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Investigation
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E&C/Office VII: The Team

DATE: October 21, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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 Circular Welded Carbon-
Quality Steel Pipe from the Socialist Republic of Vietnam

I. SUMMARY

The Department of Commerce (Department) analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of circular welded carbon-quality steel pipe (CWP) from the Socialist Republic of Vietnam (Vietnam). As a result of our analysis, we made changes since the *Preliminary Determination*¹ and *Amended Preliminary Determination*.² We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Issues:

General Issues

- Comment 1: Financial Statements to Use for Financial Ratios
- Comment 2: Water Surrogate Value
- Comment 3: Verification Findings

¹ See *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36884 (June 8, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² See *Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Amended Affirmative Preliminary Determination*, 81 FR 46048 (July 15, 2016) (*Amended Preliminary Determination*).



Company-Specific Issues

SeAH Issues

Comment 4: Misreported U.S. Sales Destinations

Comment 5: SeAH's Sodium Hydroxide and UniCoat Surrogate Values

Comment 6: Brokerage and Handling Related to Hot-Rolled Coil Surrogate Values

Comment 7: Cap on Freight Revenue

Comment 8: Surrogate Value for SeAH's Hot-Rolled Coils

Comment 9: Conversion of Surrogate Value for Vietnamese Inland Freight

Comment 10: U.S. Credit Expenses

Comment 11: Differential Pricing Analysis

Hongyuan Issues

Comment 12: Hongyuan's Hot-Rolled Strip Value

Comment 13: U.S. Indirect Selling Expenses

Comment 14: Treatment of Strengthening Tubes Used For Packing

Comment 15: Record-keeping of Hongyuan's U.S. Affiliate

II. BACKGROUND

On June 8, 2016, the Department published the *Preliminary Determination* of this antidumping duty (AD) investigation. On July 15, 2016, the Department published an *Amended Preliminary Determination* in this investigation.³ The Department conducted the sales and factors of production verifications of mandatory respondents Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. (Hongyuan) and SeAH Steel VINA Corporation (SeAH) in Haiphong and Dong Nai, Vietnam, respectively, from June 13 through 24, 2016. We conducted the verification of Hongyuan's U.S. sales at its affiliate's (Midwest Air Technologies (MAT)) facilities in Long Grove, Illinois, from July 18 through 20, 2016. We conducted the verification of SeAH's U.S. sales at its affiliates' (SeAH Steel America and State Pipe & Supply Co.) facilities in Irvine and Rialto, California, from July 21 through 26, 2016.⁴

The Department received case and rebuttal briefs from the petitioners,⁵ SeAH, and Hongyuan between September 12 and 19, 2016.⁶ The petitioners, SeAH, and Hongyuan requested that the

³ See *Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Amended Affirmative Preliminary Determination*, 81 FR 46048 (July 15, 2016) (*Amended Preliminary Determination*).

⁴ See Memorandum to the File, "Verification of the Questionnaire Responses of SeAH Steel VINA Corp." (August 31, 2016) (SeAH Verification Report); Memorandum to the File, "Verification of the Questionnaire Responses of SeAH Steel America" (August 31, 2016) (SSA Verification Report); Memorandum to the File, "Verification of the Questionnaire Responses of State Pipe & Supply Co." (August 31, 2016); Memorandum to the File, "Verification of the Questionnaire Responses of Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd." (August 30, 2016) (Hongyuan Verification Report); and Memorandum to the File, "Verification of the Questionnaire Responses of Midwest Air Technologies" (August 30, 2016) (MAT Verification Report).

⁵ Bull Moose Tube Company; EXLTUBE; Wheatland Tube, a division of JMC Steel Group; and Western Tube and Conduit (collectively, the petitioners).

⁶ See Letter from the petitioners, "Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Petitioners' Case Brief," dated September 12, 2016 (Petitioners' Case Brief), Letter from SeAH,

Department conduct a hearing in this investigation, which the Department conducted on September 26, 2016.⁷ At the hearing, the Department asked for information regarding the surrogate financial statements provided by respondent Hongyuan. Hongyuan provided this information and comments on September 28, 2016.⁸ The petitioners commented on this information on September 30, 2016.⁹

III. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments received from parties, minor corrections presented at verifications, and various errors identified during verifications, we made certain changes to the margin calculations for the respondents.¹⁰

IV. 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 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

“Antidumping Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam Case Brief of SeAH Steel VINA Corporation,” dated September 12, 2016 (SeAH Case Brief), and Letter from Hongyuan, “Circular Welded Carbon-Quality Steel Pipe from Vietnam: Antidumping Case Brief,” dated September 16, 2016 (Hongyuan Case Brief). *See also* Letter from the petitioners, “Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Petitioners’ Rebuttal Brief (Petitioners’ Rebuttal Brief), Letter from SeAH, “Antidumping Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam Rebuttal Brief of SeAH Steel Vina Corporation” (SeAH Rebuttal Brief), and Letter from Hongyuan, “Circular Welded Carbon-Quality Steel Pipe from Vietnam: Rebuttal Brief,” (Hongyuan Rebuttal Brief), respectively, all dated September 19, 2016.

⁷ *See* Hearing Transcript filed with the Department on October 3, 2016.

⁸ *See* Letter from Hongyuan, “Circular Welded Carbon-Quality Steel Pipe from Vietnam: Response to Department’s Request to Identify Source of Indian Financial Statements,” dated September 28, 2016 (Hongyuan’s Financial Statement Source Letter).

⁹ *See* Letter from the petitioners, “Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Petitioners’ Rebuttal to Haiphongs’s Information Concerning Financial Statement Public Availability,” dated September 30, 2016 (Petitioners Financial Statement Rebuttal Letter).

¹⁰ *See* Memorandum to the Mark Hoadley, “SeAH Steel Vina Corporation Final Analysis Memorandum,” October 21, 2016 (SeAH Final Analysis Memorandum); Memorandum to Mark Hoadley, “Haiphong Hongyuan Machinery Manufactory Co., Ltd. Final Analysis Memorandum,” October 21, 2016 (Hongyuan Final Analysis Memorandum) dated October 21, 2016; and Memorandum to The File, “Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Vietnam – Surrogate Values for the Final Determination,” October 21, 2016 (Final SV Memorandum).

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 law the *Trade Preferences Extension Act of 2015 (TPEA)*, which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹¹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹²

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 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 adverse facts available (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 Vietnam-wide entity, which includes Sujia Steel Pipe Company (Sujia), 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.¹³ We further determined that, because Sujia had not demonstrated its eligibility for separate rate status, the Department considered it part of the Vietnam-wide entity. Finally, the Department preliminarily assigned the Vietnam-wide entity a

¹¹ 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*).

¹² *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

¹³ See PDM at 13.

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.¹⁴

It is the Department's practice 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.¹⁵ In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of an adverse inference, which is to induce respondents to provide the Department with complete and accurate information in a timely manner.¹⁶

Specifically, in the *Preliminary Determination*, we first examined whether the highest petition margin was less than or equal to the highest calculated margin, and determined that the highest petition margin of 113.18 percent was the higher of the two. Next, in order to corroborate 113.18 percent as the potential Vietnam-wide rate, we first compared it to the highest CONNUM-specific margin calculated for the mandatory respondents.¹⁷ Neither respondent had a CONNUM-specific margin higher than the petition rate. We next compared the NVs and U.S. prices in the petition with the NVs and U.S. prices calculated for the respondents. We determined the petition values were within the range of the values calculated for the respondents. Therefore, we determined that the petition rate was corroborated by the actual experience of the mandatory respondents.¹⁸

No parties commented on this preliminary finding and none of calculation changes affect this analysis. Thus, the Department continues to find that the Vietnam-wide entity, including Sujia, failed to cooperate to the best of its ability in responding to the Department's requests for information. The AFA rate for the Vietnam-wide entity remains unchanged from the *Preliminary Determination*.

¹⁴ See *Preliminary Determination* and accompanying PDM at 12-13.

¹⁵ 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).

¹⁶ See SAA at 870.

¹⁷ See Memorandum to the File, "Preliminary Analysis of SeAH Steel Vina Corp. (SeAH)," (SeAH Preliminary Analysis Memorandum) dated May 31, 2016, and Memorandum to Mark Hoadley "Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. Preliminary Analysis Memorandum" (Hongyuan Preliminary Analysis Memorandum), dated May 31, 2016.

¹⁸ See *Preliminary Determination* and accompanying PDM at 14-15.

V. DISCUSSION OF THE ISSUES

General Issues

Comment 1: Financial Statements to Use for Financial Ratios

*Petitioners' Comments:*¹⁹

Financial Statements Used in the Preliminary Determination

- In the final determination, the Department should use different Indian companies' financial statements to calculate surrogate financial ratios than were used in the *Preliminary Determination*.
- The Department should not use the sparse, template-style financial statements of Hariom Concast and Steels Private Limited (Hariom), Hi-Tech Pipes Limited (Hi-Tech), Ravindra Tubes Limited (Ravindra), Swastik Pipes Limited (Swastik), and Vardhman Industries (Vardhman) because they do not constitute the best information available.
- There is no information to conclude that the documents containing the financial data are publicly available, as required by regulation.²⁰ The petitioners were unable locate these financial statements and the respondents have not explained their provenance. The CIT rejects the proposition that merely placing financial statements on the record renders them publicly available.²¹ NOTE: As mentioned in the Background section II above, at the hearing, the Department asked Hongyuan where it obtained the financial statements it submitted, and requested Hongyuan to submit information on the record regarding how it obtained these financial statements. *See* Hongyuan's response below. The petitioners commented that Hongyuan had not described the steps taken to obtain the financial statements it submitted, and there was no way for the petitioners to replicate the process and confirm the information's origin.²² Therefore, the Department should decline to use the statements placed on the record by Hongyuan.
- The approach of using publicly available financial statements of producers of comparable merchandise is well-founded because the Department's regulatory preference for publicly available information addresses the concern that a lack of transparency about the source of the data could lead to proposed data sources that lack integrity or reliability.²³
- The companies whose financial statements the Department preliminarily used were not among the nine companies considered in the 2012 investigation of the same product.²⁴
- Each of the financial statements used in the *Preliminary Determination* suffers from specific defects. The overarching shortcoming is that the financial data do not reflect the results of manufacturing CWP (*i.e.*, they do not comport with the results of known Indian CWP producers, as well as domestic CWP producer Wheatland). Wheatland, Ratnamani

¹⁹ *See* Petitioners Case Brief at 1-27.

²⁰ *See* 19 CFR 351.408(c)(1),(4).

²¹ *See Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1313 n. 39 (CIT 2009).

²² *See* Petitioners Financial Statement Rebuttal Letter.

²³ *See Ass'n of Am. School Paper Supplier v. United States*, 791F. Supp. 2d 1292, 1296 (CIT 2011); *Since Hardware (Guangzhou) Co. v. United States*, 911 F. Supp. 2d 1362, 1367 (CIT 2013).

²⁴ *See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 64483 (October 22, 2012) (*CWP from Vietnam*) and accompanying IDM at 11-16.

Metals & Tubes Ltd., Technocraft Industries India Ltd., and Goodluck Steel Tubes have similarity between broken down expense categories as compared to each other.

- Hariom's financial statements are only 34 pages,²⁵ and it is doubtful that this company is in fact Hariom Pipes as Hongyuan asserts. Rather, it appears to be Hariom Steel which produces steel not CWP, and it is, therefore, not a producer of identical or comparable merchandise.²⁶ Even if it is Hariom Pipes, Hariom Pipes only advertises non-subject pipe with large diameters.²⁷ In addition, Hariom's financial statements do not break out stores and spares. The Department should not rely on such opaque statements because it would prevent the Department from discharging its statutory obligation to calculate dumping margins as accurately as possible.²⁸ In addition, the financial statements have aberrational data: Hariom's energy costs are more than 27 percent of total expenditures (suggesting it does more than just produce CWP); its labor costs are only two percent of total expenses; and repairs and maintenance are only 0.1 percent of total expenses.
- Hi-Tech's financial statements are only 26 pages,²⁹ and the company appears to produce non-subject specialized pipe meant for high pressure (CWP is meant for low-pressure).³⁰ In addition, they contain aberrational data: Hi-Tech's labor is only 1.8 percent of total expenses; and stores and spares expenses are only one percent of total expenses.
- Ravindra's financial statements are erratically paginated, and they do not break out labor separately.³¹ The Department should not rely on such opaque statements, as noted above. In addition, they have aberrational data: when Ravindra's depreciation expenses are properly removed from G&A, its material costs are more than 90 percent of total expenses; its energy costs are only 1.5 percent of total expenses; its depreciation costs are only 0.7 percent of total expenses (real CWP producers should have higher depreciation for the heavy machinery needed); and its stores and spares expenses are a mere 1.4 percent of total expenses.
- Swastik's financial statements are template style and erratically paginated.³² In addition, they have aberrational data: when Swastik's depreciation expenses are properly removed from G&A, its material costs are more than 90 percent of total expenses; its labor costs are only 1.8 percent of total expenses; its depreciation costs are only 0.6 percent of total expenses; its stores and spares expenses are a mere 0.8 percent of total expenses; and its repairs and maintenance expenses are a mere 0.3 percent of its total expenditures.
- Vardhman's financial statements are only 58 pages.³³ Vardhman does not produce subject CWP but, instead, produces sheet, coil, and strip.³⁴ In addition, the financial statements have aberrational data: when Vardhman's depreciation expenses are properly removed from G&A, its labor costs are only 2 percent of total expenses; its energy costs are only 1.2 percent of total expenses; its stores and spares expenses are a mere 0.3

²⁵ See Hongyuan's May 2, 2016, SV Submission at Exhibit 1-C.

²⁶ See the petitioners' May 12, 2016, SV Rebuttal at Exhibit 3.

²⁷ *Id.* at Exhibit 4.

²⁸ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

²⁹ See Hongyuan's May 2, 2016, SV Submission at Exhibit 1-D.

³⁰ See the petitioners' May 12, 2016, SV Rebuttal at Exhibit 5.

³¹ See Hongyuan's May 2, 2016, SV Submission at Exhibit 1-I.

³² *Id.* at Exhibit 1-L.

³³ *Id.* at Exhibit 1-O.

³⁴ See the petitioners' May 12, 2016, SV Rebuttal at Exhibit 6.

percent of total expenses; and its repairs and maintenance expenses are a mere 0.1 percent of its total expenditures.

Ratnamani and Technocraft Financial Statements

- In the final determination, the Department should calculate surrogate financial ratios using data from the 2014-2015 annual reports of Ratnamani and Technocraft.³⁵ Both companies are actually producers of CWP and were considered by the Department in the 2012 investigation of *CWP from Vietnam*. These financial statements are robust (about 150 pages each) and publicly available.
- The petitioners placed price quotes from these companies and subscription market research information on the record, confirming that these two companies, in fact, produce subject CWP.³⁶
- In the *Preliminary Determination*, the Department excluded the financial data from these two companies, finding they showed evidence of subsidies.³⁷ These findings are belied by record evidence and Department practice.³⁸
- The Department preliminarily identified a potential subsidy for Ratnamani for export benefits receivable. The amount identified is only 0.13 percent of Ratnamani's gross revenue. Moreover, there is no basis to conclude these benefits were provided under a particular program previously found countervailable by the Department. Mere reference to some apparent government program is not a sufficient reason to exclude a financial statement.³⁹ The Department preliminarily excluded Ratnamani's financial statements in the 2012 investigation of CWP from Vietnam because of income from the sales of export license incentives, but ultimately included the financial statement in the final determination, finding that the income was not from a program we have previously found countervailable.⁴⁰
- The Department should likewise reverse its preliminary exclusion of Ratnamani. While SeAH claims that Ratnamani should be excluded by reference to value-added tax (VAT)/central sales tax (CST) incentives (in Gujarat), the Department has only countervailed generic tax incentives provided by other Indian states.⁴¹
- The Department also erred in excluding Technocraft. In *CWP from Vietnam*, the Department excluded Technocraft for having income through the Duty Entitlement Pass Book (DEPB) program, a program long countervailed by the Department.⁴² However, the financial statements submitted in this investigation do not show evidence of income from the DEPB program. Moreover, the Government of India provided evidence that the

³⁵ See Petition (October 28, 2015) at Exhibit III-C-7 (Ratnamani Financial Statements) and the petitioners' March 16, 2016, SV Rebuttal at Exhibit IV (Technocraft Financial Statements).

³⁶ See the petitioners' May 2, 2016, SV Submission at Exhibit 1 and the petitioners' March 16, 2016, SV Rebuttal at Exhibit 1.

³⁷ See Preliminary SV Memo at 7.

³⁸ See *CWP from Vietnam* and accompanying IDM at 14 (the Department does not rely on financial statements that contain reference to programs previously found to be countervailable by the Department).

³⁹ See *CWP from Vietnam* and accompanying IDM at 16.

⁴⁰ *Id.*

⁴¹ See SeAH's May 24, 2016, letter at 3. See also more specifics in Petitioners Case Brief at 10.

⁴² See *CWP from Vietnam* and accompanying IDM at 15.

DEPB program was terminated effective October 1, 2011.⁴³ In the *Preliminary Determination*, the Department declined to use Technocraft due to a note about revenue including export incentive benefits and notes concerning a contingent liability attributable to the Technology up gradation Fund Scheme of the Government of India.⁴⁴ There is no line item accompanying the export incentive language or any other information that Technocraft benefitted from any subsidy programs, let alone ones that the Department previously countervailed. The amount related to the contingent liability is only 0.2 percent of revenue, and the Department has never countervailed such a program. While SeAH identified different programs that have the word “technology,”⁴⁵ the Department must take a leap to find these are the same program. The Department, however, is legally obligated to base its determinations on substantial evidence, as opposed to conjecture.⁴⁶

- As noted above, the Department does not rely on financial statements where there is evidence that the company has received countervailable subsidies. Under this standard, the Department properly declined to use financial data from Nezone Tubes Limited (Nezone), whose financial statements had a line item demonstrating receipt under the Export Promotion Capital Goods program.⁴⁷ This program has long been countervailed by the Department.⁴⁸

Suspicion of a Subsidy

- The Department has improperly changed its CIT-mandated practice with respect to rejecting financial statements based on suspicion of a subsidy. More than a decade ago, the CIT invalidated rejections based on such speculation as inconsistent with the agency requirement that its actions be supported by substantial evidence. In a pair of rulings, the CIT confirmed the Department must only reject allegedly subsidized data based on particular, specific evidence, which has been interpreted to mean a demand for specificity.⁴⁹
- The Department has, in recent years, complied with the CIT mandate by either providing the requisite level of evidence to justify excluding the companies from the surrogate financial ratio calculations or else used the data from the companies alleged to have received subsidies.⁵⁰

⁴³ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015) and accompanying IDM at 24.

⁴⁴ See Preliminary SV Memo at 8.

⁴⁵ See SeAH’s May 24, 2016, letter at 5.

⁴⁶ See *Certain Woven Electric Blankets from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) and accompanying IDM at Comment 2.

⁴⁷ See Hongyuan’s May 2, 2016, SV Submission at Exhibit 1-F.

⁴⁸ See, e.g., *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) and accompanying IDM at 8.A.

⁴⁹ See *China Nat’l Mach. Imp. & Exp. Corp. v. United States*, 27 CIT 225, 267, 264 F. Supp. 1229 (CIT 2003); *Fuyao Glass Indus. Gr. Co. v. United States*, 27 CIT 1892, 1902-1903 (CIT 2003).

⁵⁰ 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 25, 2008) (*OTR Tires*) and accompanying IDM at Comment 17A (“...financial statements identify ... export incentive programs, but do not identify any specific program. While these companies may have received subsidies, we find that there is no evidence that these companies received actionable subsidies during the

- The Department’s use of Ratnamani’s financial statements over SeAH’s objection in *CWP from Vietnam* illustrates the agency being responsive to CIT concerns by only excluding financial data suspected of subsidy based on particular, specific, and objective evidence. Moreover, the CIT has repeatedly affirmed this Department practice.⁵¹
- The Department’s preliminary rejection of the Ratnamani and Technocraft financial statements in the instant investigation represents a departure from the CIT-approved practice. These statements reference only generic export programs, with no evidence of any specific export program, and a subsidy involving technology not countervailed by the Department.⁵² In addition, given the miniscule fraction of income attributable to these programs (0.2 percent or less), nothing on the record points to the amounts received as being distortive.
- Should the Department finalize its “whiff of a subsidy approach” in this case, interested parties will be incentivized to procure and submit the most cursory financial documents, bereft of anything other than numbers. The result will be a race to the bottom in the quality of evidence. Parties submitting robust financial statements from *bona fide* producers will be penalized, and the more obscure and scant financial statements will be rewarded because they are less likely to reference potential subsidies.

Comparative Analysis

- The Department must conduct a thorough comparative analysis in selecting surrogate financial companies. The law requires the Department to make a reasoned decision as to the surrogate financial statements on which it chooses to rely, and to both adequately explain its rationale and support its decision with substantial evidence.⁵³
- *Shenzen Xinboda* confirms the Department commits a legal error when it rejects financial statements based on a single criterion without engaging in a comparative analysis. The

period Accordingly, we have continued to use these two financial statements.”) *See also Wire Decking from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 75 FR 32905 (June 10, 2010) (*Wire Decking*) and accompanying IDM at Comment 2 (“...we found the statements identify it as having accounted for export incentive programs, but they do not identify any specific program. While this company may have received one or more subsidies, we find that there is no evidence of any specific export program, and no evidence the company received subsidies which the Department has previously found to be countervailable...Consequently, ...we have determined to use the financial statements.”)

⁵¹ *See, e.g., Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1379-80 (CIT 2009); *DuPont Teijin Films v. United States*, 896 F. Supp. 2d 1302, 1311-12 (CIT 2013) (“Although the statement mentions how countervailable subsidies would be accounted for, the statement does not indicate that any benefit was received in the ... fiscal year); and *Yantai Xinke Steel Structure Co. v. United States*, 2014 Ct. Intl. Trade LEXIS 39, *61-65 (April 9, 2014) (“...although... financial statements indicated the receipt of subsidies during the POI, there is no evidence on the record that any of the subsidies have been previously investigated by the Department, and found to be countervailable... their financial statements refer to the receipt of subsidies in general terms... although it is possible that the listed subsidies could be found to be countervailable or to be otherwise distortive, there is no evidence that, in fact, they were either ... Thus... the Department did not err in including their financial statements in its calculations of surrogate financial ratios.”).

⁵² *See* Preliminary SV Memo at 8.

⁵³ *See Shenzen Xinboda Indus. Co. v. United States*, 976 F. Supp. 2d 1333, 1384 (CIT 2014) (*Shenzen Xinboda*). The CIT ordered a remand because the Department had not conducted a meaningful comparative analysis that weighed the strengths and weaknesses of each, such as suspicion of a subsidy, tea processing vis-à-vis garlic processing, and level of integration.

redetermination in that case was based on a comparative evaluation of all relevant factors, including product mix and integration level.

- In *Kelco II*, the CIT found that the Department's outright rejection of incomplete statements end-ran its obligation to base its decisions on substantial evidence, and given that both sets of financial statements had different flaws, the Department should have compared the two side by side.⁵⁴
- In the instant investigation, the Department must cure its legal error by engaging in a thorough side-by-side analysis of the statements on the record, balancing offhand references to potential subsidies with the more profound deficiencies of the companies preliminarily selected.

*Hongyuan's Rebuttal Comments:*⁵⁵

Financial Statements Used in the Preliminary Determination

- The Department properly selected the Indian companies used to calculate surrogate financial ratios in the *Preliminary Determination*.
- In choosing financial statements, the Department considers the specificity, quality, and contemporaneity of the available financial statements. The Department's preference is to use financial statements of producers of identical merchandise, although its regulations allow use of financial statements of identical or comparable merchandise producers. The statute instructs the Department to make surrogate value (SV) determinations based on the best information available,⁵⁶ and the Department considers the representativeness of the production experience of the surrogate producers in relation to the respondent's own experience.⁵⁷
- In the instant investigation, the Department declined to use the two financial statements submitted by the petitioners and 10 of the 15 financial statements submitted by Hongyuan.
- While the petitioners allege that the financial statements relied upon are not publicly available, are sparse and skeletal, lack specificity, and reflect aberrant financial ratios, each of these complaints should be dismissed because they are either an irrelevant consideration, a misconstrued fact, or an assertion of facts not on the record.
- The petitioners' assertion that the financial statements are not publicly available is not supported by record evidence. NOTE: At the hearing, the Department requested Hongyuan to submit information regarding the source of its submitted financial statements. Hongyuan stated that its market researcher obtained the audited financial statements for numerous pipe producers through publicly available sources. Specifically, it obtained the financial statements of listed companies from the data provided through stock exchanges and the financial statements of non-listed companies through publicly-available Indian government sources. These sources are available to anyone that inquires.⁵⁸

⁵⁴ See *CP Kelco US, Inc. v. United States*, 2016 Ct. Intl Trade LEXIS 35 (April 8, 2016) (*Kelco II*).

⁵⁵ See Hongyuan Rebuttal Brief at 1-14.

⁵⁶ See section 773(c)(1) of the Act.

⁵⁷ See *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) and accompanying IDM at Comment 9.

⁵⁸ See Hongyuan's Financial Statement Source Letter.

- The CIT found that the primary purpose for obtaining publicly available information for financial statements is to ensure all interested parties have access to such information and are able comment on the reliability and relevance of such information in the particular case.⁵⁹ In the instant investigation, all interested parties had access to the information and opportunity to comment on their reliability and relevance.
- The petitioners never explain or identify how the allegedly sparse or skeletal financial statements are deficient for purposes of calculating surrogate financial ratios, and they do not provide a single case where the Department refused to use financial statements based on such vague accusations. In fact, the Department was able to calculate surrogate financial ratios for these companies with very detailed line-item breakdowns for overhead and SG&A.
- Although the petitioners complain that the financial ratios for the surrogate companies are aberrantly low, multiple data points are needed to show the value significantly deviates from the norm. In this case, Hongyuan submitted 15 financial statements whose rates more or less corroborated each other, and the petitioners submitted two financial statements with similarly high rates. The petitioners' allegation that the 15 financial statements are the outliers defies reason and common sense.
- In addition, the comparison to the rates of a single U.S. producer is irrelevant to the Department's analysis. Even if a valid analysis could be based on such a comparison, the petitioners only used the ratios of one of the four petitioners. In any event, the petitioners' claims that the financial ratios used by the Department are aberrational lack any basis in fact and are not supported by any precedent.
- The petitioners' argument against the use of Hariom's financial statements is based on misunderstood or misconstrued facts. The petitioners' argument about the length of Hariom's financial statements (34 pages) is irrelevant. If it were relevant, then this is the type of financial statement that would be a good surrogate for Hongyuan, which has 32 pages in its audited financial statements. The petitioners' claim that Hariom is not a pipe producer is contradicted by the financial statement itself which identifies tubes, pipes, and hollow profiles as one of the principal business activities of the company. In addition, while the petitioners allege that Hariom only advertises non-subject large diameter pipe, the website for Hariom lists outside diameter of round pipe as 22-76, but it never specifies the unit of measure as inches.⁶⁰ Because the thickness of the pipe in the same listing ranges from 1.0-3.5, the only reasonable interpretation is that the unit of measure is millimeters not inches. There is no requirement in Indian accounting rules or under Department selection criteria that a company have a stores and spares line item; thus, the petitioners' argument in this regard is irrelevant. Moreover, Hariom's financial statements list six line items that make up overhead expenses and what one company might account for in stores and spares. The arguments concerning Hariom's (and the other companies') ratios as aberrational do not fit in the Department's framework for measuring aberrational data, as discussed above, and should be disregarded.
- Similar to Hariom, Hi-Tech had shorter financial statements (26 pages), and so it would presumably be a good surrogate for Hongyuan. While the petitioners assert that Hi-Tech

⁵⁹ See *Since Hardware (Guangzhou) Co., Ltd. v. United States*, 977 F. Supp.2d 1347, 1353 (CIT 2014).

⁶⁰ See Hongyuan's May 2, 2016, SV Submission at Exhibit 1-C.

produces non-subject pipe for high pressure applications, the petitioners fail to acknowledge that Hi-Tech's website also indicates that it produces structural steel tubes (used for columns, fences, posts, etc.), which are clearly subject merchandise.⁶¹ The record lacks information that Hi-Tech produces other products that are widely dissimilar to the subject pipe.

- The claim that Ravindra does not break out labor separately is false. There are lines for salaries and wages, contribution to provident and other funds, and staff welfare expenses.⁶² With respect to the petitioners' claim that a real CWP's producer would have higher depreciation than Ravindra, there is no basis in fact for this claim, and Ravindra could have fully depreciated its production assets because it has been in business since 1973.⁶³
- The petitioners' only argument against Swastik is that its financial data are aberrational, but as discussed above, this argument does not fit in the Department's framework for measuring aberrational data and should be disregarded.
- The petitioners' arguments that Vardhman's financial statements are sparse and that its financial ratios are aberrational, are both irrelevant, as discussed above. In addition, while the petitioners claim that Vardhman produces sheet, coils and, strip, this does not evidence that Vardhman does not produce pipe. As indicated on the companies' website, Vardhman states that it is engaged in manufacturing galvanized pipes.⁶⁴

Ratnamani and Technocraft Financial Statements

- Ratnamani and Technocraft do not satisfy the Department's selection criteria in light of the fact that the record contains numerous suitable financial statements.
- Technocraft shows evidence of having received a subsidy previously investigated by the Department. In addition, Technocraft operates in four to five product segments (drum closures, scaffoldings, yarn and garment, and power generation). Although Technocraft may produce pipe in its scaffolding division, this division constitutes only one segment of the company's business, and it only comprises 38 percent of the company's revenue. The power generation operation of Technocraft renders it an especially bad surrogate for a goods manufacturer like Hongyuan. Drum closures and textiles are starkly dissimilar to pipe, but at least they are manufactured goods, while power generation involves completely different processing operations and elements. Thus, the financial data can also not be used because the company produces an unrelated mix of products that are not comparable to the subject merchandise.
- Ratnamani's overall operations differ substantially from the respondents' in that Ratnamani generates and sells windmill power and a substantial amount of stainless and seamless pipe products. The windmill power generation creates a substantial distortion because Ratnamani appears to produce electricity for its own operations. Such self-produced electricity renders Ratnamani an unusable surrogate company because the energy consumed is likely not included in the power and fuel line on the company's financial statements. If the Department does use Ratnamani's financial statement, it

⁶¹ *Id.* at Exhibit 3-D.

⁶² *Id.* at Exhibit 2-H (under the material column).

⁶³ *Id.* at Exhibit 3-H.

⁶⁴ *Id.* at Exhibit 3-O.

should revise the calculation to include three line items as labor rather than overhead (contribution to provident and other funds, gratuity expense, staff welfare expenses).

Suspicion of a Subsidy

- The Department properly declined to rely on Technocraft and Ratnamani due to evidence of countervailable subsidies.

Comparative Analysis

- For the petitioners to claim that the Department did not engage in a meaningful analysis of the available statements ignores the fact that the Department also declined to rely on 10 financial statements submitted by Hongyuan based on evidence of potential subsidies. If the Department determines to rely on Ratnamani or Technocraft in the final determination, it must also rely on the 10 statements submitted by Hongyuan that it declined to use in the *Preliminary Determination*.

*SeAH's Rebuttal Comments:*⁶⁵

Financial Statements Used in the Preliminary Determination

- The facts do not support the petitioners' claims. The evidence indicates the five companies whose financial statements the Department used in the *Preliminary Determination* were producers of comparable merchandise with production operations similar to those of the respondents. None of their financial statements show evidence of subsidies.
- The petitioners have asserted that only one of the submitted financial statement (that of Nezone) contains actual evidence of subsidies. The only justification that the petitioners have offered for why the financial statements submitted by Hongyuan cannot be used is that they are not sufficiently long and glossy. However, nothing in the statute or the Department's past decisions makes the amount of fluff and pictures relevant to the calculation of financial ratios.
- In contrast to the petitioners' claim that Hariom does not produce pipe, Hariom's financial statements specifically state that over 52 percent of the company's revenue comes from other tubes, pipes and hollow profiles. While Hariom's financial statements do not provide a specific line item for stores and spares, the notes to the financial statements provide separate figures for raw materials and consumables (which describe indirect materials that might also be called stores and spares).⁶⁶
- Hi-Tech's website states that that company produces structural steel tubes, which clearly fall within the scope of the investigation.⁶⁷
- Ravindra's financial statements clearly provide a separate figure for employee benefit expenses.⁶⁸
- Vardhman's website specifically states that the company manufactures and sells pipe.⁶⁹

⁶⁵ See SeAH Rebuttal Brief at 1-12.

⁶⁶ See Hongyuan's May 2, 2016, SV Submission at Exhibit 1-C (Note 2.16).

⁶⁷ *Id.* at Exhibit 3-D.

⁶⁸ *Id.* at Exhibit 1-H, p. 161.

⁶⁹ *Id.* at Exhibit 3-O.

- The petitioners' argument, that ratios used in the preliminary calculations are aberrational compared to ratios calculated from the financial statements that the petitioners prefer, is completely circular. One could just as easily claim that the petitioners' calculations show the ratios of the companies that they prefer are aberrational compared to the ratios for the other companies.
- In reality, the ratios calculated for each company simply represent the actual ratios for those companies. Of course, companies with different operations are likely to have different ratios. For this reason, the Department has a preference for using financial statements of surrogate country producers whose operations are as similar as possible to those of the NME producers that are under investigation.⁷⁰ However, the similarities and differences are facts to be determined by evidence, not assumptions to be made just because the petitioners do not like the results.

Ratnamani and Technocraft Financial Statements

- The Department should not base the surrogate financial ratios on the Ratnamani and Technocraft financial statements. There is ample evidence that these companies engage in a broader and different range of operations than the respondents. It is not surprising, then, that these companies have higher ratios than Indian companies with narrower operations.
- Ratnamani and Technocraft's financial statements contain explicit descriptions of countervailable subsidies that they received.
- Ratnamani has stated that its focus is on stainless steel pipe and only 25 percent of Ratnamani's sales consisted of uncoated carbon steel pipe, and an unknown portion of that small percentage consists of large diameter pipe made using a submerged-arc welding process.⁷¹ In addition, Ratnamani derives significant revenue from wind power generation and job work.⁷² It is, therefore, quite different from the Vietnamese producers in this case, who only produce carbon steel pipes using an electric-resistance welding process to do so, and who are not in the electricity-generation business.
- Technocraft is a conglomerate that sells engineering services and also produces, *inter alia*, drum closures, scaffolding, formwork, towers, yarns, fabrics, and garments. The section of the website that describes the company's tubes and scaffolding products indicates that its products consist primarily of scaffolding joints, telescopic steel props, and steel planks.⁷³
- There is no reason to expect the Ratnamani and Technocraft financial ratios to provide an accurate surrogate for the costs the Vietnamese producers would incur.

Suspicion of a Subsidy

- Ratnamani's financial statements indicate that it received VAT/CST incentives in respect of the Kutch Unit. VAT/CST has been found to have provided countervailable benefits

⁷⁰ See, e.g., *Potassium Permanganate from the People's Republic of China: Preliminary Results of the 2014 Antidumping Duty Administrative Review*, 81 FR 58476 (August 25, 2016) and accompanying IDM at 7-8.

⁷¹ See Ratnamani Financial Statements at 3, 86, and 1.

⁷² *Id.* at 86.

⁷³ See SeAH's March 16, 2016, SV Rebuttal Submission at Attachment 2.

in past determinations.⁷⁴ The petitioners have argued that the Department should ignore the subsidies to the Kutch Unit, because the unit is located in the state of Gujarat, and past decisions concerning VAT/CST incentives have only involved other Indian states. However, the Department has specifically found that sales-tax exemptions in the state of Gujarat represent countervailable subsidies.⁷⁵

- Technocraft's financial statements indicate that it received a capital subsidy under the technology upgradation fund scheme of the Government of India. Subsidies from the Indian government, to promote investment in upgradation of technology, have been found to provide benefits in past determinations.⁷⁶ The petitioners suggest the Department can ignore subsidies on Technocraft's financial statements because they relate to a contingent liability in miniscule amounts. This is a gross mischaracterization of the subsidy described in these financial statements. The capital subsidy is a reimbursement by the Government of India for plant and machinery purchased under the technology upgradation fund scheme of the Government of India. The notes to the financial statements indicate that it stated the value of machinery assets net of the subsidy. The subsidy amount appears to have been 3.60 percent of the total value of machinery acquired during the year.⁷⁷ While the petitioners assert that no such program has previously been countervailed, the Department has specifically found that the Government of India provides various subsidies to Indian manufacturers of steel products to promote investment in upgradation of technology. These subsidies have included Steel Development Fund Loans and outright grants.⁷⁸ In this regard, it is apparent that the capital subsidy that Technocraft received was a grant (given that it was recorded as a reduction to asset value and not as a loan liability). That grant would appear to fall squarely within the description of the programs the Department has countervailed in the past, and it is more than the mere whiff of a subsidy.

Comparative Analysis

- If the Department revisits its selection of surrogate financial statements and were to use Ratnamani's and Technocraft's financial statements in the final determination, it should also include the financial statements of the other Indian companies that were not used in the *Preliminary Determination*.
- Other than Nezone, which received countervailable subsidies, the petitioners have not provided any explanation of why the other financial statements provided by Hongyuan

⁷⁴ See, e.g., *Certain Cold-Rolled Steel Flat Products from India: Preliminary Results of Countervailing Duty Investigation*, 80 FR 79562 (December 22, 2015) and accompanying PDM at 16-17 (Indian state-government VAT and CST incentives).

⁷⁵ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying IDM at 21-25.

⁷⁶ See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination*, 80 FR 68854 (November 6, 2015) and accompanying PDM at 16-17 (program to promote investment in upgradation of technology).

⁷⁷ See Technocraft Financial Statements at 83.

⁷⁸ See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 12, 2012) and accompanying IDM at 21; and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying IDM at 35.

should be excluded. Most, if not all, of these companies have products and operations similar in scope to those of the Vietnamese producers.

Department Position:

In selecting SVs for factors of production, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate ME country. The Department normally will use publicly available information to value factors, pursuant to 19 CFR 351.408(c)(1). In choosing surrogate financial ratios, it is the Department’s policy to use data from ME surrogate companies based on the “specificity, contemporaneity, and quality of the data.”⁷⁹ However, when the financial statement in question contains a reference to a program or programs the Department has previously found to be countervailable, the Department may consider that the financial ratios derived from that company’s financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that do not contain evidence of subsidization.⁸⁰ Consequently, the Department does not rely on financial statements that contain references to programs previously found to be countervailable by the Department when there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios.⁸¹ In addition, it is our policy not to reject financial statements on grounds that the company received export subsidies unless we have previously found the specific export subsidy to be countervailable.⁸²

In the *Preliminary Determination*, we found all 17 financial statements on the record are from the period April 1, 2014, through March 31, 2015. Thus, they are all equally contemporaneous with the POI. We noted that one area where the financial statements differed was in the receipt of potential subsidies. In this final determination, we note that there are other areas where the financial statements were similar that we did not discuss in the *Preliminary Determination*.

Comparative Analysis

For this final determination, we are reexamining all of the submitted financial statements and providing a full comparative analysis.⁸³ As noted above, all of the financial statements are from the same time period and are, thus, all equally contemporaneous with the POI. In addition, all of the financial statements: 1) are from Indian producers; 2) contain all of the typical elements of financial statements (*e.g.*, income statement, balance sheet, cash flow statement, notes); 3) show positive profit on the income statement; 4) are stand-alone financial statements; 5) have energy

⁷⁹ See *Silicon Metal from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010) (*Silicon Metal from the PRC*), and accompanying IDM at 36.

⁸⁰ See *Certain Steel Nails From the People’s Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011) (*Nails from the PRC*), and accompanying IDM at 11.

⁸¹ *Id.* at 11.

⁸² See, *e.g.*, *Nails from the PRC* and accompanying IDM at 12; *Silicon Metal from China* and accompanying IDM at 37-38; *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012) and accompanying IDM at 16; *Certain Steel Threaded Rod From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 68400 (November 4, 2011) and IDM at 11-12.

⁸³ See Final SV Memorandum for full details.

listed separately from overhead; and 6) are from companies that produce identical and/or potentially comparable merchandise (discussed more below). All but one of the financial statements contain a valid auditor's opinion (while Spark Electrodes financial statements are signed by an auditor, there is no auditor's opinion). Thus, in this final determination, we are disregarding Spark Electrodes financial statements because they do not have a valid auditor's opinion. Based on the product mix listed in each financial statement, all but one of the financial statements show that the companies are non-integrated producers (for Hariom, billets and strips are among the company's products, indicating likely integration). We are also disregarding Hariom's financial statements because Hariom appears to be an integrated producer, while our two respondents are non-integrated (*e.g.*, they buy and do not produce their hot-rolled strip input).

We also looked at the public availability of the financial statements, the product mix of each company, and the receipt of subsidies. In selecting surrogate financial statements, the Department is guided by a general regulatory preference for publicly available, non-proprietary information.⁸⁴ The Department's regulatory preference for publicly available information stems from its "concern that a lack of transparency about the source of the data could lead to proposed data sources that lack integrity or reliability."⁸⁵

At the hearing, we asked Hongyuan to explain where it sourced the financial statements it placed on the record.⁸⁶ Hongyuan reported that a market researcher obtained the financial statements.⁸⁷ The researcher reported that it obtained the audited financial statements for numerous pipe producers through publicly available sources. Specifically, it "obtained the financial statements of the listed companies from the data provided through stock exchanges and the financial statements of non-listed companies through publicly-available Indian government sources. These sources are available to anyone that inquires."⁸⁸ It noted that the quarterly financial statements of companies listed on stock exchanges ("listed companies") in India are required to be filed to the Securities Exchange Board of India (SEBI) and to all stock exchanges where the shares of the company are listed. These filings are to be made on a quarterly basis after limited review under SRE2400 by the auditors of the company. The audited annual financial statements are also furnished to stock exchanges (BSE Limited and National Stock Exchange of India Limited) and SEBI. In response, the petitioners argue that: Hongyuan did not describe the steps taken to obtain the financial statements it submitted; there was no way for the petitioners to replicate the process and confirm the information's origin; and the Department should decline to use the statements placed on the record by Hongyuan.⁸⁹

We disagree with the petitioners, in part. Hongyuan's market researcher described two types of financial statements: one for listed companies and one for unlisted companies. The market

⁸⁴ See 19 CFR 351.408(c)(1); *Since Hardware (Guangzhou) Co., Ltd., v. United States*, 977 F. Supp. 2d 1347, 1351 (CIT 2014), *aff'd* 636 F. App'x 800 (Fed. Cir. 2016).

⁸⁵ See *Since Hardware (Guangzhou) Co., Ltd., v. United States*, 911 F. Supp. 2d 1362, 1367 (CIT 2013), *aff'd* 636 F. App'x 800 (Fed. Cir. 2016).

⁸⁶ See Hearing Transcript filed with the Department on October 3, 2016.

⁸⁷ See Hongyuan's Financial Statement Source Letter.

⁸⁸ *Id.*

⁸⁹ See Petitioners Financial Statement Rebuttal Letter.

researcher provided detail about listed companies and the names of the stock exchanges where the financial statements are filed. On the other hand, the description of the origin of the unlisted companies' financial statements was much more vague, *i.e.*, "through publicly available India government sources." Without providing additional information as to what those government sources were, there is no realistic way for the Department or the petitioners to replicate the process or otherwise obtain the financial statements of the unlisted companies independently. We reviewed the 15 financial statements which Hongyuan submitted and found that eight are for publicly listed companies (API Apollo, Goodluck Steel Tubes, Hi-Tech Pipes, JTL Infra Limited, Rama Steel Tubes, Tamilnadu Steel Tubes, and Vardhman Industries).⁹⁰ We also find that Ratnamani's and Technocraft's financial statements are publicly available. However, for the six financial statements from the unlisted companies (Hariom, Nezone, Ravindra, Shri Lakshmi, Surya Global Steel, and T.T. Swastik Pipes) which Hongyuan submitted, for this final determination, we determine that they are not publicly available.⁹¹ The financial statements for Spark Electrodes do not indicate whether the company is listed or unlisted. However, as explained elsewhere, Spark Electrodes' financial statements do not contain an audit opinion; thus, we have determined that they are not the best available information.⁹²

Regarding the product mix of the companies, the Department's preference is to use the financial statements of a company that produces identical merchandise.⁹³ In reviewing the record, we find that all of the companies for which financial statements were provided produce subject merchandise.⁹⁴ All of the financial statements list the product segments of the companies, as well as the percentage of production accounted for by each product segment. A number of the companies produce merchandise other than pipe, such as cold-rolled merchandise, yarn, drum closures, etc. The experience of a manufacturer that produces only steel pipes (whether only subject pipe or subject and non-subject) is a better match for our respondents, which also only have pipe as their primary business segment. We reviewed the product mix for all 17 financial statements and find that nine financial statements list pipes as the only or the primary business segment (pipe is 85 percent or more of revenue for all these companies). The companies are Ratnamani, API Apollo, JTL Infra, Nezone Tubes, Rama Steel Tubes, Ravindra Tubes, Shri Lakshmi Metal, Surya Global Steel, and Tamilnadu Steel Tubes.

The petitioners are correct that we improperly excluded financial statements at the *Preliminary Determination* for potential subsidies. As noted above, when the financial statement in question contains a reference to a program or programs the Department has previously found to be countervailable, the Department may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that do not contain evidence of subsidization. Similarly, with regard to export subsidies, as the Department noted in *Wire Decking* and *OTR Tires*, we do not exclude financial statements that merely identify export

⁹⁰ See Final SV Memorandum.

⁹¹ *Id.*

⁹² See Hongyuan's May 2, 2016, SV Submission at Exhibit 1-J.

⁹³ See *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2012–2013*, 80 FR 33246 (June 11, 2015) and accompanying IDM at Comment 1.

⁹⁴ See Final SV Memorandum.

incentive programs, but do not identify any specific program that the Department previously found to be countervailable.⁹⁵ We reexamined the 17 financial statements on the record and found that only two contain evidence of subsidization involving programs the Department has previously found countervailable. The two are Nezone (for the Export Promotion Capital Goods program,⁹⁶ which the Department has previously countervailed⁹⁷) and Ratnamani (Packing Credits,⁹⁸ which the Department previously countervailed⁹⁹). This determination is consistent with the Department's determination in two recent Vietnamese antidumping cases where the Department also disregarded Ratnamani's financial statements for the same reason.¹⁰⁰ While SeAH alleged that Technocraft received a subsidy under the Technology Upgradation Fund Scheme, we find that, although we have countervailed similar programs, we have not previously countervailed this program.

Therefore, in looking for financial statements to use for surrogate ratios, we looked for the best available information. As noted above, our policy is to use data from market economy (ME) surrogate companies based on the specificity, contemporaneity, and quality of the data, as well as public availability. In addition, we consider whether subsidies, which we previously countervailed, are listed. All of the financial statements are equally contemporaneous. As for quality of the data, all of the financial statements are complete and provide the information necessary to calculate ratios. In addition, all but one (Spark Electrodes') contain an auditor's opinion (as noted, we are disregarding the financial statements of Spark Electrodes). As for public availability, we are disregarding the six financial statements of the unlisted companies provided by Hongyuan because it has not sufficiently demonstrated their public availability (specifically, Hariom, Nezone, Ravindra, Shri Lakshmi, Surya Global Steel, and T.T. Swastik Pipes). We are disregarding the financial statements of Ratnamani and Nezone for receipt of previously countervailed subsidies. Thus, we are left with specificity. For this factor, we are disregarding companies that do not primarily produce pipe (specifically, Technocraft, Goodluck Steel Tubes, Hariom, Hi-Tech, T.T. Swastik, Vallabh, and Vardhman). After disregarding the unlisted companies and the companies that do not primarily produce pipe, we are left with API Apollo, JTL Infra, Rama, and Tamilnadu. We examined the financial ratio calculations submitted by Hongyuan for each of these companies and made certain adjustments.¹⁰¹ Thus, for the final determination, we are using the financial ratios calculated from the financial statements of API Apollo, JTL Infra, Rama and Tamilnadu, as adjusted.¹⁰²

⁹⁵ See *OTR Tires* and accompanying IDM at Comment 17A and accompanying IDM at Comment 2.

⁹⁶ See Hongyuan's May 2, 2016, SV Submission at Exhibit 1-F.

⁹⁷ See, e.g., *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) and accompanying IDM at 8.A.

⁹⁸ See Ratnamani Financial Statements at 81, note 7.

⁹⁹ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015) and accompanying IDM at IV.1.

¹⁰⁰ See *Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 79 FR 31092 (May 30, 2014) and accompanying IDM at Comment 1, and *Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 41972 (July 18, 2014) and accompanying IDM at Comment 2.

¹⁰¹ See Final SV Memorandum.

¹⁰² *Id.*

Financial Statements Used in the Preliminary Determination

For the final determination, as a result of our reexamination, we are not using the financial statements used at the *Preliminary Determination*. Thus, the company-specific comments regarding companies whose financial statements we used in the *Preliminary Determination* are moot, unless addressed above. We note that while the petitioners called the financial statements used at the *Preliminary Determination* aberrational, we disagree. The petitioners have not supported their allegation, other than comparing the results of two companies against the results of many others. With regard to specific ratios calculated from the financial statements, the Department's practice is not to 'go behind' the numbers reported in financial statements.¹⁰³

Ratnamani and Technocraft Financial Statements

As explained fully above, we are disregarding Ratnamani's financial statements because of subsidies received, which the Department previously countervailed. We are also disregarding Technocraft due to its product mix. Pipes account for less than 40 percent of the company's revenue.¹⁰⁴ Because we have equally qualified financial statements from other companies which produce pipe as their only or primary business, we find that the financial statements of those companies are the best information available in this case.

Suspicion of a Subsidy

As noted above, we agree with the petitioners that we erred in the *Preliminary Determination* by improperly disregarding certain financial statements for suspicion of a subsidy. As explained above, we have reexamined the financial statements of all companies, focusing only on subsidies which the Department previously found countervailable.

Comment 2: Water Surrogate Value

*Hongyuan's Comments:*¹⁰⁵

- In the *Preliminary Determination*, the Department relied on the Maharashtra Industrial Development Corporation information to value water. However, the Department did not use the water rates specific to Hongyuan's activity. The Department averaged the water rate for "Inside Industrial Area For Industrial Use" and "Outside Industrial Area For Industrial Use." As indicated throughout its responses, Hongyuan is located in the Doson

¹⁰³ See *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015), citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying IDM at Comment 16). See also, *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 IDM at Comment 18B.

¹⁰⁴ See Technocraft Financial Statements at 28.

¹⁰⁵ See Hongyuan Case Brief at 14.

Industrial Zone. Thus, the Department should value water using the rate for “Inside Industrial Area For Industrial Use.”

*SeAH’s Comments*¹⁰⁶

- In the *Preliminary Determination*, the Department treated the water usage reported by SeAH as a direct cost, which it valued based on SV information from the Maharashtra Industrial Development Corporation.
- The SV information used in the *Preliminary Determination* included separate figures for water inside an industrial area and outside an industrial area. The Department averaged the two values to obtain the SV for water.
- SeAH’s production facilities are located entirely within an industrial zone.
- The SV information for water confirms that the cost of water in industrial zones is lower than the cost in other areas, presumably due to economies of scale. There is no reason to believe industrial zones in Vietnam do not benefit from equivalent efficiencies.
- For the final results, to the extent it is necessary to value water, the Department should use the SV for water inside an industrial area.
- Water is not incorporated into the subject merchandise during the production process.
- The cost of water is typically considered part of factory overhead.
- Because the cost of water is included in factory overhead, the inclusion of a separate SV for water double counts the cost of water.

*Petitioners’ Rebuttal Comments*¹⁰⁷

- SeAH is incorrect in claiming water is not a production input, but rather an element of factory overhead. Water is a direct input for the production of CWP, as the production of CWP requires hydrostatic testing. Therefore, water is a key element in the production process and properly treated as a production input.
- The Department properly valued water using an average of the data from Maharashtra Industrial Development Corporation.
- While SeAH and Hongyuan may both be located within industrial zones, there is no evidence on the record to show that facilities within these zones are entitled to a lower water usage rate.
- The Department properly averaged the water usage rates in the *Preliminary Determination* and should do so in the final determination.

Department Position: We agree with the petitioners. Similar to what we found in *OCTG from Vietnam*, we have determined to value water as a direct input in this case.¹⁰⁸ Although water may sometimes be classified as overhead, the Department has stated, “Normally, the Department values water directly and not in factory overhead when water is used for more than incidental purposes, is required for a particular segment of the production process, or appears to be a

¹⁰⁶ See SeAH Case Brief at 1-2.

¹⁰⁷ See Petitioners’ Rebuttal Brief at 25-26.

¹⁰⁸ See *Certain Oil Country Tubular Good From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 41973 (July 18, 2014) (*OCTG from Vietnam*) and accompanying IDM at Comment 4.

significant input in the production process.”¹⁰⁹ Here, water is used on CWP for hydrostatic testing.¹¹⁰ Further, although water is not incorporated in the subject merchandise, it is used in the production process of CWP.¹¹¹ Therefore, because water is an integral part of the production process for CWP, we have included water as a direct input.

Furthermore, we disagree that the SV for water should be limited to only the category “Inside Industrial Area For Industrial Use.” Consistent with our finding in *OCTG from Vietnam*, although Vietnamese companies located within industrial areas may benefit from economies of scale that reduce the supplier’s costs, there is no record evidence that Vietnamese producers located entirely within industrial areas are charged lower water consumption rates.¹¹² Indeed, in the 2012 countervailing duty investigation of CWP from Vietnam involving the same respondents, we found that there was no separate tariff water rate for companies located within industrial zones.¹¹³ The record here is likewise devoid of information establishing a separate tariff rate for companies located within industrial zones in Vietnam. Therefore, in this final determination, we have not revised our calculation of the SV for water.

Comment 3: Verification Findings

*Petitioners’ Comments:*¹¹⁴

- The Department should make necessary corrections to the respondents’ reported data in accordance with agency findings at verification.
- The Department lacked the necessary information to value one packing material, plastic caps, for SeAH in the preliminary determination because the respondent reported these in pieces, not weight. The Department should use the information obtained during verification to value plastic caps.
- In the minor corrections presented at verification, SeAH reported that it had miscalculated total zinc usage. The Department should correct SeAH’s zinc usage for the final determination.
- In its questionnaire responses, SeAH did not allocate labor hours for its “grooving” process. The Department should include labor hours for the “grooving” process in its calculations for the final determination, and should classify this as direct labor rather than indirect labor. Classifying workers in the grooving department as indirect labor, as SeAH advocates,¹¹⁵ would improperly dilute the amount of the labor FOP by applying the hours for grooving to non-grooved merchandise.

¹⁰⁹ *Id.* See also *Automotive Replacement Glass Windshields From the People’s Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004).

¹¹⁰ See, e.g., SeAH’s January 19, 2016, Section A (SeAH Section A) response at Appendix A-8 (pdf at 609, 671).

¹¹¹ See, e.g., SeAH’s February 18, 2016, Sections D response at 22 and Appendix D-5.

¹¹² See *OCTG from Vietnam* and accompanying IDM at Comment 4.

¹¹³ See *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012) and accompanying IDM at 5. (“Hongyuan and SeAH VINA sourced their water from industrial development companies. We verified that both companies paid the applicable tariff rates for their water and there was no separate tariff rate for companies located within the industrial zones.”)

¹¹⁴ See Petitioners’ Case Brief at 35-36.

¹¹⁵ See SeAH Verification Report at Verification Exhibit 1 footnote 1.

- The Department should correct MAT's inventory carrying costs. The Department found at verification that one month's cost of goods sold was misreported, which changed the average number of days in inventory.¹¹⁶

*Hongyuan's Comments:*¹¹⁷

- The Department should use Hongyuan's most recent FOP and sales databases, submitted on July 29, 2016, in the final determination. These databases reflect changes as a result of Hongyuan's and MAT's minor corrections.

*SeAH's Rebuttal Comments:*¹¹⁸

- Workers in the grooving department primarily work on common factory tasks other than operating the grooving equipment.
- It is more accurate to treat those workers as common factory labor, not as a direct labor cost for the small quantity of grooved products.

Department Position: We agree with the petitioners, and will use the information obtained during verification to value plastic caps and zinc usage for SeAH. SeAH did not oppose using its revised FOP data for the final determination. We also agree with the petitioners that classifying labor hours used in the grooving process as indirect labor would improperly allocate labor hours for grooving to non-grooved products. There is no evidence on the record to indicate that a substantial portion of the labor identified as grooving labor was in fact indirect labor that could be allocated to all products. In its original section D response, SeAH itself classified grooving labor as direct labor.¹¹⁹ Therefore, we will treat SeAH's grooving labor as direct labor for this final determination.

We will also correct MAT's inventory carrying costs in Hongyuan's margin calculation, and we will use the most recent FOP and sales databases submitted after verification.

Company-Specific Issues
SeAH Issues

Comment 4: Misreported U.S. Sales Destinations

*Petitioners' Comments:*¹²⁰

- During verification the Department found that SeAH misreported the destinations of several of its U.S. sales.
- The number of sales examined at verification with incorrect information reported for destinations show that these are systemic errors, not isolated occurrences, and that SeAH

¹¹⁶ See MAT Verification Report at 14.

¹¹⁷ See Hongyuan Case Brief at 12-13.

¹¹⁸ See SeAH Rebuttal Brief at 16.

¹¹⁹ See SeAH's February 18, 2016 Section D Response at Exhibit D-4-D.

¹²⁰ See Petitioners' Case Brief at 31-33.

exhibited “inattentiveness, carelessness or inadequate record keeping” in its questionnaire responses.¹²¹

- The Department cannot rely on the information reported by SeAH for the destination of its U.S. sales. Therefore, the Department should apply partial AFA to SeAH’s reporting of destination.
- For the final determination, the Department should apply partial AFA and presume that the 66 percent Cohen’s *d* threshold has been exceeded.

*SeAH’s Rebuttal Comments:*¹²²

- The reported destinations for U.S. sales reflect the addresses that are recorded in the normal accounting records and shown on the invoice.
- The material terms of sale are determined by the customer’s head office.
- SeAH’s reporting methodology was consistent with the requirements of the questionnaire, and, therefore, SeAH should not be punished for reporting destination in such a manner.

Department Position: We have applied partial AFA to SeAH’s reporting of destination. As explained above, 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 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. 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.

At verification of SeAH, we found that it had misreported the destinations for several of its U.S. sales that we sampled.¹²³ We disagree with SeAH that its methodology for reporting destination was consistent with the requirements of the questionnaire. In the initial questionnaire, SeAH was requested to “Report the U.S. postal ‘ZIP’ code of the customer’s place of delivery.”¹²⁴ There is no mention in the questionnaire of reporting destination based on addresses kept in normal accounting records, or where the material terms of sale are set. We agree with the petitioners that the number of sales shown to have misreported destinations shows this to be a systemic error, not isolated occurrences. Further, SeAH’s explanation of its reporting methodology presented in its rebuttal comments indicates that this is a systemic error.

Destination (*i.e.*, region) is one of three factors, along with purchaser and time period, which the Department uses in its differential pricing analysis to determine the methodology to calculate dumping margins. Furthermore, as explained above, the questionnaire was clear on what needed

¹²¹ See Petitioners Case Brief at 32.

¹²² See SeAH Rebuttal Brief at 15.

¹²³ See SeAH Verification Report at 2 and SSA Verification Report at 1.

¹²⁴ See Section C of the Department’s initial questionnaire, dated December 22, 2016 at C-19.

to be reported in the destination field, but at verification we could not confirm that SeAH reported the correct destination for certain of its U.S. sales. Thus, SeAH provided information that could not be verified, within the meaning of section 776(a)(2)(D) of the Act. Therefore, we are using the facts otherwise available. Moreover, we also determine that SeAH did not act to the best of its ability and precluded the Department from conducting its differential pricing analysis. Therefore, pursuant to section 776(b) of the Act, we are applying a partial adverse inference and determining that all sales for the SeAH customers who were found to have misreported destinations during verification pass the Cohen's *d* test used in the differential pricing analysis.¹²⁵

Comment 5: SeAH's Sodium Hydroxide and UniCoat Surrogate Values

*Petitioners' Comments:*¹²⁶

- At the outset of verification SeAH informed the Department that it had inadvertently reported sodium hydroxide and UniCoat as part of sulfuric acid consumption.
- The Department should obtain SVs for sodium hydroxide and UniCoat for the final determination.
- The Department should use Indian HTS number 2815.11 to value sodium hydroxide and Indian HTS number 3811.19 to value UniCoat for the final determination.

*SeAH Rebuttal Comments:*¹²⁷

- SeAH agrees with the petitioners' suggested HTS number to for sodium hydroxide, but suggested an alternate HTS number, 3809.93, on which to base the SV for UniCoat.
- SeAH notes that UniCoat was a ME purchase and that the Indian HTS value for UniCoat suggested by both SeAH and the petitioners is lower than SeAH's actual purchase price as demonstrated during verification.

Department Position: We are using Indian HTS number 2815.11 suggested by both the petitioners and SeAH to value sodium hydroxide in this final determination. During the Department's verification of SeAH, we reviewed the commercial invoice for the purchase of UniCoat from a ME supplier¹²⁸ and therefore, find this to be a ME purchase. Therefore, we will use the ME purchase price as reported during verification to value UniCoat for this final determination.

Comment 6: Brokerage and Handling Related to Hot-Rolled Coil Surrogate Values

*Petitioners' Comments:*¹²⁹

- The Department should recalculate SeAH's reported cost of ME purchases of steel coil to include brokerage and handling expenses, as well as import fees.

¹²⁵ See SeAH Final Analysis Memorandum at 2-3.

¹²⁶ See Petitioners' Case Brief at 34.

¹²⁷ See SeAH Rebuttal Brief at 15-16.

¹²⁸ See SeAH Verification Report Exhibit 15 at 39.

¹²⁹ See Petitioners' Case Brief at 34-35.

- SeAH presented no evidence that brokerage and handlings costs are included in the overhead reported on any of the financial statements on the record.

*SeAH's Rebuttal Comments:*¹³⁰

- The Department valued steel coil using Indian SVs. The Department's practice is not to add import brokerage and handling charges to Indian SVs.
- The cost for brokerage and handling are already captured in the SVs

Department Position: We note that in the *Preliminary Determination*, the Department valued hot-rolled coil using only Indian SVs.¹³¹ We agree with SeAH that it is not the Department's practice to add brokerage and handling costs to Indian SVs, as these costs are already captured in the SVs.¹³² Therefore, we are not making any adjustments to add brokerage and handling costs to the SV of hot-rolled coils in this final determination.

Comment 7: Cap on Freight Revenue

*SeAH Comments:*¹³³

- SeAH is not offering a service when it charges its customers for freight. This is only a disaggregation of delivered price into arbitrary amounts for merchandise and for freight. The Department's methodology would find different dumping margins for different exporters based solely on the manner in which they present their prices, not on substantive differences between price and cost incurred. Therefore, the Department should not apply a cap to freight revenue.
- The Department erred in its calculation of freight revenue by neglecting to add freight revenue to U.S. price. If the Department does apply a cap, then it should correct the SAS programming to apply the cap correctly.

The petitioners did not comment on this issue.

Department Position: We disagree with SeAH that we should not apply a cap to freight revenue. It is the Department's normal practice to cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).¹³⁴ Therefore, we will continue to cap freight revenue for this final determination.

¹³⁰ See SeAH Rebuttal Brief at 12-14.

¹³¹ See SeAH Preliminary Analysis Memorandum at 4.

¹³² *Id.*

¹³³ See SeAH Case Brief at 4-6.

¹³⁴ See, e.g., *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) (*Wood Flooring*), and accompanying IDM at Comment 39; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 2.

We agree with SeAH that there was an error in the SAS programming, and that freight revenue was inadvertently omitted from the calculation of U.S. price. We have revised the SAS programming to correct this error in this final determination.¹³⁵

Comment 8: Surrogate Value for SeAH's Hot-Rolled Coils

*SeAH's Comments:*¹³⁶

- SeAH did not use hot-rolled coils that would be classified under HTS code 721049 in its production of subject merchandise.
- SeAH incorrectly reported usage of coils that would fall under HTS code 721049 in its initial section D response. SeAH explained in subsequent submissions that while it did have purchases of such coils during the POI, it did not use them in the production of merchandise exported to the United States. Exhibits presented at verification show SeAH did not use these coils in the production of subject merchandise.
- The Department should modify its SV calculations without including values for HTS code 721049.

The petitioners did not comment on this issue.

Department Position: We agree with SeAH and are revising the SVs for SeAH's hot-rolled coils to exclude HTS code 721049 in this final determination.¹³⁷

Comment 9: Conversion of Surrogate Value for Vietnamese Inland Freight

*SeAH's Comment:*¹³⁸

- The Department's SV for inland freight is stated in Indian rupees per metric ton. In the *Preliminary Determination*, the Department applied the rate without conversion for the inputs emulsified oil and sulfuric acid, as well as for packing materials which were reported in liters or kilograms. The Department should adjust freight value for these inputs in the final determination.

The petitioners did not comment on this issue.

Department Position: We agree with SeAH and will convert the freight values for emulsified oil and sulfuric acid, as well as for packing materials reported in liters or kilograms, to the proper unit of measure in this final determination.¹³⁹

¹³⁵ See SeAH Final Analysis Memorandum at 3.

¹³⁶ See SeAH Case Brief at 5-6.

¹³⁷ See Final SV Memorandum.

¹³⁸ See SeAH Case Brief at 6-7.

¹³⁹ See SeAH Final Analysis Memorandum at 3.

Comment 10: U.S. Credit Expenses

*SeAH's Comments:*¹⁴⁰

- In the *Preliminary Determination*, the Department calculated credit expenses for back-to-back sales based on the period from shipment from Vietnam to the date of the customers' payment. This methodology is contrary to statute.
- The Department has consistently interpreted the statute to preclude the deduction of selling expenses incurred outside the United States from constructed export price (CEP).¹⁴¹ The calculation of credit expenses used in the *Preliminary Determination* includes financing costs for the period the merchandise was in transit from Vietnam to the United States. This is in contravention of the statutory requirements.
- The practice of calculating credit expenses for back-to-back sales is a “historical artifact” from the time before the *AK Steel*¹⁴² decision when back-to-back sales were treated as export price (EP) sales. When back-to-back sales were reclassified as CEP sales, the statutory limitations on permissible deductions from CEP came into force.
- The calculation of credit expenses for back-to-back sales from the date of shipment is contrary to the basic principles of contract law,¹⁴³ as there is no contractual obligation for the customer to pay SeAH directly, as the contract is with SeAH's affiliate SeAH Steel America.
- The Department has consistently held that the imputed “inventory carrying costs” for the time prior to arrival of the merchandise in the United States cannot be deducted from CEP.¹⁴⁴ While the Department has stated that inventory carrying costs are different from credit expenses,¹⁴⁵ the Department has never explained why inventory carrying costs for time merchandise is “on the water” cannot be deducted from CEP, but imputed financing costs can.
- The Department's preliminary calculation of credit expenses for SeAH's back-to-back sales was contrary to statute and to the Department's treatment of other imputed financing costs, and should be revised in the final determination to deduct only credit expenses incurred in the United States.

*Petitioners' Rebuttal Comments:*¹⁴⁶

- SeAH argues that the Department should only deduct credit expenses incurred in the United States. However the Department has rejected identical arguments in a recent case, where it stated that it is the Department's “normal practice is to calculate credit expenses

¹⁴⁰ See SeAH Case Brief at 7-11.

¹⁴¹ See *Antidumping Duties, Countervailing Duties: Final Rule*, 62 FR 27296.

¹⁴² See *AK Steel Corp. v. United States*, 226 F.3d 1361 (Fed. Cir. 2000) (*AK Steel*).

¹⁴³ See *Uniform Commercial Code*, section 2-1310(a).

¹⁴⁴ See *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 69996 (December 16, 2003) and accompanying Issues and Decision at Comment 10.

¹⁴⁵ See, e.g., *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less than Fair Value (Line Pipe from Korea)*, 80 FR 61366 (October 13, 2015), and accompanying IDM at 76.

¹⁴⁶ See Petitioners' Rebuttal Brief at 28-29.

from the date the merchandise is first shipped to the unaffiliated customer to the date of payment by the customer.”¹⁴⁷

- SeAH’s argument, that *AK Steel* bars the Department from calculating credit expenses as it did in the *Preliminary Determination*, was addressed in *Line Pipe from Korea* where the Department stated that “the decision in *AK Steel* does not conflict with our use of the difference between the date of payment and the date of shipment in the calculation of U.S. imputed credit expenses.”¹⁴⁸
- The Department rejected identical arguments in the *CWP from Vietnam*¹⁴⁹ and *CWP from Korea*.¹⁵⁰

Department Position: We disagree with SeAH. The Department addressed this issue in *Line Pipe from Korea*¹⁵¹ and *CWP from Vietnam*.¹⁵² In both cases, we explained that it is the Department’s practice to calculate credit expenses from the date the merchandise is first shipped to the unaffiliated customer to the date of payment by that customer, and that the *AK Steel* case was not applicable to this issue because *AK Steel* does not address the issue of U.S. imputed credit expenses.¹⁵³ In *CWP from Vietnam*, the Department also rejected SeAH’s application of contract law principles to antidumping calculations.¹⁵⁴ The fact pattern in this case is similar to *Line Pipe from Korea* and *CWP from Vietnam* (*i.e.*, the merchandise is produced to order and shipped directly to U.S. customers without physically entering the inventory of the U.S. affiliate),¹⁵⁵ and we find no compelling reason to change our determination. Therefore, for this final determination, we continue to use the date of shipment from Vietnam as the start of the credit period for back-to-back sales.

Comment 11: Differential Pricing Analysis

*SeAH’s Comments:*¹⁵⁶

- Because the Department utilized the average-to-average (A-A) method, SeAH’s concerns about the Department’s differential pricing analysis are moot. Regardless, SeAH points out certain issues it has with the Department’s differential pricing analysis.
- The Department’s differential pricing analysis is contrary to basic statistical principles and the requirements of the statute.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 76-77.

¹⁴⁹ See *CWP from Vietnam* and accompanying IDM at Comment 15.

¹⁵⁰ See *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014 (CWP from Korea)*, 81 FR 39908 (June 20, 2016) and accompanying IDM at Comment 7.

¹⁵¹ *Id.*

¹⁵² See *CWP from Vietnam* and accompanying IDM at Comment 15.

¹⁵³ See *Line Pipe from Korea* and accompanying IDM at 24-25, and *CWP from Vietnam* and accompanying IDM at 30-31.

¹⁵⁴ *CWP from Vietnam* and accompanying IDM at 31.

¹⁵⁵ See SeAH Section A at 12.

¹⁵⁶ See SeAH Case Brief at 11-17.

- The Department’s use of the Cohen’s *d* test is not consistent with ordinary statistical analysis. The Cohen’s *d* test is meant to apply only to random, independently drawn samples under the assumption that the populations sampled are normally distributed.¹⁵⁷
- As the Department is not applying the Cohen’s *d* test correctly, it cannot rely on the 0.8 percent cut-off to identify if the difference between prices for target and non-target groups is large. The Department has not provided an adequate explanation of why the 0.8 percent cut-off is appropriate.
- The Department has not provided an explanation for the 33 percent and 66 percent pass rate used in the second stage of the differential pricing analysis.
- The Department’s methodology is not sufficient to distinguish between patterns and random fluctuations. SeAH has submitted analysis that the Department’s differential pricing analysis would find patterns in purely random numbers.¹⁵⁸
- The World Trade Organization (WTO) Appellate Body recently issued a decision holding that the “Differential Pricing Analysis” and use of “zeroing” is not consistent with the requirements of the WTO Agreement.¹⁵⁹ Any finding of dumping based on differential pricing analysis would be inconsistent with U.S. obligations under the WTO Agreement.

*Petitioners’ Rebuttal Comments:*¹⁶⁰

- The courts have upheld the Department’s differential pricing methodology against the same claims made by SeAH,¹⁶¹ and, therefore, the Department should continue using its differential pricing analysis.

Department Position: In both the *Preliminary Determination* and this final determination, when comparing the weighted-average dumping margins calculated using the A-A method for all U.S. sales with those calculated using an alternative method based on applying the average-to-transaction method to all U.S. sales, the Department found no meaningful difference in the results (*e.g.*, the relative change in the results is less than 25 percent). Accordingly, the Department continues to use the A-A method in this final determination.¹⁶² Because the Department is using the A-A methodology, as SeAH recognizes, arguments concerning the differential pricing analysis are moot.

Hongyuan Issues

Comment 12: Hongyuan’s Hot-Rolled Strip Value

Hongyuan reported that it purchased steel strip from a ME country and paid for the merchandise in U.S. dollars.¹⁶³ The Department preliminarily found that these purchases were not ME

¹⁵⁷ See SeAH Case Brief at 12.

¹⁵⁸ *Id.* at 15-16.

¹⁵⁹ See *United States Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, Appellate Body Report, WT/DS464/AB/R. September 7, 2016.

¹⁶⁰ See Petitioners’ Rebuttal Brief at 29.

¹⁶¹ See *JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed Cir 2015) and *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308 (CIT 20116).

¹⁶² See SeAH Final Analysis Memorandum.

¹⁶³ See Hongyuan’s February 18, 2016, Section D Response at D-8

purchases.¹⁶⁴ Thus, the Department preliminarily valued Hongyuan's hot-rolled strip using GTA data.

*Hongyuan's Comments:*¹⁶⁵

ME Purchases

- The Department should value Hongyuan's hot-rolled, hot-dipped galvanized steel strip with its actual market economy purchases. There is no dispute that Hongyuan paid in ME currency and that the goods are produced in a ME country. Hongyuan purchased the goods from a company physically located in Vietnam but legally located outside the NME country.¹⁶⁶
- Hongyuan purchased coils from a ME supplier, and although the coils may have been slit in a bonded facility in Vietnam, such slitting did not result in a new or different article or change the class or kind of the merchandise. The Department has never considered slit-cutting to be substantially transformative.
- In *Cold-Rolled Steel from Taiwan*, the Department determined that the Taiwan-based producer's manufacturing process did not result in a change in class or kind between Japanese cold-rolled coils that were imported for processing in Taiwan and the cold-rolled strip coils that were produced in Taiwan from imported Japanese coils. The Department found that the further processing in Taiwan did not result in a substantial transformation.¹⁶⁷
- In the *Preliminary Determination*, the Department inappropriately focused on the companies' location as the basis for finding that the record lacked a basis to establish a ME purchase.¹⁶⁸ The physical location cannot be the basis for accepting or denying the legitimacy of a ME purchase. Every time the Department uses a ME purchase to value an input material, the purchaser is located in the NME country.
- It is not the location or geography of an NME purchaser, but rather the laws and rules surrounding transactions that should determine whether or not a transaction reflects an arm's-length market-based action by parties relatively free from government control. The Department relied on this line of reasoning in the 2012 CWP countervailing duty investigation.¹⁶⁹

¹⁶⁴ See *Preliminary Determination* and accompanying PDM at 18.

¹⁶⁵ See Hongyuan Case Brief at 1-11.

¹⁶⁶ See *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 21, 2012) and accompanying IDM at Comment 3 (the Department found that the GOV designated Hongyuan as an export processing enterprise, and a designated export processing enterprise's production facilities are a non-tariff zone under Vietnamese law because its operations are outside the customs territory of the country).

¹⁶⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan*, 65 FR 34658 (May 31, 2000) (*Cold-Rolled Steel from Taiwan*) and accompanying IDM at Issue 1.

¹⁶⁸ Due to the business proprietary nature of these transactions, see Hongyuan's Final Analysis Memorandum for a full explanation of this issue.

¹⁶⁹ See *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471, (Oct. 22, 2012) (*CVD CWP from Vietnam*) and accompanying IDM at Comment 3 ("The GOV has designated Hongyuan as an export processing enterprise. A designated export processing enterprise's production facilities are a 'non-tariff zone' under Vietnamese law because its operations are outside the customs territory of the country. Therefore, imports of raw materials, spare parts and accessories, and

- In the final determination, the Department should rely on Hongyuan's reported ME purchases because the goods were produced in a ME country, Hongyuan paid U.S. dollars, and Hongyuan purchased the goods from a company physically located in Vietnam but legally located outside the NME country.

GTA Indian Import Data

- The Indian import data, selected as the SV in the *Preliminary Determination*, are not specific to Hongyuan's hot-rolled, hot-dipped galvanized steel strip.
- While HTS code 7212.3090 technically covers imports into India of hot-rolled, hot-dipped galvanized steel strip (Hongyuan's input),¹⁷⁰ the record shows that imports under this HTS code mostly reflect prices for other products not purchased or consumed by Hongyuan.
- Hongyuan submitted India Infodrive data for this HTS number. These data demonstrate that the imports under this HTS number reflect imports of products other than merchandise similar to steel consumed by Hongyuan.¹⁷¹
- The Infodrive data indicate that eight of the twelve lines of imports from Japan are described as material for car parts, and the other four are for electrogalvanized material. Similarly, imports from Germany do not reflect Hongyuan's steel input. Imports from Germany comprise 78 lines, of which 66 are cold-rolled material. Each of the two entries from Malaysia and four of the six entries from Taiwan are electrogalvanized, not hot-dipped, while all four entries from Romania are electrogalvanized.
- Therefore, only imports from Nepal, Canada, France, Austria, Belgium, and Hungary are potentially specific to Hongyuan's steel input. These countries represent 33 percent of the total imports. Because two thirds of imports are not specific to Hongyuan's steel input, the Department cannot continue to consider that these GTA data constitute the best available information for valuing Hongyuan's steel input.
- Valuing Hongyuan's inputs with cold-rolled galvanized steel strip cannot be reasonable. The SV used for SeAH's hot rolled-coil input (ungalvanized) was 32.91 rupees per kilogram, while the SV used for Hongyuan's input was 72.97 rupees per kilogram. The galvanization process cannot be considered to more than double the price of hot-rolled coil. The price difference appears to be driven by the fact that one is hot-rolled and the other predominately cold-rolled.
- Record evidence indicates buyers should expect to pay twice as much money for cold-rolled steel as for hot-rolled steel and that, generally, cold-rolled steel is more expensive than hot-rolled steel.¹⁷²
- ME purchases are the best information for valuing Hongyuan's galvanized hot-rolled strip. If the Department were to apply similar scrutiny to Indian import data that it applied to Hongyuan's ME purchases, the conclusion must be that Hongyuan's purchases will yield a more accurate calculation.

fixed assets going into a 'non-tariff zone' are not subject to the customs duties of Vietnam.”)

¹⁷⁰ See Hongyuan's March 16, 2016, SV Rebuttal Submission at Exhibits 2, 6, and 7; Hongyuan's February 18, 2016, section D at 3-6, 13-25, and Hongyuan Verification Report at Verification Exhibit 13, p. 13-16.

¹⁷¹ See Hongyuan's March 16, 2016, SV Rebuttal Submission at Exhibit 1 and Hongyuan Case Brief at Attachment 1.

¹⁷² See Hongyuan's March 16, 2016, SV Rebuttal Submission at Exhibit 4.

- If the Department does not use Hongyuan’s purchases, the domestic prices for hot-dipped galvanized coil for MEPS India are a better alternative than Indian import data.¹⁷³ These prices are better in terms of specificity.
- Ukrainian imports are better than Indian imports considering the demonstrated lack of specificity in the Indian imports. A reasonable mind cannot conclude that Indian imports of cold-rolled steel, automotive steel, and other goods, which result in a SV 2.25 times higher than the steel SV applied to the other respondent, is the best available information when Ukrainian data are available.
- At the very least, the Department must exclude imports from Germany, Japan, Romania, and Austria from the calculation of average import value.
- The Department has stated that it will consider Infodrive data to further evaluate import data provided that there is: direct and substantial evidence from Infodrive reflecting the imports from a particular country; a significant portion of the overall imports under the HTS category is represented by Infodrive data; and distortions of the average unit value (AUV) in question can be demonstrated by Infodrive data.¹⁷⁴
- In addition to the arguments about Japan, Germany, and Romania above, imports from Austria reflect seven pieces (per Infodrive data) rather than seven kilograms (per GTA data). GTA data must be incorrect, as evidenced by the fact that if the imports were of seven kilograms, the price would be 1438 rupees per kilogram. Because there is no conversion factor on the record, the Department should disregard imports from Austria.

*Petitioners’ Rebuttal Comments:*¹⁷⁵

ME Purchases

- The Department properly did not treat Hongyuan’s purchases of steel strip as ME purchases and correctly valued Hongyuan’s steel strip in the *Preliminary Determination*. Its decision would withstand judicial review, as it is plainly supported by such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion.¹⁷⁶
- In the *Preliminary Determination*, the Department noted certain record deficiencies precluding the use of ME prices to value its steel strip. Hongyuan did not address these deficiencies during the verification process.
- Instead of arguing based on developments since the *Preliminary Determination*, Hongyuan claims that the SV used in the preliminary determination was based on a Department finding that slit cutting was substantially transformative. While there is a transformation under Vietnam’s harmonized tariff system,¹⁷⁷ the salient issue is not whether substantial transformation occurred in Vietnam.
- The Department preliminarily valued Hongyuan’s strip using a SV out of concern that the value added in Vietnam rendered the ME prices for the factor unusable because of the

¹⁷³ See Hongyuan’s May 2, 2016, SV Submission at Exhibit 6.

¹⁷⁴ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) (*TRBs from the PRC 2011*) and accompanying IDM at Comment 14B.

¹⁷⁵ See Petitioners Rebuttal Brief at 2-24.

¹⁷⁶ See, e.g., *Huvis Corp. v. United States*, 570 F.3d 1347, 1351 (Fed. Cir. 2009).

¹⁷⁷ See Petitioners’ May 23, 2016, letter at 5.

NME influences on value and not because the input had been substantially transformed in Vietnam.

- Hongyuan misplaces reliance on *Cold-Rolled Steel from Taiwan*. In that decision, the Department was forced to determine whether subject merchandise destined for the United States was subject to the Taiwanese investigation or the companion Japanese investigation by virtue of third country transshipment that also involved further processing.¹⁷⁸ The Department used a substantial transformation test, ultimately determining the product remained subject to the Japanese investigation.
- The merchandise under consideration in *Cold-Rolled Steel from Taiwan* was a finished product with physical characteristics that fell within the scope of both investigations. However, the issue in the instant investigation involves an input to production, not whether merchandise falls within the scope. Hongyuan's attempt to overlay a test applied to subject merchandise onto a factor of production is novel and inapposite. *Cold-Rolled Steel from Taiwan* does not clarify whether a claimed ME FOP retains status when it is subject to further processing in an NME country.
- Hongyuan wrongly insists that Vietnam Customs is the arbiter of whether the Department can use a SV to value a FOP that was further processed in an NME. It is well established that the Department is not bound by U.S. Customs and Border Protection country of origin determinations, let alone determinations of the customs agency of a foreign government.¹⁷⁹
- Recent judicial precedent confirms the Department should not use Hongyuan's purchases to value its steel strip.¹⁸⁰

GTA Indian Import Data

- The Department has a long expressed preference for GTA data in the SV selection process.¹⁸¹ It has longstanding concerns with Infodrive data and will use it only in very limited circumstances.¹⁸²
- In contrast to GTA data, Infodrive data are collected by a private party that only reviews bills of lading for commercial descriptions. The data may differ from the actual entries recorded in Indian official import statistics.
- In *TRBs from the PRC*, the Department articulated a three-part test for when Infodrive data will be considered.¹⁸³ The CIT affirmed the Department's limitation on using

¹⁷⁸ See *Cold-Rolled Steel from Taiwan* and accompanying IDM at Comment 1.

¹⁷⁹ See, e.g., *Certain Cold-Rolled Steel Flat Products from Argentina: Notice of Final Determination of Sales at Less Than Fair Value*, 58 FR 37062, 37065 (July 9, 1993).

¹⁸⁰ Due to the business proprietary nature of this argument, see the Hongyuan's Final Analysis Memorandum for a full discussion.

¹⁸¹ See *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (*Diamond Sawblades from the PRC*) and accompanying IDM at Comment 11.D.

¹⁸² See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011) and accompanying IDM at Issue 2.

¹⁸³ See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) (*TRBs from the PRC*) and accompanying IDM at Comment 2. ("The Department has stated that it will consider Infodrive data to further evaluate import data, provided: 1) there is direct and substantial evidence from Infodrive reflecting the imports from a particular country; 2) a significant portion of overall imports under the relevant HTS

Infodrive data generally, and in particular, when any one of the three *TRBs from the PRC* criteria is not satisfied, the court cannot say the Department must use the Infodrive data for any purpose.¹⁸⁴

- The Department should not use Infodrive data because the product descriptions are fundamentally flawed. Setting aside the Department’s acknowledgement that its FOP methodology can result in a SV choice that can be less precise than the specific material utilized,¹⁸⁵ to reach Hongyuan’s conclusion would require confidence in the veracity of the product descriptions in the Infodrive data.
- In this case, the Infodrive descriptions are inconsistent. For instance, total quantity for Taiwan is in agreement between GTA and Infodrive data, and Infodrive has a one percent higher value than GTA data. GTA data is a CIF value, whereas Infodrive value data is the CIF value plus one percent landing charge.¹⁸⁶ Thus, after accounting for this difference, there is a 100 percent correlation between the data for Taiwan in Infodrive versus GTA.¹⁸⁷ All of the Taiwanese imports, however, are described as electrogalvanized.¹⁸⁸ This is significant because the Indian HTS system distinguishes steel coil that is electrogalvanized from that which is hot-dipped galvanized (7212.20 for electrogalvanized versus 7212.30 for hot-dipped galvanized).¹⁸⁹ The HTS number used in the *Preliminary Determination* is limited to hot-dipped galvanized steel. Because the quantity and value correlate for Taiwan, there are two possibilities: the Infodrive product descriptions are incorrect or the HTS subheading is incorrect. Because the same subheading is used for both Infodrive and GTA data (based on official Indian import data), the Department must conclude that the Infodrive description is inherently unreliable. There are other line items described as electrogalvanized in the Infodrive data, but the analysis on Taiwan isolates the data because of the 100 percent correlation.
- Further placing doubt on the descriptions in Infodrive is one line item from the Korean data that is described as a non-galvanized product.¹⁹⁰
- Therefore, to use Infodrive data over official Indian government data would necessarily impugn the integrity of Indian Customs as a whole. It is one thing to use Infodrive data to show that imports under an HTS subheading may contain imports that are less specific, but it is another to say Infodrive data demonstrate that Indian Customs misclassified entries under the wrong HTS heading.
- In addition, the Department’s administrative criteria, as set by *TRBs from the PRC*, are not satisfied. The Department first looks at the overall volume and value on a worldwide basis. Without converting any line items where the unit of measure is meters, number, pieces, or units, the Infodrive data contain 19.4 percent less quantity than the GTA data,

category is represented by the Infodrive India data; and 3) distortions of the AUV in question can be demonstrated by the Infodrive data; but that the Department will not use Infodrive data when it does not account for a significant portion of the imports which fall under a particular HTS subheading.”)

¹⁸⁴ See *Globe Metallurgical, Inc. v. United States*, 33 CIT 435, 440 (2009).

¹⁸⁵ See the Department’s Antidumping Manual, Chapter 10 at 16 (“In many cases, an exact match is not possible, e.g., ... the Department must use the price of basket of goods that includes, but is not limited to, the NME factor.”)

¹⁸⁶ See GTIS Help Index, *Data Availability, Source, Valuation*.

¹⁸⁷ See Petitioners Rebuttal Brief at 14-15.

¹⁸⁸ *Id.* at 15 and attached spreadsheet.

¹⁸⁹ See SeAH’s March 16, 2016, SV Rebuttal at Attachment 3 (pdf at 154).

¹⁹⁰ See Petitioners Rebuttal Brief at 16 (“SUP 95 GRADE BLACK PAINTED & WAXED SUP95-BL”).

which is a substantial difference and precludes the use of the Infodrive data under the *TRBs from the PRC* framework. Indeed, the Department rejected Infodrive data in *TRBs from the PRC* based on a similar discrepancy.¹⁹¹

- Nevertheless, if the Department were to proceed with the *TRBs from the PRC* analysis and compare volume and value at the country level, six of the 12 countries show significant discrepancies in the value reported in the Infodrive data, while seven countries show significant discrepancies in volume (not including Austria and Germany, which suffer from the unit of measure issue that the Department considered a stopping point in *TRBs from the PRC*).¹⁹² In addition, two countries are entirely absent from the GTA data (France and Nepal), and this is a critical consideration in the second prong of the *TRBs from the PRC* test.¹⁹³
- Hongyuan cannot demonstrate distortions in the AUV in question as required under the third prong of the *TRBs from the PRC* test. As noted above, the Infodrive product descriptions are fundamentally flawed, and the Infodrive data are devoid of information concerning whether customs duties were paid; thus, such entries could very well not be for domestic consumption. The Department previously rejected Infodrive data for this very reason.¹⁹⁴
- The Department should value Hongyuan steel strip using all of the GTA data for the HTS subheading, without alteration or manipulation. As noted above, the Department cannot use Hongyuan's purchases as ME purchases.
- Hongyuan advocates for MEPS India data; however, MEPS does not share the Indian HTS system's division of hot-dipped galvanized steel into the following categories: corrugated and other. In addition, MEPS does not distinguish between galvanized hot-rolled versus galvanized cold-rolled steel. Thus, MEPS data are less specific than the GTA data. Moreover, the Department has recently and repeatedly rejected requests to use MEPS data because they do not set forth the basis of the price, as would be necessary for evaluative purposes.¹⁹⁵
- The Department should not use Ukrainian GTA data because of the Department's longstanding regulatory preference to value all factors in a single country,¹⁹⁶ based on

¹⁹¹ See *TRBs from the PRC* and accompanying IDM at Comment 2 (“comparative analysis of the Infodrive and WTA data and Indian imports...show that only 79.81 percent of the total WTA quantity from all countries that the Department includes in its surrogate value calculation is accounted for in the total quantifiable weight figures from the corresponding Infodrive data...Further, Infodrive reports the quantity of imports for certain countries in units of measure that cannot be converted to a quantifiable weight. Thus the Department could not conduct a comparable analysis of import quantity or AUV between the datasets for several countries...”).

¹⁹² See Petitioners Rebuttal Brief at 18 and attached spreadsheet. See also *TRBs from the PRC* and accompanying IDM at Comment 2.

¹⁹³ See *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010) and accompanying IDM at 15.

¹⁹⁴ See *Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews*, 72 FR 58641 (October 16, 2007) and accompanying IDM at Comment 4.

¹⁹⁵ See, e.g., *Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Antidumping Duty Determination*, 79 FR 58320 (September 29, 2014) and accompanying PDM at XII.4; and *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review and Preliminary Intent to Rescind in Part; Calendar Year 2013*, 80 FR 18809 (April 8, 2015) and accompanying PDM at V.D.

¹⁹⁶ See 19 CFR 351.408(c)(2).

important economic reasons,¹⁹⁷ which has been repeatedly affirmed by the CIT.¹⁹⁸ In addition, the petitioners provided ample evidence that Ukrainian import data are distorted by rampant corruption. Moreover, the HTS subheading for Ukraine provided by Hongyuan is at the six-digit level (721230). If the eight-digit Indian HTS number is too broad to address the specificity of the input, then the six-digit Ukrainian HTS number must be even less specific.

- The Department should use the entirety of the Indian HTS number in accordance with its strong preference for using all import data for the relevant HTS category at issue,¹⁹⁹ and not use the Infodrive data to filter out certain countries. *TRBs from the PRC 2011* is inapposite because, in that case, the Infodrive data had significant coverage such that the Department was able to exclude what was clearly non-subject merchandise.²⁰⁰
- If the Department does find that Infodrive's product descriptions and import coverage have the veracity to impugn the Indian GTA data, then the Infodrive data should have sufficient validity to serve as a SV choice (taking out cold-rolled, electrogalvanized, and defective merchandise, and merchandise with units of measure other than kilograms or metric tons).
- Hongyuan's statement, that imports for automotive applications should be excluded because they do not reflect the type of steel used to produce fence pipe, is unsupported and illogical because the type of steel remains constant regardless of its use.

Department Position:

ME Purchases

We agree with the petitioners, and we continue to find that Hongyuan's purchases of steel strip are not ME purchases. We are, thus, not using these purchases to value Hongyuan's steel strip consumption.

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 a 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 SV for the NME portion by their respective quantities.

Hongyuan reported that it purchased substantially all of its steel strip from a ME country and paid for the merchandise in U.S. dollars.²⁰¹ We asked Hongyuan questions about these

¹⁹⁷ See *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 IDM at 13.

¹⁹⁸ See *Peer Bearing Co.-Changshan v. United States*, 804 F. Supp. 2d 1337, 1353 (CIT 2011); *Clearon Corp. v. United States*, 2013 Ct. Intl. Trade LEXIS 27 *19-27 (February 10, 2013).

¹⁹⁹ See *Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) (*LWTP from the PRC*) and accompanying IDM at Comment 9.

²⁰⁰ See *TRBs from the PRC 2011* and accompanying IDM at Comment 14B.

²⁰¹ See Hongyuan Section D at D-8

transactions.²⁰² Due to the business proprietary nature of the details of these transactions, we explained the transaction, as well as what was missing from the record with regard to a certain price, in the Hongyuan Preliminary Analysis Memorandum. In the *Preliminary Determination*, we found that, regardless of Hongyuan's assertions, it did not diminish the fact that the record lacked the evidence to establish a ME purchase.

At verification, Hongyuan did not provide documents to address the deficiency explained in the Hongyuan Preliminary Analysis Memorandum.²⁰³ Therefore, the record continues to lack the evidence to establish a ME purchase.²⁰⁴ Regardless, Hongyuan continues to repeat the same arguments that it submitted before the *Preliminary Determination*.

Hongyuan argues that it purchased coils from a ME supplier, and although the coils may have been slit in a bonded facility in Vietnam, such slitting did not result in a new or different article or change the class or kind of the merchandise. However, substantial transformation is not the issue here. Regardless of whether or not the coil is substantially transformed when it is slit, it does not negate the fact that Hongyuan purchased the merchandise from a company in Vietnam, not directly from a ME supplier. Further, part of the price paid for the merchandise would include the value added by the NME company in Vietnam.

As the petitioners note, Hongyuan misplaces reliance on *Cold-Rolled Steel from Taiwan*. In that case, the Department was determining whether subject merchandise destined for the United States was subject to the Taiwanese investigation or the companion Japanese investigation by virtue of third country transshipment that also involved further processing.²⁰⁵ The Department used a substantial transformation test, ultimately determining that the product remained subject to the Japanese investigation. The merchandise under consideration in *Cold-Rolled Steel from Taiwan* was a finished product with physical characteristics that fell within the scope of both the Taiwanese and Japanese investigations. However, the issue in the instant investigation involves an input to production, not merchandise that falls within the scope. Moreover, as we noted above, substantial transformation is not the issue in the instant case. Therefore, *Cold-Rolled Steel from Taiwan* is not instructive to the issue at hand.

Hongyuan asserts that the physical location cannot be the basis for accepting or denying the legitimacy of ME purchases, because every time the Department uses ME purchases to value input materials, the purchasers are located in the NME country. This argument does not hold. When we grant ME status to a purchase made by a NME company, the NME company purchases a good from a ME country and the good was produced in the ME country.²⁰⁶ In the instant case,

²⁰² See the Department's March 22, 2016, supplemental questionnaire and Hongyuan's April 15, 2016, response at 13-14 and Ex. Supp1-19 and 1-20.

²⁰³ See Hongyuan Verification Report and Verification Exhibit 13.

²⁰⁴ Due to the business proprietary nature of this information, see Hongyuan Final Analysis Memorandum for more discussion on this issue.

²⁰⁵ See *Cold-Rolled Steel from Taiwan* and accompanying IDM at Comment 1.

²⁰⁶ The Department's regulation at 19 CFR 351.408(c)(1) states that the Department will use the price paid to the market economy supplier if substantially all of the total volume of the factor is purchased from the market economy supplier and "where a factor is **produced in one or more market economy countries, purchased from one or more market economy suppliers** and paid for in market economy currency." (emphasis added).

the coil was partially produced in a ME country and partially produced in a NME country.²⁰⁷ As noted above, regardless of whether the merchandise is substantially transformed, part of the processing occurred in a NME country. Hongyuan purchased the merchandise from the Vietnamese company, not directly from a ME supplier.²⁰⁸ Further, part of the price paid is for processing in a NME country by a NME enterprise. Due to the lack of record evidence, we have no way to distinguish the percentage of the price paid to the ME company versus the amount paid for processing in the NME country.

Hongyuan cites to *CVD CWP from Vietnam* to support its argument that it is not the location or geography of NME purchases, but rather the laws and rules surrounding transactions that should determine whether or not a transaction reflects an arm's-length market-based action by parties relatively free from government control.²⁰⁹ In that case, the Department found that the Government of Vietnam designated Hongyuan as an export processing enterprise, and the Department found that a designated export processing enterprise's production facilities are a 'non-tariff zone' under Vietnamese law because its operations are outside the customs territory of the country. Based on that case, Hongyuan asserts that the company it purchased from is physically located in Vietnam but legally located outside the NME country. However, the cite to the CVD case is inapposite. In *CVD CWP from Vietnam*, the Department was making a decision regarding an alleged countervailing duty program for import duty exemptions. The Government of Vietnam's non-tariff zone designation does not change our treatment of an entity under the AD law. A Vietnamese non-tariff zone is still within the country of Vietnam, even if it is not considered within the "customs territory" of Vietnam. Therefore, even if the company that slit the coils is in a bonded facility or a non-tariff zone, it is still considered a NME entity under the AD law. This is consistent with *CWP from Vietnam*, where although the Department found that Hongyuan was in a non-tariff zone under Vietnamese law for an import duty exemption program in the CVD investigation, in the companion AD investigation, the Department applied NME treatment to Hongyuan.²¹⁰

GTA Indian Import Data

When selecting SVs with which to value the factors of production used to produce subject merchandise, the Department is directed to use the "best available information" on the record.²¹¹ When selecting SVs for use in a NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference to data from a single surrogate country.²¹²

²⁰⁷ See Hongyuan Case Brief and the Department's March 22, 2016, supplemental questionnaire and Hongyuan's April 15, 2016, response at 13-14 and Ex. Supp1-19 and 1-20.

²⁰⁸ See 19 CFR 351.408(c)(1).

²⁰⁹ See *CVD CWP from Vietnam* and accompanying IDM at Comment 3 .

²¹⁰ See *CWP from Vietnam* and accompanying IDM.

²¹¹ See section 773(c)(1) of the Act.

²¹² See *Certain Cut-To-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) at Comment 3.

As explained below, we find that Hongyuan has not supported its argument that the Indian GTA data are distorted. As a result, we are continuing to use Indian GTA data for HTS code 7212.30.90 to value Hongyuan's steel strip.

Hongyuan acknowledges that the HTS code we used at the *Preliminary Determination* actually covers the galvanized strip that it uses. Hongyuan presents Infodrive data to support its argument that the price in the GTA is distorted. Hongyuan asserts that the Infodrive data show that imports under the HTS code used at the *Preliminary Determination* includes mostly merchandise that is dissimilar to the strip that it uses. Specifically, Hongyuan uses hot-rolled, hot-dipped galvanized steel strip. It argues that 66 percent of the imports under the HTS code, based on information in Infodrive, is not specific to its steel input; that is, it is comprised of cold-rolled galvanized steel strip and electrogalvanized steel.

First, due to the Department's well-established reservations²¹³ regarding the use of Infodrive data, either as a corroborative tool or price benchmark, the viability of this particular Infodrive dataset must be analyzed in accordance with Department practice regarding the use of Infodrive data.²¹⁴ Further, when a party claims that a particular SV is not appropriate to value the FOP in question, the burden is on that party to prove the inadequacy of the SV or, alternatively, to show that another value is preferable.²¹⁵

With respect to electrogalvanized products, as the petitioners note, there is a separate Indian HTS (7212.20) code for electrogalvanized merchandise.²¹⁶ Thus, because the Infodrive data was for HTS 7212.30, if one accepts the descriptions of merchandise in the Infodrive data are accurate, this would mean that Indian government import data, from which GTA is derived, is wrong because electrolytically galvanized products should not be in HTS 7212.30. It is more likely that the Infodrive data are incorrect because the GTA data are based on official government statistics. Moreover, hot-dipped galvanized and electrogalvanized merchandise are both galvanized merchandise, and there is no information on the record that there is a price difference between these two types of merchandise.

With respect to cold-rolled galvanized steel strip, Hongyuan also does not support its argument that there is a price difference between hot-rolled galvanized steel strip versus cold-rolled galvanized steel strip. Hongyuan cites to an Internet article that states that buyers should expect to pay twice as much for cold-rolled steel as for hot-rolled steel.²¹⁷ First, this article only refers

²¹³ The Department outlined some of these reservations in *Diamond Sawblades from the PRC* and accompanying IDM at Comment 11D, where it noted: "...the Department prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading. The Department has also determined that Infodrive India is unreliable because a majority of the HTS categories do not report the specific import items in a uniformly comparative manner (*i.e.*, cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value. We note that this is not a problem with the WTA data because every HTS category is reported using a single uniform measurement (*e.g.*, rupees per kilogram)."

²¹⁴ See, *e.g.*, *LWTP from the PRC* and accompanying IDM at Comment 9.

²¹⁵ See, *e.g.*, *TRBs from the PRC* and accompanying IDM at Comment 2.

²¹⁶ See SeAH's March 16, 2016, SV Rebuttal at Attachment 3 (HTS 7212.20 for electrogalvanized products).

²¹⁷ See Hongyuan's March 16, 2016, SV Rebuttal Submission at Exhibit 4.

to hot-rolled steel versus cold-rolled steel and not galvanized steel. There is nothing on the record that compares or gives information about hot-rolled galvanized prices versus cold-rolled galvanized prices. Second, there is no information indicating the reliability of this article. Third, there are other factors besides whether the input into galvanizing is hot-rolled versus cold-rolled that could affect price, such as coil thickness. Fourth, we compared two imports (one cold-rolled galvanized and one hot-dipped galvanized) in Infodrive data in April 2015 from Korea.²¹⁸ This comparison shows that the hot-dipped galvanized merchandise actually had a higher per unit price than the cold-rolled galvanized material. This is the opposite of what Hongyuan is trying to prove with the Infodrive data.

Hongyuan asked us to adjust the GTA data by removing certain countries because the majority of imports from these countries consist of cold-rolled galvanized steel, electrogalvanized steel, and automotive steel. We have used Infodrive data in limited cases to further evaluate GTA data, provided that there is direct and substantial evidence from Infodrive reflecting imports from a particular country, a significant portion of overall imports in the HTS category are reflected in the Infodrive data, and distortions of the average unit value in question can be demonstrated by Infodrive data.²¹⁹ In *TRBs from the PRC*, we found that, among other discrepancies: the HTS category in Infodrive was only 79.81 percent of the total WTA quantity from all countries that the Department includes in its SV calculations; country-specific data exhibited significant variance between each dataset; the quantity of imports for certain countries was in units of measure that could not be converted to a quantifiable weight; and certain countries were missing from one of the datasets.²²⁰ Based on these discrepancies, the Department in that case found that the Infodrive data did not provide a good representation of GTA data. Similar differences are found in the instant case. Hongyuan did not specifically address the portion of overall imports covered by Infodrive data, but we calculated it to be about 80 percent.²²¹ There was some correlation between the imports in Infodrive and GTA for some countries (the first factor), but not for all countries, and some countries are missing from the Infodrive data. In addition, there are units of measure in the Infodrive data that cannot be converted to a quantifiable weight. Thus, even if the first two factors were true, Hongyuan has not demonstrated the distortions in value with the Infodrive data.

While Hongyuan also suggests that we could use MEPS India data, the Department has a practice of not using MEPS data.²²² In this case, similar to *Wind Towers*, we find that the MEPS India data are not representative of a broad market average because the record evidence demonstrates that the prices are for Delhi only, rather than all markets within India.²²³ In addition, MEPS does not distinguish between galvanized hot-rolled versus galvanized cold-rolled steel.²²⁴ It simply has a broad category for hot dipped galvanized steel. Thus, MEPS is

²¹⁸ See Hongyuan's March 16, 2016, SV Rebuttal Submission at Exhibit 1 and Hongyuan Case Brief at Attachment 1. See comparison in Hongyuan Final Analysis Memorandum.

²¹⁹ See, e.g., *TRBs from the PRC 2011* and accompanying IDM at Comment 14B.

²²⁰ See *TRBs from the PRC* and accompanying IDM at Comment 2.

²²¹ See Hongyuan Final Analysis Memorandum.

²²² See, e.g., *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) (*Wind Towers*) and accompanying IDM at Comment 1.

²²³ See Hongyuan's May 2, 2016, SV Submission at Exhibit 6.

²²⁴ *Id.*

less specific than the GTA data. Moreover, Hongyuan has not demonstrated that our preferred data, Indian GTA data, are distortive. We prefer GTA data because they are average import prices, representative of prices within the POI, product-specific, tax-exclusive and publicly available.²²⁵

Hongyuan next suggests that we use Ukrainian GTA data to value its steel strip. However, our regulations state that we will normally value all factors in a single surrogate country.²²⁶ Moreover, the Ukrainian HTS number provided by Hongyuan was only a six-digit number versus the eight-digit Indian number.²²⁷ This would make the Ukrainian data even broader than the Indian data.

Thus, Indian GTA data are the best available information on the record to value Hongyuan's steel strip. Moreover, we are not making adjustments to the Indian GTA data by removing certain countries because Hongyuan has not met its burden of demonstrating a distortion in the Indian GTA data.

Comment 13: U.S. Indirect Selling Expenses

*Petitioners' Comments:*²²⁸

- Hongyuan's U.S. indirect selling expenses should be adjusted to include certain G&A line items that Hongyuan excluded from its calculation. Longstanding Department practice treats all selling, general, and administrative expenses incurred by an affiliated importer as U.S. indirect selling expenses.²²⁹
- The verification report for MAT states that the line items relate to a fee for shared services provided by MAT Holdings, including accounting, information technology, senior management, facility maintenance, and purchasing.²³⁰
- In essence, rather than MAT hiring the personnel and developing the infrastructure to support its sales operation itself, MAT Holdings takes on these expenses and bills its affiliate.
- If MAT claims that it also engages in manufacturing activities, that status does not shield these expenses from consideration as indirect selling expenses. Regardless of whether MAT is engaged in manufacturing or further manufacturing, when the affiliate engages in more than just selling activities, the Department creates a bifurcated pathway for calculating total indirect selling expenses by separately calculating selling and G&A ratios, applying both ratios to sales of both further manufactured merchandise and non-further-manufactured merchandise to yield selling and G&A expense pools, which are ultimately combined and deducted from U.S. price.²³¹

²²⁵ See *Diamond Sawblades from the PRC* and accompanying IDM at Comment 11.D.

²²⁶ 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, 2013) (upholding the Department's regulatory preference for a single surrogate country).

²²⁷ See Hongyuan's March 7, 2016, SV Submission at Volume Two, Exhibit SV-1.

²²⁸ See Petitioners Case Brief at 27-30.

²²⁹ See, e.g., *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 37286 (July 1, 2014) (*Citric Acid from Canada*) and accompanying IDM at Comment 3.

²³⁰ See MAT Verification Report at 14.

²³¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of*

*Hongyuan's Rebuttal Comments:*²³²

- The Department properly did not include the two line items in the *Preliminary Determination*. At verification, the Department confirmed these line items are for services provided by MAT Holdings, none of which mentions or relates to selling. There is no evidence on the record that the top-level management at the holding company level is engaged in selling, indirectly or otherwise.
- In nearly an identical situation, the Department determined such expenses are properly excluded from U.S. indirect selling expenses. In the *12th Review of AFBs*,²³³ the petitioner argued that the Department should include management fees in U.S. indirect selling expenses. The respondent in that case explained that management fees are not related to selling but rather are fees allocated to the business units for corporate head office administrative functions. The Department agreed with the respondent, concluding these corporate expenses were not selling expenses and properly were not included in U.S. indirect selling expenses.

Department Position: We agree with the petitioners. We are including the two line items in question in the U.S. indirect selling expense calculation, as detailed below. Section 772(d)(1)(D) of the Act directs the Department to reduce CEP by the amount of any selling expenses not deducted under subparagraph (A), (B), or (C). Consistent with this section of the Act, it is our general practice to consider G&A expenses related to the selling operations of the seller affiliated with the producer or exporter in the calculation of indirect selling expenses, and to deduct these expenses from U.S. price.²³⁴ Where a U.S. affiliate is both a manufacturer and a seller, our practice is to require respondents to allocate these expenses between manufacturing and selling operations by calculating a G&A ratio.²³⁵

In this investigation, MAT engages in manufacturing and other activities, in addition to selling merchandise. Thus, MAT's employees are responsible for overseeing and coordinating both sales and manufacturing activities of the company. As the Department explained in *Line Pipe from Korea*, as a general rule, when faced with such facts, the Department calculates separate indirect selling expense and G&A expense ratios and applies the G&A ratio to the total cost of further manufactured products, as well as to the cost of all non-manufactured products.²³⁶

Sales at Less Than Fair Value, 81 FR 47352 (July 21, 2016) (*Heavy Walled Pipe from Mexico*) and accompanying IDM at Comment 12; *Welded ASTM A-312 Stainless Steel Pipe: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016) and accompanying IDM at Comment 3.

²³² See Hongyuan Rebuttal Brief at 14-16.

²³³ See *Antidumping Duty Administrative Reviews of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the Period of Review May 1, 2002, through April 30, 2003*, 69 FR 55574 (September 15, 2004) (*12th Review of AFBs*) and accompanying IDM at Comment 4.

²³⁴ See, e.g., *Citric Acid from Canada* and accompanying IDM at Comment 3.

²³⁵ See, e.g., *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Line Pipe from Korea*) and accompanying IDM at Comment 20, and *Heavy Walled Pipe from Mexico* and accompanying IDM at Comment 12.

²³⁶ See *Line Pipe from Korea* and accompanying IDM at Comment 20.

Although *Line Pipe from Korea* related to further manufacturing, *Heavy Walled Pipe from Mexico* involved manufacturing and the same principle applied.²³⁷

In the instant case, certain shared services (such as, accounting, information technology, senior management, facility maintenance, and purchasing) are provided to MAT by MAT Holdings, which, in turn, charges MAT.²³⁸ This does not change the fact that these services benefit MAT, just like any other G&A expense. We, therefore, included these expenses in the indirect selling expense calculation. MAT's G&A activities (including the charges by MAT Holdings) support the general activities of the company as a whole, including its sales and manufacturing functions, similar to *Line Pipe from Korea*, *Heavy Walled Pipe from Mexico* and *Citric Acid from Canada*.²³⁹ Thus, we then deducted the portion of MAT's administrative expenses (*i.e.*, the shared services provided by MAT Holdings) related to subject merchandise, from U.S. price in our final determination.

Hongyuan cites the 12th *Review of AFBs* in support of its arguments. We disagree that the factual pattern of the 12th *Review of AFBs* applies to this case, because the reason the Department excluded the management fee found in the financial statements of SKF Bearings USA and Chicago Rawhide USA was that these expenses were allocations to the various SKF Group business units (including SKF Bearings USA and Chicago Rawhide USA) of expenses incurred by the corporate head office in Gotenberg, Sweden, for corporate administrative functions. Here, on the other hand, MAT Holdings is a U.S. company located in the United States involved in the sale of subject merchandise.

In *Heavy Walled Pipe from Mexico*, we disagreed with the respondent that executive salaries must be directly related to selling activities in order to be properly included as indirect selling expenses.²⁴⁰ The activities of the company executives support the operations of a company as a whole and, thus, the Department appropriately considers a portion of their salaries as related to selling activities, even if this relationship is indirect.²⁴¹ In that case, we also found that the salaries of accountants charged with recording sales and expense information are properly considered to be indirect selling expense related administrative expenses.²⁴² The same logic applies in the instant case to the shared services provided by MAT Holdings and charged to MAT.²⁴³ These services benefit the operations of the company as whole. Therefore, we are treating the shared service fees as an indirect selling expense.

²³⁷ See *Heavy Walled Pipe from Mexico* and accompanying IDM at Comment 12.

²³⁸ See MAT Verification Report at 14.

²³⁹ See *Line Pipe from Korea* and accompanying IDM at Comment 20, *Heavy Walled Pipe from Mexico* at accompanying IDM at Comment 12, and *Citric Acid from Canada* and accompanying IDM at Comment 3.

²⁴⁰ See *Heavy Walled Pipe from Mexico* and accompanying IDM at Comment 12.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ See MAT Verification Report at 14.

Comment 14: Treatment of Strengthening Tubes Used For Packing

*Petitioners' Comments and Rebuttal Comments:*²⁴⁴

- The Department should re-allocate costs for Hongyuan's strengthening tube. The strengthening tubes are used to provide stability for pipe bundles during shipment. At the U.S. verification, MAT officials told the Department that after shipment, the strengthening tubes are scrapped by each warehouse.²⁴⁵
- At the Vietnamese verification, company officials explained that strengthening tubes are steel pipes that do not meet standards, either arising as scrap from the production process or, on very rare occasions when they do not arise from scrap, produced by the company specifically to be used in the packing process.²⁴⁶ These strengthening tubes cannot be used as CWP; they are slightly flattened, sometimes damaged, and are significantly shorter than subject merchandise.²⁴⁷
- The Department should treat sales of strengthening tube as it treats any other scrap (no costs are assigned while revenue from their sales can be used to offset costs). Hongyuan should not benefit from the assignment of factor usage to products that are not subject merchandise and cannot be used as such.
- The Department adopted such treatment in *Line Pipe from Turkey*.²⁴⁸ In that case, the Department revised the respondent's reported cost of second-quality pipes to reflect these products' net realizable values, and it allocated the residual manufacturing costs to the prime products during the POI. An important consideration in *Line Pipe from Turkey* was whether the tubes are still capable of being used as the subject merchandise.
- In *Heavy-Walled Pipe from Turkey*, the Department similarly confirmed that it normally values non-prime products that cannot be used in the same applications as prime quality merchandise at their sales price rather than at their full production costs.²⁴⁹
- Thus, the Department should reallocate factor usage values to prime products during the POI.
- Hongyuan does not provide any reason why the Department should forego recent agency practice and maintain full cost allocation toward non-prime merchandise that is more akin to scrap or byproducts.
- The petitioners do not disagree with Hongyuan that the variables fall under the packing group. The Department should follow a three-step approach: 1) reallocate all factor usage rates by altering the per-unit denominator (specifically eliminating the volume of strengthening tubes); 2) move the strengthening tube variables to the packing group; and 3) value the strengthening tube using the surrogate for scrap.

²⁴⁴ See Petitioners Case Brief at 30-31 and Petitioners Rebuttal Brief at 26-27.

²⁴⁵ See MAT Verification Report at 5.

²⁴⁶ See Hongyuan Verification Report at 14.

²⁴⁷ *Id.*

²⁴⁸ See *Welded Line Pipe from the Republic of Turkey: Final Affirmative Determination in the Less-Than-Fair-Value Investigation*, 80 FR 61362 (October 13, 2015) (*Line Pipe from Turkey*) and accompanying IDM at 4.

²⁴⁹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016) (*Heavy-Walled Pipe from Turkey*) and accompanying IDM at 34 (n.129).

*Hongyuan's Comments and Rebuttal Comments:*²⁵⁰

- Hongyuan separately reported eleven inputs used to produce strengthening tubes for packing. All these items should be regarded as packing expenses, and this is supported by the Department's verification report, which describes strengthening tube as a packing item.²⁵¹
- In the *Preliminary Determination*, the Department erred by including certain packing items in the cost of manufacture to which the financial ratios were applied. Specifically, the Department included electricity, water, and diesel oil as energy items, and labor as part of direct labor. This unintentional error should be corrected in the final determination.
- Hongyuan argues that the petitioners' arguments do not appear to relate to the strengthening tubes that Hongyuan uses as packing material. Hongyuan had no sales of strengthening tubes. The strengthening tubes are a self-produced packing input properly regarded as packing and not as a scrap byproduct.

Department Position: We agree with the petitioners. We found at verification that most strengthening tubes arose as scrap from the production process, and only on very rare occasions when they do not arise from scrap, are they produced by the company specifically for use in the packing process.²⁵² Given this, it is appropriate to treat them as we would treat other scrap merchandise.

In *Line Pipe from Turkey*, the respondent valued non-prime products at the same manufacturing cost as their prime-quality counterparts.²⁵³ In that case, the Department found that the non-prime pipes could not be used for the same applications as the prime pipes and, therefore, increased the cost of prime pipes by the difference between the cost allocated to the second-quality pipes and the second quality pipes' sales revenue. In *Heavy-Walled Pipe from Turkey*, the respondent assigned total manufacturing costs (*i.e.*, for all products, whether prime or non-prime) to prime-quality finished goods only, and offset those costs with revenue earned on sales of the non-prime merchandise that could not be used in prime product applications.²⁵⁴

Consistent with those two cases, for this final determination, we similarly assigned all production factors to prime merchandise, then offset costs by scrap value for strengthening tube, and assigned strengthening tube for packing a value for scrap metal. Specifically, we assigned total raw materials, labor, and overhead to prime products only (*i.e.*, the strengthening tube pipe quantities were excluded from finished production quantities). We then granted an offset for all usable and salable scrap generated during production (*i.e.*, for the scrap that will be sold, reintroduced into production, or used as strengthening pipe for packing). The strengthening tube FOP used in packing is valued at the SV for scrap metal (which was the same price used for the

²⁵⁰ See Hongyuan Case Brief at 12-13 and Hongyuan Rebuttal Brief at 16.

²⁵¹ See Hongyuan Verification Report at 23.

²⁵² *Id.* at 14.

²⁵³ The Department normally values non-prime products that cannot be used as the prime quality merchandise at their sales price rather than at their full production costs. See, *e.g.*, *Line Pipe from Turkey* and accompanying IDM at Comment 9.

²⁵⁴ See *Heavy Walled Pipe from Turkey* and accompanying IDM at Comment 11.

offset above). Finally, the financial ratios were applied to cost of manufacturing (*i.e.*, raw material, direct labor, and overhead).²⁵⁵

Comment 15: Record-keeping of Hongyuan’s U.S. Affiliate

*Petitioners’ Comments:*²⁵⁶

- Verification revealed record-keeping deficiencies on the part of Hongyuan’s U.S. affiliate MAT that must be remedied if this investigation results in an order.²⁵⁷ Under an order, MAT would be required to limit its U.S. sales database to Vietnam-origin merchandise.
- The Department should put Hongyuan on notice that better record keeping will be required in the event an order is issued. The Department issued such notices in other cases.²⁵⁸

Department Position: We agree with the petitioners. During verification, we verified MAT’s claim that it cannot link a sale out of inventory to a particular entry into inventory. MAT officials stated that their system tracks the origin of pipe.²⁵⁹ When product is removed from inventory, the warehouse will scan the bar code of the product.²⁶⁰ Bar code information has the part number, which would be the same for U.S.-sourced and Vietnamese-sourced material of the same type.²⁶¹ While the bar code label from different suppliers might appear different, and Vietnamese product would say “Made in Vietnam” on the label, this information is not currently tracked when the information is scanned into the system.²⁶² In the event we issue a final AD order, in future proceedings, we expect Hongyuan’s U.S. affiliate MAT to modify its recordkeeping system to be able to track the country of origin of U.S. sales of subject merchandise.

²⁵⁵ See Hongyuan Final Analysis Memorandum..

²⁵⁶ See Petitioners Case Brief at 36-37.

²⁵⁷ See MAT Verification Report at 14.

²⁵⁸ See *Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination*, 78 FR 13019, 13022 (February 26, 2013); *Certain Steel Nails from the Peoples Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013) and accompanying IDM at Comment 5.

²⁵⁹ See MAT Verification Report at 5.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

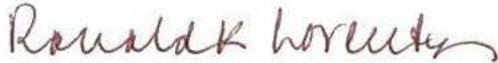
VI. RECOMMENDATION

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 in the investigation and the final weighted-average dumping margins in the *Federal Register*.

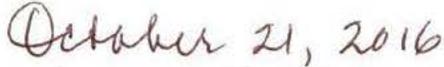


Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



(Date)