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April 28, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Prestressed Concrete Steel Rail Tie Wire from the People's
Republic of China: Issues and Decision Memorandum for the Final
Determination of Sales at Less Than Fair Value

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of prestressed concrete steel rail tie wire (PC tie wire) from the People's Republic of China (PRC). As a result of our analysis, we made changes to the Preliminary Determination.¹

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation on which we received comments.

1. Value Added Tax
2. Withdrawal of Targeted Dumping Regulation and Application of Differential Pricing Analysis
3. Inclusion of Brokerage and Handling Expenses in the Calculation of Input Surrogate Values
4. Truck Freight Surrogate Value
5. Weight Adjustment Made to the Brokerage and Handling Surrogate Value
6. Marine Insurance Surrogate Value
7. Polypropylene Fabric Surrogate Value

¹ See Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 75545 (December 12, 2013) (Preliminary Determination).



8. Electricity Surrogate Value
9. Electricity Consumption Factor Adjustment
10. Treatment of Social Security/Workman's Compensation in Surrogate Financial Ratio Calculations
11. Treatment of Transportation Expenses in Surrogate Financial Ratio Calculations

II. BACKGROUND

The Department of Commerce (Department) published its preliminary determination of sales at less than fair value and postponement of final determination on December 12, 2013.² Between January 8 and 14, 2014, the Department conducted a verification of Silvery Dragon Group Technology and Trading Co., Ltd.,³ Silvery Dragon Prestressed Materials Co., Ltd. Tianjin, and Silvery Dragon Prestressed Materials Co., Ltd. Tianjin – Hejian Branch⁴ (collectively, “Silvery Dragon”).⁵

On March 18, 2014, the petitioners⁶ withdrew their request for a hearing.⁷ As no other party in this proceeding requested a hearing, no hearing was held.

On March 21, 2014, Silvery Dragon and the petitioners submitted case briefs.⁸ On March 28, 2014, both interested parties submitted rebuttal briefs.⁹

² See id.

³ Silvery Dragon Group Technology and Trading Co., Ltd. is the exporter of the subject merchandise and is referred to as SD Tech where necessary in this memorandum.

⁴ Silvery Dragon Prestressed Materials Co., Ltd. Tianjin – Hejian Branch is the producer of the subject merchandise and is referred to as SD Hejian where necessary in this memorandum.

⁵ See Memorandum to the File through James Maeder, Office Director, AD/CVD Operations, Office 2 and Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office 2, from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office 2 and Stephanie Arthur, Senior Accountant, Office of Accounting, “Verification of the Sales and Factors Response of Silvery Dragon Group Technology and Trading Co., Ltd., Silvery Dragon Prestressed Materials Co., Ltd. Tianjin, and Silvery Dragon Prestressed Materials Co., Ltd. Tianjin – Hejian Branch in the Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China (PRC),” dated March 13, 2014 (Verification Report).

⁶ The petitioners are Davis Wire Corporation and Insteel Wire Products Company.

⁷ See Letter from the Petitioners to the Secretary of Commerce, “Investigation of Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China – Request for Rebuttal Brief Extension and Withdrawal of Hearing Request,” dated March 18, 2014.

⁸ See Letter from Silvery Dragon to the Secretary of Commerce, “Silvery Dragon Case Brief: Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China,” dated March 21, 2014; see also Letter from the Petitioners to the Secretary of Commerce, “Investigation of Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China: Petitioners’ Case Brief,” dated March 21, 2014.

⁹ See Letter from Silvery Dragon to the Secretary of Commerce, “Silvery Dragon Rebuttal Case Brief: Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China,” dated March 28, 2014; see also Letter from the Petitioners to the Secretary of Commerce, “Investigation of Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China: Petitioners’ Rebuttal Case Brief,” dated March 28, 2014.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.¹⁰ Therefore, all deadlines in this proceeding have been extended by 16 days. If the new deadline falls on a non-business day, the deadline will become the next business day. Thus, the revised deadline for the final determination in this investigation is April 28, 2014.

III. SCOPE OF INVESTIGATION

The product covered by the scope of this investigation is high carbon steel wire; stress relieved or low relaxation; indented or otherwise deformed; meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (ASTM) A881/A881M specification; regardless of shape, size or alloy element levels; suitable for use as prestressed tendons in concrete railroad ties (PC tie wire). High carbon steel is defined as steel that contains 0.6 percent or more of carbon by weight.

PC tie wire is classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7217.10.8045, but may also be classified under subheadings 7217.10.7000, 7217.10.8025, 7217.10.8030, 7217.10.8090, 7217.10.9000, 7229.90.1000, 7229.90.5016, 7229.90.5031, 7229.90.5051, 7229.90.9000, and 7312.10.3012. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

IV. SCOPE COMMENTS

In conjunction with the Preliminary Determination, the Department modified the scope of the investigation by revising the phrase “meeting at a minimum the American Society of Testing Materials (ASTM) A881/A881M specification” to “meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (ASTM) A881/A881M specification” and by including two additional HTSUS numbers.¹¹ No interested party commented on these modifications. Therefore, we made no changes to the scope language as stated in the Preliminary Determination.

V. USE OF ADVERSE FACTS AVAILABLE

In the Preliminary Determination, we determined that Wuxi Jinyang Metal Products Co., Ltd. (Wuxi Jinyang) and Shanxi New-Mile International Trade Co., Ltd. (Shanxi New-Mile) were part of the PRC-wide entity because neither company demonstrated its eligibility for a separate rate. Further, we found that the PRC-wide entity, which includes Wuxi Jinyang and Shanxi New Mile, withheld necessary information within the meaning of section 776(a) of the Tariff Act of 1930, as amended (the Act), and that each failed to act to the best of its ability to comply with the Department’s requests for information within the meaning of section 776(b) of the Act, because

¹⁰ 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).

¹¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Modification Requests” (December 5, 2013).

neither company responded to the Department's antidumping duty questionnaire. As the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department found it appropriate to base the PRC-wide rate on AFA. As AFA, we assigned the PRC-wide entity (including Wuxi Jinyang and Shanxi New-Mile) a dumping margin equal to the highest transaction-specific dumping margin calculated for Silvery Dragon, as we were unable to corroborate, pursuant to section 776(c) of the Act, the highest margin on the record of the proceeding, the dumping margin in the petition.¹²

We received no comments on our Preliminary Determination with respect to Wuxi Jinyang, Shanxi New-Mile, and the PRC-wide entity. Therefore, we continued to assign to the PRC-wide entity (including Wuxi Jinyang and Shanxi New-Mile) a dumping margin equal to the highest transaction-specific dumping margin calculated for Silvery Dragon in the final determination. While we made certain changes to the margin calculation for Silvery Dragon since the Preliminary Determination, as outlined in the Issues and Decision Memorandum, these changes did not alter our preliminary corroboration analysis.¹³

VI. MARGIN CALCULATIONS

We calculated export price (EP) and normal value (NV) using the same methodology stated in the Preliminary Determination, except as follows:

- We made an adjustment to Silvery Dragon's reported U.S. prices for irrecoverable value added tax (VAT), consistent with the calculation formula reflected in the Verification Report. See Comment 1.
- We used the Global Trade Atlas (GTA) import data from both Harmonized Tariff Schedule (HTS) subheadings (i.e., 5512.990000 and 5407.20) and derived a simple-average price to value polypropylene (PP) fabric. See Comment 7.
- We adjusted Silvery Dragon's electricity factor usage based on our verification findings. See Comment 9.

See also Memorandum from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II, through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, to The File, "Antidumping Duty Investigation of Prestressed Concrete Rail Tie Wire from the People's Republic of China: Factor Valuation Memorandum," dated concurrently with this memorandum (Final Factor Valuation Memorandum); and Memorandum

¹² See the Memorandum from Case Analysts to James P. Maeder, Jr., Office Director, AD/CVD Operations, Office II, "Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China: Corroboration of Margin Based on Adverse Facts Available," dated December 12, 2013 (Corroboration Memorandum).

¹³ See Memorandum from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, to The File, "Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China (PRC): Corroboration of Final Margin Assigned to the PRC-Wide Entity," dated concurrently with this memorandum .

from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, to The File, “Analysis of the Final Determination Margin Calculation for Silvery Dragon Group Technology and Trading Co., Ltd. Tianjin (‘Silvery Dragon Tech’),” dated concurrently with this memorandum (Final Analysis Memorandum).

VII. DISCUSSION OF ISSUES

Comment 1: Value-Added Tax

Based on Silvery Dragon’s claim that it did not incur value-added tax (VAT) on its exports of subject merchandise during the POI, in the Preliminary Determination, we did not subtract an amount for irrecoverable VAT from the reported U.S. prices. As part of examining Silvery Dragon’s claim, we issued Silvery Dragon a supplemental questionnaire and examined the data provided in its response at verification.

For VAT reporting purposes, Silvery Dragon reported the VAT which SD Tech (the exporter of the subject merchandise) and SD Hejian (SD Tech’s affiliated producer of the subject merchandise) paid on a consolidated and company-wide basis. To support its claim that the companies as a whole paid zero VAT on SD Tech’s exports during the POI, Silvery Dragon provided at verification a VAT calculation worksheet showing that what SD Tech and SD Hejian owed in VAT was less than what the two companies paid in VAT on a consolidated basis during the POI.

Based on our review of the companies’ consolidated (net) VAT rate calculation methodology at verification, we noted in the Verification Report that Silvery Dragon’s calculation offsets the amount of VAT paid by SD Hejian on inputs by the VAT refund received by SD Tech, but does not appear to take into account, among other things, the VAT paid by SD Tech on its purchases of subject merchandise.¹⁴ We also restated in the Verification Report that for purposes of calculating SD Tech’s VAT cost, it may have been more appropriate, as evidenced in SD Tech’s VAT refund applications, to calculate the VAT as follows: (SD Tech export sales value) * (SD Tech purchase VAT rate - SD Tech export VAT refund rate).¹⁵ We noted further that this calculation method is reflected in section 3.4 of the “Ministry of Finance and State Administration of Taxation, Circular on Further Promotion of Methodology of “Exemption, Deduction, and Refund of Tax” for Exported Merchandises,” CAISHUI (2002) No. 7 (Circular). Our review of SD Tech’s documentation at verification showed that SD Tech paid 17 percent VAT on its purchases of subject merchandise and received a five percent VAT refund on its exports of subject merchandise, resulting in a net 12 percent irrecoverable VAT.¹⁶

Silvery Dragon argues that: (1) the Department does not have the legal authority to adjust export price by deducting an amount of irrecoverable VAT; (2) the Department’s computation of irrecoverable VAT is contradicted by substantial record evidence; and (3) assuming that the

¹⁴ See Verification Report at 23.

¹⁵ See *id.*, at 23-24.

¹⁶ See *id.*, at 24.

Department adjusts U.S. price for irrecoverable VAT, it should not use the formula laid out in the Verification Report.

Regarding its first claim, Silvery Dragon argues that the Department's policy change with respect to the treatment of VAT¹⁷ for all non-market economy (NME) proceedings involving the PRC is erroneously based on the premise that the Department has the authority under section 772(c)(2)(B) of the Act¹⁸ to adjust U.S. price for export tax, duties or other charges (including VAT not rebated upon export) imposed by the exporting country on subject merchandise. However, Silvery Dragon argues that a VAT is not an export tax (*i.e.*, a charge imposed by the exporting country on the exportation of the subject merchandise). Therefore, Silvery Dragon contends that the Department does not have the authority under section 772(c)(2)(B) of the Act to adjust for taxes, duties or charges that are not export taxes, and has no basis upon which to expand the scope of the statute in this regard.¹⁹

Moreover, Silvery Dragon argues that to the extent it incurs a net cost for VAT, any residual liability it has (*i.e.*, irrecoverable VAT) results from the purchase of the merchandise and not from the exportation of the merchandise. Furthermore, Silvery Dragon contends that exports of its PC tie wire from the PRC to the United States are exempt from the payment of VAT pursuant to Article 2.(3) of the Provisional Regulations of the PRC on Value-Added Tax.²⁰ Finally, Silvery Dragon concludes that because the Department has not applied the same policy and rationale in market economy antidumping duty proceedings, it is singling out the PRC and Vietnam as NME countries and applying a special, extra-statutory adjustment with the sole purpose of increasing dumping margins.

With respect to Silvery Dragon's second argument regarding the Department's computation of irrecoverable VAT, Silvery Dragon states that SD Tech did not pay 17 percent VAT on its purchases of PC tie wire from SD Hejian for export to the U.S. market. Specifically, Silvery Dragon maintains that Article 4 of the VAT regulation on the record of this proceeding²¹ clearly explains that the VAT amount which SD Hejian is required to pay is the difference between a calculated value based on product sales values and the applicable VAT rate (*i.e.*, VAT-out), and a calculated value based on the purchase value of materials used in the production of products sold and the applicable VAT rate for each of the purchased materials (*i.e.*, VAT-in). In the case of SD Tech, Silvery Dragon claims that this same VAT payable formula applies where VAT-out is the export sales value times the applicable VAT rate, and VAT-in is the purchase value times the applicable VAT rate. Silvery Dragon maintains that neither the VAT-in nor the VAT-out is actually paid by the taxpayer to the tax authority. According to Silvery Dragon, these VAT

¹⁷ See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481 (June 19, 2012) (Methodological Change).

¹⁸ The corresponding provision under Title 19 of the United States Code is 19 U.S.C. § 1677a(c)(2)(B).

¹⁹ In support of its argument, Silvery Dragon cites to Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984); Dorbest v. United States, 604 F.3d 1363, 1371-1372 (Fed. Cir. 2010); and Wind Tower Trade Coalition v. United States, 741 F.3d 89 (Fed. Cir. 2014).

²⁰ See Silvery Dragon's August 12, 2013, submission at Exhibit C-4, and December 23, 2013, submission at Exhibit 2SC-1.

²¹ See Silvery Dragon's December 23, 2013, submission at Exhibit 2SC-1 for Article 4 of the Provisional Regulations of the People's Republic of China on Value-added Tax.

amounts represent theoretical values required for use when calculating the actual VAT payable by the tax payer to the tax authority. With respect to SD Tech, Silvery Dragon contends that Article 2.(3) of the VAT regulation states that “the applicable VAT rate for exports is zero.” According to Silvery Dragon, the VAT payable for SD Tech’s exports is actually a negative value.²² Based on this information, Silvery Dragon contends that SD Tech does not have to pay VAT on its exports of finished goods (including the subject merchandise) because the VAT-out is always zero for exports. For this reason, Silvery Dragon maintains that although the invoices issued by SD Hejian to SD Tech all show a 17 percent VAT rate, it is just a theoretical figure of VAT-in (for SD Tech) and a theoretical figure for VAT-out (for SD Hejian). According to Silvery Dragon, the VAT amount on the invoices SD Hejian issued to SD Tech is neither actually collected by SD Hejian nor paid by SD Tech to the tax authority, and the data examined at verification confirm this claim. Therefore, Silvery Dragon claims that, contrary to the Department’s verification findings, it correctly did not take into account in its VAT calculation worksheet (examined at verification) any VAT paid by SD Tech on purchases of subject merchandise from SD Hejian, as SD Tech did not pay a 17 percent VAT on those purchases.

Finally, Silvery Dragon argues that if the Department decides to adjust U.S. price for an irrecoverable VAT amount (despite information on the record indicating no adjustment is warranted), then the calculation formula in the Verification Report,²³ which would yield an adjustment of 12 percent to U.S. price, is in error and should be modified. First, Silvery Dragon claims that the Department’s calculation formula, which was referenced in the Circular,²⁴ is simply a mathematical formula which is intended to obtain a non-exemptible and non-deductible VAT for purposes of calculating the exemption, deduction, and refund of tax (EDR) under PRC VAT law. According to Silvery Dragon, this calculation formula is not used to determine the actual amount of VAT that remains unrefunded. Silvery Dragon claims that the documentation examined at verification by Department officials supports this conclusion as well.

To determine the irrecoverable VAT amount, Silvery Dragon contends that the Department must not only correct the calculation formula in the Verification Report but also must take into account its verification findings that SD Tech paid 17 percent on its purchases of subject merchandise and received a five percent VAT refund on its exports of subject merchandise. Therefore, Silvery Dragon proposes that the calculation formula be modified to determine SD Tech’s irrecoverable VAT as follows: (SD Tech Purchase Value * SD Tech Purchase VAT rate) - (SD Tech export value * SD Tech export VAT refund rate).

The petitioners contend that the Department’s verification findings indicate that while Silvery Dragon paid 17 percent VAT to purchase the PC tie wire, it only received a five percent VAT refund upon exportation of the PC tie wire. According to the Department’s new policy to reduce an exporter’s U.S. price by the amount of irrecoverable VAT, the petitioners maintain that the Department is required to make an adjustment to Silvery Dragon’s U.S. prices to account for the irrecoverable VAT amount (i.e., 17 percent – 5 percent = 12 percent) in the final determination.

²² Silvery Dragon provides the following calculation for illustration purposes: VAT payable for SD Tech’s exports = (export sales value * 0 percent) - (purchase value * 17 percent) = negative value.

²³ This calculation formula is: (SD Tech export sales value) * (SD Tech purchase VAT rate of 17 percent - SD Tech export VAT refund rate of five percent).

²⁴ See Circular included in Attachment 1 of the Verification Report.

With respect to Silvery Dragon’s objections to the VAT adjustment proposed by the Department, the petitioners claim that these objections were already addressed by the Department in the Federal Register notice which announced the Department’s new VAT adjustment policy in NME antidumping proceedings.²⁵ Moreover, the petitioners point out that the Department’s proposed VAT adjustment in this case has already been implemented in other recently completed NME antidumping duty cases.²⁶

Department’s Position:

For the reasons explained below, we applied the VAT adjustment formula reflected in the Verification Report to deduct from Silvery Dragon’s reported U.S. prices an amount for irrecoverable VAT.

In 2012, the Department announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any un-refunded (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.²⁷ In this announcement, the Department stated that when a NME government has imposed an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent’s EP or CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.²⁸ Where the irrecoverable VAT is a fixed percentage of export price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.²⁹

In response to Silvery Dragon’s claim that the Department does not have the authority under the statute to adjust for VAT, we note that section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of the subject merchandise. Silvery Dragon argues that Chinese VAT is not an export tax, duty or charge, but Silvery Dragon misstates what is at issue. The issue is the irrecoverable VAT, not VAT *per se*. In this context, irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is, specific to exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an “export tax, duty, or other charge imposed” on exportation of the subject merchandise to the United States. We note that the statute does not define the term(s) “export tax, duty, or other charge imposed” on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT, because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in Chinese law and, therefore, can be considered to be “imposed” by the exporting country on exportation of subject merchandise. Further, an

²⁵ See Methodological Change, 77 FR at 36481.

²⁶ In support of their argument, the petitioners cite to Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5 (Chlorinated Isocyanurates).

²⁷ See Methodological Change, 77 FR at 36482.

²⁸ See id., 77 FR at 36483; see also Chlorinated Isocyanurates.

²⁹ See Methodological Change, 77 FR at 36483.

adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross price charged to the customer to a net price received. This deduction is consistent with the Department's longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.³⁰

Silvery Dragon's claim that the Department is singling out certain NME countries by applying a special, extra-statutory adjustment is misplaced. As the Department stated in the Methodological Change, this adjustment simply reflects that the statute calls for the Department to adjust U.S. price for export taxes, duties, or other charges that are included in the price, irrespective of whether they are levied in a market economy or NME context.³¹ Given the changes in our practice with regard to the PRC and Vietnam (i.e., the application of the CVD law), we are simply acknowledging that we can now apply section 772(c)(2)(B) of the Act in proceedings involving merchandise from the PRC and Vietnam to ensure tax neutrality in our dumping margin calculations.³² Tax neutrality is no less a concern in market-economy antidumping proceedings where, as in this case, a VAT in the exporting country affects NV and U.S. price asymmetrically. But in market-economy antidumping proceedings, because it is home market sales, not export sales, that bear the tax, it is NV, not U.S. price, that the Department adjusts downward. However, in both market economy and NME antidumping proceedings, the effect of the downward price adjustment is a tax-neutral dumping margin calculation.

The Department's methodology, as explained above, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review by Silvery Dragon and verified by the Department indicates that according to the Chinese VAT schedule, the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is five percent.³³ For the purposes of this final determination, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (i.e., 12 percent) applied to the export sales value (i.e., U.S. price net of international movement expenses), consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.³⁴

Pursuant to the Circular, irrecoverable VAT is defined as (1) the free-on-board (FOB) value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.³⁵ Only the first variable, export value, is unique

³⁰ See id., 77 FR at 36483; and Antidumping Duties; Countervailing Duties, 62 FR 27296, 27369 (May 19, 1997) (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).

³¹ See Methodological Change at 77 FR 36482.

³² In this regard, we note that the Department's change of methodology in 2012 applied only to NME antidumping proceedings because the Department's previous administrative practice had been to apply section 772(c)(2)(B) of the Act only in market-economy antidumping proceedings and not in NME antidumping proceedings. See Methodological Change at 77 FR 36482 for a complete discussion.

³³ See Silvery Dragon's December 23, 2013, submission at Exhibit 2SC-4.

³⁴ See Verification Report at Attachment 1.

³⁵ See Circular at Article III.3.4., which specifies that irrecoverable VAT = (F.O.B. export value – bonded imports) * (standard VAT levy rate – VAT rebate applicable to exported goods). It is important to note that the Circular allows

to Silvery Dragon while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulation.³⁶

With respect to step one in the Department's methodology, we note that Silvery Dragon submitted on a consolidated company-wide basis an irrecoverable VAT calculation for the U.S. price adjustment pursuant to section 772(c)(2)(B) of the Act. Silvery Dragon's calculation yields a negative net VAT amount based on the VAT paid by the producer (SD Hejian) and by the exporter (SD Tech) using the formula VAT-out - VAT-in (*i.e.*, VAT paid on sales - VAT paid on input materials). Essentially, Silvery Dragon claims that its irrecoverable VAT calculation is more consistent with Chinese law and regulation or a more accurate reflection of its consolidated books and records. The Department disagrees. First, the Department's methodology is based on removing irrecoverable VAT on exports, which is product-specific and is explicitly defined in Chinese tax regulations.³⁷ Silvery Dragon's proposal to calculate a "net" or "effective" VAT position company-wide³⁸ significantly reduces the impact of this product-specific tax by spreading it across products with potentially different VAT schedules and across domestic sales. The Department's deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a more reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. Silvery Dragon's methodology, in contrast, effectively ignores this direct link and dilutes the product-specific tax effect as previously explained. Additionally, Silvery Dragon's methodology is distorted by timing differences that occur between the VAT-in value, the VAT-out value and the receipt of the VAT refund, as well as the varying rebate rates on subject and non-subject merchandise. Therefore, employing such a methodology would introduce distortion into the dumping margin calculation and obfuscate the true "apples-to-apples" comparison of U.S. price with NV on a product-specific, tax-exclusive basis.

Furthermore, the Department finds that the most straightforward, consistent, and verifiable method to make this adjustment under section 772(c)(2)(B) of the Act is by relying on the standard formula provided for under Chinese tax law and regulation. In that respect, the Department notes that the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise. There could be any number of differences between the irrecoverable VAT reported for Chinese tax purposes and how the irrecoverable VAT is actually recorded in a given respondent's records. For all of the reasons stated above, we will not consider allocations across all company sales or across sales of products with different VAT schedules. The irrecoverable VAT liability is determined on a product-specific basis, and it is on this basis that the Department will consider respondent-specific claims for adjustments to the standard formula,

the deduction from export value for the portion of bonded raw material imports used for export; however, the respondent in this investigation did not claim to use bonded imports to produce subject merchandise.

³⁶ See Circular at Article III.3.4.

³⁷ As our verification findings confirm, China's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. See Verification Report at 23, and Silvery Dragon's December 23, 2013, response at Exhibit 2SC-4 for the official VAT rate according to the HTS code for the subject merchandise.

³⁸ See, *e.g.*, Silvery Dragon's December 23, 2013, submission at Exhibit 2SC-3.

taking into account whether such adjustments are permitted under Chinese law and regulation and supported with record evidence.

Although Silvery Dragon disagrees that any adjustment for irrecoverable VAT is warranted, the respondent states that if an adjustment is to be made, then the Department must modify the calculation formula as presented in the Verification Report to take into account SD Tech's purchase value. Specifically, it proposes that the calculation formula be modified as follows: (SD Tech purchase value * 17 percent) – (SD Tech's export sales value * 5 percent). We disagree with Silvery Dragon's proposed modification and argument that the VAT calculation formula in the Verification Report is not reflective of the actual amount of irrecoverable VAT on SD Tech's exports of the subject merchandise. As indicated above, the Chinese tax regulations explicitly define how irrecoverable VAT is calculated based on the FOB value of the exported good applied to the difference in the VAT levy and refund rates. There is no reference in this formula anywhere to the purchase price or purchase value of inputs or raw materials used in production.³⁹ Moreover, Silvery Dragon did not cite to any relevant provision under Chinese tax law on this record that supports relying on a different formula or basis for determining irrecoverable VAT. In addition, we note that the calculation formula in the Verification Report properly calculates VAT based on an FOB export value because this FOB value is based on the net FOB U.S. price, exclusive of all expenses and adjustments incurred after the merchandise left the port of exportation in China. Accordingly, we find no support for Silvery Dragon's argument that the Department improperly calculated irrecoverable VAT.

In sum, based on the foregoing analysis, we calculated EP, exclusive of the irrecoverable VAT, calculated as described above, for purposes of the final determination.⁴⁰ Our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases.⁴¹

Comment 2: Withdrawal of Targeted Dumping Regulation and Application of Differential Pricing Analysis

In the Preliminary Determination, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction (A-to-T) comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. Based on the results of the differential pricing analysis, the Department found that over 66 percent of Silvery Dragon's export sales confirm the existence of a pattern of export prices for comparable merchandise that differ significantly among time periods.⁴² However, the Department determined that there was not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average (A-to-A) and an appropriate alternative comparison method. Accordingly, the Department applied the A-to-A method in the Preliminary

³⁹ See Circular.

⁴⁰ For details of the irrecoverable VAT calculation, see Silvery Dragon's Final Analysis Memorandum.

⁴¹ See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 4875 (January 30, 2014), and accompanying Issues and Decision Memorandum at Comment 5A.

⁴² See Preliminary Decision Memorandum at 13.

Determination for all U.S. sales to calculate the weighted-average dumping margin for Silvery Dragon.

Silvery Dragon challenges the Department's differential pricing analysis. In doing so, Silvery Dragon first claims that the Department unlawfully withdrew its targeted dumping methodology under 19 CFR 351.414(f)(2) in 2008,⁴³ without demonstrating that there was good cause, and without providing the required notice and comment. In support of its claim, Silvery Dragon cites to the Court of International Trade (CIT) decision in Gold East Paper⁴⁴, where the Court invalidated the Department's decision to repeal 19 CFR 351.414 because the Department "failed to provide notice and comments before withdrawing the Limiting Rule." Silvery Dragon further notes that the Department issued a Federal Register notice calling for comments regarding the withdrawn regulation (i.e., 19 CFR 351.414(f)(2))⁴⁵ pursuant to the Court's ruling.⁴⁶

Silvery Dragon contends that the Department should perform a targeted dumping analysis consistent with 19 CFR 351.414(f)(2) and ahead of reviewing comments from interested parties on the withdrawn regulation. According to Silvery Dragon, such an analysis would: a) limit the application of the A-to-T comparison methodology to only those sales found to be target dumped; b) not consider a particular sale as targeted unless it was made at dumped prices; and c) permit Silvery Dragon to address whether there are any commercial reasons that explain the price variations for the sales that the Department found in the Preliminary Determination to be target dumped based on significant price differences over time periods alone. In particular, Silvery Dragon emphasizes that the Department should seek comments to determine "why" prices may vary by customer, time period or region, and if the variance is based on a valid business reason, the Department should conclude that the merchandise is not target dumped.

Furthermore, in challenging the Department's differential pricing analysis, Silvery Dragon asserts that changes to the statistical methodology are required in order to properly determine whether targeted dumping has taken place. More specifically, Silvery Dragon proposes that:

- The Cohen's *d* test is not "a recognized statistical measure for identifying 'targeted sales'" and its real use is simply to measure the difference between two mean values when comparing the effect across various statistical studies.
- In applying the Cohen's *d* test,⁴⁷ the Department should consider only positive values of the Cohen's *d* coefficient (i.e., where the weighted-average sales prices of the test group is less than the weighted-average price of the comparison group) as passing the Cohen's *d*

⁴³ See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930 (December 10, 2008) (2008 Withdrawal).

⁴⁴ See Gold East Paper (Jiangsu) Co. v. United States, 918 F. Supp. 2d 1317, 1319-1334 (CIT 2013) (Gold East Paper).

⁴⁵ See Non-Application of Previously Withdrawn Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 78 FR 60240 (October 1, 2013).

⁴⁶ We note that the Department recently published a final rule in response to the Court's ruling. See Non-Application of Previously Withdrawn Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 79 FR 22371 (April 22, 2014).

⁴⁷ See "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated December 5, 2013 (Preliminary Decision Memorandum) at 12.

test. Only prices that are below that of the comparison group can be considered “targeted.”

- Weighted-averages, rather than simple averages, should be used to determine the pooled standard deviation based on the variances of the test and comparison groups.
- The Cohen’s *d* test should control for differences in time when performed by purchaser or region.
- The Department must consider whether individual U.S. prices are sufficiently lower than the mean price of the comparison group because even though the mean price of the test group may be sufficiently lower than the mean price of the comparison group, individual prices within the test group may be much higher and not dumped.
- The Cohen’s *d* test “says nothing about the relative magnitude of the difference between the two mean values” but only measures this difference against the variability within the overall population. Silvery Dragon recommends that the Department also consider the difference between the mean prices relative to the mean price of the comparison group.
- Based upon statements from the Department’s final determination in Coated Free Sheet,⁴⁸ the Department must address all relevant factors which may cause differences in prices.
- Furthermore, as done in Coated Free Sheet, as well as numerous other proceedings, the Department must limit its application of the A-to-T method to those U.S. sales that constitute a pattern of prices that differ significantly.

The petitioner dismisses Silvery Dragon’s opposition to the Department’s differential pricing methodology, stating that such objections have been raised and addressed in prior decisions, including Plywood from China.⁴⁹ The petitioner supports the Department’s reasoning in these prior decisions and advocates its continuation in the final determination of this investigation.

Department’s Position:

Because the Department applied its standard methodology (the A-to-A method) in the Preliminary Determination and in this final determination to calculate Silvery Dragon’s weighted-average dumping margin, Silvery Dragon’s arguments are moot.⁵⁰

Comment 3: Inclusion of Brokerage and Handling Expenses in the Calculation of Input Surrogate Values

In the Preliminary Determination, we did not add an amount for brokerage and handling to the import values (inclusive of the cost of insurance and freight (CIF)) obtained from GTA, because

⁴⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (October 25, 2007) (Coated Free Sheet).

⁴⁹ See 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), and accompanying Issues and Decision Memorandum at Comment 5 (Plywood from China).

⁵⁰ See Chlorinated Isocyanurates at Comment 4; see also Final Analysis Memorandum for the final results of the differential pricing test.

we found no evidence on the record that such expenses are incurred on all importations into Thailand.⁵¹

The petitioners argue that the Department's practice is to include all applicable freight and handling costs when it uses import prices to value factors of production (FOPs) and that it should reverse its preliminary determination decision and add brokerage and handling expenses to the Thai CIF import values obtained from GTA in the final determination. Specifically, the petitioners argue that when the FOPs are valued using import price data which do not include foreign movement expenses, the Department's practice is to add international freight and brokerage and handling charges to the import value. The petitioners cite to Policy Bulletin Number 10.2, "Inclusion of International Freight Costs When Import Prices Constitute Normal Value" (Policy Bulletin) in support of their argument.

In this case, the petitioners maintain that because the Thai import values from GTA are reported on a CIF basis, the Department must include an amount for brokerage and handling (*i.e.*, all movement expenses out of the country of origin including foreign inland freight, brokerage charges for the goods to be moved from the ship and clear customs at the port of entry, and any handling and documentation charges). The petitioners claim that in a recent case, the Department determined that the GTA Thai import values do not include brokerage and handling.⁵² Based on this determination and the assertion that all brokerage and handling expenses must by necessity be incurred for imported goods, the petitioners contend that the Department's rationale for not adding such expenses to the GTA import values is flawed. Moreover, the petitioners claim that the Department's rationale for not including brokerage and handling expenses to the GTA import values is also in error because it is not based on the fact that the Chinese producers incurred brokerage and handling charges when purchasing imported goods. In light of these alleged facts, the petitioners contend that the Department's decision not to include an amount for brokerage and handling to the GTA import values is based on unreasonable and unexplained assumptions, and the courts have overturned Department decisions with the same fact pattern.⁵³

Silvery Dragon asserts that there is no record evidence to support the petitioners' claim that the GTA Thai import values do not include brokerage and handling expenses. Moreover, Silvery Dragon notes that the petitioners fail to cite to any final decision where the Department followed the methodology they suggest. As Silvery Dragon points out, the sole case the petitioners cite to in support of their position is an initiation notice, and that notice does not have precedential value because it is neither an outcome of a proceeding nor based on a reasoned finding by the Department.

⁵¹ See Memorandum from Brian Smith, Senior International Trade Analyst, AD/CVD Operations, Office II, through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, to The File, "Antidumping Duty Investigation of Prestressed Concrete Rail Tie Wire from the People's Republic of China: Factor Valuation Memorandum," dated December 5, 2013 (Prelim Factor Valuation Memorandum) at 6.

⁵² See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations, 78 FR 65283, 65286 (October 31, 2013) (GOES from the PRC).

⁵³ See Taian Ziyang Food Company, Ltd., et. al. v. United States, et. al., 637 F. Supp. 2d 1093, 1159 (CIT 2009).

Regarding the petitioners' interpretation of the Department's Policy Bulletin on this matter, Silvery Dragon claims that the Policy Bulletin actually states that the Department will add international freight and foreign brokerage and handling charges to the import value if the surrogate country import statistics do not include international freight costs. In Silvery Dragon's view, foreign brokerage and handling expenses are the charges incurred in the country of export and not the charges incurred in the surrogate country. Moreover, Silvery Dragon notes that the Policy Bulletin also does not suggest adding an amount for either inland freight or brokerage and handling expenses in the surrogate country to import values. Rather, the Department's practice does not support the addition of brokerage and handling expenses incurred in the surrogate country to adjust CIF-based import average unit values (AUVs).⁵⁴

Finally, Silvery Dragon argues that its own production experience does not support adding Thai brokerage and handling expenses to the GTA Thai import AUVs. Silvery Dragon points out that the petitioners' argument to add an amount for foreign brokerage and handling to the surrogate input values contravenes the intent of the Department's NME surrogate value methodology to duplicate the respondent's supply, production and sales experience. Specifically, Silvery Dragon contends that in establishing a respondent's NV as accurately as possible, the Department attempts to mirror the respondent's production experience in the surrogate country. For this reason, Silvery Dragon claims that the Department only substitutes the actual costs of the respondent with corresponding surrogate values. With respect to its own experience, Silvery Dragon states that the record clearly shows it sourced all of its direct material and packing inputs from domestic suppliers in the PRC.⁵⁵ In applying its standard surrogate valuation methodology, Silvery Dragon maintains that the Department correctly valued its input usage amounts as if Silvery Dragon sourced them from a supplier in the surrogate country located the same distance away as its supplier in the PRC. Instead of using the prices it paid for the inputs, Silvery Dragon points out that the Department in this case used surrogate values based on GTA Thai import AUVs. Because it purchased all of its inputs from domestic suppliers and did not incur brokerage and handling expenses, Silvery Dragon agrees that the Department correctly determined not to add brokerage and handling expenses to its domestically-purchased inputs.

Department's Position:

For the reasons explained below, we agree with Silvery Dragon and have not added an amount for brokerage and handling expenses to the inputs we valued using Thai GTA import data for the final determination.

The Policy Bulletin states that "...in situations where the surrogate country import statistics do not include international freight costs, the Department will add international freight and foreign brokerage and handling charges to the import value."⁵⁶ As the data on the record confirm, the

⁵⁴ In support of its argument, Silvery Dragon cites to Taper Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1988-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953, 1956 (January 10, 2001); and Wooden Bedroom Furniture from the People's Republic of China: Final Results of Administrative Review, 75 FR 50992, 50999 (August 18, 2010).

⁵⁵ See Silvery Dragon's August 12, 2013, Section C and D Questionnaire Response at Exhibit D-4.

⁵⁶ See Policy Bulletin at 1.

GTA Thai import values are reported on a CIF basis which means they include international freight costs and insurance. Normally, international freight costs include not only the ocean freight portion of transporting the merchandise from one location to another but also the other expenses associated with moving the goods as well.

The Policy Bulletin also states that “When relying on surrogate country import statistics to value inputs, the Department normally obtains import prices that include the international freight costs of shipping the product to the port of the importing country...However, when the import statistics of the surrogate country do not include such costs, the Department has added surrogate values for international freight and brokerage and handling charges to the calculation of normal value.”⁵⁷ As mentioned above, because the GTA Thai import values are reported on a CIF basis, they include international freight costs. We have no basis for assuming that all international movement expenses are not already included in the GTA Thai import values.

For these reasons, we considered all international movement expenses to be included in the GTA Thai import values we used to value material inputs, and have not added an amount for brokerage and handling expenses to these values.

With respect to Silvery Dragon’s argument that adding an amount for brokerage and handling expense to the import values would not reflect its supply, production and sales experience, this argument is moot as we are not adding such an amount for the reasons outlined above.

Comment 4: Truck Freight Surrogate Value

In the Preliminary Determination, we valued truck freight expenses using data from the World Bank’s Doing Business 2013: Thailand (Doing Business 2013) and used a calculation methodology based on a 20-foot container weighing 10 metric tons (MT) and an average distance of 76.67 kilometers, to derive a weight- and distance-based freight rate. The average distance calculation incorporated the following two distances: (1) the distance from the industrial park area in greater Bangkok to the Bangkok port (i.e., 43.33 kilometers); and (2) the distance from the industrial park area in greater Bangkok to Laem Chabang port (i.e., 110 kilometers). We did not inflate this freight rate because it is contemporaneous with the POI.⁵⁸

We also stated in the Preliminary Determination that we selected the information from Doing Business 2013 to value truck freight because it was used in recent NME cases.⁵⁹ We did not use the truck freight rate data from www.dxplace.com because the data from this source appear to apply to a single date in June 2010, and it is unclear if the prices are six-month averages or a snapshot in time.

⁵⁷ See id., at 1-2.

⁵⁸ See Prelim Factor Valuation Memorandum at 6.

⁵⁹ See id.; Xanthan Gum From the PRC: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 6-A (Xanthan Gum); and 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), and accompanying Preliminary Decision Memorandum at 18.

Silvery Dragon claims that we should use the data from www.dxplace.com to value truck freight because this resource meets all of the criteria established by the Department for selecting the best surrogate value. For the reasons summarized below, Silvery Dragon argues that the Department's rationale and use of a truck freight surrogate value from [Doing Business 2013](#) in the [Preliminary Determination](#) fails to comport with the statute, is unsupported by substantial evidence, and is inconsistent with established judicial precedent.

Specifically, Silvery Dragon claims that the Department departed from its longstanding policy governing the selection of surrogate values by not using the data from www.dxplace.com to value truck freight, as this source provides a broad market average rate covering a range of prices for transportation of cargo over several different routes. Instead, Silvery Dragon claims that the truck freight data from [Doing Business 2013](#) cover only one price point (i.e., from the largest Thai city to the nearest port of exportation) and assume that a company would pay the same amount for a small delivery no matter the distance or delivery destination. In contrast, Silvery Dragon claims, the data from www.dxplace.com provide detailed price statistics for road transportation of cargo by truck from Bangkok to different cities throughout Thailand during June 2010. Silvery Dragon maintains that this resource contains freight data collected from several freight forwarders who are located in different provinces and service areas, and who use different vehicle types and ship different products.

Silvery Dragon points out that the freight rate data in [Doing Business 2013](#) lack specificity with respect to the weight basis (i.e., 10 MT per a 20-foot container). Specifically, Silvery Dragon argues that the 20-foot container weight (i.e., 10 MT) the Department used to derive a weight- and distance-based truck freight rate from [Doing Business 2013](#) is not specific to the transportation experience of Silvery Dragon, which ships, on average, more weight in a 20-foot container. Moreover, Silvery Dragon argues that the 10 MT weight is not commercially viable as it does not represent a 20-foot full container load weight. To support this claim, Silvery Dragon provided for consideration data from the Maersk shipping line, which indicate the weight of a 20-foot container is as much as 28.2 MT, and bills of lading at verification that show how much on average the 20-foot containers it used for its shipments weigh.

Moreover, Silvery Dragon notes that the distance information the Department relied on from [Doing Business 2013](#) to derive a freight rate lacks specificity. In particular, Silvery Dragon argues that the Department had to use secondary information and make assumptions to identify the largest city and nearest port mentioned in [Doing Business 2013](#) in order to derive a distance-based freight rate. Silvery Dragon also points out that the distance information from [Doing Business 2013](#) provides only a single route from a single point of origin, whereas the www.dxplace.com data provide 228 price points along with actual distances and location information.⁶⁰

In light of the above-noted data deficiencies in [Doing Business 2013](#), Silvery Dragon maintains that the data from www.dxplace.com are far more broad and reliable because they provide a

⁶⁰ In support of its argument that the Department prefers to use more complete information in its calculations, Silvery Dragon cites to [High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value](#), 77 FR 26739, 26742 (May 7, 2012).

central database of truck freight data drawn from multiple vendors located throughout Thailand and cover different products and services by using a variety of trucks. According to Silvery Dragon, this makes the www.dxplace.com data more representative of a broad geographical market average than the Doing Business 2013 data. Although the www.dxplace.com data are not as contemporaneous to the POI as the data from Doing Business 2013, Silvery Dragon claims that the Department is simply glossing over significant shortcomings with respect to Doing Business 2013, as well as record evidence indicating that the www.dxplace.com data are broader and more accurate than the Doing Business 2013 data.⁶¹ Moreover, Silvery Dragon argues that the Department cannot select one data source instead of another simply because it identifies flaws in the data it is rejecting.⁶² Furthermore, Silvery Dragon argues that in prior cases, the Department determined that the best surrogate truck freight value was from a source that was more broad-based but less contemporaneous, and it should do so in this case as well.⁶³ Finally, Silvery Dragon argues that the Department used the www.dxplace.com data in recent cases and it should continue to do so in this case as well.⁶⁴

If, despite its objections, the Department continues to use Doing Business 2013 to value truck freight in the final determination, then Silvery Dragon points out that the Department needs to make two adjustments to the data. First, Silvery Dragon argues that the Department should revise the weight load per 20-foot container used in the calculation from 10 MT to 28.2 MT based on the Maersk shipping line data, consistent with what Silvery Dragon claims was done in recent cases.⁶⁵ Second, Silvery Dragon argues that the Department should use the actual distance travelled from the industrial park area in the largest city to the nearest leading seaport to derive the average freight charge. Specifically, Silvery Dragon claims that instead of assuming Bangkok is the nearest leading seaport, the Department should consider Laem Chabang port as the main deep seaport based on the information placed on the record and use the distance of 133 kilometers (from Bangkok to Laem Chabang) in the calculation, instead of an average of the two distances as was done in the Preliminary Determination.

The petitioners argue that the contemporaneity of the Doing Business 2013 data is very important due to the significant time lag between the www.dxplace.com data and the POI, and the dramatic shift in demand for trucking from the time the www.dxplace.com data were

⁶¹ In support of its argument, Silvery Dragon cites to Clearon Corp. v. United States, 800 F. Supp. 2d 1355 (CIT 2011); and Jinan Yipin Corp. v. United States, 800 F. Supp. 2d 1226, 1295-1303 (CIT 2011).

⁶² In support of its argument, Silvery Dragon cites to Guangdong Chems. Imp. & Exp. Corp. v. United States, 35 CIT 1412, 1417 (2006).

⁶³ In support of its argument, Silvery Dragon cites to Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 55814 (September 26, 2008), and accompanying Issues and Decision Memorandum at Comment 6.

⁶⁴ In support of its argument, Silvery Dragon cites to Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Determination of Less Than Fair Value, 77 FR 60673, 60675 (October 4, 2012) (unchanged in Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013)) (Steel Sinks); and Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 70271, 70274 (November 25, 2013) (Garment Hangers).

⁶⁵ In support of its argument, Silvery Dragon cites to Certain Frozen Fish Fillets from the Socialist Republic of Vietnam; Galvanized Steel Wire from China; and Baroque Timber Indus. (Zhongshan) Co. v. United States, 925 F. Supp. 2d 1332, 1347-1348 (CIT 2013) (Zhongshan).

applicable (*i.e.*, 2010) to the POI. According to the petitioners, the lack of contemporaneity with the POI is significant with respect to the selection of the freight surrogate value because of the impact of volatile energy costs such as diesel fuel between 2010 and 2013, and a shortage of qualified drivers.⁶⁶

The petitioners also give other reasons for why the Doing Business 2013 data are superior to the www.dplace.com data. Specifically, with respect to the single freight route, the petitioners assert that when surrogate values are based on import data, the Sigma⁶⁷ ruling requires that the freight be capped by the distance between the factory and the nearest seaport. According to the petitioners, the single freight route provided by Doing Business 2013 is methodologically consistent with the Sigma rule.⁶⁸ The petitioners note further that Doing Business 2013 reflects the actual business experience of many different “local freight forwarders, shipping lines, customs brokers, port officials and banks” in Thailand’s capital (Bangkok). By contrast, the petitioners contend, the www.dplace.com data are unknown in terms of the data collection source and may reflect 2010 offers for back-haul rates from only one freight forwarder.

Furthermore, the petitioners contend that although the type of truck used is not mentioned in Doing Business 2013, this is because the freight load weight has been provided and the source indicates that the information is based on the movement of 10 MT of merchandise. According to the petitioners, this condition is superior to patching together multiple sources to estimate what rate applies to which truck and to which load. By contrast, the petitioners claim that one has to make assumptions about the freight carried by the trucks named in the www.dplace.com data because no documentation has been provided regarding freight load weights. In fact, the petitioners allege that the truck load weight used as the basis for the www.dplace.com data originates from trucks provided by Tasai Kanok for hauling soil rather than trucks used for commercial merchandise.

Moreover, the petitioners state that the Doing Business 2013 data are not based on assumptions, but rather on compiled data obtained by instructing case study participants to report their actual business experience in moving 10 MT of material. Although Doing Business 2013 does state that “to make the data comparable across economies, several assumptions about the business and the traded goods are used,” the petitioners claim that the study’s use of the term “assumptions” is in the statistical sense of a known parameter or condition. For this purpose, the petitioners note that 10 MT serves as the basis for the Doing Business 2013 data collected by the World Bank. In using this source to value truck freight, the petitioners contend that the Department knows for certain (1) the route for the freight cost, (2) the specific freight weight which the participants in the study used to express their cost, and (3) the currency in which the costs were reported.

With respect to Silvery Dragon’s allegation that the Doing Business 2013 data are incomplete and lack detail, the petitioners contend that this source is actually superior in quality to www.dplace.com because of the nature of the data collected. For example, contrary to Silvery Dragon’s claim that the former source does not identify the city used as the basis for the distance,

⁶⁶ See petitioners’ August 28, 2013, submission at 8-9 and Attachment 3.

⁶⁷ See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) (Sigma).

⁶⁸ In support of their argument, the petitioners cite to Preliminary Results of 2011-2012 Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China, 78 FR 78333 (December 26, 2013).

the petitioners assert that it actually names Bangkok as the city location where information was collected from case study participants.⁶⁹

With respect to the quality of the www.dxplace.com data, the petitioners point out, contrary to Silvery Dragon's assertion, that this source does not provide a broader market average of commercial freight rates but instead provides outdated offers to establish deeply discounted back-haul rates. Regarding the 228 data points in the www.dxplace.com data, the petitioners contend that the quantity of the data points does not translate to quality, as these data points do not represent actual prices or commercial freight costs. Rather, the petitioners claim that the data points simply help guide bidding by parties that access the www.dxplace.com website, which according to the petitioners, functions as a business portal where freight providers and freight customers offer and bid on the unused back-haul space. Therefore, according to the petitioners, www.dxplace.com is an inferior source because it only provides offers rather than actual freight costs. Accordingly, the petitioners contend that Silvery Dragon's claim that this source provides a central database of truck freight data drawn from multiple vendors is not supported by record evidence.

Regarding Silvery Dragon's reliance on other Department cases (i.e., [Steel Sinks](#) and [Garment Hangers](#)) to support its arguments for using the www.dxplace.com data to value truck freight, the petitioners note that in those cases, the period of investigation and/or review was much closer in terms of contemporaneity. Also, the petitioners note that in both [Steel Sinks](#) and [Garment Hangers](#), there does not appear to be any discussion or consideration of alternative freight sources, indicating that the selection of a truck freight surrogate value in those cases was (or is) not an issue.

With respect to Silvery Dragon's insistence that the Department adjust the 20-foot container weight used in the truck freight calculation because the 10 MT figure is allegedly hypothetical, the petitioners argue that Silvery Dragon's reliance on [Zhongshan](#) as a basis for the Department making the requested weight adjustment is misplaced. Specifically, the petitioners claim that the ruling in [Zhongshan](#) centered on whether a letter of credit expense was an actual element of the reporting of brokerage and handling costs or not. In other words, the petitioners contend, the focus of this case was whether a specific parameter (i.e., a letter of credit rather than a container weight load) was part of the World Bank's survey methodology. In the instant case, the petitioners note that all parties agree that the parameter of a 10 MT container weight load is the basis for the survey used to compile the [Doing Business 2013](#) data.

Regarding Silvery Dragon's insistence that the Department use only the distance it provided (i.e., the 133 kilometer distance from Bangkok to Laem Chabang port) in the freight calculation, the petitioners argue that Silvery Dragon is incorrect to assume that Laem Chabang has overtaken Bangkok in importance or that Bangkok is no longer a port in use. In fact, the petitioners point to record evidence which confirms that both Laem Chabang and Bangkok are Thailand's two largest ports and both are in operation.⁷⁰ The petitioners maintain that the [Doing Business 2013](#) data are clearly based on data obtained from the Bangkok port and from businesses operating in the industrial park area of greater Bangkok. If the [Doing Business 2013](#) data hypothetically

⁶⁹ See [Doing Business 2013](#) at 82, submitted in the petitioners' August 21, 2013, submission.

⁷⁰ See Silvery Dragon's August 21, 2013, submission at Exhibit 8.

relied on information from businesses located in Eastern Thailand near the Gulf of Thailand, then the petitioners agree that the distance for the freight calculation should be based on the distance from the industrial park area in greater Bangkok to Laem Chabang port.

Regarding the distance itself (*i.e.*, 133 kilometers), which Silvery Dragon claims should be used in the freight calculation, the petitioners note that this distance is from Bangkok city center to Laem Chabang port, and not from the industrial park location in greater Bangkok where businesses which participated in the survey used to compile the Doing Business 2013 data would be located. For this reason, the petitioners claim that the distance (*i.e.*, 110 kilometers) they provided from the greater Bangkok industrial park area to Laem Chabang port would be more appropriate to use if the Department continues to use a weighted-average distance in its freight calculation.

Department's Position:

We agree with the petitioners and continued to use the data in Doing Business 2013 to value truck freight for the reasons explained below.

In selecting surrogate values for inputs, section 773(c)(1) of the Act directs us to use the “best available information.” In determining the “best available information,” it is the Department’s practice to consider the following five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.⁷¹ In this case, we find that the Doing Business 2013 data are the best available information on our record for valuing truck freight because it is more reliable than the www.dxplace.com data in terms of the quality of the data and its contemporaneity with the POI. Moreover, the Doing Business 2013 data provide a publicly available, broad market average freight rate, and we determined it is more appropriate to use this data to value truck freight in past NME proceedings.⁷²

As explained in past NME proceedings, the Doing Business 2013 data provide information for the inland freight cost of shipping a container from Bangkok to a leading port in Thailand, and this freight cost is based on data collected from multiple vendors and users (*i.e.*, shipping lines, customs brokers, and banks).⁷³ Based on these facts and given that Doing Business 2013 is a World Bank publication, we find the quality of the data in this publication to be reliable, consistent with our findings in other NME cases.⁷⁴

Although the www.dxplace.com data appear to provide multiple freight rates from multiple locations in Thailand, we find that the data from this resource come from a single date in June

⁷¹ See Fresh Garlic from the People’s Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order, 77 FR 34346 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 4.

⁷² See Xanthan Gum at Comment 6-A, wherein the Department determined that the Doing Business 2013 data are superior to the www.dxplace.com data based on data quality and contemporaneity considerations, and between the two data, Doing Business 2013 is the best available information to value truck freight.

⁷³ See id.

⁷⁴ See e.g., Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review 2010-2011, 78 FR 2366 (January 11, 2013) and accompanying Issues and Decision Memorandum at Comment 3.

2010 and it remains unclear, despite Silvery Dragon's argument to the contrary, whether the prices are six-month averages or a snapshot in time. Absent evidence indicating whether this resource provides historical price data, we cannot consider this resource more reliable than Doing Business 2013.

Moreover, as both interested parties acknowledge, the freight rate data in Doing Business 2013 are contemporaneous with the POI in this case. Conversely, the June 2010 www.dxplace.com data are not contemporaneous with the POI. We find that the lack of contemporaneity of the www.dxplace.com data is important to consider given that freight rates may be affected by various factors over time (e.g., changes in demand for truck services and increasing energy costs) for which the wholesale price data used for inflating a value to the POI will not necessarily account.

Regarding the 20-foot container weight (i.e., 10 MT) which serves as the basis for the freight rate in Doing Business 2013, the Department established in prior NME cases in which Doing Business 2013 was used to value truck freight that the weight of the 20-foot container in this publication is 10 MT.⁷⁵ See Comment 5 below for further discussion.

Regarding the distance in the freight rate calculation, we note that Doing Business 2013 does not specify to which major port it is referring and there are at least two major ports in Thailand (i.e., Bangkok and Laem Chabang) based on the record evidence in this case. While the accuracy of the distance from Bangkok's industrial park area to the Bangkok port (i.e., 44.33 kilometers) is not at issue with the parties in this case,⁷⁶ the distance from Bangkok's industrial park area to the Laem Chabang port is. In the Preliminary Determination, we relied on the Laem Chabang port distance (i.e., 110 kilometers) based on information timely submitted by the petitioners from www.thailand.com which clearly establishes the distance from Bangkok's industrial park area.⁷⁷ Regarding the Laem Chabang port distance provided by Silvery Dragon (i.e., 133 kilometers), the record evidence indicates that this distance is from Bangkok city center, and not from Bangkok's industrial park area, to Laem Chabang port. Therefore, for the final determination, we continued to use an average distance of 76.67 kilometers (i.e., the average of the 44.33 and 110 distances) to convert the truck freight rate in Doing Business 2013 to a distance-based rate.

Comment 5: Weight Adjustment Made to the Brokerage and Handling Surrogate Value

In the Preliminary Determination, we valued brokerage and handling using data from the World Bank's Doing Business 2013 and a calculation methodology based on a 20-foot container weighing 10 MT to derive a U.S. dollar-per-kilogram value.⁷⁸

As mentioned in Comment 4 above, Silvery Dragon points out that the 20-foot container weight information in the World Bank publication is a hypothetical weight figure which is not specific to Silvery Dragon's transportation experience. In contrast, Silvery Dragon provided for

⁷⁵ See e.g., Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 18, 2013), and accompanying Issues and Decision Memorandum at Comment R.

⁷⁶ See the petitioners' August 21, 2013, submission at Exhibit 6.

⁷⁷ See the petitioners' August 28, 2013, submission at Exhibit 5.

⁷⁸ See Prelim Factor Valuation Memorandum at 7.

consideration data published by Maersk shipping line which indicates the weight of a 20-foot container is as much as 28.2 MT and is consistent with its own bills of lading provided at verification that show how much on average the 20-foot containers it uses for its shipments weigh. Silvery Dragon requests that the Department adjust the brokerage and handling surrogate value from the preliminary determination by using a full 20-foot container weight of 28.2 MT. Alternatively, Silvery Dragon requests that the Department use its container weight experience (as reflected in the 20-foot container weight data extracted from its bills of lading examined by the Department at verification) as the basis for deriving a U.S. dollar-per-kilogram value for brokerage and handling expenses from Doing Business 2013.

The petitioners claim that in a recent case dealing with this very same issue, the Department confirmed the applicability of the 20-foot container weight in Doing Business 2013.⁷⁹ Moreover, the petitioners point out that the businesses surveyed in this publication, including freight forwarders, reported the cost of doing business in Bangkok based on the parameter of 10 MT of goods being shipped. Therefore, the petitioners maintain that the Department should continue to calculate this expense based on the 20-foot container weight information in the World Bank's Doing Business 2013.

Department's Position:

For the reasons explained below, we agree with the petitioners and continued to value brokerage and handling using a 20-foot container weight of 10 MT from Doing Business 2013.

We find that the weight (i.e., 10 MT) mentioned as a parameter in the World Bank's Doing Business 2013 publication also serves as the basis for the brokerage and handling expense data collected for the World Bank's study. The Department addressed this same issue in Steel Nails and determined in that case that the explanatory note regarding the container weight in the Doing Business 2013 publication (i.e., "(t)he traded product travels in a dry cargo, 20-foot, full container load. It weighs 10 tons...") is the parameter used by the World Bank to collect the brokerage and handling expense data contained in that study.⁸⁰ This same information is also on the record of this case.⁸¹ Therefore, we find it unnecessary to adjust the brokerage and handling surrogate value on any other weight basis, as suggested by Silvery Dragon.

Comment 6: Marine Insurance Surrogate Value

In the Preliminary Determination, we valued marine insurance using the broad average rate quote for shipments of comparable merchandise (i.e., steel sheets, coils and bars) outside the United States obtained from PAF Shipping Insurance's (PAF's) website (<http://www.grw-products.com>) (PAF public quote).⁸² We did not use the shipment-specific quote⁸³ which Silvery Dragon

⁷⁹ In support of its argument, the petitioners cite to Certain Steel Nails from the People's Republic of China: Final Results of the Third Antidumping Duty Administrative Review, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment 3R (Steel Nails).

⁸⁰ See id.

⁸¹ See the petitioners' November 15, 2013, submission at Exhibit 5.

⁸² See Prelim Factor Valuation Memorandum at 7. The actual website is <http://www.pafinsurance.com>, but the price quote document shows the website source as <http://www.grw-products.com/onlinerates.htm>.

obtained directly from PAF because we considered that rate quote to be less representative than the selected broad average rate quote obtained from PAF's website, and because we relied on broad average rate quotes rather than shipment-specific quotes in recent NME cases.⁸⁴ We also did not use the general rate from RJG Consultants (RJG rate)⁸⁵ provided by Silvery Dragon because that rate (from October 2010), unlike the PAF rate, was not contemporaneous with the POI.

Silvery Dragon contends that the Department should use the price quote it obtained directly from PAF which it included in its November 5, 2013, submission, because it includes risk coverage and is specific for shipping containerized PC tie wire from the PRC to the United States. Despite the petitioners' contention that this price quote is not publicly available and is based on a party-specific transaction, Silvery Dragon maintains that price quotes, by their very nature, are party-specific and tailored to the shipment of specific goods. Moreover, Silvery Dragon claims that Department has a longstanding policy of accepting specific price quotes. In addition, Silvery Dragon points out that its price quote is corroborated by other information on the record of this proceeding – namely, the price quote obtained from RJG – as the two price quotes only differ by 14 percent. Finally, Silvery Dragon claims that because the petitioners did not submit any comments challenging the validity of this price quote, this must mean that the petitioners support its use in this case.⁸⁶

By contrast, Silvery Dragon argues that the PAF public quote used in the Preliminary Determination is abnormally high when compared to Silvery Dragon's price quote from the same source or to the RJG price quote. Moreover, Silvery Dragon points out that the PAF public quote also lacks specificity, as it is not specific to the subject merchandise.

The petitioners argue that the Department should continue to value marine insurance using the public quote from PAF and not a proprietary email quote which Silvery Dragon obtained in private correspondence with PAF or the outdated and non-specific RJG published rate. Regarding the PAF email quote provided by Silvery Dragon, the petitioners point out that the private nature of the quote should disqualify it from consideration. The petitioners add that this proprietary price quote is not a historical price between two disinterested parties but a private quote obtained by the respondent under investigation. For these reasons, the petitioners claim that neither the Department nor the petitioners can know the totality of the circumstances or conditions under which Silvery Dragon obtained the quote. Such unknown elements in private transactions and, in particular, single transactions involving an interested party, are, according to the petitioners, the very reason why the Department has a longstanding preference to use public data when valuing factors of production and/or transportation services provided by NME

⁸³ See Silvery Dragon's November 5, 2013, submission at Exhibit 4.

⁸⁴ See Prelim Factor Valuation Memorandum at 7; and 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, 9601 (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).

⁸⁵ See Silvery Dragon's August 28, 2013, submission at Exhibit 1C.

⁸⁶ In support of its argument, Silvery Dragon cites to Jinan Yipin Corp. v. United States, 800 F. Supp. 2d 1226, 1280 (CIT 2011) and Zhengzhou Harmoni Spice Co. v. United States, 617 F. Supp. 2d 1281 (CIT 2009) (Harmoni).

suppliers. Regarding the PAF rate, the petitioners maintain that it is superior in all respects and the Department relied on published PAF insurance rates for U.S. inland insurance in prior proceedings.⁸⁷

Department's Position:

We agree with the petitioners and continued to use the PAF public quote to value marine insurance in the final determination.

The Department has stated a preference that when selecting surrogate values for use in NME proceedings, it will select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax- and duty-exclusive and contemporaneous with the POI.⁸⁸ These surrogate value selection criteria identify “all” of the factors the Department considers when selecting the best available information for surrogate valuation purposes.

In applying these surrogate value selection criteria for purposes of selecting the best available information for marine insurance on the record of the case, we find that the PAF rate is publicly available, specific to steel products, representative of a broad market average and contemporaneous with the POI. Specifically, this rate can presently be downloaded directly from the PAF website. The website information indicates that this rate is applicable for steel products (*i.e.*, steel sheets, coils and bars) and was applicable during the POI. Because this rate is actually based on a percentage of the value, the tax- and duty-exclusive consideration does not apply.

Although the RJG rate has also been considered publicly available and been used by the Department in prior cases, it is non-specific in terms of the product and is outdated (*i.e.*, October 2010). Therefore, we find that although the PAF and RJG rates are both publicly available, the PAF rate is superior to the RJG rate both in terms of product specificity and contemporaneity. Moreover, we find no basis to suggest that this PAF rate is not representative of an exporter's experience in general and Silvery Dragon's experience in particular.

Regarding the rate quote proffered by Silvery Dragon, which was also obtained from PAF, the information Silvery Dragon provided for this rate quote indicates that counsel for Silvery Dragon contacted PAF directly and obtained a rate quote from PAF on behalf of Silvery Dragon. This information is not publicly available on the PAF website and could not be obtained without direct correspondence with PAF. Moreover, the information accompanying this rate quote appears to indicate that PAF is seeking Silvery Dragon's business and, thus, PAF may have

⁸⁷ In support of its argument, the petitioners cite to 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, 9601 (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).

⁸⁸ See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

offered Silvery Dragon a special rate in order to obtain its business. In fact, the note on the correspondence between PAF and Silvery Dragon's counsel indicates that PAF will beat any quote by 10 percent.⁸⁹

The Department's stated preference is to rely on publicly available broad market average price data rather than on price quotes obtained by interested parties, because price quotes obtained by interested parties are subject to information collection and accessibility concerns. For example, the Department has concerns about relying on price quotes obtained by interested parties in an antidumping proceeding because in order to obtain this information, an interested party may need to conduct private correspondence with the information source and this action calls into question the public availability of the data are publicly available. In addition, the Department cannot be certain that it could obtain the same price quote. Finally, price quotes are generally proprietary in nature and, as such, the Department does not know the conditions under which the information is obtained. For these reasons, the Department does not normally rely on price quote information solicited by interested parties for purposes of an antidumping case when it has alternative surrogate value information on the record which is publicly available, product-specific, representative of a broad market average, tax- and duty-exclusive, and contemporaneous with the POI.

In response to Silvery Dragon's claim that the Department is required to consider price quotes rather than broad market average surrogate values to value inputs based on the Harmoni decision, as we explained above, in this case the "best available information" is the PAF public rate and not the PAF price quote submitted by Silvery Dragon based on the totality of the Department's surrogate value selection criteria.

Comment 7: Polypropylene Fabric Surrogate Value

In the Preliminary Determination, we valued PP fabric using Thai import data from GTA reported under HTS subheading 5512.99.00000 for the POI.⁹⁰ This information was submitted by Silvery Dragon.⁹¹ For input valuation purposes, we did not include in the PP fabric surrogate value calculation import data from countries the Department had previously determined to be an NME country and imports from countries that the Department had reason to believe or suspect may be dumped or subsidized.⁹²

⁸⁹ See Silvery Dragon's November 5, 2013, submission at Exhibit 4.

⁹⁰ See Prelim Factor Valuation Memorandum at 6.

⁹¹ See Silvery Dragon's August 21, 2013, submission at Exhibit 3.

⁹² These countries include India, Indonesia, South Korea and Thailand. See China Nat'l Mach. Import & Export Corp., 293 F. Supp. 2d 1334, 1336 (CIT 2003); Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China, 69 FR 75294, 75301 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005); see also Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review, 76 FR 34048, 34051 (June 10, 2011), unchanged in Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011).

Silvery Dragon now claims that the Thai import data obtained from HTS sub-heading 5512.99.00000 were not specific to PP fabric, and that the price per kilogram derived from this HTS subheading is aberrational when compared to wire rod prices and to the import data provided for another HTS subheading for the input at issue (*i.e.*, HTS subheading 5407.20) which the petitioners submitted for consideration prior to the issuance of the Preliminary Determination.⁹³ Therefore, Silvery Dragon contends that the Department should use only the Thai import data from HTS subheading 5407.20 to derive a PP fabric surrogate value because the data from this HTS subheading are for “woven fabrics of synthetic filament yarn obtained from the strip or the like,” which is more specific to PP fabric, and also because the price per kilogram is more reasonable and probative of an actual price. Alternatively, Silvery Dragon requests that the Department weight average the data from both HTS subheadings (*i.e.*, 5407.20 and 5512.99.00000) to derive a PP fabric surrogate value, as this approach is supported by the Department’s consistent practice, case precedent and practical considerations.⁹⁴

The petitioners point out that it was Silvery Dragon that submitted the Thai import data for PP fabric from HTS subheading 5512.99.00000 in its August 21, 2013, submission for consideration in the Department’s preliminary determination, and claimed that these data were the most accurate for surrogate valuation purposes. The petitioners note that Silvery Dragon submitted this data with full knowledge of the exact characteristics of the PP fabric its uses to pack the subject merchandise. To support this claim, the petitioners explain that because the description of the four-digit HTS subheading (*i.e.*, 5512) pertains to nylon or polyethylene, it follows that other plastics such as polypropylene (*i.e.*, PP) have to be accounted for in the Nesoi category in the description of the HTS subheading 5512.99.00000 (*i.e.*, Woven Fabrics Of Synthetic Staple Fibers, Containing 85% Or More By Weight Of Synthetic Staple Fibers, Nesoi (Not Elsewhere Specified or Included), Printed, Dyed or Colored, other).

On the other hand, the petitioners contend that the Thai import data for PP fabric from HTS subheading 5407.20 were included in their August 28, 2013, submission and were their best estimate of the proper tariff category absent knowledge of the format, shape, construction, color or other characteristics of the PP fabric used by Silvery Dragon.

The petitioners also contend that the only reason Silvery Dragon is no longer advocating the use of data from HTS subheading 5512.99.00000 is because it now finds that the value derived from this data is too high. However, the petitioners argue that this reasoning is not a sufficient basis to invalidate a value.⁹⁵ Not only is Silvery Dragon’s comparison of plastic fabric and wire rod prices inapposite for purposes of showing the PP fabric price derived from HTS subheading 5512.99.00000 is abnormal, the petitioners argue, but so is Silvery Dragon’s comparison of PP fabric prices based on data from the two subheading numbers (*i.e.*, 5407.20 versus 5512.99.00000). Specifically, the petitioners note that Silvery Dragon fails to identify anything

⁹³ See the petitioners’ August 21, 2013, submission at Exhibit 8.

⁹⁴ In support of its argument, Silvery Dragon cites to Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 15, 2007) (in which the Department valued the bearing or axis of rotation input by weight averaging the data reported under two different HTS headings) (Hand Trucks).

⁹⁵ In support of its argument, the petitioners cite to Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

deficient in the import data obtained from HTS subheading 5512.99.00000 (e.g., quantity amount, outlier considerations) which would disqualify the use of this data.

Finally, with respect to Silvery Dragon's request that Department weight average the data from both HTS sub-headings (i.e., 5407.20 and 5512.99.00000) to derive a PP fabric surrogate value, the petitioners claim that if the Department agrees with this approach then it must correct an error present in Silvery Dragon's suggested calculation.

Department's Position:

When the Department applies its surrogate value selection methodology in NME proceedings, it does so with the goal of selecting the most accurate single surrogate value for the input at issue based on the information submitted on the record. In this case, Silvery Dragon proffered a PP fabric surrogate value obtained from Thai import GTA data for HTS subheading 5512.99.00000, and requested the Department to consider its use in the preliminary determination. The Department used the data from the HTS subheading 5512.99.00000 to value the input subject to verification. At verification, we were unable to obtain any more specific information relevant to the PP fabric Silvery Dragon used to pack the subject merchandise. Since the preliminary determination, Silvery Dragon has withdrawn its advocacy of the GTA import data from HTS subheading 5512.99.00000 because it claims the value is aberrational when compared to the GTA import data from HTS subheading 5407.20 which the petitioners originally suggested be used to value PP fabric.

After re-examining the descriptions of and prices obtained from both HTS subheadings, we find that it is appropriate to consider both sets of data for use in the final determination. The descriptions for each HTS subheading (i.e., 5512.99.00000 and 5407.20) indicate the product is woven fabric of a synthetic fiber. The PP fabric used by Silvery Dragon could fall under either category and Silvery Dragon did not have information available at verification to indicate otherwise. Thus, because there is no additional information on the product used by Silvery Dragon on the record of this proceeding, we find that both sets of data are equally specific to the input at issue. Regarding Silvery Dragon's allegation that the price obtained from HTS subheading 5512.99.00000 is now aberrational (when before it was not), we find this argument without merit. The description of HTS subheading 5512.99.00000 (i.e., "Woven Fabric of Synthetic Staple Fibers, Containing 85% Or More By Weight Of Synthetic Staple Fibers Nesoi, Printed Dyed Or Colored, Other") reflects a much more specific dimension and type of PP fabric than the type of PP fabric reflected in HTS subheading 5407.20 (i.e., "Woven Fabrics Of Synthetic Filament Yarn Obtained From The Strip Or The Like"). As such, it is not reasonable to compare the price data between the two subheadings, as Silvery Dragon attempts to do.

Therefore, for the final determination, we used the GTA import data from both HTS sub-headings and derived a simple-average price to value PP fabric. Should this investigation result in an antidumping duty order and an administrative review is subsequently requested, we will revisit the valuation of this input with the goal of identifying a single surrogate value that is specific to the input used by the respondent, consistent with our above-stated preference to use the most accurate single surrogate value for input valuation purposes.

Comment 8: Electricity Surrogate Value

In the Preliminary Determination, we valued electricity using the calculation methodology applied in Drawn Sinks, Sodium Hexametaphosphate, and Silicon Metal.⁹⁶ The electricity calculation we performed is based on the tariff rates applied by the Thailand Metropolitan Electricity Authority (MEA) during the POI for “large general service” companies. We stated in the Preliminary Determination that we find this methodology represents the “best available” information within the meaning of the statute because the MEA rates are from an approved surrogate country, are publicly available, specific to the input, contemporaneous, and exclusive of taxes.⁹⁷

We did not use the data from the Electricity Generating Authority of Thailand, Annual Report 2010 (EGAT Report)⁹⁸ because the 2011 Annual Report describes EGAT as a producer, transmitter and seller of electricity to distributing authorities which, in turn, sell electricity to end-users.⁹⁹ The EGAT Report provides only wholesale electricity rates for the following five segments (or customer groups) of the Thai economy: MEA, Provincial Electricity Authority (PEA), Direct Customers, Standby Power Supply, and Other Minor Customers. Thus, EGAT sells electricity at a wholesale price to a public utility which then sells electricity at a retail price to end-users. Further, while the EGAT Report does identify a price to direct customers, it does not indicate whether the EGAT Report’s direct customer price is exclusive of VAT.¹⁰⁰

We also stated in the Preliminary Determination that the EGAT’s electricity prices do not represent broad market averages to end-users such as Silvery Dragon. In their November 15, 2013, submission, the petitioners proposed using EGAT but adjusting the wholesale values in that source to retail values based on the data obtained from MEA.¹⁰¹ However, we relied solely on the MEA data to derive a surrogate electricity value in the preliminary determination, consistent with the methodology applied in recent cases.¹⁰²

The petitioners reiterate their request to use the EGAT data applicable during 2012, which contain electricity wholesale rates for the various segments of the Thai economy including MEA, but convert those segment-specific wholesale rates in the EGAT Report to retail rates by

⁹⁶ See Drawn Stainless Steel Sinks From the People’s Republic of China: Antidumping Duty Investigation, 77 FR 60673 (October 4, 2012), unchanged in Drawn Stainless Steel Sinks From the People’s Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013) (Drawn Sinks); see also Sodium Hexametaphosphate from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 59375 (September 27, 2012) and accompanying Issues and Decision Memorandum at Comment II (Sodium Hexametaphosphate); see also Silicon Metal from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 54563 (September 5, 2012) (Silicon Metal).

⁹⁷ See Prelim Factor Valuation Memorandum at 4.

⁹⁸ See the Petitioners’ August 21, 2013, submission at Exhibit 9.

⁹⁹ See *id.*

¹⁰⁰ See Prelim Factor Valuation Memorandum at 4.

¹⁰¹ See the Petitioners’ November 15, 2013, submission.

¹⁰² See Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review: 2011-2012, 78 FR 54450 (September 4, 2013), and accompanying Preliminary Decision Memorandum at 16, unchanged in Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review: 2011-2012, 79 FR 3176 (January 17, 2014).

applying an adjustment factor based on the MEA retail rate data obtained from the MEA publication. According to the petitioners, this adjustment method would yield the best broad, national, tax-free, retail-level, electricity rate tailored to Silvery Dragon's operations.

Silvery Dragon states that the Department should not adjust the electricity surrogate value used in the Preliminary Determination as requested by the petitioners because their method is flawed. Specifically, Silvery Dragon points out that only the segment rates for PEA and MEA in the EGAT Report represent broad market segments, whereas the other three segment rates in the EGAT Report are fringe customer classes. Based on this observation and the price range difference between the PEA/MEA price data and the price data for the other three customer classes, Silvery Dragon concludes that the rates in EGAT for the three fringe customer classes may be unrepresentative of the average unit price of electricity charged to a producer such as SD Hejian.

Silvery Dragon also argues that the Department should not adopt the petitioners' electricity surrogate value adjustment method because how they propose determining the surrogate electricity value based on averaging the prices charged to a broader category of non-comparable customer classes is inconsistent with their suggestion to determine the factor of production (FOP) of electricity based on a higher degree of specificity.

Department's Position:

We agree with Silvery Dragon and continued to use the MEA electricity value from the MEA publication for the final determination.

As mentioned in the Preliminary Determination, the MEA rate from the MEA publication is a retail rate applicable to industrial users such as Silvery Dragon. This rate is also tax-exclusive and contemporaneous with the POI. While the five segment rates in the EGAT Report are retail rates, three of those rates are overly broad in that they appear to apply to non-industrial segments of the Thai economy.

With respect to the petitioners' suggestion to make an adjustment to each segment's retail rate data in the EGAT Report using MEA's data from the MEA publication, we consider this approach to be unnecessary given that the MEA publication provides retail industrial user rate information from MEA, and we would be making an assumption unsupported by any record evidence that the adjustment based on the MEA data should apply to the other segments listed in the EGAT Report. Given that some of the segments in the EGAT Report do not even appear to relate to industrial usage customers, we find that the best available information on this record to value electricity is the industrial retail value contained in the MEA publication.

Comment 9: Electricity Consumption Factor Adjustment

Silvery Dragon developed its reported electricity FOP based in part on the results of a study conducted in 2007, which measured electricity consumption for different grades of steel wire products of varying diameters.¹⁰³ In its Verification Report, the Department noted the following:

¹⁰³ See Silvery Dragon's October 17, 2013 submission at 11-13.

“Given that the electricity standards developed by the company provide a more specific measure of consumption for individual product diameters, it may be appropriate to adjust the reported FOP based on the standard electricity consumption of the steel wire product that is most similar to the U.S. CONNUM.”¹⁰⁴

The petitioners agree that an adjustment to Silvery Dragon’s reported FOP for electricity should be made for the final determination.

Silvery Dragon responds that the Department should accept its electricity FOP as reported. The respondent points out that its reported electricity FOP was based on the average consumption of different grades of steel wires with various diameters. For purposes of the electricity study, Silvery Dragon measured the consumption for wire products with different diameters, and used the average of the consumption amount for three tested diameters in reporting the electricity FOP. Silvery Dragon believes that the Department’s finding in the verification report – that we would consider revising the reported FOP because one of the individual products that is included in the average consumption amount is very close to the diameter of the U.S. CONNUM and therefore provides a more specific measure of electricity usage – is based on the erroneous presumption that the diameter of wire has a one-to-one correlation with the per-unit consumption of electricity. Silvery Dragon argues, however, that information on the record establishes that there is no such correlation. The respondent asserts that the petitioners failed to explain, beyond merely citing the Department’s findings, how tying the consumption of electricity to the production of a single dimension of steel wire diameter would automatically produce a more accurate result. Because certain information related to this issue is proprietary in nature, a more detailed summary and discussion is provided in the Final Analysis Memorandum.

Department’s Position:

We agree with the petitioners and made an adjustment to the respondent’s electricity FOP for this final determination.

As noted, Silvery Dragon undertook a study in 2007 to measure the standard per-unit electricity usage for different diameters of PC steel wire products.¹⁰⁵ To report its electricity FOP to the Department, the company relied on the average per-unit consumption of three individually-tested products within a given diameter range.¹⁰⁶ As discussed in the Verification Report, the diameter of the PC tie wire sold by Silvery Dragon in the United States is very close to the diameter of one of the three individual products tested by the company that was included in the average per-unit electricity consumption used for reporting the FOP. Therefore, we find that the record in this case provides a more specific measure with which to better approximate electricity usage for the

¹⁰⁴ See Verification Report at 36-37.

¹⁰⁵ With regard to the production of the merchandise under consideration (i.e., low-relaxation, or heat treated, PC tie wire), electricity consumption is in large part a function of the nominal diameter of the finished product. That is, more electricity is required as the wire is drawn to smaller diameters.

¹⁰⁶ See Silvery Dragon’s August 12, 2013, submission at 13, and October 17, 2013, submission at 11-13 and Exhibit SD-21.

U.S. product than does the average consumption based on a range of product diameters. We acknowledge that the increase or decrease in electricity usage is not necessarily exactly proportional to the change in product dimensions. However, given that the average per-unit electricity consumption used for the reported FOP also reflects usage for two wire products that are quite different, in terms of nominal diameter, from the U.S. product, we do not find it unreasonable in this instance to instead rely on the electricity consumption of the tested wire product from the broad averaging group that is closest to the U.S. product in physical characteristics.

For this final determination, therefore, we used the more specific per-unit consumption figure from Silvery Dragon's 2007 electricity study for the individual product most similar to that sold in the United States. As certain information related to this issue is business proprietary in nature, please refer to the Final Analysis Memorandum for further discussion and analysis.

Comment 10: Treatment of Social Security/Workman's Compensation in Surrogate Financial Ratio Calculations

For the Preliminary Determination, the Department used the 2012 financial statements of Vongthong Steel Wire Co. Ltd. (Vongthong) and Rayong Wire Co. (Rayong) to calculate surrogate financial ratios. Silvery Dragon argues that the Department improperly allocated the line item from Vongthong's income statement entitled "social securities fund and workmen's compensation" to the numerator of the selling, general, and administrative (SG&A) expense ratio. The respondent asserts that the Department should have classified these expenses as "labor" in its surrogate financial ratio calculations. Silvery Dragon posits that, even though the expenses at issue are classified under "administrative expenses," they necessarily include the cost of social security and workmen's compensation for all employees, including factory workers. Silvery Dragon points out that the Department fine-tuned its labor cost valuation policy to apply a surrogate value that includes the cost of direct, as well as indirect, labor. The respondent states the Department used data from the Thai National Statistics Office (NSO) to value labor costs for the preliminary determination. Silvery Dragon further notes that the NSO data are inclusive of wages and salaries, fringe benefits, and employer's contribution to social security. Because all of the elements of indirect labor costs, including contributions to social security, are included in the NSO data that were applied as the surrogate value for factory labor, Silvery Dragon believes that the inclusion of these costs in the numerator of the SG&A ratio (to the extent that they relate to manufacturing labor) amounts to double-counting of indirect labor costs.¹⁰⁷

The petitioners respond that the line item in Vongthong's financial statement for social security and workmen's compensation does not distinguish between expenses incurred for manufacturing employees and administrative employees. The petitioners argue that, given that these expenses include both types of labor costs, the Department's calculations in this respect were correct. In the event the Department decides to reapportion some of these expenses, the petitioners submit

¹⁰⁷ In support of its claims, Silvery Dragon cites to Steel Nails, where the Department classified welfare and social security funds under "labor" instead of "SG&A."

that they should be allocated to SG&A and factory labor based on the relative salary and wages costs of factory employees and administrative personnel.

The petitioners also argue that, if the Department is unable to determine the exact nature of the Vongthong line-item expenses, it should not guess as to the proper classification of these expenses but should decide that it cannot rely on this financial statement. Under these circumstances, the petitioners assert, the Department should use the financial statements of Rayong to calculate surrogate ratios for the final determination.

Department's Position:

We disagree with Silvery Dragon that the “social securities fund and workmen’s compensation” line item from the Vongthong financial statements should be reclassified as factory labor expenses in the surrogate financial ratio calculations. The Vongthong financial statements provide a separate and clear classification for manufacturing costs and for selling and administrative expenses.¹⁰⁸ Because the expenses at issue are classified on those financial statements as “administrative” costs, we included them in the numerator of our SG&A surrogate ratio calculation for the preliminary determination.

Given the nature of the information that serves as the source for financial ratio calculations in NME cases (i.e., that it is based on surrogate financial data from a company that is not a party to the proceeding), we cannot “go behind” a surrogate financial statement to determine precisely what each item includes or to what activity it relates.¹⁰⁹ Therefore, when assigning the various expenses to particular categories for our financial ratio calculations, we prefer to rely on the classification of expenses from the surrogate financial statements, unless there is good reason to believe the classification is not accurate.¹¹⁰ In this case, as noted above, manufacturing costs and selling and administrative expenses are clearly identified in the surrogate financial statements, and the accompanying notes provide rather detailed schedules of the expenses included in each category.¹¹¹ It is not unreasonable to assume that the expenses at issue relate only to administrative personnel, as they are classified specifically as such in the financial statements.¹¹² Nor is it unreasonable to expect that social security and workmen’s compensation expenses are already included in the factory labor amounts, even though they are not separately itemized in the schedule of manufacturing costs. Moreover, there is no other information in the Vongthong financial statements or elsewhere on the record of this case suggesting that the financial statement classifications are not accurate.

¹⁰⁸ See Silvery Dragon’s August 21, 2013, Submission at Exhibit 9.

¹⁰⁹ See, e.g., Diamond Saw Blades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 16.

¹¹⁰ See, e.g., Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 6D (Chlorinated Isocyanurates) (where the Department classified employee and retirement benefits as SG&A expenses because these items were classified as such in the surrogate financial statements).

¹¹¹ See Silvery Dragon’s August 21, 2013, Submission at Exhibit 9.

¹¹² See, e.g., Chlorinated Isocyanurates at Comment 6D.

Regarding the petitioners' argument that the Department should only use the financial statements of Rayong if we are unable to determine the nature of the various line items at issue from the Vongthong financial statements, the Department cannot know with complete certainty the exact nature of each and every line item in a surrogate financial statement. This fact does not, however, render a particular financial statement unusable as a surrogate.

Therefore, for this final determination, we continued to use both the Vongthong and Rayong financial statements for our surrogate financial ratio calculation, and made no changes with respect to the classification of either "social securities and workmen's compensation" or, as discussed below in Comment 11, "transportation" expenses, in our surrogate financial ratio calculations.

Comment 11: Treatment of Transportation Expenses in Surrogate Financial Ratio Calculations

As noted above, for the Preliminary Determination, the Department used the 2012 financial statements of Rayong and Vongthong to calculate surrogate financial ratios. Silvery Dragon argues that the Department improperly classified the "transportation" expense line item from the Vongthong financial statements as manufacturing overhead (MOH) in the financial ratio calculations. Silvery Dragon maintains that the Department should have considered "transportation" to be freight-in expenses related to the transport of raw materials to the factory, and, accordingly, should have accounted for this expense in the financial ratio calculations as a component of raw materials. The respondent argues that the Department's practice is to include inward transportation expense in the cost of materials for the surrogate financial ratios.¹¹³ The respondent asserts that because transportation expenses are listed under the "Cost of Sales and Services" in the Vongthong financial statements, it must relate to the transportation of raw materials rather than finished goods. Silvery Dragon continues that the other line items classified by the Department as MOH in the financial ratio calculations are clearly related to the process of manufacture and have been properly allocated as such. The respondent surmises that, given the relatively simple process of the production of subject merchandise, there is little, if any, cost associated with transporting raw materials within the factory. Silvery Dragon also asserts that the fact that the transportation expenses are itemized alongside the cost of raw materials confirms that they are related to inward transportation of raw materials.

The petitioners respond that the Department properly treated transportation costs as part of MOH. Regarding Silvery Dragon's assertion that the expenses at issue must relate to the transportation of raw materials and that there would be little cost in transporting materials in the factory, the petitioners argue that these statements are speculative and unsupported by any record evidence. In fact, the petitioners assert, there is no evidence that the generic "transportation" expenses were related to freight costs for raw materials. The petitioners assert that these expenses could include various types of typical factory overhead expenses that are not otherwise accounted for in Vongthong's financial statement, and that it is more reasonable to presume that

¹¹³ In support of its argument, Silvery Dragon cites to 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, 60730 (October 1, 2010) (Seamless Pipe).

these transportation expenses related to overhead or SG&A expenses. The petitioners argue that Vongthong's substantial raw material line item should be the full delivered value of material inputs consumed.

The petitioners note that the Vongthong financial statements include an amount for "delivery costs," an expense that was already excluded from the financial ratio calculations. The petitioners assert that it is more reasonable to assume that the freight-in costs are already included in raw materials and that the freight-out costs are reflected in the delivery costs line item. The petitioners argue that the Department's treatment of the transportation expenses from the Vongthong financial statements is consistent with its past practice.¹¹⁴ The petitioners assert that the facts of the Seamless Pipe case cited by the respondent can be distinguished from those in the present case. In that case, the petitioners state the surrogate financial statement identified the costs at issue specifically as "freight" expenses and not the more generic term "transportation."

Department's Position:

In our financial ratio calculations for Vongthong, we included the "raw materials" line item from the cost of sales schedule in the materials, labor, and energy denominator, and classified "transportation" expenses from the schedule as MOH (i.e., we included the item in the numerator of the MOH ratio).¹¹⁵ Silvery Dragon asserts that the classification of transportation expenses as MOH was improper, arguing that the costs at issue "must relate to the transportation of raw materials" and that the fact the expenses were itemized alongside raw materials confirms that this is in fact the case.¹¹⁶ We disagree with the respondent and, for the reasons set forth below, continued to classify transportation expenses as MOH.

In the Vongthong financial statements, apart from the fact that the transportation expense line item is included as a component of the cost of sales, there is no indication, either on the face of the income statement itself or in the accompanying notes, as to what specifically this item includes or to what activities it relates. As discussed, in the Preliminary Determination, we included this line item in the numerator of the MOH ratio, reasoning that freight related to transporting purchased raw materials is typically included in the raw material expenses on the financial statement. Thus, the separate "transportation" line item likely relates to other activities (e.g., within-factory transportation, vehicles used by factory management, etc.) more appropriately classified as overhead. Accounting practice prescribes generally that raw materials inventory on a company's balance sheet is to be valued at a cost that includes all necessary expenditures to acquire such materials and bring them to the desired condition and location for use in the manufacturing process.¹¹⁷ This valuation includes not only the purchase price of the

¹¹⁴ In support of their argument, the petitioners cite to Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011) and accompanying Issues and Decision Memorandum at Comment 19; and Certain Steel Nails from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment 2.

¹¹⁵ See Prelim Factor Valuation Memorandum at Attachment 2.

¹¹⁶ See Silvery Dragon's March 21, 2013, Case Brief at 2

¹¹⁷ See, e.g., Spiceland, J. David, et. al., Intermediate Accounting (6th ed.) McGraw Hill (2011), at 401.

raw material, but also freight charges (most commonly referred to as “freight-in”) on incoming materials and other miscellaneous expenses such as handling or insurance incurred by the buyer related to the purchase.¹¹⁸ Therefore, the raw material inventory value on a company’s financial statement will necessarily include all of these attendant charges in addition to the material itself. Given the foregoing, it is reasonable for our purposes to presume that the raw material line item in the Vongthong financial statements is likewise inclusive of freight-in expenses, and that the transportation expenses at issue represent overhead charges. Faced with uncertainty as to the exact nature of this line item, and lacking conclusive evidence that the expenses at issue are in fact related to the transport of raw material to the factory, we must make reasonable conclusions based on the available information in classifying this item for our surrogate financial ratio calculations. In this case, the assumptions we made with regard to the Vongthong financial statement line items (*i.e.*, that the expenses at issue are more appropriately classified as overhead because the raw material value likely includes incoming freight) are both reasonable and solidly grounded in accounting practice and procedure.

Silvery Dragon cites to the Seamless Pipe case as support for its claim that the Department previously classified “transportation” as a raw material expense. However, in that case, the description of the charges at issue (*i.e.*, “freight, clearing, and handling”) was considerably more specific. The record in this case lacks such specificity, and, as noted above, there is no information at all in the Vongthong financial statements or in the notes to those statements to indicate that the expenses in question relate to the transport of raw materials. Moreover, there are likewise no details in the financial statements to indicate that the transportation expenses are somehow unrelated to MOH activities.

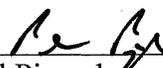
For this final determination, therefore, we continued to treat transportation expenses from the Vongthong financial statements as an MOH item in our surrogate financial ratio calculations.

¹¹⁸ Occasionally, a separate, temporary “freight-in” account is used to record incoming freight costs, but for purposes of stating the value of “raw material inventory” on the balance sheet, this amount is added to the purchase price of the materials. *Id.*

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the Federal Register.

AGREE DISAGREE



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 APRIL 2014
Date