analysis, the Department has included a more detailed analysis, incorporated herein, in the proprietary analysis memorandum: Memorandum from Christian Marsh, Deputy Assistant Secretary Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Memorandum Regarding Golden Dragon’s U.S. Sales Listing and Alleged Price Adjustment,” dated June 5, 2013 (“Marsh Memorandum”).

## **Comment 3: Whether the Department should make an adjustment to Golden Dragon’s reported U.S. prices.**

Due to the proprietary nature of the relevant factual information, the Department’s analysis is contained in the Marsh Memorandum.

## **Comment 4: Whether the Department should use the financial statement of Kobelco<sup>6</sup> or Furukawa<sup>7</sup>**

- Petitioners argue that the Furukawa financial statement shows evidence of countervailable subsidies pursuant to Thailand’s Industrial Investment Promotion Act of B.E. 2520 (“IPA”).
- Petitioners argue that the Kobelco financial statement is complete, translated, and shows no evidence of countervailable subsidies.
- Golden Dragon argues that the Kobelco financial statement contains evidence of the same investment promotion incentives under IPA as the Furukawa financial statement.

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<sup>5</sup> See Golden Dragon’s Supplemental Section C Questionnaire Response, dated May 18, 2012, at Exhibits SC-2, SC-3 and SC-4.

<sup>6</sup> Kobelco Material Copper Tube (Thailand) Co., Ltd. (“Kobelco”)

<sup>7</sup> Furukawa Metal (Thailand) Public Company Limited (“Furukawa”)

## Department's Position:

The Department agrees with Golden Dragon, in part. The Department, in valuing the factors of production ("FOPs"), should "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."<sup>8</sup> Thus, where the Department has a reason to believe, or suspect, that the company may have received subsidies, it may consider the financial ratios derived from that company's financial statements to be less representative of the financial experience of that company, or the relevant industry, than the ratios derived from financial statements that do not contain evidence of subsidization.<sup>9</sup>

The Department agrees that the Kobelco financial statement contains evidence of the same investment promotion incentives under the IPA as the Furukawa financial statement.<sup>10</sup> The Department has found that the IPA is not per se countervailable.<sup>11</sup> Because the IPA contains neither explicit export conditions nor limits to eligibility for IPA programs, the Department determines whether the benefits are countervailable based upon the reason each company's application for such benefits was approved.<sup>12</sup> There is no information in either the Kobelco or Furukawa financial statements indicating why each company's application under the IPA was approved. Thus, there is no evidence that either company received countervailable subsidies.

Nonetheless, the Department finds that only the Furukawa financial statements constitute the best available information upon which to calculate surrogate financial ratios for this period of review. Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act"), "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." While the defects in the Kobelco financial statement noted by the Department in the Preliminary Results have been remedied,<sup>13</sup> the Department has reviewed the Kobelco financial statement, and has found it to lack detail with respect to materials, labor and energy, which would make any calculated financial ratios inaccurate. The Department requires an accurate figure for materials, labor and energy, for use in the denominator of the overhead ratio. In this specific instance, with respect to the Kobelco financial statement, the Department can only estimate a composite figure for total materials, energy and labor by calculating the cost

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<sup>8</sup> Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2d Sess., at 590-91 (1988).

<sup>9</sup> See, e.g., 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 1C.

<sup>10</sup> See Letter from Golden Dragon to The Honorable John Bryson, "Re: Surrogate Value Selection Comments," dated May 9, 2012 at Exhibit 7 (Furukawa financial statements); Letter from Petitioners to Dr. Rebecca M. Blank, "Re: Seamless Refined Copper Pipe and Tube from the People's Republic of China: Petitioners' Supplemental Submission of Surrogate Values," dated August 21, 2012, at Exhibit 1 (Kobelco financial statements).

<sup>11</sup> See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462 (March 21, 2005) and accompanying Issues and Decision Memorandum at II.D, Comment 3.

<sup>12</sup> See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 3396 (January 16, 2013) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>13</sup> See Preliminary Results, 77 FR at 47035.

of goods manufactured and subtracting manufacturing depreciation.<sup>14</sup> Thus, due to the aggregate nature of the financial data in the Kobelco financial statement, for the final results, the Department has determined to use the Furukawa financial statements to calculate the financial ratios.<sup>15</sup>

**Comment 5: Whether the Department should use a different rate for Hailiang as a non-examined respondent**

- Hailiang argues that there is no evidence on the record to suggest that its rate from the investigation is reasonably reflective of the potential margin of dumping in this POR.
- Hailiang argues that its investigation rate is based upon adverse facts available (“AFA”) but that it has been fully cooperative in this segment of the proceeding.
- Hailiang states that the Department applied zero percent rates as the separate rate in Brake Rotors from PRC,<sup>16</sup> Honey from Argentina,<sup>17</sup> and most recently in the preliminary results of review in Fish Fillets from Vietnam.<sup>18</sup> Further, in Amanda IV<sup>19</sup> the Court of International Trade (“CIT”) rejected the Department’s methodology for determining the “All Others” rate when all individually investigated respondents received zero or *de minimis* rates.
- Petitioners argue that Congress expressed its preference for avoiding zero or *de minimis* margins for the “All Others” rate, and also stated that if these were the only rates available, then zero and *de minimis* rates should be averaged. Thus, Congress did not contemplate assigning a weighted-average dumping margin of zero when zero or *de minimis* rates are the only calculation rates.
- Petitioners argue that Congress’ averaging example was not meant to apply to administrative reviews, but only to investigations.
- Petitioners argue that Golden Dragon is not representative of the industry as were the three mandatory respondents in Amanda IV, because (1) Golden Dragon has a unique sales process; and (2) Golden Dragon accounted for virtually all of the exports to the United States from the PRC during the POR, and it is not similar to a company that made the remaining small share of exports.

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<sup>14</sup> See Submission of Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc., dated August 21, 2012, at Exhibit 1 (income statement and cash flow statement).

<sup>15</sup> See Memorandum from Zev Primor and Karine Gzityan to the File, “Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Surrogate Value Memorandum,” dated July 31, 2012, at Exhibit 5.

<sup>16</sup> See Brake Rotors From the People’s Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review, 73 FR 32678 (June 10, 2008) and accompanying Issues and Decision Memorandum (“Brake Rotors from PRC”).

<sup>17</sup> See Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 73 FR 24220 (May 2, 2008) (“Honey from Argentina”).

<sup>18</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Eighth Antidumping Duty Administrative Review and Ninth New Shipper Reviews, Partial Rescission of Review, and Intent To Revoke Order in Part, 77 FR 56180 (September 12, 2012) (“Fish Fillets from Vietnam”).

<sup>19</sup> See Amanda Foods (Vietnam) Ltd. v. United States, 837 F. Supp. 2d 1338 (CIT 2012) (“Amanda IV”).

- Petitioners argue that the Department did not request that Hailiang submit quantity and value data with which to corroborate an assigned weighted-average dumping margin of zero.

### **Department's Position:**

The Department disagrees with Hailiang. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the "All Others" rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that the Department not calculate an "All Others" rate using rates which are zero, *de minimis* or based entirely on facts available. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.<sup>20</sup> Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including, but not limited to, "averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

The Department has previously determined that, in administrative reviews of an antidumping order, a "reasonable method" to use when the rates for the respondents selected for individual examination are zero, *de minimis*, or based entirely on facts available, is to apply to those respondents not selected for individual examination, the average of the most recently-determined weighted-average dumping margins that are not zero, *de minimis*, or based entirely on facts available. These rates may be from the investigation, a prior administrative review, or a new shipper review.<sup>21</sup> If any such non-selected respondent had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected respondent in the instant review, including when that rate is zero, *de minimis*.<sup>22</sup>

In the Preliminary Results, the mandatory respondent Golden Dragon received a zero percent rate. For Hailiang's separate rate, the Department went back to the immediately-preceding completed segment of this proceeding (*i.e.*, the original investigation) to select a rate that was not zero, *de minimis* or based entirely on facts available. This rate also happens to be for Hailing as it was a mandatory respondent in the original investigation. Because Golden Dragon continues to

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<sup>20</sup> See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

<sup>21</sup> See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8342 (February 14, 2011), unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011).

<sup>22</sup> See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part, 77 FR 21529, 21530-31 (April 10, 2012).

receive a zero percent rate and because the rate from the previous segment of the proceeding remains the most contemporaneous rate available which is not zero, *de minimis*, or based entirely on facts available, the Department will continue to apply to Hailing its own rate from the original investigation for these final results.

Hailing's most recent rate was its calculated rate from the investigation, which was partially, but not entirely, based on AFA.<sup>23</sup> Specifically, in the original investigation, Hailing reported identical FOP values for all control numbers ("CONNUMs"), and the Department recalculated Hailing's FOPs to reflect product-group specific production steps and the corresponding processing yields at each stage, using Hailing's own information.<sup>24</sup> The Department applied as an adverse inference, pursuant to section 776(b) of the Act, Hailing's highest cumulative yield rate among product-group specific yields to all reported FOPs for all CONNUMs upon determining that Hailing had the ability to report its FOPs on a product-group specific basis from the outset, but did not do so.<sup>25</sup>

The Department disagrees with Hailing that this rate, which included partial adverse inferences, cannot be assigned as a separate rate. The statute only precludes the Department from selecting rates based "*entirely*" on facts available as the "All Others," or, as applied in this situation, as a separate rate.<sup>26</sup> The Department's policy is to resort to "partial" rather than "total" facts available in situations where there is useable information of record, but the record is incomplete.<sup>27</sup> In the investigation, the Department deemed Hailing's U.S. sales information, as well as Hailing's cumulative yield rates, to be usable information. Furthermore, the SAA indicates that when "the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis* \* \* \* (t)he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available."<sup>28</sup> The SAA also states that "if this method is not feasible or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, {the Department} may use other reasonable methods."<sup>29</sup> A rate based entirely upon Hailing's own pricing behavior in the immediately preceding segment of the proceeding and based upon Hailing's own information must be considered to be reasonably reflective of Hailing's potential dumping margin in this initial administrative review.

With regard to Hailing's arguments that the Department should apply the average of zero and *de minimis* rates as it did in in Brake Rotors from PRC, Honey from Argentina, and most recently in

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<sup>23</sup> See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010) ("Final Determination") and the accompanying Issues and Decision Memorandum at Comment 12.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> See section 735(c)(5)(A) of the Act; see also Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 873 (1994).

<sup>27</sup> See, e.g., Yantai Timken Co., Ltd. v. United States, 31 CIT 1741, 1756-1762 (2007), *aff'd* 300 Fed. Appx. 934 (Fed. Cir. 2008). Cf. Kawasaki Steel Corp. v. United Steel, 24 CIT 684, 696-697, (2000); Ferro Union, Inc. v. United States, 23 CIT 713, 720 (1999).

<sup>28</sup> See SAA at 873.

<sup>29</sup> Id.

the preliminary results of review in Fish Fillets from Vietnam, the Department disagrees. Regarding Brake Rotors from PRC, the Department recognized that the selection of a “reasonable method” to use when the available rates of the mandatory respondents are zero, *de minimis*, or entirely based upon facts available “must be made on a case-by-case basis and would depend on the facts of the case.”<sup>30</sup> In that case, the Department deemed appropriate the application of the average of zero and *de minimis* margins calculated for the mandatory respondents because “brake rotor firms are fairly homogenous in terms of economic characteristics.”<sup>31</sup> The Department has made no such finding in this case. In fact, record evidence demonstrates that the mandatory respondent Golden Dragon does not share economic characteristics with the separate rate respondent Hailiang, in that Golden Dragon is a much larger exporter in terms of volume of subject merchandise to the United States.<sup>32</sup> Regarding Honey from Argentina, the Department applied as a review-specific rate the average of two zero margins calculated for two mandatory respondents in a proceeding where the Department had calculated zero percent margins in consecutive reviews.<sup>33</sup> In this case, other than Golden Dragon’s margin in the instant review period, there is no prior instance of a calculated zero rate in the proceeding. Regarding the preliminary results the seventh review of Fish Fillets from Vietnam, we note that the Department calculated weighted-average dumping margins above *de minimis* in the final results of the review, and applied the average of these margins as the separate rate.<sup>34</sup>

In regard to Hailiang’s argument that the Department’s decision is not compatible with the CIT’s ruling that the Department’s refusal to use zero or *de minimis* rates to determine a separate rate is unreasonable when those were the only calculated rates for mandatory respondents in an administrative review, the Department disagrees. In Amanda IV, the CIT had remanded the Department’s decision in the final results<sup>35</sup> because the Department had not sufficiently related the assigned separate rate to the experience of the separate rate company, when it relied on “minimal transaction-specific positive dumping margins” of the mandatory respondent.<sup>36</sup> On remand, the Department applied a zero percent rate as the separate rate after comparing it with the separate rate respondent’s quantity and value data, to ensure that zero percent was “reasonably reflective of potential dumping margins for non-investigated exporters or producers .

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<sup>30</sup> See Brake Rotors from PRC at Comment 1.

<sup>31</sup> See *id.*

<sup>32</sup> See Memorandum to Abdelali Elouaradia, AD/CVD Operations, Office 4, from Patrick O’Conner, International Trade Compliance Analyst, Office 4, regarding “Respondent Selection in the 1st Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People’s Republic of China” (“Respondent Selection Memorandum Attachment 1”), dated February 24, 2012 at 5 and Attachment 1.

<sup>33</sup> See Honey from Argentina; see also Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke In Part, 72 FR 25245 (May 4, 2007)

<sup>34</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 29323 (May 20, 2013). Further, the Department notes that Fish Fillets from Vietnam is similar to Honey from Argentina, in that the Department had calculated several zero percent margins in the proceeding. See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011); Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010).

<sup>35</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 73 FR 52273, 52274-52275 (September 9, 2008).

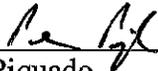
<sup>36</sup> See Amanda Foods (Vietnam) Ltd. v. United States, 774 F. Supp. 2d 1286, 1289 (CIT 2011).

...”<sup>37</sup> In this case, however, the Department is relying solely upon Hailiang’s own weighted-average dumping margin from the prior segment of the proceeding, which was calculated entirely with Hailiang’s own information, including the information relied upon as partial AFA information. Thus, the separate rate is particularly relevant to Hailiang. Accordingly, we find that the rate applied in this case is the most “reasonably reflective of potential dumping margins for non-investigation exporters or producers,” as it is the respondent’s own calculated rate from the immediately preceding segment of the proceeding. Therefore, the Department has determined to assign the rate selected in the Preliminary Results for these final results.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree ✓                      Disagree \_\_\_\_\_

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

5 JUNE 2013  
\_\_\_\_\_  
Date

<sup>37</sup> See Amanda IV, 837 F. Supp. 2d at 1346 (quoting SAA at 873).