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

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

REGARDING: Decision Memorandum for the Preliminary Results of the 2011-
2012 Administrative Review of the Antidumping Duty Order on
Seamless Refined Copper Pipe and Tube from the People's
Republic of China

SUMMARY

At the request of interested parties, the Department of Commerce (the "Department") is conducting an 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 1, 2011 through October 31, 2012. The Department has preliminarily determined that Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd. (collectively, "Golden Dragon") sold subject merchandise in the United States at prices below normal value ("NV"). If these preliminary results are adopted in the final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR"). Interested parties are invited to comment on these preliminary results. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act"), the Department will issue final results no later than 120 days from the date of publication of this notice.

BACKGROUND

On November 22, 2010, the Department published in the Federal Register an antidumping duty order on copper pipe and tube from the PRC.¹ On November 5, 2012, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on copper pipe and tube from the PRC for the period November 1, 2011

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



through October 31, 2012.² On November 30, 2012, the Department received a request from Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products Inc., and Mueller Copper Tube Company, Inc. (collectively, “Petitioners”) to conduct administrative reviews on the following companies: China Hailiang Metal Trading, Foshan Hua Hong Copper Tube Co., Ltd., Golden Dragon Holding (Hong Kong) International Co., Ltd., Golden Dragon Precise Copper Tube Group, Inc., Guilin Lijia Metals Co., Ltd., Hong Kong GD Trading Co., Ltd., Hong Kong Hailiang Metal, Luvata Alltop (Zhongshan) Ltd. (“Luvata Alltop”), Luvata Tube (Zhongshan) Ltd. (“Luvata Tube”), Ningbo Jintian Copper Tube Co., Ltd., Shanghai Hailiang Copper Co., Ltd., Shanghai Hailiang Metal Trading Limited, Sinochem Ningbo Import & Export Co., Ltd., Sinochem Ningbo Ltd., Taicang City Jinxin Copper Tube Co., Ltd., Zhejiang Hailiang Co., Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd.³ On November 30, 2012, the Department also received two additional requests for administrative reviews: (1) a request from Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd., and GD Copper (U.S.A.) (collectively, “Golden Dragon Group”) to conduct an administrative review on Golden Dragon; and (2) a request from Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd. (collectively, “Hailiang”) to conduct an administrative review of Hailiang.⁴ On December 31, 2012, the Department published in the Federal Register a notice initiating an antidumping (“AD”) administrative review of copper pipe and tube from the PRC for the period November 1, 2011 through October 31, 2012 with respect to 17 companies.⁵

On January 11, 2013, the Department placed on the record CBP data for U.S. imports classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) identified in the scope of the AD order on copper pipe and tube from the PRC.⁶ At that time, the Department invited interested parties to submit comments regarding the CBP data for use in respondent selection.⁷ On January 22, 2013, the Department received comments on respondent selection from Golden Dragon Group.⁸ No other party submitted comments. Further, on January 30, 2013, Petitioners requested that the Department determine whether antidumping duties have been absorbed by

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 77 FR 66437 (November 5, 2012).

³ See Letter from Petitioners to the Secretary of Commerce, “Seamless Refined Copper Pipe and Tube from China: Request for Administrative Review” (November 30, 2012).

⁴ See Letter from Golden Dragon Group to the Secretary of Commerce, “Request for Administrative Review” (November 13, 2012); Letter from Hailiang to the Secretary of Commerce, “Request for Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People’s Republic of China” (November 30, 2012).

⁵ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 77017 (December 31, 2012) (“Initiation Notice”).

⁶ See Letter from Robert Bolling, Program Manager, Office 4, AD/CVD Operations, to All Interested Parties, “Administrative Review of Seamless Refined Copper Pipe and Tube from the People’s Republic of China for 11/01/2011 – 10/31/2012: Results of U.S. Customs and Border Protection Database Query” (January 11, 2013).

⁷ Id.

⁸ See Letter from Golden Dragon Group to the Secretary of Commerce, “Respondent Selection Comments; Seamless Refined Copper Pipe and Tube from China” (January 22, 2013).

Golden Dragon.⁹ On February 5, 2013, the Department selected Golden Dragon as the only mandatory respondent for individual examination in this review.¹⁰

On February 6, 2013, the Department issued the antidumping questionnaire to Golden Dragon Group.¹¹ From March 2013 through July 2013, Golden Dragon Group responded to the Department's antidumping questionnaire and supplemental questionnaires.

On February 27, 2013, the Department received a no shipments claim from Luvata.¹² On March 1, 2013, the Department received a separate rate certification from Hailiang.¹³ On April 1, 2013, Petitioners filed a timely withdrawal of its review request with respect to Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., Shanghai Hailiang Metal Trading Limited, Hong Kong Hailiang Metal, and Luvata.¹⁴

On July 18, 2013, the Department extended the deadline for issuing the preliminary results of this review until October 1, 2013.¹⁵ On September 30, 2013, the Department extended the deadline for issuing the preliminary results of this review until October 31, 2013.¹⁶

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.¹⁷ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will

⁹ See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Request for Duty Absorption Inquiry" (January 30, 2013) ("Petitioners' Request for Duty Absorption Inquiry").

¹⁰ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, Office 4, AD/CVD Operations, to Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, "Respondent Selection in the 2011-2012 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (February 5, 2013) ("Respondent Selection Memo") at 5.

¹¹ See Letter from Robert Bolling, Program Manager, Office 4, AD/CVD Operations, to Golden Dragon Group, "2011-2012 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (February 6, 2013).

¹² See Letter from Luvata to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from People's Republic of China – No Shipments Claim" (February 27, 2013).

¹³ See Letter from Hailiang to the Secretary of Commerce, "Separate Rate Certification for Hailiang: Second Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China" (March 1, 2013) ("Hailiang's Separate Rate Certification").

¹⁴ See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from China: Petitioners' Withdrawal of Requests for Administrative Review" (April 1, 2013) ("Petitioners' Withdrawal").

¹⁵ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office 4, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" (July 18, 2013).

¹⁶ See Memorandum from Thomas Martin, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office 4, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" (September 30, 2013).

¹⁷ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

become the next business day. The revised deadline for the preliminary results of this review is now November 18, 2013.

SCOPE OF THE ORDER

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

The scope of this 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 this order are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

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

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

Excluded from the scope of this 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 this order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the HTSUS.

Products subject to this 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 this order is dispositive.

DISCUSSION OF THE METHODOLOGY

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Department is rescinding this review with regard to Luvata Alltop and Luvata Tube as parties have timely withdrawn all review requests with respect to these companies. Both Luvata Alltop and Luvata Tube are eligible for a separate rate from a previously completed segment of this proceeding.¹⁸ Therefore, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

Reviews were also requested for Shanghai Hailiang Metal Trading Limited and Hong Kong Hailiang Metal, companies named in the Initiation Notice,¹⁹ and these requests were also timely withdrawn. However, we are not rescinding the reviews for these two companies at this time because they are not eligible for a separate rate and, therefore, each currently remains part of the PRC-wide entity. The PRC-wide entity is under review for the final results of this administrative review (see PRC-Wide Entity section, below).

Affiliation and Collapsing

Based on the evidence presented in Golden Dragon Group's questionnaire responses, we preliminarily find that Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd., are affiliated, pursuant to section 771(33)(F) of the Act.²⁰ In addition, based on the evidence presented in the questionnaire responses, we preliminarily find that Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd. should be treated as a single entity for the purposes of this review. This finding is based on the determination that there is significant potential for manipulation of price between the parties

¹⁸ 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).

¹⁹ These companies are not included in the collapsed entity of Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd., which filed a separate certification

²⁰ This finding is supported, in part, by the fact that Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd., were under the common control of Golden Dragon Precise Copper Tube Group, Inc. during the POR. See Memorandum from Thomas Martin, International Trade Analyst, to Abdelali Elouaradia, Director, Antidumping and Countervailing Duty Operations, Office IV, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Affiliation and Single Entity Status of Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., Golden Dragon Holding (Hong Kong) International, Ltd.," dated concurrently with this decision memorandum ("Affiliation and Collapsing Memorandum").

pursuant to the criteria laid out in 19 CFR 351.401(f),²¹ due to the high level of common ownership, interlocking boards and managers, and intertwined operations.²² For further discussion of the Department's affiliation and collapsing decision, see Affiliation and Collapsing Memorandum.

Non-Market Economy Country Status

No party contested the Department's treatment of the PRC as a non-market economy ("NME") country, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews.²³ Designation as an NME country remains in effect until it is revoked by the Department.²⁴ Accordingly, the Department continues to treat the PRC as a NME in this proceeding.

Separate Rate

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the NME country are subject to government control and, therefore, should be assigned a single weighted-average dumping margin.²⁵ The Department's policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.²⁶ The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in Sparklers²⁷ and further developed in Silicon

²¹ While 19 CFR 351.401(f) specified that it applies to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review, 65 FR 20948 (April 19, 2000), and accompanying Issues and Decision Memorandum at Section C; and Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 1; see also Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 1458, 1462 (January 10, 2012) (unchanged in Honey From Argentina: Final Results of Antidumping Duty Administrative Review, 77 FR 36253 (June 18, 2012)), where the Department stated that: "The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a "reasonable interpretation of the antidumping duty statute." See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d. 1323, 1338 (Ct. Int'l Trade 2003) (Hontex). The CIT further noted that "to the extent that Commerce has followed its market economy collapsing regulations the non-market economy (NME) exporter collapsing methodology is necessarily permissible." Id. at 1342.

²² See Affiliation and Collapsing Memorandum.

²³ See, e.g., 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), unchanged in Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Results and Partial Revocation of 2010/11 Antidumping Duty Administrative Review, 78 FR 35251 (June 12, 2013).

²⁴ See section 771(18)(C)(i) of the Act.

²⁵ See, e.g., 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, 55040 (September 24, 2008).

²⁶ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers").

²⁷ Id.

Carbide.²⁸ According to this separate rate analysis, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both de jure and de facto government control over its export activities. If, however, the Department determines that a company is wholly foreign owned, then analysis of the de jure and de facto criteria are not necessary to determine whether that company is independent from government control and eligible for a separate rate.

The Department received a separate rate certification from Hailiang.²⁹ Additionally, the Department received responses from Golden Dragon Group to Section A of the antidumping questionnaire and Section A supplemental questionnaires, which contained information pertaining to Golden Dragon's eligibility for a separate rate.³⁰

Separate Rate Recipients

1. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Golden Dragon and Hailiang, the separate rate respondents in this administrative review, stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies.³¹ In accordance with its practice, the Department has analyzed whether the separate rate respondents have demonstrated the absence of de jure and de facto governmental control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.³² The evidence provided by Golden Dragon and Hailiang supports a preliminary finding of an absence of de jure government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of companies.³³

²⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

²⁹ See Hailiang's Separate Rate Certification.

³⁰ See Letter from Golden Dragon Group to the Secretary of Commerce, "Section A Questionnaire Response, Seamless Refined Copper Pipe and Tube from China" (March 6, 2013) ("March 6, 2013 Response"); Letter from Golden Dragon Group to the Secretary of Commerce, "Section A Questionnaire Response, Seamless Refined Copper Pipe and Tube from China" (May 13, 2013) ("May 13, 2013 Response").

³¹ See Hailiang's Separate Rate Certification at 4; March 6, 2013 Response at A-1 through A-2.

³² See Sparklers, 56 FR at 20589.

³³ See Hailiang's Separate Rate Certification at 8; March 13, 2013 Response at A-4 through A-6; May 13, 2013 Response at A-1.

b. *Absence of De Facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.³⁴ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Golden Dragon and Hailiang supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing that the companies: (1) set their own export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.³⁵

Therefore, the evidence placed on the record of this administrative review by Golden Dragon and Hailiang demonstrates an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide. Accordingly, the Department has preliminarily granted separate rates to Golden Dragon and Hailiang.

Rate for Non-Examined, Separate Rate Respondents

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 that were not examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely {on the basis of total facts available}." Accordingly, when only one weighted-average dumping margin for the individually investigated respondents is above de minimis and not based on total FA, the separate rate will be equal to that single above de minimis rate.³⁶ However, when the weighted-

³⁴ See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

³⁵ See Hailiang's Separate Rate Certification at 8-9; March 13, 2013 Response at A-6 through A-9; May 13, 2013 Response at A-1 through A-2.

³⁶ See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008) (affirming the Department's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and

average dumping margins established for all individually investigated respondents are zero, de minimis, or based entirely on facts available, section 735(c)(5)(B) of the Act permits the Department to “use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”

In these preliminary results, the Department has calculated a rate for the mandatory respondent (i.e., Golden Dragon) that is not zero, de minimis, or based entirely on facts available. Therefore, in accordance with section 735(c)(5)(A) of the Act and its prior practice, the Department has preliminarily assigned Golden Dragon’s calculated rate (i.e., 3.55 percent) to Hailiang as the separate rate for a non-examined respondent.

PRC-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data, and selected Golden Dragon.³⁷ Petitioners timely filed a withdrawal of their review request for five companies for which a review was initiated, and that did not request a review of themselves: Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., Shanghai Hailiang Metal Trading Limited, Hong Kong Hailiang Metal, and Luvata Alltop and Luvata Tube.³⁸ However, as stated above, we are not rescinding the reviews for Shanghai Hailiang Metal Trading Limited and Hong Kong Hailiang Metal³⁹ at this time, because they are not eligible for a separate rate and, therefore, each currently remains part of the PRC-wide entity. Additionally, the following six companies named in the Initiation Notice do not have a separate rate, and did not submit either notifications of no sales or separate rate applications to the Department: China Hailiang Metal Trading, Foshan Hua Hong Copper Tube Co., Ltd., Guilin Lijia Metals Co., Ltd., Sinochem Ningbo Import & Export Co., Ltd., Sinochem Ningbo Ltd., and Taicang City Jinxin Copper Tube Co., Ltd. These companies also remain part of the PRC-wide entity. Further, three companies, Ningbo Jintian Copper Tube Co., Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd., had separate rate status, but did not submit either notifications of no sales or separate rate certifications to the Department. Thus, we preliminarily find that Ningbo Jintian Copper Tube Co., Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd., are no longer eligible for a separate rate and, therefore, become part of the PRC-wide entity. Because eleven companies named in the Initiation Notice were not responsive to the Department, we have preliminarily determined that the PRC-wide entity is under review.

Use of Facts Available and Adverse Facts Available (“AFA”)

Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” if (1) necessary 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

zero percent, respectively); Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656, 36660 (July 24, 2009).

³⁷ See Respondent Selection Memo at 5.

³⁸ See Petitioners’ Withdrawal.

³⁹ These companies are not included in the collapsed entity of Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd.

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.

Furthermore, 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.

Application of Total AFA to the PRC-Wide Entity

In the Initiation Notice, the Department stated that if one of the companies for which this review was initiated “does not qualify for a separate rate, all other exporters of Seamless Refined Copper Pipe and Tube from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.”⁴⁰ As noted above, Ningbo Jintian Copper Tube Co., Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd. forfeited their separate rate status by failing to submit either notifications of no sales or separate rate certifications to the Department. Further, eight other companies named in the Initiation Notice failed to submit either notifications of no sales or separate rate applications (i.e., Shanghai Hailiang Metal Trading Limited, Hong Kong Hailiang Metal, China Hailiang Metal Trading, Foshan Hua Hong Copper Tube Co., Ltd., Guilin Lijia Metals Co., Ltd., Sinochem Ningbo Import & Export Co., Ltd., Sinochem Ningbo Ltd., and Taicang City Jinxin Copper Tube Co., Ltd.). Because these eleven companies did not respond to the Department, the PRC-wide entity is under review.

The PRC-wide entity, including Ningbo Jintian Copper Tube Co., Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd., failed to respond within the established deadlines in accordance with sections 776(a)(2)(A) and (B) of the Act. Thus, the Department must rely on facts otherwise available to assign a weighted-average dumping margin to the PRC-wide entity in accordance with section 776(a) of the Act. Further, the Department finds that the failure of the PRC-wide entity to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation has been shown. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.⁴¹

Consistent with our practice,⁴² the Department has assigned 60.85 percent as AFA to the PRC-wide entity, including Ningbo Jintian Copper Tube Co., Ltd., Zhejiang Jiahe Pipes Inc., and

⁴⁰ See Initiation Notice, 77 FR at 77019, n.10.

⁴¹ See, e.g., Pure Magnesium in Granular Form From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 77 FR 46030, 46032 (August 2, 2012), unchanged in Pure Magnesium in Granular Form From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 71578 (December 3, 2012).

⁴² See, e.g., Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 26748 (May 8, 2013) and accompanying Preliminary

Zhejiang Naile Copper Co., Ltd. The Department assigned this AFA rate in the most recent segment of the proceeding in which the PRC-wide entity was considered, which was the original investigation.⁴³ The Department calculated the rate for Hailiang.⁴⁴ The rate is currently applicable to PRC-Wide Entity.⁴⁵

Surrogate Country

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production ("FOPs") valued using the best available information in a surrogate market economy ("ME") country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are— (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single country.

As explained in the Surrogate Country Memorandum released concurrently with these preliminary results, the Department, in accordance with section 773(c)(4) of the Act and 19 CFR 351.408(c)(2), selected Thailand as the primary surrogate country in this administrative review.⁴⁶ The Department determined that (1) Thailand is at a level of economic development comparable to that of the PRC and (2) Thailand is a significant producer of merchandise comparable to the subject merchandise. Moreover, the record indicates that Thailand has the best available information to value Golden Dragon's FOPs. Therefore, the Department preliminarily determined that Thailand is the most appropriate primary surrogate country for purposes of this administrative review. Accordingly, the Department used Thai prices, when available and appropriate, to value Golden Dragon's FOPs. In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value FOPs until 20 days after the date of publication of the preliminary results.⁴⁷

Decision Memorandum at 11; and Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 21101 (April 9, 2013) and accompanying Preliminary Decision Memorandum at 8.

⁴³ 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, 60729 (October 1, 2010)

⁴⁴ Id.

⁴⁵ See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Results and Partial Revocation of 2010/11 Antidumping Duty Administrative Review, 78 FR 35251, 35253 (June 12, 2013).

⁴⁶ See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office IV, to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, "Second Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China: Selection of a Surrogate Country," dated concurrently with this decision memorandum ("Surrogate Country Memorandum").

⁴⁷ In accordance with 19 CFR 351.301(c)(1) (2012), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) (2012) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1) (2012).

Date of Sale

Golden Dragon reported the invoice date as the date of sale because it claims that for its U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date.⁴⁸ After evaluating Golden Dragon's claim in light of record evidence, the Department, in accordance with 19 CFR 351.401(i) and its long-standing practice of determining the date of sale,⁴⁹ preliminarily determines that the invoice date is the most appropriate date to use as Golden Dragon's date of sale.

Fair Value Comparisons

To determine whether sales of copper pipe and tube to the United States were made at less than NV, the Department compared the constructed export price ("CEP") and export price ("EP") to NV, as described in the "Determination of Comparison Method," "Export Price," "Constructed Export Price," and "Normal Value" sections below.⁵⁰ In particular, the Department compared monthly weighted-average EPs (or CEPs) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping duty investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.⁵¹ In recent investigations, the Department has applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁵² The

See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying IDM at Comment 2.

⁴⁸ See May 13, 2013 Response at A-9.

⁴⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

⁵⁰ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews").

⁵¹ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

⁵² See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013).

Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination zip code and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large threshold (i.e., 0.8).

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test

accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

The results of the differential pricing analysis demonstrate that 38.9 percent of Golden Dragon's export sales pass the Cohen's *d* test. Thus, the value of U.S. sales passing the Cohen's *d* test is substantial (*i.e.*, between 33% and 66%) such that we should consider as an alternative comparison method applying the average-to-transaction method to those sales identified as passing the Cohen's *d* test. However, when comparing the weighted-average dumping margins calculated using the standard average-to-average method for all U.S. sales and the appropriate alternative comparison method, there is not a meaningful difference in the results.⁵³ As such, the Department finds that these results do not support consideration of an alternative to the average-to-average method. Accordingly, the Department has determined to use the average-to-average method in making comparisons of EP and CEP with NV.

⁵³ See Memorandum from Thomas Martin, through Robert Bolling, to the File, "Second Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Review," dated concurrently with this decision memorandum ("Golden Dragon's Preliminary Analysis Memo") at 11.

Export Price

According to section 772(a) of the Act, EP is “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under {section 772(c) of the Act}.” In accordance with section 772(a) of the Act, the Department has used EP for the Golden Dragon’s U.S. sales that were sold directly to the unaffiliated customers in the United States prior to importation.

The Department based EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, the Department made deductions, where appropriate, from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, and marine insurance.

Constructed Export Price

According to section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under {sections 772(c) and (d) of the Act}.” The Department considered sales made by Golden Dragon’s U.S. affiliate in the United States to be CEP sales. The Department calculated CEP based on prices to unaffiliated purchasers in the United States. In accordance with sections 772(c)(2)(A) and 772(d)(1) and of the Act, the Department made deductions, where applicable, from the starting price for movement expenses, and commissions, credit expenses, inventory carrying costs, warranty expenses, and indirect selling expenses which relate to commercial activity in the United States. Movement expenses, where applicable, included foreign inland freight from the plant to the port of exportation, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight from the port to the warehouse, U.S. freight from the warehouse to the customer, U.S. customs duty and U.S. warehousing expenses. Additionally, the Department deducted CEP profit from U.S. price in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 773(a) of the Act, the Department calculated Golden Dragon’s credit expenses and inventory carrying costs based on short-term interest rates. Because Golden Dragon did not incur short-term U.S. dollar borrowings during the POR, the Department based its interest rate on the short-term interest rate from the Federal Reserve. For those expenses that were paid directly to an ME provider and paid for in an ME currency, the Department used the reported expense.

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in

an NME context, the Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. This methodology ensures that the Department's calculations are as accurate as possible.⁵⁴ Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by Golden Dragon for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value ("SV") to value each FOP, but when a producer sources an input from an ME and pays for it in an ME currency, the Department normally will value the factor using the actual price paid for the input.⁵⁵ To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting SVs, the Department considered the quality, specificity, and contemporaneity of the data.⁵⁶ As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to import SVs surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

For the preliminary results, except where noted below, the Department used data from the Thai import statistics in Global Trade Atlas ("GTA") and other publicly available Thai sources in order to calculate SVs for Golden Dragon's FOPs (i.e., direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most

⁵⁴ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

⁵⁵ See 19 CFR 351.408(c)(1); see also Shakeproof Assembly Components Div of Ill Tool Works v. United States, 268 F.3d 1376, 1382-83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

⁵⁶ See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

contemporaneous with the POR, product-specific, and tax-exclusive.⁵⁷ The record shows that Thai import statistics obtained through GTA are contemporaneous with the POR, product-specific, and tax-exclusive.⁵⁸ In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the SVs using, where appropriate, the Thai Producer Price Index (“PPI”) or Consumer Price Index (“CPI”), as published in the International Monetary Fund’s International Financial Statistics.⁵⁹

In accordance with legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized or dumped.⁶⁰ In this regard, the Department has previously found that it is appropriate to disregard such import statistics from India, Indonesia, the Republic of Korea (“Korea”), and Thailand because the Department determined that these countries maintain broadly available, non-industry specific export subsidies.⁶¹ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, Korea, and Thailand may have benefitted from these subsidies. Therefore, the Department has not used prices from India, Indonesia, Korea, and Thailand in calculating the import-based SVs. Additionally, the Department disregarded prices from NME countries.⁶² Finally, imports that were labeled as originating from an “unspecified” country were excluded

⁵⁷ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warm water Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

⁵⁸ See Memorandum from Thomas Martin, through Robert Bolling, to the File, “Second Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Surrogate Value Memorandum for the Preliminary Results of Review,” dated concurrently with this decision memorandum (“Surrogate Value Memorandum”) at Exhibit 1.

⁵⁹ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less than Fair Value, 74 FR 36656 (July 24, 2009).

⁶⁰ See Omnibus Trade and Competitiveness Act of 1988, H.R. REP. No. 576, 100th Cong., 2d Sess. 590 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547.

⁶¹ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

⁶² See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final determination, 74 FR 9591, 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009).

from the average value, because the Department could not be certain that they were not from either a NME country or a country with generally available export subsidies.⁶³

In accordance with 19 CFR 351.408(c)(1) (2012), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.⁶⁴ Where the Department finds ME purchases to be of significant quantities (i.e., 33 percent or more), in accordance with our statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,⁶⁵ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.⁶⁶ When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33 percent threshold. Because information reported by Golden Dragon Group demonstrates that it purchased certain quantities (i.e., less than 33 percent) of copper from market ME suppliers, and paid for in ME currencies, the Department used the actual purchases of copper to value those inputs. For the remainder of the copper purchases, the Department valued Golden Dragon's copper inputs using surrogate values from Thailand.⁶⁷ Freight expenses were added to the ME prices of the input.

The Department valued water using contemporaneous data from the Metropolitan Waterworks Authority.⁶⁸

The Department valued truck freight charges using contemporaneous data from World Bank's Doing Business 2013: Thailand. This report gathers information concerning the cost to transport imported or exported products from the largest city in Thailand to the most commonly used seaport.⁶⁹

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean

⁶³ Id.

⁶⁴ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

⁶⁵ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-18 (October 19, 2006) ("Antidumping Methodologies: Market Economy Inputs").

⁶⁶ Id.

⁶⁷ See Golden Dragon Group's Preliminary Analysis Memo at 6-7.

⁶⁸ See Surrogate Value Memorandum at 4 and Exhibit 3.

⁶⁹ See Surrogate Value Memorandum at 5 and Exhibit 6.

transport in Thailand as reported in Doing Business 2013: Thailand published by the World Bank.⁷⁰

The Department valued international ocean freight from the PRC to the United States using data obtained from the Descartes Carrier Rate Retrieval Database, available at www.descartes.com.⁷¹

The Department valued marine insurance using a marine insurance rate offered by RJG Consultants. The Department inflated this rate using the Thai PPI as published in the IMF's International Financial Statistics.⁷²

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.⁷³ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization ("ILO") Yearbook of Labor Statistics.

In these preliminary results, the Department is valuing labor using industry-specific 2007 labor wage rate data published by Thailand's National Statistics Office ("NSO"). The Department inflated this rate using the Thai CPI as published in the IMF's International Financial Statistics.⁷⁴ Although the 2007 NSO data are not from the ILO, the Department finds that this does not preclude us from using this as a source for valuing labor. In Labor Methodologies, the Department decided to change to the use of ILO Chapter 6A data from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.⁷⁵ The Department did not, however, preclude all other sources for evaluating labor costs in NME antidumping proceedings. Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor. And thus, we find that the 2007 NSO data are the best available information for valuing labor. Specifically, the 2007 NSO data is significantly more contemporaneous than the ILO Chapter 6A from Thailand, which is from 2000.⁷⁶ As stated above, the Department used Thailand data reported under 2007 NSO data, which reflects all costs related to labor, including wages, benefits, housing, training, etc.

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, general and administrative expenses ("SG&A"), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. To value SG&A and profit, the Department used audited financial statements for the year ending December 2011 of Furukawa Metal (Thailand) Public Company Limited, a Thai producer of merchandise identical

⁷⁰ See Surrogate Value Memorandum at 5 and Exhibit 6.

⁷¹ See Surrogate Value Memorandum at 5 and Exhibit 7.

⁷² See Surrogate Value Memorandum at 5 and Exhibit 8.

⁷³ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

⁷⁴ See Surrogate Value Memorandum at 4 and Exhibit 4.

⁷⁵ See Labor Methodologies, 76 FR at 36093.

⁷⁶ See <http://laborsta.ilo.org/>

to the subject merchandise.⁷⁷ The Department may consider other publicly available financial statements for the final results.

The Department was unable to segregate and, therefore, unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary results, the Department disregarded Golden Dragon's energy inputs in the calculation of NV, in order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratios.⁷⁸

Golden Dragon reported that it reclaims and reintroduced copper scrap and sells a small amount of copper slag and copper ash.⁷⁹ Therefore, the Department granted by-product offsets for the quantities of Golden Dragon's reported by-products generated from production, valued using Thai GTA data.⁸⁰

Duty Absorption

On January 30, 2013, Petitioners requested that the Department determine whether antidumping duties had been absorbed for U.S. sales of copper pipe and tube made during the POR by Golden Dragon.⁸¹ If a duty absorption inquiry is requested, section 751(a)(4) of the Act directs the Department to determine, during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer. Because the antidumping duty order underlying this review was issued in 2010, and this review was initiated in 2012, the request for the Department to conduct a duty absorption inquiry was timely requested. Therefore, the Department is conducting a duty absorption inquiry for this segment of the proceeding pursuant to Petitioners' request.

In determining whether a respondent absorbed dumping duties, 19 CFR 351.213(j)(3) directs the Department to examine the antidumping duties calculated for the respondent in the administrative review in which the absorption inquiry was requested. The Department maintains a rebuttable presumption that the duties will be absorbed for CEP sales that have been made at less than NV.⁸² This presumption can be rebutted with evidence (e.g., an agreement between the

⁷⁷ See Surrogate Value Memorandum at 5 and Exhibit 5.

⁷⁸ See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

⁷⁹ For slag and ash byproduct generated, see Golden Dragon Group's Section D Response dated March 25, 2013 at Exhibit D-6; Golden Dragon Group's Section D Supplemental Response dated May 28, 2013 at 15; and Golden Dragon Group's Fourth Section D Supplemental Response dated August 23, 2013 at Exhibit 17. For copper byproduct generated, see Fourth Golden Dragon Group's Section D Supplemental Response, dated August 23, 2013 at Exhibits 17 and 18.

⁸⁰ See Golden Dragon Group's Preliminary Analysis Memo at 9.

⁸¹ See Petitioners' Request for Duty Absorption Inquiry.

⁸² See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of Second Antidumping Duty Administrative Review, and Preliminary Rescission in Part, 75 FR 26927, 26930 (May 13, 2010), unchanged in Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208, 70210-11 (November 17, 2010).

affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.⁸³

On April 24, 2013, the Department requested Golden Dragon Group to provide evidence to demonstrate that its unaffiliated U.S. customers will ultimately pay the antidumping duties assessed on entries during the POR.⁸⁴ Golden Dragon Group responded by explaining that its U.S. affiliate, GD Copper (U.S.A.) Inc., “pays the antidumping cash deposits at the time of import” and “will either owe additional duties or receive a refund” when final duties are assessed.⁸⁵ Golden Dragon Group further confirmed that it has entered into no agreements in which its unaffiliated U.S. customers will pay the full duty ultimately assessed on the subject merchandise.⁸⁶ Because Golden Dragon Group has confirmed that its unaffiliated U.S. customers will not pay the full antidumping duty ultimately assessed on the subject merchandise, the Department preliminarily determines that Golden Dragon has absorbed antidumping duties on all U.S. sales made through its affiliated importer of record.

Currency Conversion

Where appropriate, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Recommendation

We recommend applying the methodology described above for these preliminary results.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

November 14, 2013

Date

⁸³ Id.

⁸⁴ See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Golden Dragon, “Sections A, C, & D Supplemental Questionnaire in the 2011-2012 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People’s Republic of China” (April 24, 2013) at 9.

⁸⁵ See Letter from Golden Dragon to the Secretary of Commerce, “Section A Questionnaire Response, Seamless Refined Copper Pipe and Tube from China” (May 13, 2013) at A-16-A-17.

⁸⁶ Id.