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April 21, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Seamless Refined Copper Pipe and Tube from the People's Republic of China; 2011-2012

SUMMARY

We analyzed the comments from interested parties in the 2011-2012 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"). As a result of our analysis, we made changes to our margin calculations for Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd. (collectively, "Golden Dragon") in these final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On November 21, 2013, the Department of Commerce ("the Department") published its Preliminary Results.[1] On December 30, 2013, Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners"), Golden Dragon, and Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd. (collectively, "Hailiang") each submitted a case brief.[2] On January 6, 2014, Petitioners and Golden Dragon each submitted a rebuttal case brief.[3] On March 6, 2014, the Department extended the deadline for the final

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[1] See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review; 2011-2012, 78 FR 69820 (November 21, 2013) ("Preliminary Results").
[2] See Letter from Petitioners, "In the Matter of: 2011-12 Administrative Review Of The Antidumping Duty Order On Seamless Refined Copper Pipe And Tube From The People's Republic Of China: Petitioners' Case Brief," dated December 30, 2013; Letter from Hailiang, "Re: Hailiang Case Brief: Second Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube ("Copper Pipe") from the People's Republic of China ("PRC")," dated December 30, 2013; Letter from Golden Dragon, "Re: Golden Dragon's Case Brief," dated December 30, 2013.
[3] See Letter from Petitioners, "In the Matter of: 2011-12 Administrative Review Of The Antidumping Duty Order

results in this administrative review until April 8, 2014.[4] On April 3, 2014, the Department further extended this deadline until April 22, 2014.[5]

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:

ELEMENT	LIMITING CONTENT PERCENT BY WEIGHT
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

On Seamless Refined Copper Pipe And Tube From The People's Republic Of China: Petitioners' Rebuttal Brief," dated January 6, 2014(resubmitted at the request of the Department on February 28, 2014); Letter from Golden Dragon, "Re: Golden Dragon's Rebuttal Brief," dated January 6, 2014.

[4] See Memorandum 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 Final Results of Antidumping Duty Administrative Review," dated March 6, 2014.

[5] See Memorandum 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 Final Results of the Second Antidumping Duty Administrative Review," (April 3, 2014).

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.

Determination of the Comparison Method

The Department preliminarily determined that application of a differential pricing analysis was appropriate for Golden Dragon and, accordingly, applied such an analysis for the Preliminary Results, because while a pattern of export prices ("EP") (or constructed export prices ("CEP")) existed for comparable merchandise that differs significantly among purchasers, regions, or time periods, the average-to-average method appropriately accounted for such differences.[6] For these final results, the Department changed the definition of time period for the Cohen's *d* test (see Comment 6 below). The results of the differential pricing analysis for these final results demonstrate that 51.2 percent of Golden Dragon's export sales pass the Cohen's *d* test,[7] 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 (i.e., the mixed alternative method). When comparing the weighted-average dumping margin calculated using the standard average-to-average method, with the weighted-average dumping margin calculated using the mixed alternative method, the change in the two results exceeds the 25 percent threshold which the Department considers meaningful.[8] Accordingly, the Department determined to use the mixed alternative comparison method to calculate the weighted-average dumping margin for Golden Dragon.

[6] See Preliminary Results and the accompanying Decision Memorandum, "Determination of Comparison Method."
[7] For an explanation of the Department's differential pricing analysis, see Preliminary Results and the accompanying Decision Memorandum, "Determination of Comparison Method."
[8] 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 Final Results of Review," dated concurrently with this decision memorandum ("Golden Dragon's Final Analysis Memo") at 2.

Discussion of the Issues

Comment 1: Hailiang Cash Deposit and Liquidation Instructions

Hailiang:

- The Department should correct its draft cash deposit and liquidation instructions for Hailiang, to reflect their applicability to the collapsed Hailiang entity of Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd. and Shanghai Hailiang Copper Co., Ltd.

No parties rebutted this comment.

Department's Position: The Department agrees with Hailiang. The Department will issue the cash deposit and liquidation instructions for the single entity comprising Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd. and Shanghai Hailiang Copper Co., Ltd.

Comment 2: Golden Dragon's By-Product Offset

Petitioners:

- Golden Dragon failed to claim entitlement to a by-product offset for internally-generated scrap as a by-product or co-product. Rather, Golden Dragon stated that it had no by-products or co-products.
- The reported by-product in the claimed offset is not plausible because of the by-product production yield rates that would be required to generate the reported by-product.
- Should the Department continue to grant Golden Dragon a by-product offset, the Department should apply the surrogate value ("SV") for copper scrap and not virgin copper cathode. The difference in the SVs reflects that copper scrap and virgin copper cathode do not have equivalent commercial value.

Golden Dragon:

- Golden Dragon originally reported its copper consumption net of the quantity of recovered and reintroduced copper. The Department requested that Golden Dragon include this copper in its direct materials, and also report a by-product offset factor for this material. The net copper input into the production process did not change based on this revision because the revision resulted only in a change to how the recovered and reintroduced copper was captured in the copper usage calculation. Based on this reported data, the Department properly determined to grant a by-product offset.
- Petitioners' claim that, as a matter of law, Golden Dragon was required to have expressly requested the offset is incorrect. Golden Dragon reported the information requested by the Department that was necessary to make the adjustment, and the Department accepted that information. Pursuant to 19 CFR 351.40l(b)(l), Golden Dragon supported the adjustment by submitting detailed inventory movement schedules showing the monthly quantities for each form of copper raw material and recovered copper. Golden Dragon also submitted comprehensive listings detailing every individual transaction for recovered and reintroduced

copper as well as accounting vouchers that form the basis for the recording of each inventory transaction in its accounting systems.

- Petitioners' analysis of Golden Dragon's yield rates, which it argues are not plausible, is incorrect. Petitioners are comparing the quantity of recovered copper withdrawn from inventory and consumed each month - not the quantity generated - to the monthly production. Thus, the ratios calculated by Petitioners are not identifying fluctuating yield rates but simple variations in the mix of material consumed each month.
- The copper that is recovered and reintroduced is almost entirely the product of virgin copper cathode that will be effectively reused. To value this copper at anything other than the SV for virgin copper would be distortive and unreasonable given the Department's understanding of Golden Dragon's production process.

Department's Position: The Department agrees with Golden Dragon that its recycled copper scrap by-product reintroduced into production should be offset with the quantities of recycled copper scrap by-product produced during the period of review ("POR"). In the instant review, Golden Dragon reported specific quantities of copper and scraps required to manufacture one metric ton of subject merchandise.[9] In its initial responses to the Department's questionnaire, Golden Dragon subtracted the amount of copper scrap it generated during production from the gross quantity of copper consumed.[10] In its supplemental questionnaire dated August 7, 2013, the Department requested that Golden Dragon report the quantity of copper scrap generated during production in a separate field, to be applied as a by-product offset, rather than subtract copper scrap generated during production from the input and reporting a net quantity of copper consumed.[11] The Department also requested supporting documentation for the generated by-product.[12] On August 23, 2013, Golden Dragon responded to the Department's request.[13]

Section 773(c) of the Tariff Act of 1930, as amended ("the Act") requires the Department to value all factors of production ("FOPs") utilized in producing the subject merchandise. Particularly, section 773(c)(3)(B) of the Act requires the Department to value the "quantities of raw materials employed." The calculation of normal value ("NV") in a non-market economy ("NME") proceeding is thus based, in part, upon the aggregation of quantities of raw materials consumed in the production of one unit of finished goods. By requesting that Golden Dragon include scrapped copper in the total copper consumed, the Department requested that the entire quantity of Golden Dragon's copper input be reported in the copper FOP. When Golden Dragon reported, at the Department's request, the full amount of consumed copper and the full amount of the other direct material FOPs for purchased scrap and phosphor copper, Golden Dragon's direct material input to output ratio is significantly greater than one.[14] In support of the reported direct material consumption quantities, Golden Dragon previously provided its copper inventory movement schedule, containing details of each inventory withdrawal of copper that Golden

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[9] See Golden Dragon's Section D Response, dated March 25, 2013, at Exhibit D-7.
[10] Id.
[11] See Letter from the Department, "Sections C & D Third 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," dated August 7, 2013 ("August 7, 2013, Supplemental Questionnaire") at 6.
[12] Id.
[13] See Golden Dragon's Supplemental Section D Response, dated August 23, 2013, at 10 ("August 23, 2013 Response").
[14] Id. at Exhibit 17.

Dragon made during the POR.[15] In support of its reported quantities of copper scrap recovered and reprocessed for reintroducing into production, Golden Dragon submitted inventory transaction reports showing each transaction placing copper scrap into inventory, and each transaction withdrawing the reprocessed copper cathode for reintroduction.[16] Even after taking into account the rate of scrap recovery and reprocessing that Golden Dragon reported in the by-product offset information that the Department requested, Golden Dragon's direct material input-to-output ratio is still greater than one, a yield rate that the Department accepted in the Preliminary Results.[17] Thus, Petitioners' contention that the reported production yield rates are not plausible is not supported by the record. The Department continues to accept Golden Dragon's reported reintroduced by-product quantities for the final results.

Regarding Petitioners' argument that the Department should value Golden Dragon's by-product offset with the SV for copper scrap and not copper cathode, the Department disagrees. The reintroduced by-product consists of shavings from the milling process, tube end from drawing, and damaged product that is compressed into blocks called "biscuits," and reintroduced into the furnace.[18] Because Golden Dragon's copper inputs are overwhelmingly of cathode quality rather than scrap quality,[19] the by-product must also be overwhelmingly of cathode quality. Thus, the Department will continue to assign the SV for copper cathode to the by-product offset for the final results.

Comment 3: Surrogate Value for Ocean Freight

Petitioners:

- The Department applied rates for ocean freight obtained from the Descartes database that were dated prior to the POR, and the Department only included the "base" rates, without the relevant surcharges or additional fees that would be in effect for a POR shipment date. Petitioners submitted ocean freight data for five carriers that are contemporaneous with the POR, and which pertain more specifically to the subject merchandise.

Golden Dragon:

- Petitioners submitted a skewed collection of significantly-inflated ocean freight rates that are approximately 10 times greater than the rates selected by the Department. Petitioners' rates are based on nonsensical routings that are not as representative of Golden Dragon's shipping practices as the Department's data used in the Preliminary Results. Under Sigma Corp. v. United States, 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997), Commerce's freight methodology must employ the principle that a producer would use the lowest cost ocean freight available to ship the finished goods, and Petitioners submitted rates do not conform to this principle.

[15] See Golden Dragon's Supplemental Section D Response, dated June 25, 2013, at Exhibit SSD-1.
[16] Id.
[17] See August 23, 2013 Response at Exhibit 17.
[18] See Golden Dragon's Section D Response, dated March 25, 2013, at D-9; see also Golden Dragon's Supplemental Section D Response, dated May 28, 2013, at 3.
[19] See August 23, 2013 Response at Exhibit 17.

- Information submitted by Golden Dragon to the record supports the claim that the ocean freight rates that Golden Dragon actually paid to a freight forwarder were set by a market economy carrier. If the Department does not use Golden Dragon's actual ocean freight rates, they can be used as a basis of comparison supporting the rates applied by the Department in the Preliminary Results.
- Regarding the contemporaneity of the Department's ocean freight rates obtained from the Descartes database, Petitioners only cite to the dates that the rates were filed, which does not confirm that the rates were not effective during the POR.
- Petitioners have not submitted ocean freight rates more specific to subject merchandise, but rather rates for general, unspecified cargo.
- The additional surcharges and fees identified by Petitioners in its ocean freight rates are already reflected in the brokerage and handling SV.
- Petitioners' calculation includes an erroneous weight for 40-foot containers.

Department's Position: The Department disagrees with Petitioners and finds that the ocean freight rates used in the Preliminary Results are contemporaneous with the POR. As noted by Golden Dragon, Petitioners only cite to the dates that the rates were filed, which does not confirm that the rates were not effective during the POR. The Department notes that the ocean freight rates at issue contain no indication that they have expired, and thus can be considered to be contemporaneous with all months of the POR.

Generally, to adjust EP and CEP by deducting international freight charges provided by PRC service providers or paid for in renminbi under section 772(c)(2)(A) of the Act, the Department uses surrogate values based upon the best available information from a market economy country.[20] Regarding the 10 ocean freight rates that Petitioners obtained from Descartes, the Department finds that there is no information on the record to determine whether these rates were obtained from a market or NME source.[21] In contrast, the Department included the location information for the rates used in the Preliminary Results.[22] The issuing office location for each rate is revealed in the tariff details, which report the ocean freight rate. These details will include

[20] See, e.g., Silica Bricks and Shapes From the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination, 78 FR 37203 (June 20, 2013) and the accompanying Preliminary Decision Memorandum, "Export Price," unchanged in Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China, 78 FR 70918 (November 27, 2013); Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013) and the accompanying Preliminary Decision Memorandum, "Export Price," unchanged in Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013); Freshwater Crawfish Tail Meat From the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011, 77 FR 61383 (October 9, 2012) and the accompanying Preliminary Decision Memorandum, "U.S. Price," unchanged in Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission; 2010-2011, 78 FR 22228 (April 15, 2013).

[21] See Letter from Petitioners to The Honorable Penny Pritzker, "Re: Seamless Refined Copper Pipe and Tube from China: Submission of Surrogate Values," dated December 11, 2013 ("Petitioners' SV Submission").

[22] 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 October 1, 2013 ("Prelim SV Memo"), at Exhibit 8.

filing information, and specifically, the issuing office location that is the source of the rate.[23] The Department included the location information for the rates used in the Preliminary Results, but the Petitioners did not include this information in the quotes submitted to the record after the Preliminary Results.[24]

Additionally, the Department agrees with Golden Dragon, in part, regarding the ocean freight rates in Exhibits 3, 4, 5, 6 and 9 of Petitioners' submission. The rates in these exhibits either include no specificity regarding the type of cargo to which the rate is applicable, or indicate a very different kind of cargo (e.g., refrigerated food).[25]

The Department will not address other contentions by Golden Dragon (i.e., whether the rates are too high, apply to nonsensical ship routings, double-count brokerage and handling, and include erroneous calculations), which have been rendered moot based upon the defects we specifically noted to support our conclusion and to continue to apply the rates used in the Preliminary Results as the basis for the surrogate value for Golden Dragon's ocean freight.

Comment 4: Consideration of an Alternative Comparison Method in Administrative Reviews

Golden Dragon:

- Section 777A(d) of the Act does not permit the Department to consider whether an alternative comparison method is appropriate in administrative reviews. Section 777A(d)(1) only grants such authority in investigations. Section 777A(d)(2) of the Act, governing reviews, does not authorize the Department to use an "exception and certainly not the differential pricing analysis it advances here." Due to this lack of statutory authority, "the Department's reliance on differential pricing analysis in administrative reviews is not in accordance with law."
- Section 351.414(c)(1) of the Department's regulations cannot be interpreted to bypass the clear language of the statute.

Petitioners:

- The statute does not prohibit the Department from considering different comparison methods in administrative reviews, but rather is silent. The Department is permitted to use its delegated authority in instances where the statute is silent, and the Department has repeatedly used this authority to consider comparison methods.

Department's Position: The Department disagrees with Golden Dragon's claim that it does not have the authority to consider an alternative comparison method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value and export price or

[23] See Prelim SV Memo at Exhibit 8.
[24] See Petitioners' SV Submission at Exhibits 3, 4, 5, 6 and 9.
[25] Id.

constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison.

Golden Dragon argues that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. Golden Dragon also states that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d) of the Act. Indeed, section 777A(d)(1) of the Act applies to "Investigations" and section 777A(d)(2) of the Act applies to "Reviews." Section 777A(d)(1) of the Act discusses, for investigations, the standard comparison methods (i.e., the A-to-A method and the transaction-to-transaction ("T-to-T") method), and then provides for an alternative comparison method (i.e., the A-to-T method) that may be applied as an exception to the standard methods when certain criteria have been meet. Section 777A(d)(2) of the Act discusses, for administrative reviews, the maximum length of time over which the Department may calculate weighted-average normal values when using the A-to-T method. Section 777A(d)(2) has no provision specifying the comparison method to be employed in administrative reviews. To follow Golden Dragon's logic, that statute makes no provision for comparison methods in reviews at all. Such a conclusion would infer that Congress did not intend that the Department ever make a comparison in administrative reviews of NVs and EPs or CEPs in order to calculate a dumping margin as described in section 771(35)(A) of the Act.

To fill the gap in the statute, the Department promulgated regulations to specify how comparisons between normal value and export price or constructed export price would be made in administrative reviews. With the implementation of the Uruguay Round Agreements Act ("URAA"), the Department promulgated 19 CFR 351.414(c)(2), which stated that the Department would normally use the A-to-T comparison method in administrative reviews. In 2010, the Department published its Proposed Modification for Reviews[26] pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several World Trade Organization ("WTO") Dispute Settlement Body panel reports which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the U.S. Trade Representative ("USTR") submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published the Final Modification for Reviews.[27] These revisions were effective for all preliminary results of review issued after April 16, 2012, as is the situation for this administrative review.

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[26] See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment, 75 FR 81533 (December 28, 2010) ("Proposed Modification for Reviews").

[27] See 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

19 CFR 351.414(b) describes the methods by which NV may be compared to EP or CEP in antidumping investigations and administrative reviews (i.e., A-to-A, T-to-T, and A-to-T). These comparison methods are distinct from each other. When using T-to-T or A-to-T comparisons, a comparison is made for each export transaction to the United States. When using A-to-A comparisons a comparison is made for each group of comparable export transactions for which the export prices, or constructed export prices, have been averaged together (i.e., for an averaging group).[28] The Department does not interpret the Act or the Statement of Administering Authority accompanying the URAA ("SAA") to prohibit the use of the A-to-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-to-T comparison method in administrative reviews. 19 CFR 351.414(c)(1) (2012) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department determined that in both antidumping investigations and administrative reviews, the A-to-A method will be used "unless the Secretary determines another method is appropriate in a particular case."[29]

The Act, the SAA, and the Department's regulations do not address the circumstances that could lead the Department to select a particular comparison method in an administrative review. Indeed, whereas the statute addresses this issue specifically in regards to investigations, the statute conspicuously leaves a gap to fill on this same question in regards to administrative reviews.[30] In light of the statute's silence on this issue, the Department indicated that it would use the A-to-A method as the default method in administrative reviews, but would consider whether to use an alternative comparison method on a case-by-case basis.[31] At that time, the Department also indicated that it would look to practices employed by the Department in antidumping investigations for guidance on this issue.[32]

In antidumping investigations, the Department examines whether to use the A-to-T method consistent with section 777A(d)(1)(B) of the Act:

> The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if:
>
> (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
> (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).[33]

Reviews").
[28] See 19 CFR 351.414(d)(2).
[29] See 19 CFR 351.414(c)(1).
[30] See section 777A(d)(1)(B) of the Act; SAA, H.R. Doc 103-316, vol. 1 (1994), at 842-43; and 19 CFR 351.414.
[31] See Final Modification for Reviews, 77 FR at 8107.
[32] Id. at 8102.
[33] See 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 an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review to be analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. In less-than-fair-value investigations, the Department has considered an alternative comparison method to unmask dumping consistent with section 777A(d)(1)(B) of the Act.[34] Similarly, the Department has considered an alternative comparison method to unmask dumping under 19 CFR 351.414(c)(1).[35] For this administrative review, the Department continues to find the consideration of an alternative comparison method to be a reasonable extension of the statute where the statute made no provision for the Department to follow.

The SAA does not demonstrate that the Department may consider the application of an alternative comparison method in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) of the Act does not require or prohibit the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction comparison methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods."[36] Like the statute, the SAA does not limit the Department to undertake such an examination in investigations only.[37]

The silence of the statute with regard to the application of an alternative comparison method in administrative reviews does not preclude the Department from applying such a practice in this situation. Indeed, the U.S. Court of Appeals for the Federal Circuit ("CAFC") stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."[38] Further, the U.S. Court of International Trade ("CIT"), quoting the CAFC, stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties

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[34] See, e.g., Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 16431 (April 1, 2010); Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value, 77 FR 17027 (March 23, 2012); and Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013).
[35] See, e.g., 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); Stainless Steel Plate in Coils From Belgium: Antidumping Duty Administrative Review, 2010-2011, 77 FR 73013 (December 7, 2012); Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65272 (October 31, 2013).
[36] See SAA at 843.
[37] Id.

in the way it believes most suitable' and courts will uphold these decisions '{s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."[39] The Department filled a gap in the statute with a logical, reasonable and deliberative comparison method for administrative reviews.

Comment 5: Differential Pricing Analysis: A Pattern of Prices That Differ Significantly Based on Period of Time

Golden Dragon:

- In the Preliminary Results, the Department found a pattern of prices that differ significantly by time period for Golden Dragon. Because Golden Dragon's prices are made up of contractually-fixed fabrication charges, and copper prices that are also set contractually by published London Metals Exchange ("LME") prices, the Department should disregard the price differences which are attributable to Golden Dragon's contractually-fixed formulas which set these prices. Then the Department would not find that a substantial pattern based on time periods exists, and not consider an alternative comparison method. Should the Department make other changes to the Preliminary Results margin calculation that result in what it considers to be "a meaningful difference" between the comparison methods, the Department should still apply the standard, average-to-average comparison method.

Petitioners:

- The Department is not required by the statute to discern whether raw material costs contributed to price variations across time periods.
- Golden Dragon conflates "targeted dumping" with "differential pricing." The statute does not specify how the Department should undertake its price differential analysis or require a specific type of analysis.

Department's Position: The Department disagrees with Golden Dragon. Golden Dragon essentially argues that the Department's analysis should account for causal links for an identified pattern or prices that differ significantly in a respondent's U.S. sales. However, the relevant statute states that the Department may consider an alternative comparison method if:

> (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
> (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).[40]

There is no language in section 777A(d) of the Act that requires the Department to engage in the kind of analysis Golden Dragon requests. If Congress had intended for the Department to control for external factors (such as LME prices), or consider a causal link (such as between

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[38] See United States Steel Corp. v. United States, 621 F.3d 1351, 1357 (Fed. Cir. 2010).
[39] See Mid Continent Nail Corp. v. United States, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010) (quoting U.S. Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996)).
[40] See section 777A(d)(1)(B) of the Act.

LME prices and U.S. prices), or understand the intentions or motivations of the producer or exporter when considering whether there exists a pattern of prices that differ significantly and make up a substantial portion of the value of U.S. sales, then Congress would have included such requirements. The statute includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* and ratio tests and based on the factual information of the record of this review, reasonably informs the Department whether there exists a pattern of prices that differ significantly and make up a substantial portion of the value of U.S. sales. Simply because Golden Dragon's U.S. prices are determined by a contractual formula does not invalidate the results of the Department's Cohen's *d* test and whether there exists a pattern of prices that differ significantly and make up a substantial portion of the value of U.S. sales. On this basis, the Department will continue to apply the Cohen's *d* and ratio tests, regardless of whether Golden Dragon's prices are based on contractually fixed fabrication charges and copper prices that are also set contractually by a formula.

Comment 6: Differential Pricing Analysis: Alternative Definition of Time Periods for the Cohen's d Test

Golden Dragon:

- Should the Department continue to conduct its differential pricing analysis, it should conduct the analysis on a monthly rather than a quarterly basis, due to the contractually-determined monthly fluctuation in copper prices. The grouping together of sales prices into quarters is arbitrary and distortive in this instance.

Petitioners:

- To ignore a pattern of significant price differences by quarter would mask - rather than unmask - dumping.

Department's Position: The Department agrees with Golden Dragon. In the Preliminary Results, the Department stated that interested parties may present arguments and justifications in relation to the differential pricing approach, including arguments for modifying the group definitions used in this review based upon the factual information on the record of this review. Golden Dragon's argument that the analysis should be made on a monthly rather than a quarterly basis, due to the contractually-determined monthly fluctuation in copper prices, is supported by the record.[41] Because a major contractually-determined portion of the price changes monthly, there exists a logical basis for grouping sales by month when examining whether there are prices that differ significantly among time periods. The Department agrees with Golden Dragon, and modified the definition of time periods accordingly.

We disagree with Petitioners' argument that basing the definition of time period on sale month rather than sale quarter would mask dumping. This change only impacts the results of the

[41] See Letter from Golden Dragon to Honorable Rebecca M. Blank, "Re: Resubmitted Proprietary Version of Section A Questionnaire Response, Seamless Refined Copper Pipe and Tube from China," dated March 13, 2013, at Exhibit A-3, page 9.

Cohen's *d* and ratio tests. Dumping, and the potential masking thereof, may only be a concern when weighted-average dumping margins are calculated.

Comment 7: Surrogate Country Selection

Golden Dragon:

- The Department should select Ukraine as the surrogate country for the final results. Ukraine is both at a level of economic development comparable to China, and is a significant producer of comparable merchandise, based on world export data.
- The Department did not select Ukraine as the surrogate country due to defects regarding the Ukrainian SVs on the record, explaining that the record contained only the 2011 Ukraine financial statement of JSC Artemivskyy Plant, which the Department found to be incomplete, and also that no values for copper slag and ash had been provided. Golden Dragon resolved these defects in its submission of SVs after the preliminary results, by submitting the 2012 financial statement of JSC Artemivskyy Plant, which covers ten months of the POR, represents the experience of an identical merchandise producer, and which contains no evidence of countervailable subsidies. The Thailand financial statement on the record (i.e., Furukawa Metal (Thailand) Public Company Limited ("Furukawa")), covers two months of the POR. Golden Dragon also submitted Ukraine import data for copper slag and ash.

Petitioners:

- The Ukraine SV data for copper slag, ash and water are not contemporaneous with the POR, whereas the Thai SVs for all inputs and by-products are contemporaneous.
- It is not clear from the 2012 financial statement of JSC Artemivskyy Plant that the company makes identical merchandise. Rather, the translation of this financial statement refers to "non-ferrous metals processing," and "plant-treated ferrous metals."
- Although the Thai financial statement covers just two months of the POR, the Department's practice is to consider such financial statements to be contemporaneous with the POR.
- The Department should continue to select Thailand as the surrogate country for the final results.

Department's Position: The Department disagrees with Golden Dragon, and will continue to select Thailand as the primary surrogate country in this administrative review.[42] 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. As indicated by Golden Dragon, in the Preliminary Results, the Department did not select Ukraine as the primary surrogate country because Golden Dragon had not provided sufficient information to demonstrate that Ukraine is a reliable source of publicly

[42] 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 November 14, 2013.

available surrogate data.[43] The Department stated that the Ukrainian financial statements on the record, i.e., the JSC Artemivskyy Plant 2011 Annual Report, was incomplete.[44] The Department additionally stated that the record contains no Ukrainian data to value copper slag and ash.

The Department agrees that the specific defects with the JSC Artemivskyy Plant 2011 Annual Report noted in the Preliminary Results, i.e., that the financial statements did not include the beginning portion of the annual report, which would include revenues, expenses, and an auditor's report or notes, have been remedied, and the information is now included on the record in the submitted JSC Artemivskyy Plant 2012 Annual Report.[45] However, the Department notes that 19 CFR 351.408(c)(4) directs the Department to calculate SVs for manufacturing overhead, general expenses, and profit using information from producers in the surrogate country of merchandise that is identical or comparable to the subject merchandise. The JSC Artemivskyy Plant financial statements indicate only that the JSC Artemivskyy Plant engages in "copper production,"[46] and the Department cannot speculate on the precise meaning of this description of the company's commercial activity. In contrast, Furukawa Metal's financial statements used in the Preliminary Results specifically state that Furukawa Metal manufactures seamless copper tube.[47] Because the Department cannot determine whether JSC Artemivskyy Plant is a producer of identical or comparable merchandise, the JSC Artemivskyy Plant financial statements would be an inappropriate source for calculating surrogate financial ratios.

Further, due to other defects in the JSC Artemivskyy Plant financial statements, the Department cannot consider the JSC Artemivskyy Plant financial statements to be the best available information with which to calculate financial ratios for Golden Dragon. Specifically, the auditing firm that conducted the audit of the JSC Artemivskyy Plant only offered a qualified opinion, stating that "(t)he auditor was not able to observe the inventory of existing fixed assets, reserves, and other non-current assets and liabilities since the inventory took place before the appointment of our auditors."[48] The auditing firm was also unable to perform alternative procedures on all qualified balance sheet areas mentioned in the opinion (specifically, fixed assets), stating "(d)ue to the nature of the accounting records, we were unable to confirm the number of records using other audit procedures."[49] Because the Department is unable to seek clarification from JSC Artemivskyy Plant about these concerns raised by its auditor, the Department cannot consider the JSC Artemivskyy Plant financial statements to be the best available information on the record with which to calculate financial ratios for Golden Dragon.

Regarding the Ukrainian copper ash and slag SVs that Golden Dragon submitted, we agree with Petitioners. The information from Thailand that the Department used to value copper slag and ash in the Preliminary Results is contemporaneous with the POR, and the information from

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[43] Id. at 9.
[44] Id.
[45] See Letter from Golden Dragon, "Re: Publicly Available Surrogate Value Information, Seamless Refined Copper Pipe and Tube from China," dated December 11, 2013 ("Golden Dragon SV Submission"), at Exhibit 1.
[46] Id. at Exhibit 1, page 1 of the financial statements.
[47] See Letter from Golden Dragon, "Refiling of Golden Dragon's Surrogate Value Rebuttal Comments, Seamless Refined Copper Pipe and Tube from China," dated May 29, 2013 ("Golden Dragon Rebuttal SV Comments"), at Exhibit 13, page 9.
[48] See Golden Dragon SV Submission at Exhibit 1, section 2.6.1, "Basis For Qualified Opinion."
[49] Id.

Ukraine provided by Golden Dragon is not.[50] Accordingly, we continue to select Thailand as the primary surrogate country for these final results.

Comment 8: Financial Ratios

Golden Dragon:

- Based upon Furukawa's financial statements, the Department misclassified certain personnel expenses as selling, general and administrative ("SG&A") expenses rather than labor, when SG&A labor costs should be classified as direct labor expenses to avoid double-counting the expense.

Petitioners:

- There is no blanket treatment of SG&A labor expenses in cases involving Thailand as the surrogate country. Rather, the Department's approach is to employ a case-by-case analysis in situations where there is evidence that the NME respondent's cost of labor is overstated. Golden Dragon failed to meet its evidentiary burden.

- Furukawa's cost of sales includes contributions to pensions that are not captured in the Thailand National Statistics Office ("NSO")-based hourly labor cost, and the Department's calculation of financial ratios understate the full measure of the pension element of labor costs in the cost of goods sold.

- Even if the Thailand NSO data include the labor of SG&A employees, it will not account for Golden Dragon's SG&A labor expenses because Golden Dragon did not include SG&A labor hours in its reported direct and indirect labor FOPs.

Department's Position: The Department reviewed the specific line items for personnel expenses in the Furukawa financial statements that Golden Dragon contends would be double-counted with its reported direct labor. The only information in the Furukawa financial statements regarding the type of labor expenses included in these line items is simply that one falls under the heading of "selling expenses" and the other under the heading of "administrative expenses."[51] The limited information presented in the Furukawa financial statements does not permit us to speculate further regarding the type of personnel expenses that might be included in these aggregate figures. The Department will continue to treat these labor expenses as appropriately classifiable as SG&A labor in the Department's financial ratio calculations for the final results.

Further, the Department agrees with Petitioners that Golden Dragon did not include SG&A labor hours in its reported direct and indirect labor FOPs. Regarding direct labor, Golden Dragon calculated its hourly labor expenses on the basis of specific production steps in specific

[50] See Golden Dragon SV Submission at Exhibit 3, Ash and Slag Worksheet (showing the proposed SV is based on 2007 data, four years prior to the POR).
[51] See Golden Dragon Rebuttal SV Comments at Exhibit 13, page 34.

workshops, thereby tying labor expenses to the production of subject merchandise only.[52] Regarding Golden Dragon's reported indirect labor, Golden Dragon reported two categories for this type of labor, maintenance workers and "energy support" workers.[53] While these two categories of labor are not related to specific production steps, the description is sufficient to support that these two types of indirect labor relate to production rather than selling or administration. Thus, the Department finds no basis to consider that there is any double-counting of expenses between Golden Dragon's reported labor and the personnel expenses reported by Furukawa under its selling and administrative expenses in its financial statements.

Comment 9: Surrogate Value for Labor

Golden Dragon:

- The Department used the Thai 2007 Industrial Census data published by the Thailand NSO for the industry category 2899, "Manufacture of other fabricated metal products not elsewhere classified." This is a basket category which is not as representative as the more specific labor cost reported in the same NSO database for category 2732, "casting of non-ferrous metals."

Petitioners:

- Because casting is only one step in Golden Dragon's multi-step production process for manufacturing subject merchandise, Category 2732 is not a better match than the category used by the Department.

Department's Position: The Department disagrees with Golden Dragon that "casting of non-ferrous metals" is a better description of Golden Dragon's production than "Manufacture of other fabricated metal products not elsewhere classified." The Department agrees with Petitioners, who cite to Golden Dragon's responses detailing the production steps involved in subject merchandise production. Specifically, Golden Dragon reported that the melting and casting of copper is the first step in an eleven step process.[54] This production step is followed by milling, rolling, cascading, spinning, winding, annealing, packaging, in-line annealing, forming, and level winding, the details of which are proprietary.[55] The multiple steps involved in the processing are consistent with a description that the subject merchandise is a manufactured metal product, and not merely a metal casting. Therefore, for the final results, the Department will continue to apply data from Thailand NSO for the industry category 2899, "Manufacture of other fabricated metal products not elsewhere classified" to value Golden Dragon's labor FOP.

[52] See Golden Dragon's Section D Questionnaire Response, dated March 25, 2013, at Exhibit D-10; Golden Dragon's Supplemental Questionnaire Response, dated May 28, 2013, at Exhibit SD-10; Golden Dragon's Supplemental Questionnaire Response, dated June 25, 2013, at Exhibit SSD-8.
[53] See Golden Dragon's Section D Questionnaire Response, dated March 25, 2013, at Exhibit D-11.
[54] Id. at page D-3.
[55] Id. at page D-4.

Recommendation

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

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 APRIL 2014
Date