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Investigation
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DATE: May 24, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (Department) analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation on certain corrosion-resistant steel products (corrosion-resistant steel) 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.

Issues:

- Comment 1: Ocean Freight Surrogate Value
- Comment 2: Byproduct Offset
- Comment 3: Hot-Rolled Steel Surrogate Value
- Comment 4: Surrogate Financial Ratios

II. BACKGROUND

The period of investigation (POI) is October 1, 2014, through March 31, 2015. On January 4, 2016, the Department published its *Preliminary Determination* in the less-than-fair-value (LTFV) investigation of

¹ See *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

corrosion-resistant steel from the PRC, and on February 5, 2016, we published a *Notice of Correction* to the *Preliminary Determination*.²

Between January 25 and 29, 2016, we conducted verification of the questionnaire responses submitted by Yieh Phui (China) Technomaterial Co., Ltd. (Yieh Phui). We issued the verification report on March 7, 2016.³

On March 18, 2016, one of the petitioners, U.S. Steel, and Yieh Phui each submitted case briefs.⁴ On March 23, 2016, U.S. Steel and Yieh Phui each submitted rebuttal briefs.⁵

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government because of snowstorm “Jonas.”⁶ All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination of this investigation is now May 24, 2016.

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

The Department preliminarily found that factual information provided by Petitioners⁷ indicated that by March 2015, prior to the filing of the petition, importers, exporters or producers had reason to believe that proceedings were likely.⁸ The Department preliminarily determined that critical circumstances existed for imports of subject merchandise from the PRC-wide entity, including Hebei Iron & Steel Co.,

² See *Antidumping Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to Preliminary Antidumping Determinations*, 81 FR 6236 (February 5, 2016) (*Notice of Correction*).

³ See Memorandum to The File, “Verification Report of the Sales and Factors Responses of Yieh Phui (China) Technomaterial Co., Ltd. in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China,” dated March 7, 2016 (Verification Report).

⁴ See Letter from U.S. Steel, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China” (U.S. Steel Comments), and Letter from Yieh Phui, “Corrosion-Resistant Steel Products from China: Case Brief” (Yieh Phui Comments), respectively, both dated March 18, 2016.

⁵ See Letter from U.S. Steel, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China” (U.S. Steel Rebuttal Comments) and Letter from Yieh Phui, “Corrosion-Resistant Steel Products from China: Rebuttal Brief” (Yieh Phui Rebuttal Comments), respectively, both dated March 23, 2016.

⁶ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review” (December 17, 2015).

⁷ Petitioners consist collectively of United States Steel Corporation (U.S. Steel), Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc.

⁸ See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) (*Preliminary CC Determination*). See also Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office VII, “Calculations for Preliminary Determination of Critical Circumstances in the Antidumping Duty Investigation of Corrosion-Resistant Steel Products from the People’s Republic of China,” October 29, 2015.

Ltd. (Tangshan Branch) (Tangshan) and Baoshan Iron & Steel Co., Ltd. (Baoshan).⁹ No parties commented on the *Preliminary CC Determination*.

Based on the examination of the shipping data requested by the Department and placed on the record by mandatory respondent Yieh Phui after the *Preliminary CC Determination*, we examined whether the increase in imports was massive pursuant to section 735(a)(3)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.206(h)(1) –(2) by comparing shipments over the period of July 2014 through February 2015, with the period March 2015 through October 2015. Based on that examination, the Department continues to find for this final determination that critical circumstances do not exist for Yieh Phui and the companies eligible for a separate rate.¹⁰ With respect to the PRC-wide entity, we are continuing to make an adverse inference that the PRC-wide entity dumped “massive imports” over a “relatively short period” and, therefore, that critical circumstances do exist for the PRC-wide entity, including Tangshan and Baoshan.

IV. SCOPE COMMENTS

In accordance with the Preliminary Determination Scope Memorandum,¹¹ the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues. On February 9, 2016, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc. (collectively Baosteel) submitted scope comments on the Preliminary Determination Scope Memorandum regarding Baosteel’s prior request to exclude certain hot dipped galvanized steel products from the scope.¹² On February 16, 2016, Petitioners submitted rebuttal comments in support of the Department’s findings in Preliminary Determination Scope Memorandum.¹³ On March 29, 2016, the Department rejected an improper filing of scope exclusion request by a Wisconsin-based importer, AmeriLux International Co., Ltd. (AmeriLux International) and placed its rejection letter and e-mail correspondence memorandum on

⁹ See *Preliminary CC Determination*, 80 FR at 68507.

¹⁰ Because the companion countervailing duty preliminary determination was published November 6 (the beginning of November), we are using data through October in determining critical circumstances for Yieh Phui. For all other producers and exporters, our critical circumstances determination continues to be based on data through August, the latest month for which GTA data is on the record. See also Memorandum to the File, “Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Analysis Memorandum for Yieh Phui (China) Technomaterial Co., Ltd. (Yieh Phui), dated May 24, 2016 (Yieh Phui Final Analysis Memorandum).

¹¹ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 21, 2015 (Preliminary Scope Decision Memorandum); see also Memorandum to the File, “Certain Corrosion-Resistant Steel Products From the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum,” dated January 29, 2016.

¹² See Letter from Baosteel, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Post Preliminary Comments on Scope,” dated February 9, 2016.

¹³ See Letter from Petitioners, entitled, “Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Petitioners’ Scope Rebuttal Brief,” dated February 16, 2016 (“Petitioners’ Scope Rebuttal”).

the record of this investigation.¹⁴ Based on the reasons provided in the rejection letter, the Department is not considering AmeriLux International's comments for the final determination.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.¹⁵ The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

V. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

¹⁴ *See* Letter to AmeriLux International, "Antidumping and Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea and Taiwan: Rejection of AmeriLux International's November 30, 2015, Scope Exclusion Request," dated March 29, 2016. *See also* Memorandum to the File, "Email Correspondence Regarding Scope Exclusion," filed concurrently with the rejection letter.

¹⁵ *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

VI. CHANGES SINCE THE PRELIMINARY DETERMINATION

We made changes from the *Preliminary Determination*, as discussed below, and as described in the Yieh Phui Final Analysis Memorandum.¹⁶ We made changes to ocean freight for U.S. sales. *See* Comment 1, below.

VII. USE OF ADVERSE FACTS AVAILABLE

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping duty (AD) statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. On June 29, 2015, the President of the United States signed into

¹⁶ *See* Yieh Phui Final Analysis Memorandum..

law the *Trade Preferences Extension Act of 2015 (TPEA)*, which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁸

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the *TPEA*, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The *TPEA* also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

In the *Preliminary Determination*, we found that the PRC-wide entity, which includes Baoshan, Tangshan, and other PRC exporters and/or producers, did not respond to the Department’s requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. We further determined that because non-responsive PRC companies had not demonstrated their eligibility for separate rate status, the Department considered them part of the PRC-wide entity. Finally, the Department preliminarily assigned a PRC-wide rate based on facts available, pursuant to sections 776(a)(1) and (a)(2)(A)- (C) of the Act, applying an adverse inference, pursuant to 776(b) of the Act.¹⁹

¹⁷ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (*TPEA*). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the USITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

¹⁸ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

¹⁹ See *Preliminary Determination* and accompanying PDM at 17-18.

In order to induce the respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the petition; or (b) the highest calculated rate for any respondent in the investigation.²⁰ In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner.

Specifically, in the *Preliminary Determination* the Department first examined whether the highest petition margin was less than or equal to the highest calculated margin in the *Preliminary Determination*, and determined that the highest calculated margin of 255.80 percent was the higher of the two.²¹ Because this rate was a calculated rate in this segment of the proceeding, there was no need to corroborate it, *i.e.*, it is not secondary information.²² Thus, for the *Preliminary Determination*, we assigned to the PRC-wide entity a dumping margin of 255.80 percent, which was the highest calculated rate.

No parties commented on this preliminary finding, and the Department continues to find that the PRC-wide entity failed to cooperate to the best of its ability in responding to the Department's requests for information. Because the highest rate calculated in the *Preliminary Determination* changed, the AFA rate applied in this final determination is the highest calculated rate in this final determination, 209.97 percent, which remains greater than the highest petition margin.

VIII. DISCUSSION OF THE ISSUES

Comment 1: Ocean Freight Surrogate Value

Yieh Phui initially reported all subject merchandise was shipped from the PRC using non-market economy (NME) providers. At verification, Yieh Phui submitted a minor correction in which it explained it used a market economy (ME) provider of ocean freight for U.S. sales to a certain location.

*U.S. Steel Comments and Rebuttal Comments:*²³

- Yieh Phui's correction should be rejected. Yieh Phui's claim to have used an ME provider for ocean freight is a significant and substantive change, which affected 13 percent of the U.S. sales.

²⁰ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3). See also, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000) (the Department applied the initiation margin as AFA); *Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China*, 71 FR 16116, 16118-19 (March 30, 2006).

²¹ See *Preliminary Determination* and accompanying PDM at 17-18.

²² See 19 CFR 351.308(c) and (d) and section 776(c) of the Act. See also *Applicability Notice*, 80 FR at 46794 ("Section 502 provides that, in making AD and CVD determinations on the basis of the facts available, the Department is not required to corroborate, in certain circumstances, the information employed, to make certain estimates or demonstrations concerning that information, or to address certain claims regarding the 'alleged commercial reality' of non-cooperating parties.").

²³ See U.S. Steel's Comments at 1-8; U.S. Steel's Rebuttal Comments at 19-20.

It is not the type of error that the Department accepts as a minor correction,²⁴ as under the statute, the Department has not accepted “new information” or “major corrections” at verification.²⁵

- This correction should also be rejected as unsolicited and untimely new factual information. This late submission deprived U.S. Steel of an opportunity to submit rebuttal information on the issue.
- Yieh Phui’s correction directly contradicts information and evidence previously submitted to the Department.
- The Department’s Verification Report states it does not draw conclusions as to whether the reported information was successfully verified, or how the facts obtained at verification will ultimately be treated.²⁶
- Even if the correction is accepted, Yieh Phui failed to show that it made ME purchases.
- The record evidence shows that Yieh Phui entered into a three-party contract between Yieh Phui, a Chinese freight forwarder, and an ME ocean freight carrier. Yieh Phui did not pay the ocean freight carrier directly but paid the Chinese freight forwarder, which paid the carrier.
- The Department’s regulations provide that under certain circumstances a respondent’s purchases from an ME supplier may be treated as ME transactions if there is evidence of the price paid to the ME supplier.²⁷ Thus, in cases where a respondent used an NME freight forwarder or an NME agent of an ME carrier, the Department has consistently required the respondent to provide documentation that establishes a link between the prices charged by the ME provider and the prices paid by the respondent.²⁸
- Absent such payment documentation, the record will only reflect the amounts paid from one NME entity to another, and, thus, the Department will not be able to determine the price actually paid to the ME carrier.²⁹
- In addition, the Department will not be able to determine whether any agent fees or commissions were paid, and, if they were, whether they were set by the ME carrier.

²⁴ See U.S. Steel’s Comments at 2, listing “clerical error, not a methodological error, an error in judgment, or a substantive error” as minor corrections and referencing *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People’s Republic of China*, 72 FR 9508 (Mar. 2, 2007) and accompanying Issues and Decision Memorandum (IDM) at Comment 7 (quoting *Maui Pineapple Co. v. United States*, 264 F. Supp. 2d 1244, 1261 (CIT 2003)).

²⁵ *Id.*, citing *Nippon Steel Corp. v United States*, 337 F.3d 1378-84 (Fed. Cir. 2003).

²⁶ See Verification Report at 1.

²⁷ See 19 CFR 351.408(c)(1).

²⁸ See U.S. Steel’s Comments at 5, citing *e.g.*, *Sebacic Acid From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000) and accompanying IDM at Comment 8 (*Sebacic Acid from the PRC*); *Certain Stilbenic Optical Brightening Agents From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68148, 68152 (November 3, 2011) (*Optical Brightening Agents from the PRC*) (unchanged in *Certain Stilbenic Optical Brightening Agents From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436 (March 26, 2012)); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China*, 65 FR 19873 (April 13, 2000) and accompanying IDM at Comment 3 (*Apple Juice from the PRC*).

²⁹ *Id.*, citing *Sebacic Acid from the PRC* and accompanying IDM at Comment 8. U.S. Steel asserts that the facts of the instant case are also similar to *Apple Juice from the PRC* at Comment 3.

- In the instant case, Yieh Phui did not document the payment from the PRC freight forwarder to the ME carrier for each ocean freight transaction, so only the payment to the freight forwarder is on the record.
- The Department confronted similar facts in *Sebacic Acid from the PRC*. In that case, the respondent paid ocean freight to its freight forwarder who in turn paid the ME carrier agent in the PRC. Also in that case, the respondent did not document the transaction between the PRC agent and the ME carrier. The Department rejected the respondent’s argument that it should treat ocean freight charges as ME purchases. The Department explained that it could not determine the ME nature of the transaction because it did not have documents linking the amounts which either respondent claimed to have paid to the amount charged by the ME carrier.³⁰
- The Department’s regulations state that the Department will only use the prices paid to an ME supplier to value an input or service if “substantially all” of the purchases were made from ME suppliers, meaning “85 percent or more” of the total volume of the input or service purchased during the POI.³¹ Even if the Department were to determine to use the expenses in question for certain sales, Yieh Phui’s ocean freight expenses cited above only amount to 13 percent of its total sales and do not meet the threshold to be used for all sales. The Department should continue to use a surrogate value to value all of Yieh Phui’s ocean freight expenses.
- U.S. Steel notes that the surrogate ocean freight rates it provided were from Maersk. Contrary to Yieh Phui’s argument (*see below*), U.S. Steel claims these rates are public information. U.S. Steel labeled the information as proprietary out of an abundance of caution for Yieh Phui’s business proprietary information (BPI) destination data.
- Yieh Phui had an opportunity before the *Preliminary Determination* to rebut the ocean freight data submitted by U.S. Steel, but Yieh Phui did not submit rebuttal information.
- There is no evidence on the record that calculating freight rates for container shipments (rather than bulk shipments) is in any way distortive (*see Yieh Phui’s argument below*). In fact, the Maersk freight rates submitted by U.S. Steel are specific to ocean freight shipments of iron, steel, and metal.
- In *OCTG from the PRC*, the respondent argued that the Department should not value brokerage and handling using data from *Doing Business in Indonesia* because it shipped merchandise in bulk rather than in containers.³² The Department rejected this argument because the respondent had not demonstrated that charges based on a container rate are distortive relative to rates for bulk shipments of the subject merchandise.
- The Department should continue to calculate an average of the Maersk freight rates to value ocean freight services. The Department’s practice is to calculate broad-based market averages.³³

³⁰ See *Sebacic Acid from the PRC* and accompanying IDM at Comment 8.

³¹ See U.S. Steel’s Rebuttal Comments at 17, fn. 17, referencing 19 CFR 351.408(c)(1).

³² *Id.* at 19, referencing *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) and accompanying IDM at Comment 3 (*OCTG from the PRC*).

³³ *Id.* at 20, referencing, e.g., *High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying IDM at Comment 1 (*Cylinders from the PRC*); *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative*

*Yieh Phui Comments and Rebuttal Comments:*³⁴

- It is the Department's long-established practice to use surrogate values derived from publicly available sources.³⁵
- The surrogate ocean freight data submitted by U.S. Steel is problematic because it is not derived from public sources. The Department had to use this data, despite its non-public nature, because there was no other information on the record.
- The Department now has a source of ocean freight data which is superior to U.S. Steel's data: Yieh Phui's ME ocean freight data for shipments to the West coast of the United States. This data was submitted as a minor correction and verified without discrepancies. The Department should use this data for the final determination.
- This data is superior for two reasons: 1) Yieh Phui shipped the merchandise under consideration to the United States in bulk (the ocean freight data submitted by U.S. Steel is for shipment by container); 2) and U.S. Steel's data was not derived from publicly available sources and was not verified by the Department.
- If the Department continues to use the ocean freight data submitted by U.S. Steel, the Department should apply destination-specific ocean freight rates.
- For the *Preliminary Determination*, the Department may have misread the ocean freight surrogate value information. The rates submitted are destination specific, and the "average" surrogate ocean freight rate that was used in the *Preliminary Determination* was the data for shipment to a specific U.S. city and not an average rate calculated using rates for different destinations.
- The Department should correct this ministerial error, calculate an actual average, or apply rates specific to the destinations at issue.
- The record makes clear that the minor correction submitted at verification consisted of information which was intended to correct data that had been on the record long before verification began.
- During preparation for verification, Yieh Phui discovered that its reported U.S. sales to a certain port were in fact shipped by an ME carrier, which means Yieh Phui should have reported ocean freight data under these terms instead of what it reported. Yieh Phui realized it should not have reported "No" in the international freight field for these sales, but it should have reported the actual ocean freight expenses incurred on a per-unit basis for these sales.
- Thus, Yieh Phui timely raised the issue at the beginning of verification.
- The Verification Report notes that Yieh Phui did not correctly report its ME ocean freight because there was a three-party contract. Record evidence suggests that, due the complicated nature of the three-party contract, first-time respondent Yieh Phui made an error in reporting its ocean freight for sales to the port in question. The record demonstrates the error was inadvertent and clerical in nature.
- Yieh Phui's correction is not new factual information because it relates directly to information previously reported in the database and was intended to correct that information.

Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) and accompanying IDM at Comment XIX (Fish Fillets from Vietnam).

³⁴ See Yieh Phui's Comments at 7-9, Yieh Phui's Rebuttal Comments at 2-6.

³⁵ See 19 CFR 351.408.

- Contrary to U.S. Steel’s contention, this is the type of information that the Department routinely accepts through the minor correction process. The verification agenda stated that new information would be accepted only when the information makes minor corrections to information already on the record.
- U.S. Steel’s argument with respect to the allegedly substantial nature of the correction also lacks record support. The verification report indicates that the correction affects only 13 percent of U.S. sales, which is a minor portion of Yieh Phui’s total U.S. sales during the POI.
- Ocean freight is the only selling expense, out of many selling expenses, for which Yieh Phui submitted a correction, and, thus, the corrected ocean freight data accounts for a very small portion of Yieh Phui’s overall data.
- The cases cited by U.S. Steel in support of its arguments regarding payment of ocean freight are all factually distinguishable from the instant proceeding. *Sebacic Acid from the PRC*, *Optical Brightening Agents from the PRC*, and *Apple Juice from the PRC* involve similar but not identical shipment situations. In those cases, the respondents did not engage in business directly with an ME carrier but only with the Chinese freight forwarder, which in turn dealt with the ME carrier.
- Record evidence in the instant case shows that Yieh Phui’s sales to a certain location were shipped by an ME carrier, and Yieh Phui paid for those services in an ME currency.
- There is a preference in the Department’s regulations for using the actual prices paid to the ME supplier when valuing ME inputs.³⁶ However, the regulation does not restrict the record evidence that the Department could rely upon in ascertaining the prices paid to the ME input supplier.
- U.S. Steel misinterprets the regulations by arguing that Yieh Phui’s freight should be rejected because of the lack of the documentation showing the payment made by the Chinese forwarder to the ME shipper. U.S. Steel knows that this type of information is not under Yieh Phui’s control.
- Nonetheless, the record does provide the Department the necessary information to ascertain the prices paid to the ME carrier for Yieh Phui’s sales to the destination in question. These rates are found in the Affreightment Contracts which Yieh Phui entered into with the ME carrier.³⁷

Department Position:

In the *Preliminary Determination*, we used Maersk data to value ocean freight for all U.S. sales. As U.S. Steel acknowledged, the Maersk rate data itself is public data. Yieh Phui is correct that, in the *Preliminary Determination*, we inadvertently applied the average Maersk ocean freight for one port to all U.S. sales. It is the Department’s practice to use, if available, destination-specific ocean freight, which is weight averaged if there is more than one value for each destination. For instance in *Xanthan Gum from the PRC*, we said “{w}e used an average of the quoted rates for the specific route (*i.e.*, port of export to port of import) reported by Meihua in its U.S. sales database.”³⁸ U.S. Steel cites *Fish Fillets*

³⁶ See 19 CFR 351.408(c)(1).

³⁷ See Verification Exhibit 1.

³⁸ See *Xanthan Gum From the People’s Republic of China: Preliminary Results of 2013 Antidumping Duty New Shipper Review*, 79 FR 78797 (December 31, 2014), and accompanying PDM at 12 (*Xanthan Gum from the PRC*) (unchanged in

from Vietnam in support of its argument for broad-based market averages, but that case involved brokerage and handling, for which destination-specific charges are usually not available, unlike for ocean freight.³⁹ Moreover, in *Xanthan Gum from the PRC*, the rates were averaged, but they were averaged by route not by broad-based market averages.⁴⁰ For the final determination, we will change the ocean freight values we use to use a methodology similar to *Xanthan Gum*, which is consistent with our practice, by applying a weighted average of destination-specific ocean freight charges with one exception, explained below.

At verification, Yieh Phui reported and the Department accepted, as a minor correction, that it used a market economy provider for ocean freight for sales to a certain port. Notwithstanding U.S. Steel's assertions, the Department finds, after careful consideration, that the correction at issue is a minor correction of the type we routinely accept at verification, for the following reasons. First, during verification, Department officials reviewed the proposed correction and were able to examine source documents substantiating it. It only affected sales to one port, and our verification uncovered no similar mistakes that would suggest this was a systemic problem in Yieh Phui's responses.⁴¹ Instead, our review of the error at, and subsequent to, verification, has supported our initial conclusion that the error was a minor error of the type typically accepted at verification.

Pursuant to 19 CFR 351.408(c)(1), where a factor is produced in one or more ME countries, purchased from one or more ME suppliers and paid for in an ME currency, the Department normally will use the prices paid to the ME suppliers if substantially all (*i.e.*, 85 percent or more) of the total volume of the factor is purchased from the ME suppliers. In those instances where less than substantially all of the total volume of the factor is produced in one or more ME countries and purchased from one or more ME suppliers, the Department will weight-average the actual prices paid for the ME portion and the surrogate value for the NME portion by their respective quantities.⁴² In the instant case, because Yieh Phui's minor correction applied only to a small portion of U.S. sales (only those sales shipped to a certain port) we would at most use it to value ocean freight for sales to that port. Thus, even if, assuming *arguendo*, we were to entirely accept Yieh Phui's minor correction as useable, we would not use this data for all U.S. sales, but only for the sales to the port in question. For sales to the remaining ports, we would use surrogate values.

While U.S. Steel suggests that the facts of this case are similar to *Sebacic Acid from the PRC* and *Apple Juice from the PRC*, factual differences exist. In *Sebacic Acid from the PRC* and *Apple Juice from the*

Xanthan Gum From the People's Republic of China: Final Results of 2013 Antidumping Duty New Shipper Review, 80 FR 29615 (May 22, 2015). In *Fuyao Glass Indus. Group Co. v. United States*, 27 CIT 1892, 2003 Ct. Intl. Trade LEXIS 171, 26 Int'l Trade Rep. (BNA) 1066, SLIP OP. 2003-169 (CIT 2003) the court found that record evidence indicated that price variances occur when shipping from a port to different zip codes within a state, therefore, Commerce's decision to value carrier shipments by destination-specific values was reasonable, given that ocean freight costs are influenced by distance. Citing, *e.g.*, *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 23 CIT 479, 59 F. Supp. 2d 1354, 1358 (1999).

³⁹ See *Fish Fillets from Vietnam* and accompanying IDM at Comment XIX.

⁴⁰ See *Xanthan Gum from the PRC* and accompanying PDM at 12.

⁴¹ See Verification Report.

⁴² See 19 CFR 351.408(c)(1).

PRC, the Department stated that in the absence of documentation on the record of the amount actually charged by the ME shipper, the record only contains the values associated with the transactions between two PRC entities.⁴³ In *Optical Brightening Agents from the PRC*, the respondent did not demonstrate that the PRC freight forwarder was an agent acting on behalf of an ME freight carrier.⁴⁴ In the instant case, the respondent has a contract between itself, the ME shipper, and the PRC intermediary. This contract spells out the prices for ocean freight in ME currency. Thus, Yieh Phui demonstrated how the per-unit ocean freight cost for the one U.S. sale we examined at verification tied to the ocean freight contracts and its accounting system. It provided a list of the other affected sales, and assigned the same ocean freight cost to all sales. However, based on the contract submitted, there are additional considerations to the determination of the ocean freight price per sale to the port in question.⁴⁵ Therefore, we do not have the necessary information to definitively know the separate prices for all sales provided by the ME freight provider. Thus, we cannot use this ocean freight data for all sales to the port in question. We will, however, use the minor correction for the one sale for which we verified the U.S. dollar price.⁴⁶ As facts available for the remaining sales to the port in question, pursuant to section 776(a)(1) of the Act, we will use Maersk data to value ocean freight. The Maersk data is valid and public and being used for the remainder of the U.S. sales, on a destination-specific basis.

Yieh Phui argues that its merchandise is shipped in bulk and not in containers, and that the Maersk data is for shipment by container, and therefore is not appropriate for valuing Yieh Phui's shipments. Even assuming *arguendo* that there was an established difference on the record between bulk freight and container freight, there is no other usable ocean freight surrogate value data on the record other than Maersk data. Indeed, Yieh Phui had the opportunity to place rebuttal information on the record (including bulk ocean freight data) after U.S. Steel submitted its surrogate value data. Yieh Phui failed to submit rebuttal ocean freight data.

Comment 2: Byproduct Offset

*U.S. Steel Comments:*⁴⁷

- Yieh Phui claims its production process generated nine types of scrap, and it is therefore entitled to offsets for such scrap. Yieh Phui admitted its accounting records do not track the quantity of scrap generated in its production process, but it weighs the scrap when it is sold.
- Under the Department's regulations and practice, a party requesting a favorable adjustment bears the burden of demonstrating entitlement to the adjustment.⁴⁸ To get a byproduct (or scrap)

⁴³ See *Sebacic Acid from the PRC* and accompanying IDM at Comment 8, and *Apple Juice from the PRC* and accompanying IDM at Comment 3.

⁴⁴ See *Optical Brightening Agents from the PRC* at 68152.

⁴⁵ See Yieh Phui Final Analysis Memorandum.

⁴⁶ *Id.*

⁴⁷ See U.S. Steel's Comments at 8-11.

⁴⁸ *Id.* at 8-9; referencing 19 CFR 351.401(b)(1) and *Timken Co. v. United States*, 673 F. Supp. 495, 513 (CIT 1987) (holding that it is reasonable to require a party that seeks an adjustment and that has access to the necessary information to bear the burden of establishing entitlement to the adjustment).

offset, a company must show the byproduct has commercial value, that it was generated during the production of subject merchandise, and that it was generated during the POI.⁴⁹

- Where the only evidence in support of an offset is information regarding sales (not production), the Department has in numerous cases denied the offset.⁵⁰ The Court of International Trade (CIT) has recognized that by demanding proof of production, the Department excludes scrap made during prior periods and ensures that the normal value reflects the actual cost of making subject goods.⁵¹
- Yieh Phui has no way of determining when the scrap it sold was produced.
- Basing the scrap offset on the quantity of scrap sold during the POI clearly distorts the calculation of the scrap offset.⁵²

*Yieh Phui Rebuttal Comments:*⁵³

- The Department should accept Yieh Phui's reported byproduct offsets. Record evidence shows that the byproduct offsets reported by Yieh Phui reasonably correlate with Yieh Phui's production of byproducts during the POI.
- Yieh Phui expended its best effort in reporting FOP data, including byproduct offsets. Indeed, after the Department questioned the accuracy of Yieh Phui's reported FOPs, Yieh Phui recalculated byproduct offsets on a more product-specific level in its supplemental questionnaire response. This more reasonably reflected the actual yield situation of each CONNUM.
- Thus, even though Yieh Phui's accounting system does not track the production quantity of scrap generated from its production process, Yieh Phui did its best to prove that the reported byproduct offsets which are based on sales during the POI correlate to the production of byproducts during the POI, and the Department verified this information without discrepancies.
- Almost all of Yieh Phui's products fall in the scope of the investigation, thus the scrap generated or sold during the POI is virtually all related to the production of the merchandise under consideration.
- An analysis of Yieh Phui's input, output, and yield losses shows that the reported sales quantity of scrap used as the offset is less than the scrap that could possibly have been produced by Yieh Phui during the POI.⁵⁴

⁴⁹ *Id.* at 9; referencing *Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) and accompanying IDM at Comment 18 (*Frontseating Service Valves from the PRC*).

⁵⁰ *Id.*, referencing, e.g., *OCTG from PRC* and accompanying IDM at Comment 2; *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 32245 (June 12, 2013) and accompanying IDM at Comment 10; *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012) and accompanying IDM at Comment 3 (*Silicon Metal from the PRC*); and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying IDM at Comment 23 (*Lined Paper Products from the PRC*).

⁵¹ *Id.*, referencing *American Tubular Products LLC v. United States*, Court No. 13-29, Slip Op. 14-116 at 17-18 (CIT September 26, 2014).

⁵² U.S. Steel Comments at 10-11 and Attachment 1. *See also* Final Calculation Memorandum for a summary of the proprietary aspects of this issue.

⁵³ *See* Yieh Phui's Rebuttal Comments at 10-12

- The comparison provided by U.S. Steel in its case brief is based on misleading and incorrect apples-to-oranges comparisons among the data.⁵⁵ U.S. Steel’s chart attempts to compare the reported consumption of metal inputs with the reported byproduct offsets. However, U.S. Steel incorrectly compared the sum of metal input factors (including hot- and cold-rolled steel) with the non-corresponding and incomparable byproduct offsets (including hot-rolled steel coil, cold-rolled steel scrap, and galvanized steel scrap). U.S. Steel failed to include the inputs of zinc and aluminum ingots in the calculation of the inputs. In addition, it included galvanized steel scrap in the byproduct offset calculation, and this scrap includes zinc and aluminum coating, which are associated with zinc and aluminum ingots, which were not included in the total inputs for purposes of comparison .
- Yieh Phui submitted a comparison which shows that even though for a small number of control numbers (CONNUMs) the calculated yield loss is less than the reported byproduct offsets, the difference is minor given that the reported byproduct offsets are reported by allocating a sum to a broad range of CONNUMs.⁵⁶

Department Position:

The Department’s practice with regard to scrap or byproduct offsets is that “the byproduct offset is limited to the total production quantity of the byproduct...produced during the {POI or period of review}, so long as it is shown the byproduct has commercial value.”⁵⁷ One of the concerns of past cases where respondents did not keep track of scrap production was that the scrap that was sold may have included non-subject merchandise.⁵⁸ In this case, unlike *Lined Paper Products from the PRC*, where the company made no attempt to allocate its scrap sales to the production of scope merchandise or on a product-specific basis, virtually all of Yieh Phui’s production is of the merchandise under investigation, and, thus, virtually all of Yieh Phui’s scrap production is from the production of the merchandise under investigation.⁵⁹ U.S. Steel cited *Silicon Metal from the PRC* as a case where the Department denied the scrap offset.⁶⁰ However, in that case, the respondent submitted no evidence that the scrap was sold or re-introduced, and it, thus, did not show that the scrap had value.⁶¹ The fact that the scrap has value is not at issue in this case. In *OCTG from the PRC*, where the Department did not grant a byproduct offset, the respondent did not record the production of steel scrap, and steel scrap was only measured when the scrap was sold, and while the respondent submitted a chart comparing sales to total production of all merchandise, it did not support the chart with evidence, such as inventory

⁵⁴ *Id.* at 12, referencing October 23 SQR at 11-12 and Exhibit 15.

⁵⁵ *Id.*, referencing U.S. Steel Comments at Attachment 1.

⁵⁶ *Id.* at 13-14 and Exhibit 1.

⁵⁷ See *Frontseating Valves from the PRC* and accompanying IDM at Comment 18; see also *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying IDM at Comment 23.

⁵⁸ See *Lined Paper Products from the PRC* and accompanying IDM at Comment 23 (where the respondent made no attempt to allocate scrap between the production of scope merchandise and the production of non-scope merchandise).

⁵⁹ See Letter from Yieh Phui “Corrosion-Resistant Steel Products from China; Sections C and D Supplemental Response,” October 23, 2015, at 12.

⁶⁰ See *Silicon Metal from the PRC* and accompanying IDM at Comment 3.

⁶¹ *Id.*

ledger.⁶² In this case, we reviewed raw material and sales inventory ledgers and other accounting documents during verification.⁶³

In *Nails from Korea*, we limited the respondent's reported scrap offset.⁶⁴ We stated, in that case, that it is the Department's practice to allow a scrap offset related to the quantity of scrap generated.⁶⁵ Also in that case, the respondent did not track the quantity of steel scrap generated and only recorded the quantity of steel scrap sold, and we looked for record evidence to determine the amount of scrap which could have been generated during the production process. Specifically, we calculated the amount of steel scrap which could have been generated during the production process and then applied the scrap generation rate to monthly POI consumption of raw materials.

Similarly, in the instant case, Yieh Phui does not track the quantity of scrap generated but only records the amount sold. We know the total quantities of major raw material inputs (steel, zinc, aluminum, and paint) and the quantity of finished goods output during the POI. Thus, we can calculate an overall yield for production. We subtracted the finished goods output quantity from the total input quantity (of all major raw material inputs). We compared this difference to the quantity of scrap sales reported.⁶⁶ The quantity we calculated was more than the amount reported. Therefore, we have not limited the total scrap sales used as an offset. Unlike in *American Tubular Products* - where the CIT recognized we were not required to grant an offset when we lacked information to do so accurately - in this instance our calculated scrap offset quantity is more than the claimed scrap sales provided by Yieh Phui and accordingly provides a reliable basis to grant an offset. Further, in doing so, the normal value continues to reflect the actual cost of making subject goods.⁶⁷

While U.S. Steel submitted a comparison showing that scrap was overstated for a number of CONNUMs, Yieh Phui is correct that U.S. Steel failed to include certain inputs in its calculation. Yieh Phui's comparison shows that for a small number of control numbers (CONNUMs) the calculated yield loss is less than the reported byproduct offsets. We stated in *Frontseating Valves from the PRC*:

an allocation methodology may result in instances where the allocation is more or less than the actual amounts employed because allocations are based on estimates rather than allocation amounts. The question is whether the allocation methodology is reasonable, based on a company's accounting books and records kept in the normal course of business, and does not result in distortions...Sanhua explained in its response that it did not track scrap production by product/model in the normal course of business as it would be impractical to do so.⁶⁸

⁶² See *CTG from the PRC* and accompanying IDM at Comment 2.

⁶³ See Verification Report at 15-23.

⁶⁴ See *Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015) and accompanying IDM at Comment 8 (*Nails from Korea*).

⁶⁵ *Id.* (citing to *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 78 FR 65272 (October 31, 2013) and accompanying IDM at Comment 11).

⁶⁶ See Yieh Phui Final Analysis Memorandum.

⁶⁷ See *American Tubular Products LLC v. United States*, Court No. 13-29, Slip Op. 14-116 at 17-22 (CIT September 26, 2014).

⁶⁸ See *Frontseating Valves from the PRC* and accompanying IDM at Comment 18.

In that case, the respondent based its per-product code allocation of brass scrap on the total quantity of brass scrap produced for all production.⁶⁹ Here we are limiting the scrap offset to the overall scrap possible (based on input and output quantities). Yieh Phui allocated scrap on a CONNUM-specific basis.⁷⁰ As noted in *Frontseating Valves from the PRC*, because allocations are based on estimates, some amounts may be more or less than actual.⁷¹ Yieh Phui's allocation methodology is reasonable, is based on the company's records kept in the normal course of business as supported by documentation on the record of this investigation, and evidence on the record of this investigation does not demonstrate that its allocation methodology results in unacceptable distortions with respect to calculation of NV.

Comment 3: Hot-Rolled Steel Surrogate Value

*Yieh Phui Comments:*⁷²

- The Department should recalculate the surrogate value for hot-rolled steel by excluding all HTS numbers under HTS 7225, as well as excluding HTS 7208.1099. In the *Preliminary Determination*, the Department used Mexican HTS data under 7208 and 7225 (using eight-digit HTS numbers and calculating a simple average of their average unit values).
- HTS 7225 covers alloyed hot-rolled steel, a type of input which was not used by Yieh Phui for the production of the merchandise under investigation. The inclusion of this data distorts the surrogate value for hot-rolled steel.
- The record (*e.g.*, sales documents and mill certificates) shows Yieh Phui consumed non-alloy hot-rolled steel coils and sold non-alloy merchandise under investigation.
- The average unit value for HTS 7208.1099 is highly aberrational and should be excluded. The import volume of this HTS number is only six metric tons (MT), while other HTS numbers range from 295 MT to 105,994 MT.
- In addition to the fact that the import volume of this HTS number is statistically and commercially insignificant, its average unit value is unreasonably high (highest of all the unit values under HTS 7208). This high value distorts the surrogate value under the Department's simple average method.
- The CIT ruled that the Department can rely on import statistics as a basis for surrogate value only after concluding the statistics are commercially and statistically significant quantities. The Department must also ensure a small quantity of imports did not produce a price that is aberrational to other sources of market value.⁷³

*U.S. Steel Rebuttal Comments:*⁷⁴

- Yieh Phui failed to provide any description of its hot-rolled coil input in response to the initial questionnaire other than describing it as "hot-rolled steel coils." There was nothing in Yieh Phui's narrative indicating whether Yieh Phui used alloy or non-alloy hot-rolled coil.

⁶⁹ *Id.*

⁷⁰ See Verification Report at 22-23.

⁷¹ See *Frontseating Valves from the PRC* and accompanying IDM at Comment 18.

⁷² See Yieh Phui's Comments at 2-5.

⁷³ *Id.* at 5, referencing *Shanghai Foreign Trade Enterprise Co., Ltd. v. United States*, 318 F. Supp. 2d 1339, 1352 (CIT 2004).

⁷⁴ See U.S. Steel's Rebuttal Comments at 1-6.

- Accordingly, in the *Preliminary Determination*, the Department calculated a surrogate value for hot-rolled steel coils using HTS numbers under 7225 (alloy) and 7208 (non-alloy). The Department should continue this treatment for the final determination.
- A suggestion regarding the HTS code the Department should use (like Yieh Phui had in its Section D response) does not provide a full description of the input that the Department requires. In addition, in its response, Yieh Phui did not provide an explanation of why the suggested HTS number was most appropriate.
- The Department should reject Yieh Phui's claim, which was raised for the first time in its case brief, that the reason it suggested HTS 7208 is that it only consumed non-alloy hot-rolled steel in the production of the subject merchandise.
- The Department has consistently rejected claims that are asserted for the first time in a party's case brief.⁷⁵ For instance, in *WBR from the PRC*, the Department used HTS codes that covered coniferous and non-coniferous plywood to value a respondent's plywood input. The respondent argued for the first time in the case brief that it used only coniferous plywood, but the Department used both HTS codes in the final determination, stating that, when given an opportunity, the respondent failed to provide a detailed description of its plywood input or to explain why it suggested certain HTS codes.⁷⁶
- There is no mention in the verification agenda or verification report of an examination of alloy hot-rolled coil, non-alloy hot-rolled coil, or the appropriate HTS code that should be used to value Yieh Phui's hot-rolled coil input.
- The Department should reject Yieh Phui's argument that the record shows that it consumed only non-alloy merchandise based on the sample sales documents it submitted. In prior cases, the Department recognized that it requests sample sales documents for the purpose of corroborating the respondent's description of the material input.⁷⁷ The documents are not intended, by themselves, to establish the physical characteristics of all of a respondent's material inputs.⁷⁸
- In *OCTG from the PRC*, the respondent failed to describe the chemical composition of the steel billets it consumed, including whether they were alloy or non-alloy.⁷⁹ The Department valued the billets using alloy and non-alloy codes. The respondent argued before the CIT that this valuation was erroneous because the sample sales documents it had placed on the record only reflected the consumption of non-alloy steel billets. The CIT rejected this argument finding that, had the respondent wished to prove that the billets it consumed were non-alloy steel, it could have answered, with exactness, the Department's requests for a description of its billets.

⁷⁵ *Id.* at 2, referencing, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007) and accompanying IDM at Comment 9; *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (Aug 20, 2008) and accompanying IDM at Comment 18 (*WBF from the PRC*); *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, (March 11, 2005) and accompanying IDM at Comment 43 (*Live Swine From Canada*).

⁷⁶ *Id.* at 3, referencing *WBF from the PRC* at Comment 70.

⁷⁷ *Id.* at 5, referencing, e.g., *American Tubular Products, LLC v. United States*, CIT No. 13-29, Slip Op. 15-98 (CIT 2015) at 14-15 (*American Tubular Products*).

⁷⁸ *Id.*

⁷⁹ *Id.* at 5-6, referencing *OCTG from the PRC* and accompanying IDM at Comment 2.

Because it did not, the CIT found the Department properly valued the billets using alloy and non-alloy HTS codes.⁸⁰

- If the Department does rely on the sample sales documents, the Department should use only the 7208 HTS codes that are most specific to the hot-rolled coil reflected in the samples sales documents.⁸¹
- The average unit value (AUV) for imports under HTS 7208.1099 is not aberrational. It is only one percent higher than the next highest AUV and only three percent higher than the following AUV. Whenever there is a range of AUVs, one has to be the highest, but that does not make it aberrational.
- Yieh Phui ignores that the Department already excluded an AUV of hot-rolled steel that it considered to be aberrational. The Department did not use the AUV of HTS 7208.9099. The Department stated that while AUVs for other numbers ranged from 10.02 to 13.56, the AUV for this number was 40.72 (more than three times the other AUVs).
- Thus, the AUV of 13.56 is not the highest AUV on the record. In addition, Yieh Phui ignores the Department's normal practice, which is not to reject to import data based solely on the magnitude of the import volumes, but to examine whether the AUVs are aberrant as compared to other benchmarks.⁸² The CIT has upheld the Department's practice in this regard.⁸³

Department Position:

We agree with U.S. Steel. For this final determination, we are using both the alloy HTS 7225 numbers, as well as the 7208 numbers, including 7208.1099. In its initial Section D questionnaire response, Yieh Phui had the opportunity to be more specific in describing the type of input it used. However, it only gave a generic hot-rolled steel coil description and suggested "7208" as the HTS number to use to source surrogate values. Yieh Phui offered no explanation, however, as to why this number should be used. In fact, it only offered up a four-digit HTS number, while U.S. Steel provided specific eight-digit HTS numbers when providing surrogate value comments. When selecting surrogate values, we consider, among other factors, the quality, specificity, and contemporaneity of the data. Eight-digit HTS numbers generally are more specific than four-digit numbers. Moreover, when describing the hot-rolled steel coil input it uses, Yieh Phui simply stated "{h}ot-rolled steel coil." Hot-rolled steel coil can include both non-alloy and alloy steel.⁸⁴ While the documentation we sampled in the questionnaire responses and at verification do not reference alloy steel, we do not have production or sales documentation for all sales on the record. Thus, there is no information on the record confirming that

⁸⁰ See *American Tubular Products* at 14-15.

⁸¹ See Yieh Phui Final Analysis Memorandum for a summary of the proprietary aspects of this issue.

⁸² See U.S. Steel's Rebuttal Comments at 8, referencing *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 IDM at Comment 4.

⁸³ *Id.* referencing *Shanghai Foreign Trade Enterprises Co., Ltd. v. United States*, 318 F. Supp. 2d 1339, 1350-51 (CIT 2004).

⁸⁴ See, e.g., *Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15231 (March 22, 2016). The scope of this case includes both 7208 and 7225 numbers. While this investigation has not resulted in a final determination, there is no preliminary indication that the scope of the investigation would exclude alloy products for the final determination. Indeed, the existing Chinese order on hot-rolled steel does not include alloy HTS numbers. We note however while the subject merchandise is "hot-rolled steel," the caption of the proceeding is "Hot-Rolled Carbon Steel Flat Products." See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China: Final No Shipments Determination of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 67415 (November 13, 2014).

Yieh Phui does not use alloy steel as an input. As U.S. Steel noted, in prior cases, we recognized that we request sample sales documents for the purpose of corroborating the respondent's description of the material input.⁸⁵ The documents are not intended, by themselves, to establish the physical characteristics of all of a respondent's material inputs, and that had parties wished to prove specific characteristics of their products they could have provided the information with exactness.⁸⁶ In addition, as U.S. Steel noted, there have been a number of cases where we rejected a respondent's claim because it was raised for the first time in the case brief and not otherwise verifiable.⁸⁷

In addition, it is our normal practice to not reject import data based solely on the magnitude of the import volumes, but to examine whether the AUVs are aberrant as compared to other benchmarks.⁸⁸ In this case, as compared to other AUVs for hot-rolled coil, 7208.1099 is not aberrational. As U.S. Steel noted, in the *Preliminary Determination*, we excluded an HTS number with a value of 40.72 (more than three times the other AUVs). HTS 7208.1099 has value that is only one percent higher than the next highest AUV and only three percent higher than the following AUV. Thus, we will continue to use 7208.1099 in our final determination calculations.

Comment 4: Surrogate Financial Ratios

*Yieh Phui Comments:*⁸⁹

- The Department should use the audited financial statements of Blue Scope, a Thai producer of the merchandise under investigation, to calculate surrogate financial ratios in the final determination.
- In the *Preliminary Determination*, the Department used the financial statements of Grupo Simec, a Mexican steel maker, rather than those of Thai producers of corrosion-resistant steel products. The Department based this decision on the fact that the Thai companies received countervailable subsidies, which rendered the data unusable.
- Even though the Thai company received subsidies, the data of Blue Scope remain a superior source of surrogate financial ratios.
- In determining the proper source of surrogate values, the Department traditionally considers several factors. The CIT has ruled that product specificity is fundamental in the surrogate value selection process. If the data set is not sufficiently product specific, it is of no relevance whether or not the data satisfy the other traditional factors.⁹⁰
- Blue Scope manufactures identical products to Yieh Phui's using a virtually identical production process, while the record makes clear that Grupo Simec does not manufacture identical merchandise nor use an identical process. The manufacturing process Grupo Simec applies in

⁸⁵ See, e.g., *American Tubular Products, LLC v. United States*, CIT No. 13-29, Slip Op. 15-98 (CIT 2015) at 14-15.

⁸⁶ *Id.*

⁸⁷ See, e.g., *Live Swine from Canada* and accompanying IDM at Comment 43, *WBR from the PRC* and accompanying IDM at Comment 18.

⁸⁸ See *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 IDM at Comment 4.

⁸⁹ See *Yieh Phui Comments* at 9-12.

⁹⁰ *Id.* at 9, referencing *Hebei Metal & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264,1273 (CIT 2002) (*Hebei Metals*).

manufacturing other types of steel creates an incomparable surrogate manufacturing overhead ratio, which the Department has refused to use in many other cases.⁹¹

- A failure to account for these differences in production process between integrated production and non-integrated production can therefore affect the resulting dumping calculation, contrary to the Department's mandate to calculate accurate dumping margins.
- The Department's *Preliminary Determination* failed to give sufficient weight to the product specificity factor.
- The investment support Blue Scope received from the Thai government was only in the form of an income tax exemption. A tax exemption would not be recorded under accounts such as cost of production, financial expenses, or selling, general, and administrative (SG&A) expenses. Thus, surrogate overhead and SG&A ratios would not be affected or distorted.
- The amount of investment support on Blue Scope's financial statements can be easily identified. Thus, the Department could make an adjustment to the calculation of the surrogate profit ratio.

*U.S. Steel Rebuttal Comments:*⁹²

- The Department should continue to calculate surrogate financial ratios using the 2014 audited financial statements of Grupo Simec.
- Grupo Simec is a large producer of products comparable to corrosion-resistant steel, and it is located in the country that the Department has selected as the primary surrogate country, *i.e.*, Mexico. The Department's practice is to select financial statements of companies that produce merchandise that is identical *or comparable* (emphasis added) to the merchandise produced by a respondent.
- The Department's regulations state that it will value all factors in a single surrogate country.⁹³ It is the Department's well-established practice to rely upon the selected surrogate country for all surrogate values and to resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.⁹⁴
- In the instant case, Mexico was selected as the primary surrogate country, and there are reliable financial data from Mexico on the record with which to calculate surrogate financial ratios. As a result, there is no need to resort to a secondary surrogate country to calculate financial ratios in this investigation (*i.e.*, Thai company Blue Scope's financial statements).

⁹¹ *Id.* at 12, stating that the Department has noted in past cases that the degree of integration in the steel production process is critical in selecting surrogate country data, because differences in production process can create differences in overhead rates. *Id.* at 12, referencing, *e.g.*, *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 13.

⁹² See U.S. Steel's Rebuttal Comments at 20-24.

⁹³ *Id.* at 21, referencing 19 CFR 351.408(c)(2).

⁹⁴ *Id.* at 22, referencing *e.g.*, *Cylinders from the PRC* and accompanying IDM at Comment II.

- In addition, it is the Department’s well-established practice to reject the financial statements of a company, as a basis for calculating surrogate financial ratios, where there is evidence of receipt of countervailable subsidies.⁹⁵
- Blue Scope’s financial statements reflect receipt of subsidies under Thailand’s Investment Promotion Act (IPA), a program previously determined by the Department to constitute a countervailable subsidy.⁹⁶ Under this program, the Thai Board of Investment (BOI) is authorized to grant incentives to facilitate investment in Thailand to achieve social and developmental goals.⁹⁷ Thai companies must apply for IPA status and receive a promotion certificate that details the company’s granted rights and privileges.⁹⁸
- Blue Scope’s financial statements report that the company received special rights regarding taxation for investment support related to the production of plated steel. “The rights include taxation exceptions regarding income tax for legal person for profit from business.”⁹⁹ In addition, the Thai BOI lists Blue Scope on its website as a company that is promoted under the IPA based on its production of steel sheet.
- Yieh Phui offers no specific proposal as to how to adjust the financial ratios to take into account the countervailable subsidies received by Blue Scope. Moreover, there is no reason to make such an adjustment because there are already suitable financial statements on the record, from a producer of comparable merchandise located in the primary surrogate country, that do not evidence any receipt of countervailable subsidies.
- As noted above, it does not matter that Grupo Simec did not make identical merchandise because the Department selects financial statements from producers of *identical or comparable* merchandise.¹⁰⁰ As the Department noted in the *Preliminary Determination*, the evidence on the record shows that Grupo Simec makes various types of long steel products, which have long been recognized by the Department as comparable to flat-rolled steel products.¹⁰¹ The financial ratios calculated using Grupo Simec’s financial statements are representative of the financial ratios of a producer of corrosion-resistant steel.

Department Position:

⁹⁵ *Id.* referencing e.g., *Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 79 FR 31092 (May 14, 2014) and accompanying IDM at Comment 1.

⁹⁶ *Id.* referencing *Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, and Thailand: Final Results of Expedited Sunset Reviews*, 78 FR 16252 (March 14, 2013) and accompanying IDM at 2; *Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand*, 70 FR 13462, (March 21, 2005) and accompanying IDM at 6-8.

⁹⁷ *Id.* at 21 referencing *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying IDM at 7-8.

⁹⁸ *Id.*

⁹⁹ See Yieh Phui’s September 8, 2015, Surrogate Country Comments at Attachment 9 (2014 financial statements at note 20).

¹⁰⁰ See *Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) and accompanying IDM at Comment 5.

¹⁰¹ See *Preliminary Determination* and accompanying PDM at 12.

We agree with U.S. Steel. Our regulations state that we will normally value all factors in a single surrogate country.¹⁰² In addition, our regulations state that we will value overhead, general expenses, and profit, using public information gathered from producers of identical *or comparable* merchandise (*emphasis added*) in the surrogate country.¹⁰³ In *Hebei Metals*, the data at issue was material inputs, not financial statements, so 19 CFR 351.408(c)(4) (concerning producers of identical or comparable merchandise) does not apply to that case. As U.S. Steel noted, our well-established practice is to rely upon the selected surrogate country for all surrogate values and to resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.¹⁰⁴ In this case, we chose Mexico as the primary surrogate country because of the completeness of the data, including financial statement data.¹⁰⁵ As we stated in the *Preliminary Determination*, although Grupo Simec does not manufacture identical merchandise, it does manufacture comparable merchandise (*e.g.*, it manufactures another processed steel product),¹⁰⁶ and, as explained above, the Department's regulations permit it to use information from producers of identical *or comparable* merchandise. After steel is made, it can be made into flat products, which include slabs, hot-rolled coil, cold-rolled coil, coated steel products, tinplate and heavy plate, or into long products, which include billets, blooms, rebars, wire rod, sections, rails, sheet piles and drawn wire. Both flat and long products are used in automotive and construction markets, among others. The subject merchandise is a flat product while the Mexican company Grupo Simec makes long products. However, both flat and long products are steel products, even though they involve different sizes and shapes (or different properties depending on the specifications). In fact, we have long cited flat products and long products as examples of comparable merchandise: "Thus, if circular steel pipe and tube were the subject merchandise, rectangular steel pipe and tube, hot-rolled steel sheet and plate, steel wire rod, steel wire rope, steel bar, and structural, all of which are low value-added products of roughly similar form . . . would constitute comparable merchandise."¹⁰⁷

While Blue Scope makes identical merchandise, there are factors standing in the way of the use of its financial statements. First, it is from a country other than the primary surrogate country, and there are useable financial statements from the primary surrogate country on the record. In addition, there is evidence on the record that Blue Scope is a promoted company under Thailand's IPA, and we previously determined that multiple incentives provided by the IPA are countervailable.¹⁰⁸ Moreover, Blue Scope's financial statements show it benefitted from investment support. We generally do not rely on financial statements where there is evidence that the company received countervailable subsidies, and there are other, more reliable and representative data on the record for purposes of calculating surrogate

¹⁰² See 19 CFR 351.408(c)(2). See also *Clearon Corp. v. United States*, Court No. 08-364, Slip Op. 13-22 at 12-14 (CIT February 20, September 26, 2013) (upholding the Department's regulatory preference for a single surrogate country).

¹⁰³ See 19 CFR 351.408(c)(4).

¹⁰⁴ See, *e.g.*, *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) and accompanying IDM at Comment 5; *Cylinders from the PRC* and accompanying IDM at Comment II.

¹⁰⁵ See *Preliminary Determination* and accompanying PDM at 10-13.

¹⁰⁶ *Id.* at 12-13.

¹⁰⁷ See Import Administration Policy Bulletin, Number: 04.1, Non-Market Economy Surrogate Country Selection Process, at 3.

¹⁰⁸ See *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying IDM at 7-11.

financial ratios.¹⁰⁹ Contrary to Yieh Phui's suggestion that we can somehow adjust Blue Scope's data to account for subsidies, it is not our practice to go behind the financial statements of a surrogate company to obtain additional information as we have no authority to either ask questions or verify the information from the surrogate company.¹¹⁰

As such, the financial statements of Mexican company, Grupo Simec, are from the primary surrogate country and are the best available financial statements on the record, and we continue to use them to calculate the surrogate financial ratios and profit for this case.

IX. RECOMMENDATION

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

Agree Disagree



Paul Piquado
Assistant Secretary
For Enforcement and Compliance

24 MAY 2016

Date

¹⁰⁹ The Department bases the valuation of the factors of production on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . ." See section 773(c)(1) of the Act. In valuing such factors, Congress further directed the Department to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices." See Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 76 100th Cong., 2nd Session (1988) at 590; and see, e.g., *Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) at Comment 2 (citing *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) at Comment 1, where the Department determined that the financial statements of several companies that had received countervailable subsidies did not constitute the best available information to value the surrogate financial ratios and, consequently, did not use them).

¹¹⁰ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 18.F.