

January 3, 2011

**MEMORANDUM TO:** Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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

**SUBJECT:** Drill Pipe from the People’s Republic of China: Issues and  
Decision Memorandum for the Final Determination

**SUMMARY**

The Department of Commerce (“Department”) has analyzed the comments submitted by the government of the People’s Republic of China (“PRC”),<sup>1</sup> DP-Master Manufacturing, Co., Ltd. and Jiangyin Liangda Drill Pipe Co., Ltd. (“the DP-Master Group”), Baoshan Iron & Steel Co., Ltd. (“Baoshan”), and Shanxi Yida Special Steel Imp. & Exp. Co., Ltd. (“Yida”) in the antidumping duty (“AD”) investigation of drill pipe from the PRC. Following the *Preliminary Determination*, verifications, and the analysis of the comments received, we made changes to the margin calculations for all three individually-selected respondents.<sup>2</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments by parties.

**General Issues:**

**Comment 1: Double Remedy**

**Comment 2: Scope of the Investigation**

**Comment 3: Whether the Department Should Correct the Preliminary Determination**

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<sup>1</sup> The government of the PRC is hereinafter referred to as “GOC.”

<sup>2</sup> See *Drill Pipe From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51004 (August 18, 2010) and *Drill Pipe From the People’s Republic of China: Notice of Correction to the Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51014 (August 18, 2010) (collectively, “*Preliminary Determination*”); see also the company-specific analysis memoranda, dated concurrently with this memo; see also Memorandum to the File through Paul Walker, Acting Program Manager, Office 9, from Susan Pulongbarit, Case Analyst, “Investigation of Drill Pipe from the People’s Republic of China: Surrogate Values for the Final Determination,” dated concurrently with this notice.

- A. Whether the Department Correctly Calculated the Surrogate Value for Green Tubes
- B. Whether the Department Correctly Calculated Sealer (“SEALRES”)
- C. Whether the Department Overlooked Surrogate Values on the Record for Tool Joints

**Comment 4: Labor Rate**

**Comment 5: Selection of Surrogate Financial Ratios**

- A. The DP-Master Group
- B. Baoshan

**Company-Specific Issues:**

**The DP-Master Group**

**Comment 6: Selection of a Surrogate Value for Tool Joints**

**Comment 7: Selection of a Surrogate Value for Green Tubes**

**Comment 8: Selection of a Surrogate Value for Alloy Steel Bars for Tool Joints**

**Comment 9: Critical Circumstances**

**Baoshan**

**Comment 10: Date of Sale**

**Comment 11: Market Economy Purchases of Iron Ore Pellet Made through Affiliated Companies**

**Comment 12: Self-Produced Inputs**

**Comment 13: By-Product Offset for Pulverized Fuel Ash**

**Comment 14: Valuation of Baoshan’s Copper Plating Tolling Factors of Production**

**Yida**

**Comment 15: Yida’s Reporting of Rubber Pads as a Packing Material**

**Comment 16: Yida’s Unreported Overhead Materials Discovered at Verification**

**Changes from Verification:**

- A. DP-Master Group’s Phosphate Treatment Tolling Factors of Production
- B. Baoshan’s Indirect Selling Expenses
- C. Baoshan’s Credit Expenses

**BACKGROUND**

The Department published in the *Federal Register* the *Preliminary Determination* on August 18, 2010. The period of investigation (“POI”) is April 1, 2009, to September 30, 2009. The Department conducted sales and factors of production (“FOPs”) verifications for all three

individually-selected respondents (including Baoshan's affiliated U.S. sales company) between September 20, 2010, and October 15, 2010.<sup>3</sup>

In accordance with 19 CFR 351.309(c)(i), we invited parties to comment on our *Preliminary Determination*. On November 4, 2010, the individually-selected respondents, the GOC, and Petitioners<sup>4</sup> submitted case briefs, and on November 12, 2010, the DP-Master Group, Baoshan, and Petitioners filed rebuttal briefs.

On November 16, 2010, the Department released an industry-specific wage rate calculation and gave parties an opportunity to comment. On November 19, 2010, the Department received supplemental comments from the DP-Master Group and Baoshan on the Department's labor wage rate methodology. On December 3, 2010, the Department placed tool joint data on the record and gave parties an opportunity to comment. On December 8, 2010, the Department received comments from the Petitioners, and on December 10, 2010, the Department received comments from the DP-Master Group, regarding the tool joint data. On December 14, 2010, the Department placed new information on the record regarding surrogate values ("SVs") for galvanizing and zinc. On December 20, 2010, the Department received comments from Baoshan on the galvanizing and zinc SVs. Also on December 14, 2010, the Department requested additional shipment data from Baoshan, the DP-Master Group, and Yida,<sup>5</sup> and received their responses on December 17, 2010.

## **General Issues:**

### **Comment 1: Double Remedy**

#### *Government of the PRC's Comments*

- The Department should make its less-than-fair-value ("LTFV") final determination without employing its AD non-market economy ("NME") methodology or, alternatively, terminate its countervailing duty ("CVD") investigation on the theory that these could

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<sup>3</sup> See Memo to the File, from Toni Dach and Jerry Huang, International Trade Compliance Analysts, "Verification of the Sales and Factors of Production Response of DP-Master Manufacturing Co., Ltd. and Jiangyin Liangda Drill Pipe Co., Ltd. in the Antidumping Duty Investigation of Drill Pipe from the People's Republic of China," dated October 26, 2010 ("DP-Master Verification Report"); Memo to the File, through Scot T. Fullerton, Program Manager, from Matthew Renkey, Senior International Trade Compliance Analyst, and Susan Pulongbarit, International Trade Compliance Analyst, "Verification of the Sales and Factors Response of the Yida Group in the Antidumping Investigation of Drill Pipe from the People's Republic of China," dated October 27, 2010 ("Yida Verification Report"); Memo to the File, through Scot T. Fullerton, Program Manager, from Susan Pulongbarit, International Trade Compliance Analyst, and Matthew Renkey, Senior International Trade Compliance Analyst, "Verification of the Sales and Factors of Production Response of Baoshan Iron & Steel Co., Ltd. in the Investigation of Drill Pipe from the People's Republic of China," dated October 27, 2010 ("Baoshan Verification Report"), and Memo to the File, through Scot T. Fullerton, Program Manager, from Susan Pulongbarit, International Trade Compliance Analyst, and Matthew Renkey, Senior International Trade Compliance Analyst, "Verification of the CEP Sales Response of Baoshan Iron & Steel Inc. in the Investigation of Drill Pipe from the People's Republic of China," dated October 27, 2010 ("Baoshan CEP Verification Report").

<sup>4</sup> The petitioners are VAM Drilling USA, Inc., Texas Steel Conversion, Inc., Rotary Drilling Tools, TMK IPSCO, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (collectively "Petitioners").

<sup>5</sup> See Letters to Baoshan, the DP-Master Group, and Yida dated December 14, 2010.

result in the imposition of a double remedy and that the U.S. Court of International Trade (“CIT”) gives the Department discretion not to impose CVDs when employing the NME AD methodology.<sup>6</sup>

- The Department’s valuation of FOPs in its NME AD analysis using market value in a non-subsidized market economy (“ME”) country leads to a duplicative remedy since CVD margins would also capture the difference between non-subsidized market imports and allegedly subsidized Chinese imports.
- The CIT held in *GPX*, due to double counting and the inability of the Department to determine whether and to what degree double counting is occurring, the only option is to not apply CVD law to imports that the Department has already applied to the NME AD methodology.

#### *The DP-Master Group’s Comments*

- The Department is not able to determine the existence or degree of a double remedy resulting from the concurrent application of both CVD law and AD NME methodology and thus it cannot lawfully apply the two concurrently.<sup>7</sup>
- The concurrent application of the AD NME methodology and CVD law double counts the same alleged distortion of export subsidies by applying ME SVs in its AD NME methodology to the same products from the same NME country with coexisting CVD laws.

#### *Baoshan’s Comments*

- The Department must take measures to avoid double counting remedies by either finding a new methodology offsetting any AD by, at a minimum, the amount of CVD imposed on the imports of the same goods or foregoing the imposition of CVD on imports of drill pipe.

#### *Petitioners’ Comments*

- The Department has previously rejected the double counting arguments and should continue do so for this investigation.
- Nothing in the World Trade Organization (“WTO”) agreements holds that applying AD duties using an NME methodology while simultaneously applying CVD duties is inconsistent.
- The CIT did not identify any specific statutory language that the Department had violated in *GPX* and, in any case, the CVD statute has definite terms that the Department must reduce ADs by *an* amount equal to any CVD imposed on an export subsidy.<sup>8</sup>
- Petitioners do not believe that the CIT in *GPX* applied a deferential standard of review toward the Department’s methodology; however, Petitioners note that the WTO did, finding that the United States had not violated the WTO agreements by applying CVDs and an NME methodology simultaneously.

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<sup>6</sup> *GPX Int’l Tire Corp. v. United States*, 645 F. Supp. 2d 1231, 1242-1243 (CIT 2009) (“*GPX*”).

<sup>7</sup> Citing *GPX International Tire Corp. v. United States*, Slip Op. 2010-84, at 3 (August 4, 2010) (“*GPX II*”) at 11 (concluding that the Department tacitly conceded “that, at this time, it is too difficult for Commerce to determine, using improved methodologies, and in the absence of new statutory tools, whether and to what degree double counting is occurring”).

<sup>8</sup> Citing 19 U.S.C. § 1677a(c)(1)(C)

### **Department's Position:**

The Department disagrees with the GOC, the DP-Master Group, and Baoshan that the concurrent application of AD duties calculated under the Department's NME methodology and the imposition of CVDs creates a double remedy for domestic subsidies in the PRC. As such, we find that the Department is not required to terminate the AD and/or CVD investigations or make adjustments to the drill pipe SVs.

The Department notes that the Tariff Act of 1930, as amended ("the Act"), is silent with respect to this issue. The AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies.<sup>9</sup> Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value.<sup>10</sup> With one exception, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

The one point of intersection between the AD and CVD regimes is found under section 772(c)(1)(C) of the Act. This provision requires that the price used to establish the export price shall be increased by "the amount of any CVD imposed on the subject merchandise . . . to offset an *export subsidy*" (emphasis added). The GOC and the DP-Master Group suggest that the Department erred by refusing to interpret this provision as if it actually read, "to offset an export subsidy *or, where the NME antidumping methodology is applied, a domestic subsidy*" (emphasis added).<sup>11</sup> In other words, the GOC and the DP-Master Group would have the Department read an automatic 100-percent offset for domestic subsidies in NME AD proceedings into the Act, based upon the logic purportedly inherent in Congress's decision to provide an automatic offset for export subsidies to implement the requirements of Article VI(5) of the General Agreement on Tariffs and Trade ("GATT"). Plainly, the above-emphasized language is not in the Act. As the Department previously noted, Congress amended the Act to provide for an adjustment to the AD calculation to offset CVDs for export subsidies.<sup>12</sup> If anything, the absence of the additional language related to a domestic subsidy implies that Congress intended to not provide additional adjustment for domestic subsidies.

In fact, the legislative history of the export subsidy adjustment establishes only that Congress considered it to satisfy the obligations of the United States under Article VI(5) of the GATT. The legislative history does not appear to be based on any specific assumption about whether foreign government subsidies lower prices in the United States and, in fact, is not solely concerned with the effects of subsidies in the United States.<sup>13</sup> Thus, although the Act requires a

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<sup>9</sup> See section 701(a) of the Act.

<sup>10</sup> See section 731(a) of the Act.

<sup>11</sup> See e.g. *Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 6.

<sup>12</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France*, 69 FR 46501, 46505-06 (August 3, 2004).

<sup>13</sup> See Trade Agreements Act of 1979, Report of the Committee on Finance United States Senate on H.R. 4537, July 17, 1979, 96<sup>th</sup> Cong. 1<sup>st</sup> Sess. Rep. No. 96-249.

full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings, it provides no basis for concluding that Congress's action was based on any specific assumptions about the effect of subsidies upon export prices. It may be simply that Congress recognized the complexity of the issues that would have had to have been resolved in order to provide anything less than a complete offset for export subsidies, and simply opted for a full offset to avoid those potential problems.

It is not clear whether Congress considered the economic assumptions that might have been behind the silence of the GATT contracting parties with respect to domestic subsidies in Article VI(5). In any event, all that the contracting parties may have assumed was that domestic subsidies had a symmetrical effect upon export and domestic prices. This presumed symmetrical impact may have been a *pro rata* or *de minimis* reduction in these prices. Thus, it is not correct to conclude that Congress assumed that the GATT contracting parties assumed that domestic subsidies lower export prices, *pro rata*, still less that Congress built any assumptions about the price effects of domestic subsidies into the AD law.

Indeed, neither the GOC, the DP-Master Group, nor Baoshan cited any statutory provision that would be a basis for imposing such an adjustment; this is telling because there are no such provisions in the Act. As in this investigation, the various theories advanced by the respondents in prior cases to support their requests for an automatic 100-percent offset, or an adjustment of AD duties determined under the NME methodology by any CVD duties are based on mistaken premises. Accordingly, the Department has consistently and properly rejected these claims.<sup>14</sup>

Although the GOC, the DP-Master Group, and Baoshan have asserted that the Department should terminate the AD or CVD investigations, they cite no statutory provision that would provide a basis for permitting or requiring the Department to adopt any of these measures. Section 701 of the Act requires the Department to impose CVDs equal to the full amount of the subsidy "in addition to any other duty imposed." The Department does not see how any matter related to dumping could alter this statutory command.

We disagree with the GOC's characterization of the Department's previous practice with respect to NME countries and, by implication, of the decision of the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") in *Georgetown Steel*.<sup>15</sup> Specifically, we disagree that the Department did not apply the CVD law to NMEs concurrently with the NME AD methodology before 2007 because the distortions allegedly offset by the NME methodology remedied any distortions from countervailable subsidies. In fact, the Department declined to apply the CVD law to the Soviet Bloc countries in the mid-1980s because of the difficulties involved in identifying and measuring subsidies in the context of those command-and-control economies at that time.

*Georgetown Steel* concerned potash imported from the USSR and the German Democratic Republic, and carbon steel wire rod from Czechoslovakia and Poland. In those proceedings, the

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<sup>14</sup> See, e.g., *Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32905 (June 10, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>15</sup> See *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) at 1310 ("*Georgetown Steel*").

Department determined that the concept of a subsidy had no meaning in an economy that had no markets and in which activity was controlled according to central plans.<sup>16</sup>

The Federal Circuit noted the broad discretion due the Department in determining what constituted a subsidy, then called a “bounty or grant” by the statute, and held that:

We cannot say that the administrations’ conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law, or an abuse of discretion.<sup>17</sup>

As the Court noted, even if one were to label these incentives as a subsidy, in the loosest sense of the term, the governments of these NMEs would in effect be subsidizing themselves.<sup>18</sup> Thus, *Georgetown Steel* did not hold that the CVD law could never be applied to exports from an NME country. It simply upheld the Department’s determination that it could not identify a “bounty or grant” in the conditions of the Soviet Bloc that were before it.

Because the Department’s prior practice of not applying the CVD law to NME countries was not based on the theory that the NME AD methodology already remedied any domestic subsidies in NME countries, the Department’s current practice of applying the CVD law to exports from the PRC remains consistent with our earlier practice.

Another argument put forth by the GOC, the DP-Master Group, and Baoshan, *i.e.*, that AD and CVD proceedings against NME countries result in the application of a double remedy, is also without merit.<sup>19</sup> The GOC argues that the effects of countervailable domestic subsidies can pass through to normal value (“NV”) under the Department’s NME methodology, so that AD duties on Chinese exports, by themselves, remedy all subsidies attributable to that merchandise. In other words the GOC, like the DP-Master Group, asserts that the NME methodology inherently provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is necessarily duplicative. Apparently, the GOC, the DP-Master Group, and Baoshan conclude that the NME methodology arrives at this result mechanically because of the lack of any statutory provision that requires or achieves this result.

It appears that the general premise of these respondents’ argument is that, unlike NME proceedings, the concurrent application of ADs and CVDs in ME proceedings does not create automatic double remedies because domestic subsidies automatically lower NV, and hence the dumping margins, *pro rata*. The NME AD methodology, on the other hand, produces an NV that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statute requires the Department to offset. We reject this proposition.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1318.

<sup>18</sup> *Id.* at 1316.

<sup>19</sup> The GOC also specifically argues that any subsidization will have already been accounted for by our NME NV methodology because we use non-subsidized SVs from ME countries, and therefore the concurrent application of CVD results in a double remedy.

There are several reasons why subsidies in ME cases would not necessarily lower the NV calculated by the Department, *pro rata*, below what it would have been absent any subsidies. Subsidies often come with conditions attached that reduce the cost savings to the recipient below the nominal amount of the benefit received. For example, subsidy recipients may be required to retain redundant workers, maintain higher levels of production than would be optimum, remain in economically disadvantageous locations, reduce pollution, obtain supplies from favored sources, and so forth. Even if subsidies come with no strings attached, there is no guarantee that they will result in a lower cost of production (“COP”). Subsidies could be paid out as dividends, used to increase executive pay, or wasted in any number of ways.

Moreover, the Act provides that NV in ME cases is to be based on home market prices, where possible. Where NV is based on prices, the relationship of subsidies to NV becomes yet more tenuous. Not only is the extent to which the subsidies will affect costs uncertain but, even to the extent that subsidies may lower costs, the extent to which the producer will pass these cost savings through to home market or third-country prices is uncertain. Basic economic principles indicate that the prices are a function of the supply and demand for the product in the relevant market, so that any cost savings will be reflected in prices only indirectly.

Finally, to the extent that domestic subsidies lower NV in ME cases, they may lower export prices commensurately, so that the dumping margins may not change. Thus, it is not safe to conclude that subsidies in MEs automatically reduce dumping margins, still less that they automatically reduce dumping margins, *pro rata*.

The counterpoint to the argument that domestic subsidies automatically lower NVs (and, thus, dumping margins) in ME cases, *pro rata*, is that domestic subsidies have no effect whatsoever on NVs (and, thus, dumping margins) determined under the NME methodology. The GOC and the DP-Master Group argue that domestic subsidies do not affect NV in NME cases because NV is essentially imported from surrogate ME countries. This premise is also incorrect, as there are several ways in which subsidies can lower NME NVs.

For instance, although NME subsidies may not affect the factor values used to calculate NVs in an NME proceeding, such subsidies may easily affect the quantity of factors consumed by the NME producer in manufacturing the subject merchandise. The simplest example would be where a domestic subsidy in an NME country enables an investigated producer to purchase more efficient equipment, lowering its consumption of labor, raw materials, or energy. When the SVs are multiplied by the NME producer’s lower factor quantities, they result in lower NVs and, hence, lower dumping margins.<sup>20</sup> Any reduction in factor usage by NME producers would reduce NV in a second manner, because the final factor valuations are also used to calculate the amounts for overhead, selling, general, and administrative expenses (“SG&A”), and profit that are additional components of NV.<sup>21</sup>

Moreover, the whole idea of comparing AD margins under the NME methodology to the theoretical margins that the Department would find if it treated the PRC as an ME country is

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<sup>20</sup> See section 773(c)(3) of the Act.

<sup>21</sup> See *Hebei Metals & Mineral Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1277 (CIT 2005); *Dorbest Ltd. v. United States*, 452 F. Supp. 2d 1262, 1300-01 (CIT 2007).

dependent upon other things being equal, so that any actual difference could be attributed to the difference in the distortion from subsidies. But this is not the case. The most obvious difference between NVs determined in ME and NME situations involves exchange rates. In ME proceedings, NVs are converted from the home-market currency to the currency of the importing country at prevailing exchange rates. In NME proceedings, however, NVs are derived from the actual FOPs, valued based on information from the surrogate country using the currency of that surrogate country. Thus, NVs in NME proceedings are not influenced by the exchange rate between the exporting country and the importing country. How the different roles that currencies play in NME and ME AD proceedings affect any difference in dumping margins calculated under the two methodologies is uncertain, and highly complex. What is certain, however, is that this key difference would prevent any simple comparison of NME and ME AD margins.

The GOC asserts that the fact that the Department may find that an input for a particular product was provided for less than adequate remuneration in a CVD case, and then used an SV for that input in the AD case, proves that the subsidy lowered NV, *pro rata*. This conclusion is not logical. NME methodology involves more than the simple addition of input costs. It is a complex calculation that takes into consideration operating efficiencies, administrative expenses, the cost of capital, and numerous other factors. An SV for one FOP that is higher than the price actually paid by the respondent company does not necessarily result in a higher dumping margin, nor does a lower SV for one FOP necessarily result in a lower dumping margin. The individual elements of the NME methodology do not exist in a vacuum; the various elements necessarily work together. Moreover, the respondents did not provide evidence demonstrating how the CVDs the Department found on inputs in the companion CVD case lowered NV in this AD case.

The Department is charged with calculating dumping margins as accurately as possible. The GOC, the DP-Master Group, and Baoshan fail to identify any item in the dumping margin calculation that is being counted twice. Rather, because the GOC, the DP-Master Group and Baoshan argue that the CVD law cannot be applied concurrently with the NME AD methodology, they argue that the Department should terminate the AD or CVD investigation or make adjustments to the SVs. Contrary to the GOC, the DP-Master Group, and Baoshan's assertions, record evidence does not establish double counting in the dumping margin calculation and, as such, we find that the Department is not required to terminate the AD or CVD investigation or make adjustments to the SVs based on subsidies findings. In other words, the accurately calculated dumping margin should be collected in full as the remedy for pricing at less than NV.

The Department disagrees with the GOC, the DP-Master Group and Baoshan's claim that the concurrent imposition of CVDs and the NME SV methodology imposes a double remedy. The GOC cites to *GPX* as evidence that the Department must adopt additional policies to address possible double counting of duties.<sup>22</sup> However, this reliance on *GPX* is misplaced as the decision is not final; a final order has not yet been issued by the Court, nor have all appellate rights been exhausted. Further, even if reliance on *GPX* were not misplaced, *GPX* does not support the GOC's claims of double counting of duties. *GPX* did not find that a double remedy necessarily

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<sup>22</sup> See *GPX II*.

occurs through concurrent application of the CVD statute and NME provision of the AD statute, only that the “potential” for such double counting may exist.<sup>23</sup>

With respect to Baoshan’s argument that the Department should offset any AD rate by the amount of CVD imposed on the imports of the same goods, we disagree. It is the Department’s practice to fully offset only those companies who have a calculated CVD rate against an AD cash deposit rate.<sup>24</sup> Consequently, if a company was not investigated in the corresponding CVD investigation, we cannot conclude whether or not it has benefitted from export subsidies. As a result, we will not offset those companies’ AD rate by the amount of CVD imposed on the imports of the same goods.

## **Comment 2: Scope of the Investigation**

### *The DP-Master Group’s Comments*

- The Department should modify the scope to exclude green tube for drill pipe as significant overlaps in physical dimensions, mechanical properties, and chemistry of green tubes for drill pipe and green tubes for oil country tubular goods (“OCTGs”) make it impossible to distinguish green tube for drill pipe from green tube for OCTGs and, as such, all green tubes are already covered by the AD order on *OCTG from the PRC*.<sup>25</sup> Further, Petitioners believe that all green tubes are already covered by *OCTG from China*, as evidenced by Petitioners’ filing of a scope request seeking clarification on this point from the Department.<sup>26</sup>
- The Department is barred from initiating an investigation if there is an existing AD or CVD in place covering the same merchandise from the same country.<sup>27</sup>

### *Petitioners’ Comments*

- The scope of *OCTG from the PRC* is unclear as to whether drill pipe green tubes are included in the scope of that AD order.
- The record of the U.S. International Trade Commission (“ITC”)’s investigation of OCTG from the PRC clearly illustrates that the ITC did not include drill pipe green tube in its like product analysis.
- Drill pipe green tube must be included in an AD order to provide relief to the U.S. drill pipe industry because the capital investment needed to manufacture drill pipe from drill pipe green tube is low, and Chinese companies would simply import green tube into the U.S. to be further manufactured into finished drill pipe if drill pipe green tube is not subject to an AD order.
- All drill pipe green tube must be seamless, and the Department should continue to include drill pipe green tube in the scope of the instant investigation, and to differentiate

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<sup>23</sup> *Id.* at 1240.

<sup>24</sup> *See Final Results of Redetermination Pursuant to Remand, GPX International Tire Corporation v. United States*, Consol. Court No. 08-00285 Slip Op. 09-103 (September 18, 2009) at 11.

<sup>25</sup> *See Certain Oil Country Tubular Goods From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010) (“*OCTG from the PRC*”).

<sup>26</sup> *See* The DP-Master Group’s Submission, dated October 13, 2010, at Exhibit 1.

<sup>27</sup> *See Mitsubishi Heavy Indus. v. United States*, 21 C.I.T. 1227, 1232 (1997).

drill pipe green tube from OCTG green tube using the characteristics previously submitted by Petitioners.<sup>28</sup>

**Department's Position:**

The Department agrees with Petitioners that in addition to finished drill pipe and drill collars, drill pipe green tubes and drill collar green tubes should be included in the scope of this investigation. The scope of the AD order in *OCTG from the PRC* does not specifically include drill pipe green tubes, and explicitly excludes drill pipe.<sup>29</sup> To ameliorate any confusion between the scope of this investigation and the scope of *OCTG from the PRC*, the Department has clarified the language of the scope of this investigation regarding drill pipe green tubes and drill collar green tubes in order to provide a physical and chemical description of drill pipe green tubes.

The Department developed characteristics for drill pipe green tubes based on numerous submissions of factual data from parties regarding the physical and chemical characteristics of drill pipe and drill pipe green tubes. First, the Department has determined that drill pipe green tubes must be seamless, based on Petitioners' comments and submission of technical specifications.<sup>30</sup> Second, the Department has determined that drill pipe green tubes must have an outer diameter of less than or equal to 6 5/8 inches (168.28 millimeters), based on the DP-Master Group's submission of American Petroleum Institute ("API") specifications for drill pipe.<sup>31</sup> Finally, the Department has determined that drill pipe green tubes must contain between 0.16 and 0.75 percent molybdenum and between 0.75 and 1.45 percent chromium, based on Petitioners' submission of declarations from experienced drill pipe engineers who direct the purchase of green tubes for drill pipe based on specific physical and chemical requirements.<sup>32</sup> Accordingly, the Department has concluded that these characteristics, taken together, draw a distinction between those green tubes used in producing OCTG and those green tubes used in producing drill pipe. The Department also notes that we will continue to include drill collar green tube within the scope of this investigation, because the record of the present investigation indicates that this product is a hollow steel bar dissimilar from the green tubes used to produce OCTG and drill pipe.<sup>33</sup>

While the DP-Master Group has provided specifications for certain OCTGs that overlap in some characteristics with drill pipe, no specifications for OCTGs have been placed on the record that meet *all* of the criteria for drill pipe green tube listed above.<sup>34</sup> The DP-Master Group has, however, provided reliable evidence that the yield strength of finished drill pipe is largely imparted by the heat-treatment process, and not by the pre-heat treated strength of green tubes.<sup>35</sup>

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<sup>28</sup> See Petitioners' Scope Submission, dated September 13, 2010.

<sup>29</sup> See *OCTG from the PRC*, 75 FR at 28553.

<sup>30</sup> See Petitioners' Scope Submission, dated September 13, 2010.

<sup>31</sup> See The DP-Master Group's Scope Submission, dated September 23, 2010. See also The DP-Master Group's Scope Submission, dated January 15, 2010.

<sup>32</sup> See Petitioners' Scope Submission, dated September 13, 2010.

<sup>33</sup> See The DP-Master Group's Response to the Department's Original Section D Questionnaire, dated June 1, 2010, at Exhibit D-21.

<sup>34</sup> See The DP-Master Group's Submission of Factual Information, dated September 14, 2010; The DP-Master Group's Scope Submission, dated September 23, 2010.

<sup>35</sup> *Id.*

Furthermore, the required wall thickness percentages remaining (*i.e.*, “nominal wall thickness”) shown in the API specifications provided by the DP-Master Group confirm that there are significant similarities between drill pipe and OCTG with respect to this characteristic.<sup>36</sup> Therefore, based on the record, the Department finds that yield strength and nominal wall thickness are not appropriate characteristics with which to specifically define drill pipe green tubes and to distinguish such tubes from those covered by *OCTG from the PRC*.

### **Comment 3: Whether the Department Should Correct the Preliminary Determination**

#### **A. Whether the Department Correctly Calculated the Surrogate Value for Green Tubes**

##### *The DP-Master Group’s Comments*

- The Department made a ministerial error in copying the stated values for J/K 55 tubing, used as the SV for green tube in the *Preliminary Determination*, from the March 2009 edition of Metal Bulletin Research (“MBR”) and that the Department should have issued an amended preliminary determination.
- In averaging the two quoted offers for sale of \$1,500/metric ton (“MT”) and \$1,100/MT, the Department overlooked the fact that these values are offers for sale, not actual sale prices and thus incorrectly calculated the SV for green tube. The Department should instead construct the value for green tube based on a statement in the February 2009 edition of MBR that prices for OCTGs in India had declined 5-7% from January 2009. The DP-Master Group suggests using the quoted sales values from the January 2009 edition of MBR, and a constructed value for February deflated by 6% (average of 5 and 7).
- The Department mistakenly inflated the value for green tubes to be contemporaneous with the POI. Record evidence indicates that OCTG prices declined over the POI and, therefore, the Department should either use the unadjusted value as calculated using its methodology stated above, or deflate the value to reflect price declines during the POI.

No other interested party commented on this issue.

#### **Department’s Position:**

The Department disagrees with the DP-Master Group that the Department made a ministerial error when calculating the SV for green tubes based on the MBR data, which, pursuant to 19 CFR 351.224(e), would require an amended preliminary determination. The Department stated in the Surrogate Value Memorandum that “The Department is valuing green tubes using data from the January and March, 2009, *issues* of Metal Bulletin Research for J/K55 tube.”<sup>37</sup> Thus, the Department did not, as the DP-Master Group argues, overlook data for February 2009; rather, the Department made the methodological decision not to use the February 2009 issue of the MBR because it did not contain data regarding price quotes or offers for sale for J/K 55, only

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<sup>36</sup> See The DP-Master Group’s Scope Submission, dated September 23, 2010.

<sup>37</sup> See Memorandum to the File, Through Scot T. Fullerton, Program Manager, Office 9, From Susan Pulongbarit, International Trade Analyst, Office, 9, Subject Antidumping Duty Investigation of Drill Pipe from the People’s Republic of China (“PRC”): Surrogate Values for the Preliminary Determination, dated August 5, 2010 at 7 (“Surrogate Value Memorandum”) (emphasis added).

general statements regarding price trends for all OCTG products. Rather, the Department used specific data for India derived from the January and March 2009 issues of the MBR. Regarding the DP-Master Group's argument that the March 2009 MBR data reflect offers for sale and not sale prices, the Department was fully aware of this information and, based on the record prior to the *Preliminary Determination*, made a methodological decision that this data nevertheless constituted the best available information for the SV of green tubes.

Regarding the DP-Master Group's inflation argument, consistent with our practice, the Department stated that "For Indian data, where publicly available information contemporaneous with the POI could not be obtained from Indian import statistics or other Indian sources, the SV was adjusted using the Wholesale Price Index ("WPI") rate for India, as published in *International Financial Statistics* ("IFS")."<sup>38</sup>

Therefore, the Department's decision to use both sales offers quoted in the March 2009 edition of MBR, and to inflate the data to be contemporaneous with the POI, were stated, intentional methodological choices and not ministerial errors requiring an amended preliminary determination.

## **B. Whether the Department Correctly Calculated Sealer ("SEALRES")**

### *The DP-Master Group's Comments*

- The Department mistakenly used an SV for SEALRES ("sealer") denominated in MT when SEALRES is reported in kilograms ("KG").

No other interested party commented on this issue.

### **Department's Position:**

The Department used the same SV for sealer and SOLVQUENLIQ ("solvent quenching liquid"), which are denominated in KG and MT, respectively. To account for this difference in unit of measure, the Department divided the SV for SEALRES by 1,000 in calculating the cost of the sealer input.<sup>39</sup> Thus, the Department disagrees with the DP-Master Group that the Department's calculation of the cost of the sealer input constitutes a ministerial error in the calculation of the *Preliminary Determination*.

## **C. Whether the Department Overlooked Surrogate Values on the Record for Tool Joints**

### *The DP-Master Group's Comments*

- The Department committed a significant ministerial error in the *Preliminary Determination* by overlooking possible tool joint SVs on the record of the investigation.<sup>40</sup>

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<sup>38</sup> See Surrogate Value Memorandum at 2.

<sup>39</sup> See Memorandum to The File, Through Scot T. Fullerton, Program Manager, From Toni Dach, Case Analyst, Regarding Investigation of Drill Pipe from the People's Republic of China: Preliminary Analysis Memo for DP-Master Manufacturing Co., Ltd., and Jiangyin Liangda Drill Pipe Co., Ltd., dated August 5, 2010, at 13-15.

<sup>40</sup> See *Heavy Forged Hand Tools From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Reviews*, 65 FR 50499, 50500 (August 18, 2000), upheld by *Shandong Huarong General Corp. vs. United States*, 159 F. Supp. 2d 714, 727-728 (CIT 2001).

The Department's selection of Indian HTS 8431.43.90 to value tool joints is an obvious error that the Department is required to correct<sup>41</sup> and the Department should issue an amended preliminary determination, adjusting the DP-Master Group's preliminary AD rate.

No other interested party commented on this issue.

### **Department's Position:**

We maintain, as stated in the Ministerial Error Memorandum,<sup>42</sup> that the Department did not overlook SVs for tool joints on the record of this investigation prior to the *Preliminary Determination*. It was only after the issuance of the *Preliminary Determination* that the DP-Master Group provided a methodologically-sound, fully-supported calculation for tool joints using its own production experience.<sup>43</sup> Moreover, voluminous information consistent with the Department's stated requirements for the use of Infodrive data<sup>44</sup> demonstrating that Indian HTS 8431.43.90 contained few or no tool joint entries was placed on the record of this investigation on July 21, 2010, well after the stated deadline for submission of SV data for consideration in the *Preliminary Determination* of June 11, 2010.<sup>45</sup> The late submission of this Infodrive information left the Department with insufficient time to analyze the data submitted prior to the *Preliminary Determination*. Therefore, the Department's decision to use Indian import statistics for HTS 8431.43.90 in the *Preliminary Determination* was a methodological decision based on the best available information on the record at the time and not a significant ministerial error which, pursuant to 19 CFR 351.224(e), would require the Department to issue an amended preliminary determination.

### **Comment 4: Labor Rate**

#### *The DP-Master Group's Comments*

- The Department should use the Indian national wage rate to value labor. The significant producer standard the Department utilized to calculate a surrogate labor wage rate is not supported by record evidence and contrary to past practice. Also, the International Labor Organization ("ILO") industry category the Department selected as representative of the labor rate for drill pipe includes many types of activities unrelated to drill pipe production and, in any case, such data for India, the primary surrogate country, are absent.

#### *Baoshan's Comments*

- There is no legal basis or requirement that the labor value be industry-specific, and such a practice is inconsistent with the Department's approach to other SVs. Using industry-

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<sup>41</sup> See *Alloy Piping Prods. v. Kanzen Tetsu Sdn. Bhd.*, 334 F.3d 1284, 1293 (Fed. Cir. 2003).

<sup>42</sup> See Memorandum to James C. Doyle, Office Director, Through Scot T. Fullerton, Program Manager, From Toni Dach, International Trade Analyst, Regarding Antidumping Duty Investigation of Drill Pipe from the People's Republic of China: Allegation of Ministerial Errors, dated September 21, 2010 ("Ministerial Error Memorandum") at 3.

<sup>43</sup> See Letter from the DP-Master Group regarding Comments Regarding Ministerial Error, dated August 17, 2010, at Exhibit 1 ("Ministerial Error Allegation").

<sup>44</sup> *Dorbest Ltd. v. United States*, 30 CIT 1671, 462 F. Supp. 2d 1262 (2006).

<sup>45</sup> See Memorandum to the File, From Toni Dach, International Trade Compliance Analyst, Regarding Investigation of Drill Pipe from the People's Republic of China, dated May 21, 2010.

specific data decreases the reliability of the information, as a smaller data set has a greater potential to be distorted. The Department should consider using the “next best available” information from economically comparable countries that did not report industry-specific wage data, *i.e.*, use the average manufacturing wages where industry-specific data is not available.

### **Department’s Position:**

As a consequence of the Courts of Appeal for the Federal Circuit’s (“CAFC”) decision in *Dorbest*,<sup>46</sup> the Department is no longer relying on its regression-based wage rate regulation, 19 CFR 351.408(c)(3), and we are continuing to evaluate options for determining surrogate labor values. Because the Department is continuing to evaluate options, our calculation methodology in this final determination differs slightly from that utilized in the *Preliminary Determination*. While the Department finds that both of these methodologies are consistent with *Dorbest* and section 773(c)(4) of the Act, hawse have also determined that the methodology we are now using better represents the SV for labor because this calculation is industry-specific.<sup>47</sup> Therefore, for the final determination of this investigation, the Department has calculated an hourly wage rate in valuing the respondents’ reported labor input by averaging industry-specific earnings and/or wages in countries that we have determined to be economically comparable to the PRC and significant producers of comparable merchandise.

Section 773(c)(4) of the Act requires the Department “to the extent possible” to use “prices or costs of FOPs in one or more ME countries that are (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise.” Accordingly, to calculate a wage rate, the Department first looked to the Surrogate Country Memo issued in this proceeding to determine countries that were economically comparable to the PRC.<sup>48</sup>

In determining which potential surrogate ME countries are economically comparable to the PRC, consistent with our practice and 19 CFR 351.408(b),<sup>49</sup> the Department placed primary emphasis on gross national income (“GNI”). In the *Preliminary Determination*, the Department selected six countries for consideration as the primary surrogate country for this investigation based on the Surrogate Country Memo.<sup>50</sup> From the list of countries contained in the Surrogate Country

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<sup>46</sup> See *Dorbest, Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest*”).

<sup>47</sup> See Surrogate Value Memorandum.

<sup>48</sup> See April 20, 2010, Letter to All Interested Parties, regarding “Antidumping Duty Investigation of Drill Pipe from the People’s Republic of China,” attaching the April 14, 2010, Memorandum to Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Kelly Parkhill, Acting Director, Office for Policy, regarding “Request for List of Surrogate Countries for an Antidumping Duty Investigation of Drill Pipe from the People’s Republic of China” (“Surrogate Country Memo”).

<sup>49</sup> The Department notes that 19 CFR 408(b) specifies that the “Department places primary emphasis on per capita GDP.” However, it is Departmental practice to use “per capita GNI, rather than per capita {gross domestic product}, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country’s level of total income and thus level of economic development.” See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, Fn. 2 (October 19, 2006) (“*Antidumping Methodologies*”).

<sup>50</sup> The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. See Surrogate Country Memo.

Memo, the Department used the country with the highest GNI (*i.e.*, Peru) and the lowest GNI (*i.e.*, India) as “bookends” for economic comparability. The Department then identified all countries in the World Bank’s *World Development Report* with per capita GNIs for 2008 that fell between the “bookends.” This resulted in 43 countries, ranging from India (with USD 1,080 GNI) to Peru (with USD 3,990 GNI), that the Department considers economically comparable to the PRC.<sup>51</sup>

Next, regarding the “significant producer” prong of the statute, the Department identified all countries which have exports of comparable merchandise (defined as exports under HTS 7304.22, 7304.23, 8431.43, 7304.39, 7304.49, 7304.59, as identified in the scope of the investigation)<sup>52</sup> between 2007 and 2009.<sup>53</sup> In this case, the Department has defined a “significant producer” as a country that has exported comparable merchandise between 2007 through 2009. After screening for countries that had exports of comparable merchandise, the Department determined that 31 of the 43 countries designated as economically comparable to the PRC are also significant producers of comparable merchandise. Accordingly, for purposes of valuing wages for the final determination, the Department determines the following 31 countries out of 43 countries designated as economically comparable to the PRC are also significant producers of comparable merchandise: 1) India; 2) Indonesia; 3) Thailand; 4) Tunisia; 5) Sudan; 6) Nigeria; 7) Peru; 8) Ecuador; 9) Philippines; 10) Morocco; 11) Ukraine; 12) Bolivia; 13) Jordan; 14) Guatemala; 15) Nicaragua; 16) Albania; 17) El Salvador; 18) Honduras; 19) Guyana; 20) Sri Lanka; 21) Paraguay; 22) Cape Verde; 23) Samoa (Western); 24) Kiribati; 25) Fiji; 26) Egypt; 27) Belize; 28) Bhutan; 29) Syria; 30) Swaziland; and 31) Mongolia.<sup>54</sup>

The Department then identified which of these 31 countries also reported the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B “earnings,” if available, and “wages” if not.<sup>55</sup> The Department used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. The Department then adjusted the wage data for countries where it was available to the POI using the relevant Consumer Price Index (“CPI”).<sup>56</sup> Of the 31 countries that the Department has determined are both economically

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<sup>51</sup> See Memorandum to the File, Through James C. Doyle, Director, Office 9, AD/CVD Operations, and Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, From Susan Pulongbarit, Analyst, Office 9, AD/CVD Operations, Regarding Investigation of Drill Pipe from the People’s Republic of China: Industry-Specific Wage Rate Selection, dated November 16, 2010 (“Wage Rate Memo”).

<sup>52</sup> See *Preliminary Determination*, 75 FR at 51005.

<sup>53</sup> The export data is obtained from Global Trade Atlas.

<sup>54</sup> See *id.*

<sup>55</sup> The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. Thus, if earnings data is unavailable from the base year (2008) or the previous five years (2003-2007) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 *Antidumping Methodologies* still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

<sup>56</sup> Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. See *Antidumping Methodologies*, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-worth of data was

comparable and significant producers, 23 countries, *i.e.*, 1) India; 2) Tunisia; 3) Sudan; 4) Nigeria; 5) Morocco; 6) Bolivia; 7) Guatemala; 8) Nicaragua; 9) Albania; 10) El Salvador; 11) Honduras; 12) Guyana; 13) Sri Lanka; 14) Paraguay; 15) Cape Verde; 16) Samoa (Western); 17) Kiribati; 18) Fiji; 19) Belize; 20) Bhutan; 21) Syria; 22) Swaziland; and 23) Mongolia, were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.<sup>57</sup>

Contrary to the DP-Master Group's argument that the Department should only utilize Indian wage data, while information from a single surrogate country can reliably be used to value other FOPs, the Department finds that wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNI. Using the high- and low-income countries identified in the Surrogate Country Memo as bookends provides more data points and, as such, diminishes the potential distortion which could arise from using fewer data points from a single ME country. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable MEs.<sup>58</sup> As a result, the Department finds reliance on wage data from a single country is not preferable where data from multiple countries are available for the Department to use.

For example, when examining the most recent wage data, even for countries that are relatively comparable to the PRC in terms of GNI for purposes of factor valuation (*e.g.*, countries with GNIs between USD 1,080 and USD 3,990), the hourly wage rate spans from USD 0.18 to USD 2.37.<sup>59</sup> Additionally, although both India and Guyana have GNIs below USD 2,940, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.48, as compared to Guyana's observed wage rate of USD 1.34 – more than double that of India.<sup>60</sup> There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input. Moreover, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. The Department thus finds that reliance on wage data from a single country is not preferable where data from several countries are available. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, more data are still better than less data

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still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as the Department has previously), albeit adjusted using the CPI. See *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Wage Rate Memo for the CPI data used in the instant case.

<sup>57</sup> See ILO's Yearbook of Labor Statistics.

<sup>58</sup> See *e.g.*, ILO, *Global Wage Report: 2009 Update*, (2009) at 5, 7, 10. [http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/documents/publication/wcms\\_116500.pdf](http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/documents/publication/wcms_116500.pdf).

<sup>59</sup> See Wage Rate Memo.

<sup>60</sup> See *id.*

for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible that also meet the statutory requirement that a surrogate be derived from a country that is economically comparable and also a significant producer. Indeed, for this reason, although the Department is no longer using a regression-based methodology to value labor, the Department has determined that reliance on labor data from multiple countries, as opposed to labor data from a single country constitutes the best available information for valuing the labor input.<sup>61</sup>

Based on the selection methodology set forth above, the Department has determined it is most appropriate to rely on industry-specific wage data reported by ILO for the final determination. Determinations concerning whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, the Department considers a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry specific data.

Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, and because absent evidence to the contrary, the industry-specific data would be *at least* more specific to the subject merchandise than the national manufacturing data, the Department used industry-specific data to calculate a surrogate wage rate for the final determination, in accordance with section 773(c)(1) of the Act. Thus, the Department has determined that it is appropriate to calculate the surrogate labor wage rate using a simple average of the data provided to the ILO, under Sub-Classification 27 of the ISIC-Revision 3 standard, for countries which the Department determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department has determined that this is the best available information from which to derive the surrogate wage rate based on the analysis set forth below.

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nation, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and ISIC-Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

Due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (*i.e.*, not mixing revisions) constitutes the best available information for the final determination. While the Department finds use of industry-specific information is the best available information

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<sup>61</sup> Both the statute and our regulations recognize the need to source factor data from more than one country. Although 19 CFR 351.408(c)(2) provides that the Department will *normally* source the FOPs from a single surrogate country, the language in the regulation provides sufficient discretion for the Department to address situations in which sourcing an FOP from a single source is not preferable. Use of the word "normally" means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

herein, the fact remains that there is a lack of information available that indicates how the wages from the selected category and other manufacturing sectors are weighted or combined. The Department finds that averaging wage rates that were reported under the same revision standard provides specificity to the industry being examined, but also ensures some degree of consistency across multiple labor data points being averaged. Accordingly, for the final determination, the Department has only used industry-specific wage data from a single revision.

It is the Department's preference to use data reported under the most recent revision, however, in this case the Department found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Rev.4. Accordingly, in this case, the Department turned to the industry definitions contained in ISIC-Rev.3 to find the appropriate classification for drill pipe. Under the ISIC-Revision 3 standard, the Department identified the two-digit series most specific to drill pipe as Sub-Classification 27, which is described as "Manufacture of Basic Metals." The breakdown for Division 27 states that this division includes Group 271 the "casting of metals." Within this group, Class 2710 contains an explanatory note that the class includes the "Manufacture of primary iron and steel products, *i.e.*, production of ... tubes, pipes and hollow profiles of iron or steel, seamless, including cast, tubes, pipes and hollow profiles open seam or welded, riveted or similarly closed."<sup>62</sup> Accordingly, for this investigation, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 27 of the ISIC-Revision 3 standard by countries determined to be economically comparable to the PRC and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Revision 3, Sub-Classification 27, the Department used the most specific wage data available within this revision.

From the 31 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. Of these 31 countries, the following eight reported industry-specific data under the ISIC-Revision 3, under Classification 27, "Manufacture of Basic Metals:" 1) Ecuador; 2) Egypt; 3) Indonesia; 4) Jordan; 5) Peru; 6) the Philippines; 7) Thailand; and 8) Ukraine. The following 23, however, did not report wage data on an industry-specific basis: 1) India; 2) Tunisia; 3) Sudan; 4) Nigeria; 5) Morocco; 6) Bolivia; 7) Guatemala; 8) Nicaragua; 9) Albania; 10) El Salvador; 11) Honduras; 12) Guyana; 13) Sri Lanka; 14) Paraguay; 15) Cape Verde; 16) Samoa (Western); 17) Kiribati; 18) Fiji; 19) Belize; 20) Bhutan; 21) Syria; 22) Swaziland; and 23) Mongolia. Accordingly, these 23 countries are not included in our wage rate calculation.

While the Department prefers to use the most specific wage data available within the selected ISIC revision, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, the Department has relied on the two-digit sub-classification in our industry-specific wage rate calculation. Accordingly, based on the above, the Department relied on data reported under ISIC-Rev.3. Sub Classification 27 "Manufacture of Basic Metals" from the following countries to arrive at the industry-specific wage rate calculated for this investigation: 1) Ecuador; 2) Egypt; 3) Indonesia; 4) Jordan; 5) Peru; 6) the Philippines; 7) Thailand; and 8) Ukraine.

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<sup>62</sup> See Wage Rate Data at Attachments 1 and 2.

Based on the foregoing methodology, the revised wage rate to be applied in the final determination is 1.84 USD/Hour. This wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in *Dorbest* and the statutory requirements of section 773(c) of the Act.

## **Comment 5: Selection of Surrogate Financial Ratios**

### **A. The DP-Master Group**

#### *The DP-Master Group's Comments*

- The Department should use all four financial statements on the record to calculate the surrogate financial ratios for the DP-Master Group because, as none of the financial statements on the record fully meet the Department's selection criteria, they are of equivalent validity.
- Additionally, the DP-Master Group challenges the Department's preliminary reliance on Oil Country Tubular, Ltd. ("OCTL"), arguing that although it displays a similar level of integration to the DP-Master Group, its product line is much broader than the DP-Master Group's. Moreover, OCTL provides some services internally that the DP-Master Group contracts to outside parties, thus making it a broader and more integrated company than the DP-Master Group.
- The Department's decision to exclude the financial statements other than OCTL from the calculation of DP-Master Group's surrogate financial ratios was not supported by record evidence, and all financial statements on the record are contemporaneous with the POI and represent producers of identical or comparable merchandise. Moreover, like itself, ISMT Limited ("ISMT") is also a non-integrated producer of comparable merchandise. The Department has a preference to use multiple financial statements representing the range of experiences of respondents.<sup>63</sup>
- Finally, the Department's decision to use the financial statement of Tata Steel Limited ("Tata") in calculating its surrogate financial ratios for Baoshan, despite the fact that it received actionable subsidies during the applicable fiscal year, is not in accordance with the Department's regulations and practice.<sup>64</sup> However, the based on the inclusion of Tata's financial statements for calculating Baoshan's financial ratios, and the inclusion of Tata's financial statements in other recent cases, excluding ISMT in calculating the DP-Master Group's financial ratios is internally inconsistent.<sup>65</sup>

#### *Petitioners' Comments*

- The Department should continue calculate surrogate financial ratios for the DP-Master Group based on the financial statements of OCTL, as OCTL produces a narrow range of

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<sup>63</sup> See, e.g., *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part*, 75 FR 57449 (September 21, 2010), and accompanying Issues and Decision Memorandum at Comment 6 ("*Seamless Final*"); *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) ("*OCTG Final*"), and accompanying Issues and Decision Memorandum at Comment 13.

<sup>64</sup> See Surrogate Value Memorandum at 12-13.

<sup>65</sup> See 19 CFR 351.408(c)(4); *OCTG Final* and accompanying Issues and Decision Memorandum at Comment 13.

products identical or very similar to the products produced by the DP-Master Group and is at a similar level of integration to the DP-Master Group. Further, the Department has used the financial statements of OCTL before in calculating surrogate financial ratios, noting in those cases that OCTL produces merchandise identical or comparable to the DP-Master Group's product range.<sup>66</sup>

- The Department correctly excluded the financial statements of Tata, Jindal Saw, Ltd. ("Jindal Saw"), and ISMT in calculating the surrogate financial ratios for the DP-Master Group because all of these companies are more integrated than the DP-Master Group. In addition, ISMT produces only comparable merchandise, while OCTL produces identical merchandise, and ISMT receives actionable subsidies, making ISMT's financial statements less representative of the experience of the DP-Master Group than OCTL.

### **Department's Position:**

The Department agrees with Petitioners that OCTL continues to constitute the best match for the DP-Master Group's production process and product mix for the purpose of calculating surrogate financial ratios. While, where possible, the Department will use multiple financial statements in calculating surrogate financial ratios, if a particular statement does not meet the Department's surrogate selection criteria, such a factor would outweigh our preference for using multiple financial statements. In this investigation, the Department has determined that the only appropriate statement for calculating surrogate financial ratios for the DP-Master Group is OCTL.

Consistent with section 773(c) of the Act and 19 CFR 351.408, our practice is to calculate a respondent's surrogate financial ratios based on the contemporaneous financial statement or statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company producing comparable merchandise may have received countervailable subsidies, 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 that do not contain evidence of subsidization. Consequently, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios.<sup>67</sup> In this investigation, the Department has determined that the OCTL and Jindal Saw financial statements do not contain evidence of countervailable subsidies whereas the Tata and ISMT statements do;<sup>68</sup> accordingly, in light of this information, the Department has determined that it is appropriate to reject both the Tata and ISMT statements as surrogates for the DP-Master Group.

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<sup>66</sup> See *OCTG from the PRC and Seamless Final*.

<sup>67</sup> See *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>68</sup> Specifically, the Duty Entitlement Pass Book ("DEPB") Scheme (page 169 of the Tata financial statement), and Advanced Licenses Program (pages 32 and 57 of the ISMT financial statement), respectively. 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 Issues and Decision Memorandum at 8-9 ("*India Hot-Rolled*").

The Department's standard criteria for selecting financial statements in calculating surrogate financial ratios also includes examining the level of integration of the surrogate company in order to approximate the overhead costs, SG&A, and profit levels of the respondent.<sup>69</sup> In this case, OCTL is at an identical level of integration to the DP-Master Group, purchasing green tube that is then processed into drill pipe. In contrast, the record indicates that, unlike the DP-Master Group, Jindal Saw is an integrated steel manufacturer, beginning its production at the iron ore stage for certain products. In light of these levels of integration, the Department has determined that OCTL's production process represents the best match to the DP-Master Group's production experience, despite the DP-Master Group's assertion that OCTL produces certain out-of-scope merchandise that the DP-Master Group does not. While the Department has, in past cases, used multiple financial statements from companies at various levels of integration to approximate the experience of respondents, in this investigation the DP-Master Group's production experience is closely matched by OCTL alone and the Department has concluded that it is appropriate to reject Jindal Saw's financial statement as a surrogate because that company's high level of vertical integration is not representative of the DP-Master Group's production experience and, therefore, not representative of its corresponding financial ratio information.

Therefore, for the *Final Determination*, the Department will continue to calculate the surrogate financial ratios for the DP-Master Group using only the financial statement of OCTL because: (1) there is no evidence on the record that OCTL benefitted from countervailable subsidies during the financial period in question; and (2) the record demonstrates that OCTL is a similarly-integrated producer of identical merchandise, making it the most appropriate source for calculating surrogate financial ratios for the DP-Master Group.

## **B. Baoshan**

### *Baoshan's Comments*

- The Department should use the 2009 – 2010 financial statement for Jindal Saw, because it is contemporaneous with the POI, similar to Baoshan's production experience, and more specific to Baoshan's merchandise than the three other potential surrogate financial statements.
- The Department should not use the 2008 – 2009 financial statement for Tata because Tata has benefitted from countervailable subsidies. Further, Tata focuses its production on welded pipes and tubes, which utilize different production processes and equipment from those Baoshan employs in its production of drill pipe and other seamless pipe.

### *Petitioners' Comments*

- Petitioners contest that Tata's financial statement should be used because Tata produces a broad range of merchandise including seamless pipe.
- Both Tata and Jindal Saw's financial statements should be used for the final determination because it is the Department's preference to use the average of multiple financial ratios despite the Department's previous finding that Tata benefitted from countervailable subsidies during the financial period in question.

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<sup>69</sup> See, e.g., *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).

### **Department's Position:**

As noted above, it is the Department's practice to value overhead, SG&A, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>70</sup> A careful review of Jindal Saw's financial statement shows that Jindal Saw produces drill pipe along with other seamless tube.<sup>71</sup> The Department notes that Jindal Saw shares a similar level of integration with Baoshan as it is also fully integrated. Specifically, the production of certain of its products begins at the iron ore stage.

As stated above, the Department prefers to value financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable. After careful review of Tata's financial statement, the Department agrees with Petitioners that, like Jindal Saw, Tata produces merchandise comparable to Baoshan's drill pipe. However, the Department also agrees with Baoshan that Tata receives the DEPB,<sup>72</sup> which the Department has previously found to provide a countervailable subsidy.<sup>73</sup> In terms of vertical integration, the Department finds that Tata's differs from Baoshan's because it has captive mines, indicating that it is a fully integrated company whose production experience begins at the mining stage. Because the Department has an established practice of rejecting financial statements of surrogate producers whose production process or integration level is not comparable to the respondent's and prefers not to use financial statements indicating subsidization when better information is available, the Department finds that Tata's financial statement is not appropriate to use for calculating Baoshan's surrogate financial ratios.

In addition, because Jindal Saw's 2009 – 2010 financial statement (submitted on the record after the *Preliminary Determination*) covers more months of the POI than the previously available 2008 – 2009 Jindal Saw financial statement, consistent with our practice, we used the 2009 – 2010 Jindal Saw financial statement to calculate surrogate financial ratios for Baoshan for the final determination.<sup>74</sup>

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<sup>70</sup> See, e.g., *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), and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act.

<sup>71</sup> See Letter from Baoshan, to the Department of Commerce, Regarding Drill Pipe from the People's Republic of China – Additional Surrogate Value Submission, dated September 27, 2010, at Exhibit 1 on pages 20, 21, and 71.

<sup>72</sup> See Tata financial statement at 169.

<sup>73</sup> See *India Hot-Rolled*.

<sup>74</sup> See e.g., *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2a (when considering multiple financial statements from a single company the Department considers the financial statements overlapping more months of the POR to be more contemporaneous, and thus, preferable).

## Company-Specific Issues:

### The DP-Master Group

#### **Comment 6: Selection of a Surrogate Value for Tool Joints**

##### *The DP-Master Group's Comments*

- The Department must select an alternative SV for tool joints than Indian HTS 8431.43.90 which was selected in the *Preliminary Determination*. Petitioners have conceded that HTS 8431.43.90 is not usable;<sup>75</sup> in addition, the average unit value (“AUV”) of HTS 8431.43.90 is outside the realm of commercial reality, because it is several times greater than the alternative values for tool joints placed on the record of this investigation.<sup>76</sup>
- The record evidence indicates that most or all Indian drill pipe producers produce their own tool joints, do not use tool joints, or otherwise do not import tool joints. These facts indicate that the demand for tool joints in India is low and can be satisfied through domestic production.<sup>77</sup>
- The Infodrive data it placed on the record shows that Indian HTS 8431.43.90 contains few to no imports of tool joints during the POI.<sup>78</sup>
- Petitioners’ purchase prices for tool joints are the best available information to value tool joints, as they offer values for an identical product from an ME country. While Petitioners’ purchase prices are proprietary, the Department’s regulations simply state that the Department will “normally use publicly available information,”<sup>79</sup> and that the Department did use non-public SVs for brokerage and handling and welding wire in the *Preliminary Determination*. Additionally, while information from economically comparable countries should be used “to the extent possible,”<sup>80</sup> and Petitioners’ values are U.S. prices, because there is no usable information from countries at a similar level of economic development to the PRC, the Department is “free to use whatever data it {feels} is appropriate to use.”<sup>81</sup>
- The value constructed by using the DP-Master Group’s own tool joint production experience represents an exact product match, but is imprecise because it is calculated using SVs for the inputs to tool joints.
- Finally, the only other alternative on the record, imports under Indian HTS 7307.99.90, “tube and pipe fittings,” is a more specific description of tool joints than HTS 8431.43.90, but is less precise than tool joints, which are exactly what Petitioners’ purchase prices and the DP-Master Group’s production experience capture.

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<sup>75</sup> See Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the People’s Republic of China, Dated December 30, 2009 (“Petition”), Volume II, at II-10 to -11.

<sup>76</sup> See Petition at Exhibit II-1-B-1-a and II-1-B-1-b.

<sup>77</sup> See *Shandong Huarong Machinery Co. v. United States*, 31 CIT 1815, 1826 (2007).

<sup>78</sup> See The DP-Master Group’s Factual Information Submission, dated June 11, 2010; and The DP-Master Group’s Factual Information Submission, dated July 20, 2010.

<sup>79</sup> See 19 CFR 351.408(c)(1)

<sup>80</sup> See 19 U.S.C. 1677b(c)(4).

<sup>81</sup> See *Dorbest*, 604 F.3d at 1372.

### *Petitioners' Comments*

- The record shows the tool joints produced by the DP-Master Group were not produced by the DP-Master Group itself, but by an affiliate, and all tool joints consumed by the DP-Master Group should be valued using an SV for the completed intermediate input.<sup>82</sup>
- If the Department decides not to value all tool joints consumed by the DP-Master Group using an SV for tool joints and consider the DP-Master Group's self-produced tool joints as a self-produced input, the Department should only value the tool joints produced by the DP-Master Group using the inputs for those tool joints, and the remaining, purchased tool joints using an SV for completed tool joints.
- Petitioners' own purchase costs for tool joints are not an appropriate SV for tool joints because their purchase costs are proprietary and not from a country at a comparable level of economic development to the PRC.<sup>83</sup> In addition, their own purchase costs are only appropriate in the context of preparing a petition.
- Indian import statistics for HTS 8431.43.90 provide an appropriate value for tool joints as these import statistics reflect an HTS category which includes imports of finished tool joints, are based on actual transaction prices, represent a broad market average, are contemporaneous with the POI, and are exclusive of taxes and import duties.
- Certain line items in the Infodrive India data submitted by the DP-Master Group do appear to be tool joints, including "tool connection," "tools," and entries containing the terms "pin and box," which are tool joints. Moreover, the Department has found that it cannot determine if Infodrive data fully represents the contents of Indian import statistics where Infodrive contains various units of measure that cannot be converted to match the units of measure represented in official Indian import statistics.<sup>84</sup>
- Indian HTS 7307.99.00, "tubes or pipe fittings of iron or steel, other, other, non-galvanized," covers pipe fittings that are vastly different from tool joints. Tool joints are produced to exacting specifications using high-grade materials unreflective of pipe fittings captured under Indian HTS 7307.99.00.

### *The DP-Master Group's Comments on U.S. Import Data*

- The U.S. import data placed on the record of this investigation by the Department<sup>85</sup> contains anomalous data, and would require significant adjustments to account for these anomalies.<sup>86</sup>

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<sup>82</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China*, 68 FR 13674 (March 23, 2003); *Anshan Iron & Steel v. United States*, 27 CIT 1234 (CIT 2004); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovandium from the People's Republic of China*, 67 FR 45088 (July 8, 2002).

<sup>83</sup> See *Bristol Metals L.P. v. United States*, 703 F. Supp. 2d 1370 (CIT 2010) ("*Bristol Metals*").

<sup>84</sup> See *OCTG Final*.

<sup>85</sup> See Memorandum to the File Regarding Request for Comments on New Information, dated December 3, 2010.

<sup>86</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844, 846 (January 6, 2010); and *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 75 FR 41148, 41155 (July 15, 2010).

### *Petitioners' Comments on U.S. Import Data*

- Tool joints vary widely in their sizes, and they note that the DP-Master Group produced drill pipe with tool joints attached in a wide variety of weights. Certain varying values for months and trading partners contained in the U.S. import data for HTS 8431.43.80.20 call into question the reliability of the import data.
- Using U.S. values to value an FOP is contrary to the Department's practice in this case<sup>87</sup> as well as other cases.<sup>88</sup>

### **Department's Position:**

When selecting SVs with which to value the FOPs used to produce subject merchandise, the Department is directed to use the "best available information" on the record. As noted by Petitioners, when selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, publicly available, tax-exclusive, and product-specific prices for the POI, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference to data from a single surrogate country.<sup>89</sup> After comparing the quality of the five potential surrogate data value sets on the record of this investigation in light of these criteria, the Department has determined that in the highly unusual circumstances presented by the record evidence in this case, the DP-Master Group's own production experience – adjusted to account for overhead, SG&A, and profit for the DP-Master Group's purchased tool joints – represents the best available information for the SV of its tool joints.

As the DP-Master Group has noted, Indian HTS category 8431.43.90 contains no actual entries of tool joints *per se* during the POI.<sup>90</sup> While Petitioners contend that Infodrive data cannot be matched to Indian import statistics based on the volume of imports, the DP-Master Group has provided a detailed analysis of the contents of the Infodrive data provided, showing a strong correlation between the total value of imports reported in both Infodrive and official Indian import statistics, as well as nearly identical total import values for selected trading partners.<sup>91</sup> Based on this analysis of the Infodrive data provided, the Department determines that the Infodrive data placed on the record by the DP-Master Group for HTS 8431.43.90 is highly correlated to official Indian import statistics and can act as a corroborative tool in determining the merchandise that actually entered under the HTS category during the POI. The Infodrive line items cited by Petitioners as *potentially* reflecting entries of tool joints – such as "tool connections," "tools," and "pin and box" items – suffer from several crucial deficiencies. First, for "tool connections" and "tools," there is no evidence on the record of this investigation to indicate that these titles apply to tool joints. For example, the Infodrive data for HTS 8431.43.90 includes line items such as milling tools and tool kits, and given the existence of these items which are obviously not tool joints, the Department cannot determine what an entry simply titled tool connection or tool is without further information. Second, all of these line items, taken

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<sup>87</sup> See Import Administration, Office of AD/CVD Enforcement, Antidumping Duty Investigation Initiation Checklist, A-570-965, January 20, 2010, at 9.

<sup>88</sup> See *Bristol Metals*.

<sup>89</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) ("*TRBs From the PRC*") and accompanying Issues and Decision Memorandum at Comment 5.

<sup>90</sup> See The DP-Master Group's July 21, 2010, Surrogate Value Submission.

<sup>91</sup> *Id.*

together, comprise an extremely small sampling of the thousands of lines of entries contained in the Infodrive data. Moreover, for the entries captioned “pin and box,” it is clear that all but one of these entries is a pin and box connector attached to additional pipe or equipment. Therefore, the Department agrees with the DP-Master Group that HTS 8431.43.90 contains few to no entries of tool joints during the POI and is, therefore, not product-specific to the input the DP-Master Group consumed in producing the merchandise under investigation. Accordingly, the Department has determined that HTS 8431.43.90 is not representative of the input consumed by the DP-Master Group and does not constitute the best available information on the record for the SV of tool joints.

Like HTS 8431.43.90, no evidence has been provided that HTS 7307.99.90 is product-specific to the tool joints that the DP-Master Group consumed in its production of drill pipe. The DP-Master Group argues that the description of this heading – “tube or pipe fittings of iron or steel, other, other, non-galvanized” – describes the form and function of tool joints, but fails to provide evidence that general tube and pipe fittings are comparable to tool joints. As Petitioners have noted, tool joints are an extremely specialized, high-strength item, which are not adequately represented by general steel tube and pipe fittings.<sup>92</sup> Thus, the Department has also determined that HTS 7307.99.00 is not representative of the input consumed by the DP-Master Group and does not constitute the best available information on the record for the SV of tool joints.

The Department agrees with Petitioners that using their proprietary U.S. purchase costs to value tool joints would be inappropriate. As noted above, the Department prefers to use publicly available, tax-exclusive, and product-specific prices for the POI. Petitioners’ purchase prices are not publicly available, nor are they from the selected surrogate country, India, or a country economically comparable to the PRC. The Department has concerns that using a petitioner’s proprietary purchase prices as the SV for a major input, unavailable to a respondent, would effectively allow a petitioner to directly influence our calculation of NV and hinder a respondent from adjusting its prices to eliminate dumping.<sup>93</sup> Thus, taking these factors into consideration as a whole, the Department has determined that Petitioners’ purchase prices are not the best available information on the record to serve as the SV for the DP-Master Group’s tool joints.

With respect to U.S. import data for HTS 8431.43.80.20, placed on the record by the Department,<sup>94</sup> the Department determines that this information is also inappropriate to value tool joints for this final determination. As Petitioners have noted, U.S. import data for HTS 8431.43.80.20 is not from the selected surrogate country or a country economically comparable to the PRC. While the Department has, in limited past cases, used U.S. data, in this case, other sources for a tool joint value using Indian data exist on the record.<sup>95</sup> Therefore, because other reliable information, which, after careful consideration the Department has concluded better meets our preferred SV selection criteria, is available on the record of the proceeding, the Department has determined that U.S. import data, while product-specific, are not the best available information with which to value tool joints in the instant investigation.

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<sup>92</sup> See Petition at II-9 - II-10.

<sup>93</sup> See, e.g., *Ferrovandium and Nitrided Vanadium From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 65656, 65661 (December 15, 1997).

<sup>94</sup> See Memorandum to the File Regarding Request for Comments on New Information, dated December 3, 2010.

<sup>95</sup> See *TRBs From the PRC*, and accompanying Issues and Decision Memorandum at Comment 5.

Given the above analysis of Indian HTS 8431.43.90, Indian HTS 7307.99.90, Petitioners' purchase data for tool joints, and U.S. import data, the Department finds that, given the unique circumstances of this case, the best available information on the record of this investigation with which to value tool joints is a value constructed from the DP-Master Group's own experience in producing tool joints.<sup>96</sup> While the Department normally places an SV on inputs in cases where a respondent purchases part or all of the input from unaffiliated suppliers, tool joints are a highly specialized product produced only in a few countries<sup>97</sup> and are not represented by the other potential SVs from India, HTS 8431.43.90 or 7307.99.90, on the record. The DP-Master Group's own information on its production of tool joints is specific to the input in question, covers the vast majority of the models of tool joints the DP-Master Group consumed during the POI, and accounts for the models the DP-Master Group consumed but did not produce with the average of a narrow range of tool joint models.<sup>98</sup> The DP-Master Group's own factors for producing tool joints also provides a POI-average value constructed from data for the primary ME surrogate country, India. In fact, no additional FOP information (other than the information already submitted by the DP-Master Group for its own self-produced tool joints) is employed in this construction. To account for the fact that the DP-Master Group's purchased tool joints were purchased from an unaffiliated supplier, the Department has added surrogate ratios for overhead, SG&A, and profit to the constructed tool joint value, to as closely as possible approximate the experience of purchasing an input from an unaffiliated supplier.

The Department has a preference to value purchased FOPs by using an SV for that factor. However, given that there are no suitable SVs from any country of comparable economic level of development, valuing the purchased tool joint by using the DP-Master Group's FOPs for its self-produced tool joint is the best available SV information on the record. The SVs applied to the components of a tool joint are from our selected surrogate country, India, and represent tax and duty exclusive broad market average values contemporaneous with the POI. Concerning SG&A, overhead, and profit, the DP-Master Group has placed evidence on the record demonstrating that OCTL also produces tool joints, making it a suitable surrogate company for the selected surrogate financial ratios.<sup>99</sup> In order to reflect most accurately the costs of the specific tool joints used in producing the merchandise under investigation, where the DP-Master Group produced some or all of the model of tool joints used to produce the model of drill pipe in question, the exact FOPs for producing that model of tool joint were used to construct the value for those tool

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<sup>96</sup> We note that, with respect to Petitioners' assertion that Jiangyin Liangda Drill Pipe Co., Ltd. ("Liangda"), not DP-Master Manufacturing, Co., Ltd. ("DP-Master"), produces tool joints, record evidence demonstrates that DP-Master produces the tool joints the DP-Master Group uses in production of the merchandise under investigation. See The DP-Master Group's June 29, 2010, response to the Department's Second Supplemental Sections C and D Questionnaire; see also Memorandum to The File, From Toni Dach, International Trade Compliance Analyst, and Jerry Huang, International Trade Compliance Analyst, Regarding Verification of the Sales and Factors of Production Response of DP-Master Manufacturing Co., Ltd. and Jiangyin Liangda Drill Pipe Co., Ltd. in the Antidumping Duty Investigation of Drill Pipe from the People's Republic of China, dated October 26, 2010, at 14, 18-19, and 21, and Exhibits 23 and 28. However, we also note that, in the *Preliminary Determination*, we found DP-Master and Liangda to be affiliated because they are affiliated producers of the merchandise under investigation that DP-Master ultimately sells to the United States.

<sup>97</sup> See *Drill Pipe and Drill Collars from China*, Investigation Nos. 701-TA-474 and 731-TA-1176 (Preliminary), Publication 4127 (March 2010) at VII-7; we note that the producers of tool joints are also not economically comparable to the PRC.

<sup>98</sup> See Final Analysis Memorandum for the DP-Master Group, dated concurrently with this memo.

<sup>99</sup> See The DP-Master Group's September 27, 2010, Surrogate Value Submission, at Exhibit SV-40.

joints. Where the DP-Master Group purchased all of the tool joints used to produce a model of drill pipe, the factors for all models of tool joints consumed in the production of the merchandise under investigation were averaged to arrive at the factors for producing the purchased tool joint model.<sup>100</sup> For the proportion of each model of tool joint purchased from unaffiliated suppliers, surrogate financial ratios were applied to the cost of manufacture and energy to approximate the experience of purchasing the finished tool joint from an unaffiliated supplier. The Department notes that this methodology makes use of information readily available to the Department from the record of the investigation, submitted in response to the Department's ordinary requests for information over the course of the investigation, and which the Department verified.

Finally, the DP-Master Group has requested that the Department issue an amended preliminary determination to correct the alleged ministerial error of overlooking tool joint values on the record of this investigation in our *Preliminary Determination*. The Department maintains, as was stated in the Ministerial Error Memorandum, that the Department did not overlook SVs for tool joints on the record of this investigation prior to the *Preliminary Determination*. In sum, for this investigation, we have constructed an SV for tool joints only after the record indicated that tool joints are one of two critical material components of finished drill pipe, because the DP-Master Group had verified factor information from its self-production of the vast majority of the tool joints it produced and used and because the highly specialized nature of the product and highly concentrated nature of the industry resulted in no adequate alternative existing on the record of the investigation.<sup>101</sup>

Moreover, voluminous information consistent with the Department's stated requirements for the use of Infodrive data<sup>102</sup> demonstrating that HTS 8431.43.90 contained few or no tool joint entries was placed on the record of this investigation on July 21, 2010, too close to the *Preliminary Determination* for the Department to adequately analyze this data for consideration in the *Preliminary Determination*.<sup>103</sup> However, the Department has now had sufficient time to analyze the Infodrive data submitted by the DP-Master Group and is considering this data in this final determination.

## **Comment 7: Selection of a Surrogate Value for Green Tubes**

### *Petitioners' Comments*

- The Indian Import data for HTS categories 7304.23 and 7304.29, placed on the record by Petitioners, meets the Department's requirements for selection of SVs, and are the proper HTS categories for green tube based on Customs rulings and ITC findings.<sup>104</sup>

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<sup>100</sup> See Final Analysis Memorandum for the DP-Master Group, issued concurrently with this memorandum.

<sup>101</sup> See, e.g., Petition, Volume II, at Exhibit II-1-B.

<sup>102</sup> *Dorbest Ltd. v. United States*, 30 CIT 1671, 462 F. Supp. 2d 1262.

<sup>103</sup> See Memorandum to the File, From Toni Dach, International Trade Compliance Analyst, Regarding Investigation of Drill Pipe from the People's Republic of China, dated May 21, 2010.

<sup>104</sup> See *Oil Country Tubular Goods (OCTG) from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela*, Inv. Nos. 701-TA-428 (Preliminary) and Inv. 731-TA-992-994 and 996-1005 (Preliminary) (May, 2002); and Department of Treasury, U.S. Customs Service, Classification Rulings: CLA-2-73:S:N:N1:117 860060 (February 21, 1991); CLA-2-84:RR:NC:1:106 A88413 (October 16, 1996).

- In contrast, the values used in the *Preliminary Determination*, derived from MBR do not meet the Department’s requirements for selection of SVs. J/K 55 cannot be used to produce drill pipe and, therefore, cannot be used as a basis for an SV for green tubes.<sup>105</sup> Also, the MBR data is from only two points in time, January 2009 and March 2009, months outside of the POI,<sup>106</sup> and the MBR does not state that its prices are duty- or tax-exclusive.<sup>107</sup> Finally, the Department cannot determine the reliability of the MBR data because MBR does not state the source for its price data.

*The DP-Master Group’s Comments*

- The Department should continue to value green tube using price quotes for J/K 55 from MBR, because J/K 55 is the most similar product to green tube, and the MBR price quotes are public and represent actual prices in India.
- Green tube prior to finishing conforms to API physical dimensions; has the yield strength of regular steel; is chemically similar to oil country tubular goods which include J/K 55 tubes; and is similar to OCTG in length, outside diameter, and wall thickness. Like drill pipe green tube, J/K 55 has not been upset, making this product the most similar to green tubes.
- Finished drill pipe and N80Q and L80 OCTGs, for which prices are provided in MBR, are subjected to extensive heat treatment to establish the proper yield strength, while J/K 55 is subjected to far less extensive heat treatment in its processing.
- Due to the lack of chemical standards for drill pipe and OCTGs, the Department can either adjust for chemistry differences between J/K 55 and drill pipe green tube, or ignore these chemical differences as there is significant overlap between the chemistries of drill pipe and OCTGs.
- The Indian HTS 7304.23 is a basket category containing green tube in addition to finished and unfinished drill pipe, and HTS 7304.29 contains all finished casing and tubing products that is not product-specific to drill pipe. Furthermore, the HTS category 7304.23 is overwhelmed by finished products and, thus, double counts many of the DP-Master Group’s FOPs. The similar monetary value of Indian imports under HTS 7304.29 indicates that this category is also overwhelmed by finished product.
- U.S. Customs rulings on tariff classifications in the HTSUS do not bear on Indian tariff classifications.<sup>108</sup>
- *Bristol Metals* is factually dissimilar to this investigation because data from the January MBR reflects actual sales prices. Additionally, CIT’s opinion in *Hebei* supports the Department’s selection of an SV from an actual input “or a reasonably comparable item,” which the DP-Master Group argues J/K 55 represents for drill pipe green tube. However, the DP-Master Group agrees with Petitioners that the Department should exclude data from the March MBR, which plainly represents offers for sale and not actual completed transaction prices.

<sup>105</sup> See *Bristol Metals; Hebei Metals & Minerals Import & Export Corp. v. United States*, 366 F. Supp. 2d 1264 (CIT 2005) (“*Hebei*”); and *Zhengzhou et al v. United States*, 617 F. Supp. 2d 1288, 1320 (CIT 2009).

<sup>106</sup> See *Taian Ziyang Food Co. v. United States* 637 F. Supp. 2d 1093, 1154 (CIT 2009).

<sup>107</sup> See *Shanghai Foreign Trade Enters. Co. v. United States*, 28 CIT 480, 493, 318 F. Supp. 2d 1339, 1350 (2004); and *Shandong Huarong Gen. Corp. v. United States*, 25 CIT 834, 159 F. Supp. 2d 714 (CIT 2001).

<sup>108</sup> See <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1002c84.pdf>.

- Contemporaneity and coverage of a broad time frame may only be deciding factors between multiple SV choices when the choices are substantially equal in all other regards.<sup>109</sup>
- Finally, while the MBR does not specifically state whether the prices are tax- or duty-free, the prices quoted by MBR should be duty-free as they are domestic prices, and the Department has a preference for domestic data over import statistics.<sup>110</sup> Further, the Department has not previously found Indian import statistics to be tax- and duty-exclusive.

**Department’s Position:**

When selecting SVs to value the FOPs used to produce subject merchandise, the Department is directed to use the “best available information” on the record. *See* section 773(c)(1) of the Act; *see also* the Department’s position at Comment 6, *supra*. The Department agrees with Petitioners that Indian import statistics for HTS categories 7304.23 and 7304.29 are the best available information with which to value green tubes for the final determination. Specifically, the Department has determined that these data meet our preferences for information which is publicly-available, representative of broad market average prices in India, contemporaneous with the POI, and that these data are exclusive of taxes and import duties.<sup>111</sup>

Where no information providing a higher level of product specificity is available, the Department may use information for a product that is only comparable to the input used to produce the subject merchandise.<sup>112</sup> However, in this investigation, unlike the MBR data, Indian HTS categories 7304.29 and 7304.23 do, in fact, capture the green tube input used to produce subject merchandise. While the DP-Master Group argues that these HTS categories are “overwhelmed” by products further along in the production process than raw green tube, the Department does not find that these data sets, although basket categories including more finished merchandise, are necessarily unrepresentative of the input, especially, as in this case, there is no viable alternative value. Specifically, Infodrive data placed on the record by the DP-Master Group definitively show entries of green tube under these HTS categories.<sup>113</sup> It is true that U.S. Customs rulings do not influence the categorization of products in the Indian HTS. However, the DP-Master Group has placed no evidence on the record demonstrating that a different HTS category is more appropriate for green tubes, and the Department has determined that the green tube entries exist in Indian import data for HTS categories 7304.29 and 7304.23. Therefore, because the Indian HTS categories 7304.29 and 7304.23 are product-specific to the green tubes used in the production of drill pipe, the Department finds that it is appropriate to select these data over the MBR data for J/K 55 tubing, a product that the record demonstrates cannot be used to produce drill pipe.

Moreover, as both Petitioners and the DP-Master Group have noted, the Department has determined that the March data from MBR represent offers for sale, not actual completed

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<sup>109</sup> *See Taian Ziyang Food Co. v. United States*, 637 F. Supp. 2d 1093 (CIT 2009).

<sup>110</sup> *See Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1316 and note 44 (CIT 2009).

<sup>111</sup> *See, e.g., Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 17, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>112</sup> *See Hebei*, 366 F. Supp. 2d at 1276-77.

<sup>113</sup> *See* The DP-Master Group’s Submission of Factual Information, dated July 21, 2010, at Exhibit SV-45.

transaction prices. The Department prefers completed transaction prices because offers for sale (such as price quotes or price lists) may not reflect the prices actually paid and, therefore, are generally unreliable SVs.<sup>114</sup> Therefore, after eliminating the March MBR data, the Department has determined that the only reliable price data on the record from MBR for Indian J/K 55 tubing is from January 2009, a single month not contemporaneous with the POI. In contrast, Indian import statistics for HTS categories 7304.29 and 7304.23 are fully contemporaneous with the POI and represent broad market average prices in India during the entire POI. The Department has historically chosen to use SVs that reflect broad market averages and that cover a substantial time period throughout the POI instead of price data that are obtained from so isolated a time frame as to be potentially subject to temporary market fluctuations.<sup>115</sup> Indeed, information from the January 2009 and other issues of MBR on the record of this investigation note price fluctuations in tubing products over the POI and months prior, further undermining the value of pricing data from a single point in time.

While both Petitioners and the DP-Master Group have alleged that the green tube SVs on the record of this investigation may not be duty- or tax-exclusive, no party has provided evidence that either Indian import statistics or MBR pricing reports are inclusive of taxes. Thus, in this investigation, the Department finds that both the Indian import statistics and the MBR pricing data are tax- and duty-exclusive and, therefore, that this factor is not instructive concerning the quality of a potential SV for green tube.

Therefore, after comparing the quality of the potential SV data sets on the record, for the final determination, the Department has concluded that the Indian import statistics for HTS categories 7304.29 and 7304.23 are the best available information on the record for the SV of green tubes. As explained above, the Indian import statistics for these HTS categories are publicly available, specific to the input used to produce the merchandise under investigation, contemporaneous with the POI, and represent a broad market average. Conversely, the MBR data on the record represent a product that cannot be used to produce the merchandise under investigation, do not represent a broad market average since they are limited to data from a single month, and are not contemporaneous with the POI.

### **Comment 8: Selection of a Surrogate Value for Alloy Steel Bars for Tool Joints**

#### *Petitioners' Comments*

- If the Department values the DP-Master Group's self-produced tool joints based on the factors used to produce the tool joints, the alloy steel bar input used to produce tool joints should be valued using Indian HTS 7228.30.11, "alloy tool steel." This HTS category more specifically describes the steel used by the DP-Master Group in producing tool joints than the HTS the Department used in calculating the *Preliminary Determination*, 7228.30.29, "other."

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<sup>114</sup> See generally *Bristol Metals*, 703 F. Supp. 2d at 1376.

<sup>115</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42654, (July 16, 2004); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004).

No other interested party commented on this issue.

**Department’s Position:**

While the DP-Master Group did not comment specifically on this issue, the Department agrees with the DP-Mater Group’s previous evidence showing that Indian HTS 7228.30.11 covers “bright bars” of alloy tool steel, which are not comparable with the DP-Master Group’s reported input of alloy steel bars for producing tool joints. The DP-Master Group placed evidence on the record of this investigation describing the production process for bright bars, which included information that production processes for surface treatment and extrusion are conducted on bright bars, and not on the alloy steel bars it uses.<sup>116</sup> In addition, Petitioners have failed to point to any characteristics specified in mill certificates for the DP-Master Group’s alloy steel bars placed on the record that indicate these steel bars are composed of alloy tool steel or bright bars.<sup>117</sup> Therefore, the Department continues to find that Indian HTS 7228.30.29 is the best available information on the record for the SV of the DP-Master Group’s alloy steel bars used in producing tool joints because no other potential surrogates on the record of the instant investigation are more product-specific than this HTS category. Further, as the Department noted in the *Preliminary Determination*, HTS 7728.30.11 also satisfies the Department’s other preferred criteria for SVs.<sup>118</sup>

**Comment 9: Critical Circumstances**

*The DP-Master Group’s Comments*

- The Department incorrectly found that critical circumstances exist with respect to its imports of drill pipe. The identity of the declarant and the information contained in the declaration it submitted lends significant weight to the notion that importers, exporters, or producers had reason to believe in June 2009, that a proceeding was likely.
- Additionally, the regulatory “believe or suspect” standard for an alternative knowledge month is low, and the Department has altered the base and comparison period repeatedly in past cases where even less specific, and more speculative, information was available to parties.<sup>119</sup> By examining the alternative base and comparison period it proposes, its shipment data demonstrate that massive imports of the subject merchandise do not exist.

*Petitioners’ Comments*

- The DP-Master Group’s claim of an earlier knowledge month is without basis because Petitioners themselves did not have a reasonable basis to believe that a proceeding was likely until December 2009, which was when the petition was filed in this investigation.

**Department’s Position:**

The Department disagrees with the DP-Master Group. In support of its argument regarding the low regulatory threshold, the DP-Master Group relies on a court case involving the “believe or

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<sup>116</sup> See The DP-Master Group’s June 11, 2010, Surrogate Value Submission.

<sup>117</sup> See The DP-Master Group’s June 23, 2010, Response to the Department’s Second Supplemental Questionnaire.

<sup>118</sup> See Surrogate Value Memorandum at 6.

<sup>119</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany*, 67 FR 55802 (August 30, 2002), and accompanying Issues and Decision Memorandum (“*German SWR*”) at Comment 6; *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Japan*, 64 FR 24329 (May 6, 1999) (“*Japan Hot-Rolled*”).

suspect” standard with respect to subsidy suspicion, not critical circumstances.<sup>120</sup> The two prior antidumping cases cited by the DP-Master Group both involved widely disseminated publications discussing the high probability that trade cases would be filed. While the DP-Master Group contends that the Department’s accepting an earlier knowledge month in *German SWR* involved a reliance on publications that did not specifically mention Germany by name, and were thus even more speculative than the declaration it submitted, the DP-Master Group failed to acknowledge the fact that the Department, in accepting the earlier knowledge month, noted that Germany was a leading exporter of steel wire rod to the United States in 2000 and 2001, an indication that such publications *per se* referred to German exports to the United States. *See German SWR* at 16.

The DP-Master Group also argues that a similar situation existed with respect to the Department accepting an alternative knowledge month in *Japan Hot-Rolled*. However, the Department finds that the DP-Master Group’s assertion is not supported by the facts of that case. One of the press reports relied upon in that case specifically mentioned Japan. *See Japan Hot-Rolled*, 64 FR at 24337. In addition, while the remainder of the press reports did not specifically mention Japan by name, during the period in question, Japan was the second largest exporter to the United States, also indicating that such publications *per se* referred to Japanese exports to the United States. *Id.* Thus, the DP-Master Group’s assertion that the widely disseminated publications relied upon in two other cases where an alternative knowledge was accepted were somehow more speculative than the declaration it submitted is not supported by a full reading of those two cases. Furthermore, the sole declaration provided by the DP-Master Group does not rise to the level of past evidence upon which the Department has relied to determine an alternate knowledge month, namely, widely disseminated trade publications and news articles.<sup>121</sup> Lastly, the Department is not persuaded by the DP-Master Group’s assertion of an earlier knowledge month, as record evidence concerning its own behavior, along with that of its importers, contradicts the earlier alternative knowledge month.<sup>122</sup>

However, we note that for the final determination, we collected additional shipment data from the DP-Master Group (two months for the base period and two months for the comparison period). Based on this additional data, we find that critical circumstances do not exist for the DP-Master Group. Specifically, we find that the additional data no longer supports a finding of critical circumstances, *i.e.*, there has not been an increase in imports greater than 15 percent when comparing the base period to the comparison period. *See* Memorandum to The File, from Matthew Renkey, Senior Analyst, through Paul Walker, Acting Program Manager, regarding “Investigation of Drill Pipe from the People’s Republic of China: Final Determination Critical Circumstances Analysis,” dated concurrently with this notice.

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<sup>120</sup> *See Zhejiang Mach. Imp. & Exp. Corp. v. United States*, 473 F. Supp. 2d 1365, 1374 (CIT 2007).

<sup>121</sup> *See German SWR* and accompanying Issues and Decision Memorandum at Comment 6 and *Japan Hot-Rolled*, 64 FR at 24338; *see also Preliminary Determination*, 75 FR at 51013.

<sup>122</sup> Due to the proprietary nature of the information forming the basis for this analysis, *see* the DP-Master Group’s case brief, dated November 5, 2010, at 13-15 for a description of the underlying information.

## **Baoshan**

### **Comment 10: Date of Sale**

#### *Petitioners' Comments*

- The material terms for Baoshan's United States sales contract were not established during the POI because the signed agreement was received by Baoshan's U.S. affiliate, Baosteel America, Inc. ("BAI"), after the POI.
- The U.S. sales contract received by BAI did not contain conclusive evidence as to what date the contract went into effect.
- The material terms of the contract between BAI and its U.S. customer were not established during the POI because the U.S. customer's down payment was not made in accordance with the stated payment terms in the contract.

#### *Baoshan's Comments*

- The material terms of the sale at issue were agreed upon during the POI, as evidenced by the date BAI placed the production order, the corresponding production scheduling process, and information provided during verification.
- The Department's policy does not base the date of sale on when physical documents are exchanged or signed.
- The material terms of its sale did not change after they were established and that a payment date is not an essential term of sale.

#### **Department's Position:**

For the final determination, we are continuing to treat the contract date between Baoshan's U.S. affiliate, BAI, and its U.S. customer as the appropriate date of sale. As noted in the Department's regulations, the Department will normally use the date of invoice as recorded in the producers' records kept in the ordinary course of business.<sup>123</sup> However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, if the record indicates that the material terms of sale (*e.g.*, price and quantity) were established on some date other than invoice date.<sup>124</sup>

As noted by both parties, in determining the date of sale, the key element to consider is which date better reflects the date on which the exporter or producer established the material terms of sale. It is the Department's well-established and long-standing practice to consider a sale as completed within the meaning of the Act when the material terms, *i.e.*, usually price and quantity, are definite and firm.<sup>125</sup> Additionally, the Department often looks to the course of conduct between the parties in evaluating whether a written document represents a binding agreement.<sup>126</sup>

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<sup>123</sup> See 19 CFR 351.401(i).

<sup>124</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997) and *Corus Staal BV v. United States*, 502 F.3d 1370 (Fed Cir. 2007).

<sup>125</sup> See *Notice of Final Determination of Sales at Less than Fair Value; Polyvinyl Alcohol From Taiwan*, 61 FR 14064 (March 29, 1996).

<sup>126</sup> *Id.*

In this case, although the contract does not have a date on the signature page, the Department finds that Baoshan has provided sufficient evidence supporting its claim that the date appearing on the first page of the contract best represents the date of sale. It is apparent from the record that the parties did enter into a contract during the POI in which the quantity and price were established. Upon review of the information on the record, the Department finds that the parties' later course of conduct evidenced that there was a meeting of the minds concerning these material terms, because neither price nor quantity were altered in the course of performance following the contract date.<sup>127</sup> Thus, the Department has concluded that the evidence in this case supports our finding that the terms of sale were set on some date other than the invoice date.

The Department disagrees with Petitioners' argument that a sales contract does not take effect until the seller receives a signed copy of the document. Moreover the Department agrees with Baoshan that the Department has previously looked to other forms of documentation when parties could not provide definitive evidence as to when a contract was signed, in order to establish a date of sale.<sup>128</sup> Although the record shows BAI did not receive the signed sales contract during the POI, there is evidence on the record of this investigation indicating that the material terms of the contract were established prior to the date BAI received the signed contract from its customer. This information includes Baoshan's submission of a description of the sales negotiation process involved for the transaction in question, which supported the claim that the contract date occurred when the material terms were established. The Department verified this description,<sup>129</sup> as well as Baoshan's explanation that the date on page one of BAI's contract with its U.S. customer was generated simultaneously with the subsequent pages in the contract detailing the terms and conditions.<sup>130</sup> Additionally, Baoshan scheduled production to start prior to the contract date.<sup>131</sup> Finally, Baoshan submitted a letter from its unaffiliated U.S. customer supporting Baoshan's explanation that the material terms of the contract were established on the date listed on page one of the contract.<sup>132</sup>

Regarding Petitioners' argument that the material terms of the contract were not established during the POI because the down payment was not paid according to the payment terms stated in

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<sup>127</sup> See Letter from Baoshan Regarding Drill Pipe from the People's Republic of China/Section A Questionnaire Response at Exhibit 2, dated April 23, 2010; see also *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal*, 67 FR 60219 (September 25, 2002) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>128</sup> See e.g., *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Mexico*, 55 FR 29244 (July 18, 1990) and *Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts From the Federal Republic of Germany*, 52 FR 28170 (July 28, 1987).

<sup>129</sup> See Memorandum to the File, Through Scot T. Fullerton, From Susan Pulongbarit and Matthew Renkey, Regarding Verification of the Sales and Factors of Production Response of Baoshan Iron & Steel Co., Ltd. in the Investigation of Drill Pipe from the People's Republic of China, dated October 27, 2010 ("Baoshan Verification Report") at 7-9; and Memorandum to the File, Through Scot T. Fullerton, From Susan Pulongbarit and Matthew Renkey, Regarding Verification of the CEP Sales Response of Baoshan Iron & Steel Inc. in the Investigation of Drill Pipe from the People's Republic of China, dated October 27, 2010 ("Baoshan CEP Verification Report") at 6-8 and 9-11.

<sup>130</sup> *Id.*

<sup>131</sup> See Letter from Baoshan Regarding Drill Pipe from the People's Republic of China/Supplemental A Questionnaire Response, dated May 10, 2010 ("Baoshan's May 10, 2010 Supplemental Section A Response").

<sup>132</sup> See Letter from Baoshan Regarding Drill Pipe from the People's Republic of China/Supplemental Section A Questionnaire Response, dated May 10, 2010 at Exhibit 3.

the contract, the Department disagrees. As stated above, the Department considers the material terms of payment to include price and quantity. Therefore, here, the Department has determined that a change in the agreed upon payment date should not be considered a change in the material terms of the United States sales contract because the record demonstrates that neither the price nor the quantity differed from the date of contract and the date on which the unaffiliated United States customer actually paid for the merchandise. Additionally, as the United States Supreme Court held in *United States v. Eurodif S.A.*, 129 S. Ct. 878, 887-90 (2009) (“*Eurodif*”), the Department is not restricted by contract law in its implementation and enforcement of the Act. Rather, the Department’s primary guidance is the economic reality and substance of the facts and circumstances before it in enforcing the antidumping law.<sup>133</sup> Accordingly, the Department has determined that the contract date between BAI and the U.S. affiliate represents economic reality for the purposes of selecting the date of sale. While we recognize Petitioners’ argument that the date BAI received the down payment was ten days after the date Petitioners suggest as the proper date of sale, we find that the weight of the other information on the record as discussed above supports Baoshan’s reported date of sale. As a result, we find that the contract date is the appropriate date of sale and that it was effective within the POI.

### **Comment 11: Market Economy Purchases of Iron Ore Pellet Made through Affiliated Companies**

#### *Baoshan’s Comments*

- The Department should include Baoshan’s ME purchases made through its affiliated companies in the weight-averaged ME purchase price for iron ore.
- If the Department continues to exclude from its NV calculation Baoshan’s ME purchases from its affiliated supplier, the Department should rely on the Indian import statistics for HTS 26011210, “Iron Ores And Concentrates, Other Than Roasted Iron Pyrites, Agglomerated, Iron Ore Pellets,” as an SV for the final determination because this is the HTS category under which the FOP entered the PRC.

No other interested party commented on this issue.

#### **Department’s Position:**

For the final determination, the Department has valued Baoshan’s purchases of iron ore pellets using the average purchase price paid to Baoshan’s ME suppliers, inclusive of its affiliated supplier.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information as a surrogate to value FOPs; however, when a producer sources an input from an ME country and pays for it in an ME currency, the Department normally will value the factor using the actual ME price paid for the input. The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.<sup>134</sup> In these cases, unless case-specific facts provide adequate grounds to rebut the Department’s

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<sup>133</sup> See *Eurodif*, 129 S. Ct. at 887.

<sup>134</sup> See *Antidumping Methodologies*.

presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.<sup>135</sup> When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33 percent threshold.<sup>136</sup>

Section 773(f)(2) of the Act states that:

A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.

Since the record indicates that Baoshan purchased iron ore pellet from an affiliated ME supplier, the Department must determine whether the price paid by Baoshan to its affiliated supplier is a price that reflects purchase prices in an ME. Therefore, the Department compared Baoshan's price from its affiliated supplier to the price paid to the unaffiliated supplier during the POI and found that the back-to-back sales<sup>137</sup> made directly from the unaffiliated supplier, to Baoshan's affiliate, and finally to Baoshan, were higher. Accordingly, the Department finds that this price from Baoshan's affiliated supplier fairly reflects the ME price for purchases of iron ore pellet. The Department agrees with Baoshan that the Department has previously excluded purchases from an ME affiliated supplier when the price paid to the affiliated supplier during the POI was lower than the price paid to the unaffiliated supplier during the POI.<sup>138</sup> Accordingly, the Department finds that Baoshan's higher purchase price of iron ore pellet indicates an arm's length purchase. Therefore, because the inclusion of Baoshan's purchases from its affiliated ME supplier would increase the percentage of ME purchases of iron ore to above the 33 percent threshold, for this final determination the Department will weight-average the purchase price of iron ore pellets from its affiliated and unaffiliated ME suppliers of iron ore pellet to value this factor.<sup>139</sup>

With respect to the use of HTS 26011210 "Iron Ores And Concentrates, Other Than Roasted Iron Pyrites, Agglomerated, Iron Ore Pellets" for the final determination, this issue is moot since the Department is valuing iron ore pellets using Baoshan's ME purchase price of this factor.

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<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Baoshan's affiliate purchased iron ore from unaffiliated market economy suppliers and then immediately resold the merchandise to Baoshan. See Baoshan Verification Report at 23.

<sup>138</sup> See *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007) and accompanying Issues and Decision Memorandum at Comment 21.

<sup>139</sup> See *Antidumping Methodologies*.

## Comment 12: Self-Produced Inputs

### *Baoshan's Comments*

- The Department should value all of Baoshan's self-produced input factors using the inputs consumed to produce these factors.

No other interested party commented on this issue.

### **Department's Position:**

In accordance with section 773(c) of the Act, for this final determination, the Department calculated NV based on FOPs reported by Baoshan for the POI. As the basis for NV, Baoshan reported FOPs information for each separate stage of production, including the factors used in the production of all self-produced material and energy inputs.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise. If the NME respondent is an integrated producer, the Department takes into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them.<sup>140</sup> This policy has been applied to both agricultural and industrial products.<sup>141</sup> Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, the Department addressed whether to value the respondent's factors used in

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<sup>140</sup> See *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) and accompanying Final Results Valuation Memorandum.

<sup>141</sup> See e.g., *Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recission*, 67 FR 50866 (August 6, 2002)(unchanged in final) and *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997).

extracting iron ore—an input to its wire rod factory in *Steel Wire Rod from Ukraine*.<sup>142</sup> The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead.<sup>143</sup>

In this investigation, the Department has determined that the exceptions described above do not apply because Baoshan produces a significant amount of each of its self-produced intermediate inputs and valuing Baoshan's FOPs for self-produced intermediate inputs will adequately account for all of the costs in the overall factors buildup for Baoshan's self-produced inputs. Accordingly, the Department will value the inputs to Baoshan's self-produced intermediate FOPs. For those inputs which Baoshan both self-produced and purchased, the Department will value the self-produced portion using the corresponding inputs and for the purchased amount the Department will value the FOP using SVs.

### **Comment 13: By-Product Offset for Pulverized Fuel Ash**

#### *Petitioners' Comments*

- Baoshan should not receive an offset to NV for pulverized fuel ash because Baoshan did not receive income for the sale of this by-product.

#### *Baoshan's Comments*

- The Department's practice is to grant a by-product offset based solely on the production quantity of the by-product during the POI.
- It is entitled to a by-product offset for pulverized fuel ash because the income received is irrelevant in NME cases since the purchase and/or sale involved a Chinese entity.

#### **Department's Position:**

For the final determination, the Department will not grant Baoshan a by-product offset for its production of pulverized fuel ash. As stated in *Citric Acid from the PRC*, the Act allows the Department to grant an offset to costs of production for a by-product generated in the manufacturing process that is either sold for revenue or has commercial value and is reintroduced into production.<sup>144</sup> While, based on the record of this investigation at the time, the Department did grant Baoshan a by-product offset for pulverized fuel ash in the *Preliminary Determination*, following our determination, the Department verified the disposition of payments for pulverized

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<sup>142</sup> *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002) ("*Steel Wire Rod from Ukraine*").

<sup>143</sup> *See Steel Wire Rod from Ukraine*; *see also Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001); *Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964 (November 20, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

<sup>144</sup> *See, e.g., Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 17 ("*Citric Acid from the PRC*").

fuel ash by-product; specifically, at verification, the Department observed that Baoshan did not receive payments for the sale of this by-product.<sup>145</sup>

With respect to Baoshan's argument that, pursuant to *Silicon Metal from the PRC*, it is the Department's practice to grant by-product offsets based solely on the quantity of by-products sold during the POI/POR, the Department disagrees.<sup>146</sup> In the final results of *Silicon Metal from the PRC*, the Department did change its practice to grant by-products offsets based on the production of by-products during the POR.<sup>147</sup> However, the Department did not change its practice requiring that the mandatory respondent sell the by-product for revenue before receiving an offset to NV.<sup>148</sup> Additionally, the Department disagrees with Baoshan's claim that the income received for the by-product is irrelevant, unless the purchase or sale involves an ME party. As discussed above, it is the Department's requirement that any mandatory respondent either receive revenue or re-introduce the by-product into production for any requested by-product offset. Further, we disagree with Baoshan's argument that income received is irrelevant in NME cases because the Department does not distinguish whether income should be provided by ME or NME entities when determining whether to grant a by-product offset.

#### **Comment 14: Valuation of Baoshan's Copper Plating Tolling Factors of Production**

##### *Petitioners' Comments*

- The Department should not use the estimated tolling factors from Baoshan's own experience of galvanizing steel to value its tolled copper plating process because these are two different processes. The Department has previously applied AFA when the FOPs used by tollers are not provided.
- The Department should value Baoshan's tolling FOPs using the highest labor and electricity rates for those products that were copper plated.

##### *Baoshan's Comments*

- The Department should not apply AFA because, although Baoshan was unable to obtain information from its unaffiliated tollers concerning the copper plating and blooming processes, it provided FOP data based on its own experience in galvanizing and piercing and, therefore, it cooperated to the best of its ability with the Department's requests for information. Using an SV for galvanizing steel will overstate the tolling cost of copper plating because: 1) it does not incorporate the consumption rates for copper and sodium cyanide used in the copper plating process; 2) the source for galvanizing reflects hot-dip galvanization and not electroplating; 3) zinc galvanizing uses different materials from the copper plating process; and 4) the cost of galvanizing one ton of rebar is higher than the cost of galvanizing one ton of tool joint.

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<sup>145</sup> See Baoshan's Verification Report at 31.

<sup>146</sup> Citing *Silicon Metal From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 74 FR 32885 (June 9, 2009) ("*Silicon Metal from the PRC*").

<sup>147</sup> 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) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>148</sup> *Id.* and accompanying Issues and Decision Memorandum at Comment 15.

- If the zinc galvanizing SV is used, the Department should either deduct those material inputs used in the zinc galvanizing process and replace them with the materials used in copper plating or multiply the galvanizing SV by the weight of the copper-plated area, which the Department verified.

**Department’s Position:**

The Department disagrees with Petitioners that the Department should apply AFA to calculate Baoshan’s electricity and labor FOPs for the CONNUMs which received copper plating. In this instance, the Department finds that Baoshan has cooperated with the Department to the best of its ability by providing the necessary information for its tolled FOPs for the copper plating process and providing letters to the Department from its tollers confirming that the tolling FOPs would not be provided by the tollers despite Baoshan’s requests.<sup>149</sup> As a result, the Department has determined that Baoshan has cooperated with our requests to the best of its ability and, therefore, that the application of AFA pursuant to section 776(b) of the Act is not warranted.

Additionally, the Department has also determined not to use Baoshan’s estimated FOPs from its galvanizing process as a proxy for its tolled copper plating service FOPs. When valuing tolling services, the Department’s preference is to obtain the actual FOP data from the toller. If these FOPs cannot be obtained from the toller, the Department then seeks an appropriate SV for the processing or service provided by the toller. In this instance, the Department agrees with Baoshan’s claim that the galvanizing process is similar to the copper plating process because both entail plating one metal with another.<sup>150</sup> For the final determination, the Department has decided to value the copper plating service using an SV for galvanizing.<sup>151</sup> In order to account for the fact that Baoshan’s toller used copper instead of zinc, the Department has adjusted the galvanizing SV to reflect the difference in price, between zinc (the metal used for plating in the galvanizing process<sup>152</sup>) and copper.<sup>153</sup> For a full explanation of the calculation for this SV, *see* the Baoshan Final Analysis Memo.<sup>154</sup>

Moreover, with regard to Baoshan’s argument that the Department should deduct those materials used in the zinc galvanizing process using the appropriate consumption ratios from the galvanizing SV and replace them with the copper plating FOPs, the Department notes that we are not performing a factor build up calculation, but rather valuing the tolled service using an SV per section 773(c)(1) of the Act. Moreover, Baoshan has not provided the Department with the SVs

<sup>149</sup> *See* Letter From Baoshan Regarding Drill Pipe from the People’s Republic of China Supplemental Sections C and D Questionnaire Responses, dated June 25, 2010 (“Baoshan June 25, 2010 Supplemental C and D Response”), at 7, and Letter From Baoshan Regarding Drill Pipe from the People’s Republic of China Supplemental Sections C and D Questionnaire Responses, dated July 16, 2010 (“Baoshan July 16, 2010 Supplemental C and D Response”) at 1.

<sup>150</sup> *See* Baoshan July 16, 2010 Supplemental C and D Response, and Baoshan Verification Report at 22.

<sup>151</sup> *See* Memorandum to the File, Through Paul Walker, Acting Program Manager, Office 9, From Susan Pulongbarit, International Trade Analyst, Office, 9, Subject Antidumping Duty Investigation of Drill Pipe from the People’s Republic of China (“PRC”): Surrogate Values for the Final Determination, dated January 3, 2011 (“Final Surrogate Value Memo”).

<sup>152</sup> *See* Baoshan’s July 16, 2010 Supplemental C&D Questionnaire Response.

<sup>153</sup> *See* Final Surrogate Value Memo.

<sup>154</sup> *See* Memorandum to the File, Through Paul Walker, Acting Program Manager, From Susan Pulongbarit, Regarding Antidumping Investigation of Drill Pipe from the People’s Republic of China: Analysis for the Final Determination of Baoshan Iron & Steel Co., Ltd., dated January 3, 2011 (“Baoshan Final Analysis Memo”).

for the galvanizing materials or the appropriate consumption ratios; thus, the Department must use the galvanizing SV as it is the best available information on the record.

Further, the Department disagrees with Baoshan's implication that the source for the galvanizing steel SV reflects only the hot dip galvanizing process. Although the source does cite a U.K. study as to the benefits of galvanization which uses hot-dipped galvanized products as a comparator, the source does not specify that the value information is based on hot dipped galvanizing alone.<sup>155</sup> Rather, the source discusses that its findings are based on "a comprehensive study of {galvanizing} facilities and quality of work done."<sup>156</sup> As it is comprehensive, the study neither specifically includes nor excludes any type of galvanizing process.

Last, the Department disagrees with Baoshan's presumption that the Department will be valuing the cost of galvanizing one ton of drill pipe and that the Department should instead value the weight of the verified copper plated area. As explained in the Baoshan Final Analysis Memo, the Department is applying the galvanizing SV only to the tool joint since that is the only part of the merchandise that was copper plated.<sup>157</sup> Additionally, the Department rejects Baoshan's suggestion that the Department should multiply the galvanizing SV with the weight of the area that is copper plated. The Department notes that using those weights provided by Baoshan would not be appropriate because those are the calculated weights of copper consumption for each CONNUM and not the weight of the area that is copper plated.<sup>158</sup>

## **Yida**

### **Comment 15: Yida's Reporting of Rubber Pads as a Packing Material**

#### *Yida's Comments*

- The verification report incorrectly states that it had not reported rubber pads as packing material, stating that it had imprecisely translated the term "rubber pads" as "washers," which it had reported under the PAKMAT3 variable.

No other interested party commented on this issue.

#### **Department's Position:**

The Department disagrees with Yida. As noted in the verification report, the Department separately weighed and accounted for Yida's washers and rubber pads.<sup>159</sup> Moreover, at no point

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<sup>155</sup> See Memorandum to the File, Through Paul Walker, Acting Program Manager, From Susan Pulongbarit, Regarding Antidumping Duty Investigation of Drill Pipe from the People's Republic of China: Request for Comments on New Information, dated December 14, 2010.

<sup>156</sup> See *id.*

<sup>157</sup> See Baoshan Final Analysis Memo.

<sup>158</sup> See Letter From Baoshan Regarding Drill Pipe from the People's Republic of China/Pre-Preliminary Comments, dated December 17, 2010, at Exhibit 2.

<sup>159</sup> See Memo to the File, through Scot T. Fullerton, Program Manager, from Matthew Renkey, Senior Case Analyst, and Susan Pulongbarit, Case Analyst, "Verification of the Sales and Factors Response of the Yida Group in the Antidumping Investigation of Drill Pipe from the People's Republic of China," dated October 27, 2010 ("Yida Verification Report") at 18-19.

during the weighing of the individual packing materials at verification did Yida raise that it somehow mistranslated the rubber pads it uses for a packing material as “washers.” Thus, record evidence indicates that washers which Yida separately accounted for, and rubber pads, are distinct materials used in the packing process. As such, the Department will value rubber pads as a separate material. Because there is no SV for rubber pads currently on the record, the Department will use the SV for the closest analogous material available, which are the PVC plastic frames used by Baoshan as a packing material.

### **Comment 16: Yida’s Unreported Overhead Materials Discovered at Verification**

#### *Yida’s Comments*

- Yida contends that the three materials the Department observed during the plant tour (lubricant oil, hydraulic oil, and emulsifying fluid) should be considered as manufacturing overhead items and not as direct material inputs.
- Citing case precedent, Yida states that it properly did not include these items in its FOP database in accordance with Department practice, as these three items are not physically incorporated into the subject merchandise, not consumed or destroyed in the production process, and are not regularly replenished.
- No other interested party commented on this issue.

#### **Department’s Position:**

The Department agrees with Yida. The Department notes, however, that the original Section D questionnaire requests that a respondent identify any raw materials that it believes should be classified as factory overhead expenses rather than valued as FOPs.<sup>160</sup> While Yida did not identify these three materials in its Section D response, record evidence indicates that they should be classified as overhead items, as they are neither incorporated into the finished product, nor regularly replenished during the course of the production process.<sup>161</sup> Moreover, these materials do not account for a significant portion of Yida’s manufacturing costs, and the surrogate financial ratios applied to Yida include an overhead line item (“Stores, Spares and Tools Consumed”) that would appear to account for these materials. Due to these factors, which have been the basis for past precedent,<sup>162</sup> the Department will treat these three materials as overhead items for this final determination.

#### **Changes from Verification:**

### **A. DP-Master Group’s Phosphate Treatment Tolling Factors of Production**

#### *Summary*

- On June 29, 2010, the DP-Master Group provided FOPs for its unaffiliated phosphate treatment toller.

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<sup>160</sup> See the Department’s April 7, 2010, Original Section C&D Questionnaire at D-1.

<sup>161</sup> See Yida Verification Report at 12.

<sup>162</sup> See *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 27 (where the Department explained its rationale for treating 34 of the respondents’ materials as overhead items).

- On September 8, 2010, the DP-Master Group submitted a COP reconciliation for its unaffiliated phosphate treatment toller.
- At verification, the Department attempted to verify the allocation of material FOPs consumed in producing the merchandise under investigation and COP reconciliation for the DP-Master Group’s phosphate treatment toller. However, the Department was unable to complete our verification procedures<sup>163</sup> of the unaffiliated phosphate treatment toller due to its inadequate bookkeeping.

No interested party commented on this issue.

**Department’s Position:**

*A. Facts Available*

The Department finds that the use of facts otherwise available is warranted with respect to the consumption of material inputs by the DP-Master Group’s phosphate treatment toller, pursuant to section 776(a) of the Act. In general, sections 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in reaching the applicable determination if: (1) The necessary information is not available on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified.

As further discussed below, pursuant to sections 776(a)(2) (B) and (D) of the Act, the Department determines that the use of partial facts otherwise available is warranted for this final determination with respect to consumption of material inputs for the DP-Master Group’s phosphate treatment toller. The DP-Master Group’s unaffiliated phosphate treatment toller failed to provide information regarding certain FOPs in the form and manner requested by the Department. Due to the insufficiency of the DP-Master Group’s record keeping, numerous verification procedures could not be completed. For these reasons, the Department was unable to verify certain statements in the DP-Master Group’s questionnaire responses regarding its unaffiliated phosphate treatment toller’s consumption of material inputs.<sup>164</sup>

Because the DP-Master Group’s phosphate treatment toller did not maintain adequate accounting records for its FOP, the Department was unable to verify the accuracy of the DP-Master Group’s phosphate treatment toller’s FOP database. Company officials for the DP-Master Group explained that the phosphate treatment toller kept records of only its purchases of material inputs, not the consumption or entry into production of such material FOPs.<sup>165</sup> In addition, regular accounting records – such as material inputs ledgers – and source documents – such as invoices – detailing consumption and expenses for material inputs, labor, and energy were not

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<sup>163</sup> For a description of the procedures to be completed and requested documentation, *see* Letter to the DP-Master Group, from Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, Re: Antidumping Duty Investigation of Drill Pipe from the People’s Republic of China, dated September 10, 2010 (“The DP-Master Group Outline”).

<sup>164</sup> *See* DP-Master Verification Report at 2, 6-8, and 10-11.

<sup>165</sup> *Id.*

kept by the DP-Master Group's phosphate treatment toller, so a reconciliation of its reported FOPs to its financial records was impossible.

Without a complete and verifiable FOP reconciliation, the Department cannot determine whether the reported consumption of phosphate treatment factors in the FOP database is overreported or underreported. Additionally, the sections C and D questionnaire specifically instructs parties that "If you are not reporting factors of production (FOPs) using actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis, please provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under investigation on a CONNUM-specific basis."<sup>166</sup> The DP-Master Group provided no such explanation that its phosphate treatment factors were not reported on an actual consumption basis prior to verification.<sup>167</sup>

*B. Adverse Facts Available*

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information."<sup>168</sup> In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.<sup>169</sup>

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>170</sup> The Federal Circuit provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.<sup>171</sup> The Federal Circuit acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries "would suffice" as well.<sup>172</sup> Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.<sup>173</sup> The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>174</sup>

Within the meaning of section 776(b) of the Act, the Department finds that the DP-Master Group failed to cooperate by not acting to the best of its ability to comply with the Department's

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<sup>166</sup> See Original Sections C and D Questionnaire, dated April 7, 2010, at D-2.

<sup>167</sup> See Supplemental Questionnaire Responses dated June 29 and September 8, 2010.

<sup>168</sup> See section 776(b) of the Act.

<sup>169</sup> *Id.*; see also Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994).

<sup>170</sup> See SAA at 870.

<sup>171</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

<sup>172</sup> *Id.* at 1380.

<sup>173</sup> *Id.* at 1382.

<sup>174</sup> *Id.*

requests for information regarding provision of its phosphate treatment toller's FOPs in the form and manner requested, as noted above, and that the application of partial adverse facts available ("AFA") is warranted. The Department provided specific instructions for completing the COP reconciliation in its original questionnaire and verification outline.<sup>175</sup> The Department also provided specific instructions for reporting all FOPs and the basis upon which those factors should be reported in the original questionnaire. The Department provided specific guidelines for what supporting documentation should be provided to the verifiers for the purposes of the FOP reconciliation. In the original questionnaire, the Department also noted that if the books and records the respondent was utilizing to prepare its response to the Department prevent them from reporting any information in the manner requested by the Department, the respondent should contact the Department immediately.<sup>176</sup> Despite these extensive instructions, provided numerous times over the course of the investigation, the DP-Master Group failed to provide the Department with FOP information from its phosphate treatment toller in the form and manner requested by the Department, failed to notify the Department that the requested data was not being provided in the form and manner requested, and failed to prepare adequate supporting documentation to fully verify its responses to the Department's questionnaires regarding its phosphate treatment toller's consumption of material inputs.

For all of the aforementioned reasons, the Department finds that the DP-Master Group failed to cooperate to the best of its ability with respect to provision of its phosphate treatment toller's consumption of material inputs, pursuant to section 776(b) of the Act. Therefore, the Department is applying partial AFA to the DP-Master Group for this final determination with regard to the phosphate treatment toller's consumption of material inputs. The Department will use the maximum monthly consumption of each material input as the basis for calculating the per-piece consumption of material inputs in the phosphate treatment stage of production.<sup>177</sup> The Department notes that it is appropriate to only apply AFA to the portion of the DP-Master Group's response dealing with its phosphate treatment toller's factors, since the phosphate treatment toller is an unaffiliated company that keeps its own books and records, wholly independent of the DP-Master Group. As noted throughout the verification report, the DP-Master Group provided complete, verifiable information regarding its own sales and FOPs and related records, and verification procedures were routinely completed noting no or only minor discrepancies.<sup>178</sup> For this reason, it would be inappropriate to infer the inadequacy of the DP-Master Group's phosphate treatment toller's records to the entire DP-Master Group.

## **B. Baoshan's Indirect Selling Expenses**

### *Summary*

- Following the *Preliminary Determination*, Baoshan submitted information to the Department specifying which accounts it included and excluded from its indirect selling expenses ("ISEs") ratio.

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<sup>175</sup> See Original Sections C and D Questionnaire, dated April 7, 2010, at Appendix V and Section D and the DP-Master Group Outline, dated September 10, 2010, at XII. Cost Reconciliation.

<sup>176</sup> See Original Questionnaire, dated April 1, 2010, at G-1.

<sup>177</sup> See Final Analysis Memo for the DP-Master Group, dated concurrently with this Memorandum.

<sup>178</sup> See DP-Master Verification Report.

- During verification, the Department examined those accounts excluded from Baoshan's ISEs and obtained descriptions of each.

No other interested party commented on this issue.

**Department's Position:**

After a careful review of BAI's accounts, the Department has determined that Baoshan should have included all of BAI's SG&A in its ISEs ratio.<sup>179</sup> Because BAI is an affiliated entity devoted to selling, consistent with our practice, the Department has determined that it is appropriate to include all of its SG&A expenses in Baoshan's ISEs calculation.<sup>180</sup> Accordingly, the Department has corrected this for the final determination and has included these accounts in the calculation for Baoshan's ISEs ratio.<sup>181</sup>

**C. Baoshan's Credit Expenses**

*Summary*

- Prior to the *Preliminary Determination*, Baoshan did not report any credit expenses for its CEP sales.
- During verification, Baoshan stated that it did not report credit expenses because it assumed that these expenses would be accounted for in the surrogate financial ratios.<sup>182</sup>

No other interested party commented on this issue.

**Department's Position:**

The Department disagrees with Baoshan that credit expenses are accounted for in the surrogate financial ratios. The surrogate financial ratios, in particular, the ratio for SG&A expenses, account for the selling activity realized by the company within the NME, Baoshan. BAI's expenses are in no way accounted for by these ratios, and the Department calculates an imputed credit expense based on the difference between shipment date and payment date for all CEP sales.<sup>183</sup> Additionally, at no point in the proceeding prior to verification did Baoshan either provide a credit expense or attempt to explain why it did not report one. As such, pursuant to section 776(a)(2)(A) of the Act, the Department finds that the application of facts available is warranted with respect to this issue. Additionally, pursuant to section 776(b) of the Act, the Department finds that Baoshan did not act to the best of its ability in replying to the Department's request for information. Thus, as an adverse inference, the Department is using the largest difference between shipment date and payment among its reported U.S. sales to

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<sup>179</sup> See Letter From Baoshan Regarding Drill Pipe from the People's Republic of China/Supplemental Sections C and D Questionnaires Responses, dated September 14, 2010, at Exhibit 14.

<sup>180</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 49622 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>181</sup> See Baoshan Final Analysis Memo.

<sup>182</sup> See Baoshan CEP Verification Report at 14.

<sup>183</sup> See the Department's April 7, 2010, original Section C questionnaire at C-24 and C-25; see also *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 10000 (March 9, 2009) (unchanged at final).

calculate Baoshan's credit expense. For a full explanation of our calculation for Baoshan's credit expenses, *see* Baoshan's Final Analysis Memo.

**RECOMMENDATION**

Based on our analysis of the comments received, verification results and information on the record, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final determination of investigation and the final dumping margins in the Federal Register.

AGREE\_\_\_\_\_

DISAGREE\_\_\_\_\_

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date