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December 5, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

CASE: Oil Country Tubular Goods from the People's Republic of China

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2010-2011 Administrative Review

SUMMARY:

On June 8, 2012, the Department of Commerce (“the Department”) published its *Preliminary Results* in the antidumping duty administrative review of oil country tubular goods from the People’s Republic of China.¹ On July 23, 2012, American Tubular Products, LLC (“ATP”)², the Jiangsu Chengde Steel Tube Share Co., Ltd. (“Chengde”), and United States Steel Corporation (“U.S. Steel”) submitted their case briefs.³ On August 10, 2012, ATP, Chengde, TMK IPSCO,

¹ See *Certain Oil Country Tubular Goods From the People’s Republic of China: Preliminary Results of the First Antidumping Duty Administrative Review, Rescission in Part and Intent To Rescind in Part*, 77 FR 34013, 34015 (June 8, 2012) (“*Preliminary Results*”).

² ATP is an importer of subject merchandise.

³ See Letter from ATP, “Oil Country Tubular Goods from the People’s Republic of China: First Administrative Review; Case Brief” dated July 23, 2012; see also Letter from the Chengde Group, “Oil Country Tubular Goods from China; Submission of Jiangsu Chengde’s Case Brief” dated July 23, 2012; see also Letter from U.S. Steel, “First Administrative Review of Oil Country Tubular Goods from the People’s Republic of China” dated July 23, 2012.



Wheatland Tube Company, and V&M Star (“TWV”), U.S. Steel, and Maverick Tube Corporation (“Maverick”) submitted rebuttal briefs.⁴

Below is the complete list of the issues for which we received comments from interested parties.

- Comment 1: Valuation of Steel Billets
- Comment 2: Whether to Grant Chengde a By-product Offset
- Comment 3: Valuation of Brokerage and Handling
- Comment 4: Surrogate Financial Ratios
- Comment 5: Assessment
- Comment 6: Valuation of Labor
- Comment 7: Double Counting of Thread Protectors
- Comment 8: Valuation of Ocean Freight
- Comment 9: Valuation of Inland Freight

BACKGROUND

The Chengde Group submitted surrogate value (“SV”) data on July 5, 2012.⁵ U.S. Steel and Maverick Tube Corporation (“Maverick”) submitted SV rebuttal comments on July 16, 2012, in response to the Chengde Group’s July 5, 2012, submission.⁶ On July 23, 2012, American Tubular Products, LLC (“ATP”),⁷ the Chengde Group, and U.S. Steel submitted their case briefs.⁸ On July 27, 2012, Maverick and U.S. Steel submitted a letter to the Department claiming that ATP and the Chengde Group’s case briefs contained untimely new factual information.⁹ On July 30, 2012, ATP submitted a letter arguing that its case brief did not contain new factual information.¹⁰ On August 1, 2012, the Department released letters to both ATP and the Chengde Group informing them that it found that certain factual information in their case briefs was untimely submitted and instructed them to submit revised case briefs with the untimely factual

⁴ See ATP’s rebuttal brief “Oil Country Tubular Goods from the People’s Republic of China: First Administrative Review; Rebuttal Brief”; see also Chengde’s rebuttal brief “Oil Country Tubular Goods from China; Submission of Jiangsu Chengde’s Rebuttal Brief”; see also TWV’s rebuttal brief “Oil Country Tubular Goods from the People’s Republic of China”; see also U.S. Steel’s rebuttal brief “First Administrative Review of Oil Country Tubular Goods from the People’s Republic of China”; see also Maverick’s rebuttal brief “Oil Country Tubular Goods from the People’s Republic of China: Rebuttal Brief” all dated August 10, 2012.

⁵ See Letter from the Chengde Group, “Oil Country Tubular Goods from the People’s Republic of China; Submission of Surrogate Value Information for the Final Results” dated July 5, 2012.

⁶ See Letter from U.S. Steel, “First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People’s Republic of China” dated July 16, 2012; see also Letter from Maverick, “Certain Oil Country Tubular Goods from the People’s Republic of China: Rebuttal Comments in Response to Jiangsu Chengde Steel Tube Share Co., Ltd.’s Submission of Surrogate Value Information” dated July 16, 2012.

⁷ ATP is an importer of subject merchandise.

⁸ See Letter from ATP, “Oil Country Tubular Goods from the People’s Republic of China: First Administrative Review; Case Brief” dated July 23, 2012; see also Letter from the Chengde Group, “Oil Country Tubular Goods from China; Submission of Jiangsu Chengde’s Case Brief” dated July 23, 2012; see also Letter from U.S. Steel, “First Administrative Review of Oil Country Tubular Goods from the People’s Republic of China” dated July 23, 2012.

⁹ See Letter from Maverick and U.S. Steel, “Oil Country Tubular Goods from the People’s Republic of China: Objection to New Factual Information and Request for Extension” dated July 27, 2012.

¹⁰ See Letter from ATP, “Oil Country Tubular Goods from the People’s Republic of China: First Administrative Review” dated July 30, 2012.

information removed by August 3, 2012.¹¹ ATP and the Chengde Group submitted their revised case briefs on August 2, 2012.¹²

SCOPE OF THE ORDER

The merchandise covered by the order consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The merchandise covered by the order also covers OCTG coupling stock. Excluded from the order are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80. The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.

DISCUSSION OF THE ISSUES

Comment 1: Valuation of Steel Billets

Whether Steel Billet Inputs Are Alloy or Non-Alloy Steel

¹¹ See Letter from the Department to ATP, “Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from the People’s Republic of China, Untimely New Factual Information” dated August 1, 2012; see also Letter from the Department to Jiangsu Chengde, “Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from the People’s Republic of China, Untimely New Factual Information” dated August 1, 2012.

¹² See Letter from ATP, “Oil Country Tubular Goods from the People’s Republic of China: First Administrative Review; Revised Case Brief” dated August 3, 2012; see also Letter from Chengde, “Oil Country Tubular Goods from China: Submission of Jiangsu Chengde’s Revised Case Brief” dated August 2, 2012.

- ATP argues that the surrogate value that the Department used for steel billets in the *Preliminary Results* is incorrect because Chengde consumed only non-alloy steel billets to produce subject merchandise but the Department valued steel billets using Harmonized Tariff Schedule (“HTS”) category 7224.90, which is a basket category that would include alloy steel billets.
 - ATP asserts that Chengde later provided mill test certificates for its U.S. sales that demonstrate that carbon steel billets were used to produce the subject merchandise.
- Chengde also argues that it used only non-alloy steel billets in the production of the subject merchandise.
 - Chengde claims that it initially suggested that the Department value steel billets using HTS item 7224.90 because the Department had used that category in the preliminary determination of the initial investigation.
 - Chengde claims it uses round cross section billets of carbon steel to produce subject merchandise.
 - Chengde asserts that the administrative record contains mill certificates that establish that it used carbon steel billets, not alloy steel billets, to produce the subject merchandise.
- U.S. Steel argues that the Department should continue to value Chengde’s steel billets as alloy steel using Indonesian import price data under HTS 7224.90.
 - U.S. Steel asserts that in Chengde’s initial response to the antidumping questionnaire, it reported that the steel billets that it consumed to produce the subject merchandise should be valued using import price data under HTS 7224.90, *i.e.*, “other semi-finished products of alloy steel.”
 - U.S. Steel maintains that Chengde never disputed the use of an alloy steel billet until the submission of its brief and that the Department has consistently rejected claims that are asserted for the first time in party’s case brief in circumstances such as these.¹³
 - U.S. Steel asserts that all parties relied on Chengde’s representation that its steel should be valued as alloy steel, and that by waiting until the briefing period to argue that the billets are non-alloy, Chengde has deprived the Department and the petitioners the opportunity to probe this claim.
 - U.S. Steel argues that the mill test certificates Chengde submitted are not sufficient to show that the Department should value its steel billets using an HTS

¹³ See U.S. Steel’s case brief at page 3 where it cites *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People’s Republic of China*, 72 FR 9508 (March 2, 2007) (“*Activated Carbon 2007*”); *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) (“*WBF 2008*”); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005) (“*Live Swine 2005*”).

code for carbon steel billets in the final results because the mill test certificates covered only a small quantity of its sales of subject merchandise, and because it provided only the first page of the mill test certificates.

- Maverick argues that the Department should continue using the alloy steel to value Chengde's billet inputs.
 - Maverick notes that, despite ATP's and Chengde's later positions, Chengde initially advocated the use of an alloy steel value for valuing Chengde's steel billets, implicitly indicating the billets at issue were alloy.
 - Maverick asserts that Chengde's contention that the Department should use an alloy steel surrogate value to value all its billets because "most" of its mill test certificates indicate that its steel billets contained less than 0.25 percent carbon is contradicted by the fact that Chengde's website establishes that it uses round billets with carbon contents above and below 0.25 percent, as well as alloy billets, in OCTG production.
 - Maverick argues that because Chengde has failed to provide all mill test certificates for L80 OCTG, the Department cannot assume that all of its L80 grade tubes are carbon, non-alloy.
 - Maverick argues that Chengde deliberately omitted mill test certificates from its submission to the Department for OCTG grades (including alloy P110 pipe and alloy L80) it exported to the U.S. during the period of review ("POR"), and what certificates it did submit show it consumed steel billets with carbon contents above and below 0.25 percent, making the exclusive use of a low carbon steel billet HTS inappropriate.
 - Maverick asserts that Chengde has failed to clarify what percentage of its billets are low carbon, high carbon, and alloy, and the Department should not reward this behavior by using only low carbon steel billets to value Chengde's total billet consumption.
- TMK IPSCO, Wheatland Tube Company, and V&M Star, (collectively "TWV") argue that Chengde itself initially asserted that HTS 7224.90, an alloy steel classification most accurately reflected the steel it used to produce subject merchandise, although, it later claimed to have used non-alloy steel.

Surrogate Value Sources

- ATP and Chengde contend that Indonesian import values for carbon steel billets are aberrational and unusable and that there are no OCTG producers in Indonesia that produce OCTG using billets. ATP further contends there are no useable Thai surrogate value data on the record for HTS 7207.19.
 - ATP contends that the Department should value steel billets using Ukrainian import data because 1) Ukraine has significant import volumes at representative prices which are corroborated by price data from the London Metal Exchange ("LME"), 2) Ukraine is a known producer and exporter of OCTG, and 3) useable Ukrainian import data for HTS numbers 7207.19 and 7207.20 cover a

substantially larger quantity of billets than the import data for Indonesia and Thailand.

- Alternatively, ATP argues that the Department should use the LME data to calculate a surrogate value for carbon billets.
- Chengde claims that Ukrainian import values for steel billets are corroborated by LME price data and that the Court of International Trade has confirmed that global market economy prices may be used to corroborate competing surrogate value data from the appropriate surrogate countries.¹⁴
- Chengde argues that where the surrogate value from the primary country for a certain input, in this case steel billets, is aberrational or is not suitable, the Department prefers to select a surrogate value from among the other countries that have been found to be economically comparable to the nonmarket economy (“NME”) country in question who are significant producers of the subject merchandise.¹⁵
- Moreover, Chengde argues that in the final determination of the less than fair value investigation, the Department used Indonesian HTS item 7207.20 to value steel billets only because the respondent used carbon steel billet with a carbon content greater than 0.25 percent, whereas Chengde uses carbon steel billets with carbon content under 0.25 percent.
- U.S. Steel argues that the Department should value steel billets using a simple average of Indonesian imports prices under HTS 7224.90, HTS 7207.19, and HTS 7207.20.990 which cover alloy steel and non-alloy steel with carbon contents above and below 0.25 percent by weight.¹⁶
 - U.S. Steel claims that Indonesian Import data under HTS 7207.19 and HTS 7207.20.990 are not aberrant. U.S. Steel argues that the import volumes are not small by the Department’s standards and it is not the Department’s normal practice to reject data solely on the magnitude of import volumes, rather the Department examines whether AUVs are aberrant.
 - U.S. Steel argues that ATP’s contention that the AUV of Indonesian imports under HTS 7207.19 and HTS 7207.20.990 are aberrational based on a comparison of import prices within the import data for each HTS number, but that it is not the Department’s practice to use the AUVs of imports from certain suppliers into the surrogate country to determine if the AUV for all imports into that country are aberrant. Rather, U.S. Steel argues that the Department’s

¹⁴ Chengde cites *Peer Bearing Company-Changshan v. United States*, 752 F. Supp.2d 1353, 1371 (CIT 2011).

¹⁵ Chengde cites *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 (January 6, 2010), and accompanying Issues and Decision memorandum at Comment 3 and *Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent To Revoke, in Part, of the Sixth Antidumping Duty Administrative Review*, 77 FR 12801, 12807-08 (March 2, 2012).

¹⁶ U.S. Steel cites *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18 2011), and accompanying Issues and Decision Memorandum at Comment 20.

established practice is to compare the AUV for all imports into a single country to other benchmarks on the record to determine if the AUV is aberrant.

- U.S. Steel argues that LME daily and weekly prices from the LME for steel billets are not an appropriate benchmark for determining whether the AUVs for Indonesian imports are aberrant.
- U.S. Steel argues that historical Indonesian AUVs and import volumes do not show Indonesian import prices are aberrational. Moreover, it argues there is nothing on the record to show that price variations are anything other than normal fluctuations in the market for steel billets, and further, the AUVs for Indonesian imports under HTS 7207.19 and HTS 7207.20.9900 during the POR are completely in line with all of the relevant benchmarks on the record including the surrogate value used by the Department in the original investigation of this proceeding.
- U.S. Steel argues that the Department should not value steel billets using Ukrainian values. U.S. Steel argues that relative to Ukrainian import data, Indonesian import data is equally or more input specific. U.S. Steel contends that Indonesian imports under the 10-digit HTS code 7207.20.9900 (semi-finished steel products containing greater than 0.25 percent of carbon of circular cross section) are more specific than the Ukrainian imports under the six-digit code 7207.20 (semi-finished steel products containing greater than 0.25 percent of carbon). In addition, U.S. Steel claims that the Ukrainian import data are clearly unreliable due to entrenched corruption in Ukraine and, thus, are not suitable for use in valuing Chengde's steel billets.
- Finally, U.S. Steel argues that the Department should not use the LME Data to value Chengde's steel billets.
- Maverick argues that the Department was right to value Chengde's billets using Indonesian import data. Maverick argues that for the Department to regard a surrogate value as aberrational, it must be much higher or lower than benchmark values and the imported quantity must be so small as to be commercially meaningless. Maverick contends that neither of these conditions are applicable to the Indonesian data.
 - Maverick argues that the use of Ukrainian import data would be inappropriate because it is aberrational. Maverick argues that LME data, cited by ATP in support of using Ukrainian prices for billets actually demonstrate that Ukrainian data are aberrational. Maverick contends that LME data are distorted because they include price data for billets from NME countries, subsidy countries and prices for square billets, rather than the round billets consumed by Chengde. Maverick argues that this confirms that Ukrainian prices, which are comparable to those on the LME, are inappropriate surrogates. In addition, Maverick argues that Thai billet data, also cited in support of using the Ukrainian values, reflects only non-OCTG types of billets.
 - Maverick argues further that the Ukrainian and Thai HTS values on the record do not include alloy billet values, while the LME billet chemistries do not reflect any of Chengde's high carbon (J55, K55, and N80) billets or high chromium P110 and L80 billets. Moreover, Maverick argues that Indonesian values are reflective of

the carbon and alloy billets consumed by Chengde.

- Maverick claims that the respondents have not provided record evidence to support their claim that there are no companies in Indonesia using steel billets to produce comparable merchandise. Maverick argues that this assertion runs contrary to evidence on the record and a Department memorandum.
- Maverick argues that government corruption is widely-noted and pervasive in Ukraine, and this calls into question the reliability of Ukrainian import statistics.
- Maverick notes that Chengde said it uses “round cross section billets of carbon steel” in OCTG production, and argues that the Department should use HTS 7207.20.99.00, covering high carbon round steel billets used for OCTG production, if it declines to use only the alloy HTS subheading.

Department’s Position:

Whether Chengde Used Non-Alloy Steel in the Production of Subject Merchandise

In examining the record of the present proceeding, we find that Chengde’s suggestion that the Department value steel billets using price data for HTS 7224.90, which covers only alloy steel, indicates that it consumed alloy billets. In addition to Chengde’s indication that it used alloy billets in the production of the subject merchandise, we find that other record evidence supports the determination that Chengde consumed alloy billets as well. Because record evidence also indicates that Chengde consumed non-alloy steel billets, *i.e.*, low carbon and high carbon non-alloy steel billets, we will include a value for non-alloy steel in the surrogate value for steel billets.¹⁷

Section D of the Department’s original questionnaire, under “Raw Material Inputs” specifically asks the respondent to “Describe each type and grade of material used in the production process.”¹⁸ Chengde did not respond directly to this request but did provide a worksheet in which it suggested surrogate values. In this suggested surrogate value worksheet, the Department requests, among other things, the factor of production (“FOP”) category, sources of suggested surrogate value, HTS number of suggested surrogate value, and the classification of the product as reported in the source.¹⁹ In this worksheet, Chengde suggested an HTS number to value steel billets that covered only alloy steel. Chengde also provided three specifications, SA106C, 28MN2 and SA210C, none of which indicate whether the steel is alloy or non-alloy.²⁰

In our supplemental questionnaire, dated December 12, 2011, we specifically asked Chengde to:

13. Please provide a complete technical description of each of the inputs used to produce the subject merchandise during the POR. Include chemical specifications, purity, grades/standards, and mineral/metal content, etc., for each reported FOP.
 - a. Where grades are applicable, identify the standards organization that

¹⁷ See below and Analysis Memorandum, Jiangsu Chengde Steel Tube Share Co., Ltd. (“Jiangsu Chengde”), Taizhou Chengde Steel Tube Co., Ltd. (“Taizhou Chengde”), and Yangzhou Chengde Steel Tube Co., Ltd. (“Yangzhou Chengde”) (collectively “the Chengde Group”) Final Results, dated December 7, 2012 (“Final Analysis Memorandum”) for additional discussion.

¹⁸ See Original Questionnaire at D-8.

¹⁹ See Appendix VI of the Chengde’s questionnaire response.

²⁰ See Exhibit D-5 of Chengde’s November 16, 2011, questionnaire response.

develops/maintains/publishes the reported grade/standard, e.g. , ASTM International, ANSI, API, ISO, etc.

b. Provide complete specifications for each grade/standard for each reported FOP as published by the relevant standards organization,

c. For each FOP used to produce the subject merchandise, and each packing input, please provide the following documents (translated), for the first purchase during the POR:

1. Purchase Order or Purchase Contract;
2. Supplier's Invoice;
3. Packing List; and,
4. Certificate of Assay.

In response to the supplemental question above, Chengde merely stated “Please refer to Exhibit S1-15 for the description of inputs used to produce the subject merchandise during the POR.” The description provided for steel billets in Exhibit S1-15 states: “SA106C; 28MN2; SA210C, please refer to mill certificates provided in Exhibit S1-15 for detailed information for the steel billets.” No additional mill test certificates or descriptions were provided for steel billets (or finished OCTG) in Exhibit S1-15.

In addition to Chengde’s indication that its steel billets are comprised of alloy steel, there is other evidence on the record indicating that Chengde consumed alloy steel in the production of subject merchandise. Chengde’s cost reconciliation contains a “Monthly Steel Billet Consumption Statement” and inventory out slips that show Chengde consumed alloy steel billets during the POR.²¹ Additionally, as noted by petitioners, Chengde’s website shows that it produced and sells alloy-based OCTG.²² Also, as noted by petitioners, Every L-80 steel listed in the ISO 11960 tables has a maximum range for at least some element exceeding the threshold set by customs to be classified as an alloy.

As stated above, the specifications provided by Chengde for steel billets, SA201C, SA106C, and 28MN2, are not dispositive as to the type of billets consumed by Chengde to produce subject merchandise. Of these specifications, only SA210C is defined on the record in Chengde’s company brochure.²³ However this specification is not conclusive as to the type of steel billet consumed. The chemical content shown for SA210C indicates that, depending on silicon content, SA210C could be either alloy or non-alloy steel. Furthermore, specification SA210C may not apply to OCTG. Chengde’s company brochure indicates that the SA210C is a standard applicable to boiler pipe, not OCTG. The mechanical and chemical specifications for SA210C are defined in the “Tubes for power generation & petrochemical” section under “ASME SA210 – American Boiler and Pressure Vessel Code.” The “Application” as stated in this section is “For the low pressure in the boiler (not more than the general stress 5.88Mpa, in the temperature below 450 C) of the heating surface tube; for the high-pressure boiler (pressure in general more than 9.8 Mpa, the temperature 450 C- 650 C of inter) face of the heat pipe, economizer, superheater, heat, with the petrochemical.” Thus, it is not clear whether Chengde has provided specifications for billets to produce OCTG or nonsubject boiler pipe, which it produces in the same facilities as OCTG.

²¹ See Exhibit R2, “Cost Reconciliation,” of Chengde’s section D questionnaire response, specifically “Monthly Steel Billet Consumption Statement” and “inventory out slip.”

²² See U.S Steel’s surrogate value rebuttal submission “First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China” dated July 16, 2012; see also U.S. Steel’s surrogate value rebuttal submission dated July 16, 2012 at Exhibit J, page 2.

²³ See Chengde’s company brochure, Exhibit A-19 of its section A questionnaire response.

There is also evidence on the record that some portion of the subject merchandise was produced using non-alloy billets. This evidence is in the form of mill test certificates for the finished merchandise. However, these mill test certificates cover only part of the subject merchandise sold during the POR. While only the first pages of the mill test certificates, the summary pages, were submitted, we consider them to be a reliable basis on which to determine the chemical composition of the steel billets used to produce subject merchandise because, based on Chengde's production process, the chemical composition of the subject merchandise produced will be the same as the steel billets consumed to produce it. Therefore, we will weight-average the SV for steel billets with a surrogate value for non-alloy steel by that percentage of sales that are covered by the mill test certificates.²⁴

Surrogate Values

Because the record indicates that alloy, low carbon non-alloy, and high carbon non-alloy steel billets were consumed during the POR, for the final results we are valuing steel billets using surrogate values for alloy and low carbon non-alloy and high carbon non-alloy steel billets. Because there is no evidence on the record demonstrating the quantities of each type of non-alloy billet consumed during the POR to produce subject merchandise, we are valuing the quantity of billets required to produce the non-alloy OCTG covered by the mill test certificates on the record of this review using equal amounts of Indonesian surrogate values for low carbon non-alloy steel and high carbon non-alloy steel, HTS numbers 7207.19 and 7207.20. For the remaining sales, for which no mill test certificates were submitted, we are valuing steel billets using an Indonesian surrogate value for alloy steel, HTS 7224.90

Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act"), we find that the values derived from the Indonesian import data for HTS numbers 7207.19, 7207.20, HTS 7224.90 represents "the best information available" for valuing steel billets. The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and free of taxes and duties.²⁵ The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering available record evidence regarding the particular facts of each industry.²⁶ Although there is no hierarchy for applying the surrogate-value selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' surrogate value is for each input."²⁷

Surrogate Value Sources for Alloy Billets

For the *Preliminary Results*, the Department valued Chengde's alloy steel billets with Indonesian HTS 7224.90. No parties have argued that this value is an unsuitable source for the valuation of

²⁴ See the Final Analysis Memorandum for the weighting calculation which includes business proprietary information.

²⁵ See, e.g., *First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

²⁶ See *Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

²⁷ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

alloy billets. For the final results, we will continue to value alloy steel billets with Indonesian HTS 7224.90.

Surrogate Value Sources for Non-Alloy Steel Billets

We disagree with ATP's and Chengde's contentions that the AUVs for Indonesian HTS numbers 7207.19 and 7207.20 are aberrational. In determining whether a surrogate value is aberrational, it is the Department's practice to first compare it to the AUVs calculated using the Global Trade Atlas ("GTA") data for the input at issue of the other countries found by the Department to be economically comparable to the NME country.²⁸ As noted in the *Preliminary Results*, the Department identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as the other countries comparable to the PRC in terms of economic development for purposes of this review.²⁹

For HTS 7207.19, the AUV's on the record are as follows: Indonesia \$754.27, Philippines \$1,740.68, South Africa \$1,270.96, and Ukraine \$600.57. Thus, by AUV, the Indonesian data are not only not aberrational compared to the other data, they are well within the range of the AUV's for the other economically comparable countries. For HTS 7207.20, the AUV's on the record are: Indonesia \$1,166.05, Thailand \$567.55, and Ukraine \$653.84.. Though the AUV for Indonesia is higher than the others, in making a determination as to whether data are aberrational, the Department has found the existence of higher prices alone does not necessarily indicate the price data are distorted or misrepresentative, and thus is not sufficient to exclude a particular surrogate value.³⁰

Furthermore, while the total usable import volume (26,574 metric tons ("MT")) for HTS 7207.19 and HTS 7207.20 into Indonesia is low relative to imports into Ukraine (346,530 MT), we do not consider this volume low in absolute terms. Moreover, ATP and Chengde have presented no evidence demonstrating that this volume of imports constitutes aberrational or unrepresentative data, or somehow distort the overall calculated AUV. Lastly, even if this volume were to be considered low, the Department has found that small quantities of imports are not inherently distortive with respect to the calculation of normal value and the U.S. Court of International Trade ("CIT") has affirmed these findings.³¹

We agree with U.S. Steel that LME daily and weekly prices from the LME for steel billets are not an appropriate benchmark for determining whether the AUVs for Indonesian imports are aberrant. As mentioned above, the Department normally determines whether AUVs are aberrational by comparing them to the GTA data AUVs of economically comparable countries. The LME data are not only from non-economically comparable countries, they also contain data from countries the Department would not consider viable sources: NME countries and countries that may receive generally available export subsidies. Neither ATP nor Chengde have proposed a specific methodology for calculation of a surrogate value using the LME data and have not demonstrated what values within the LME data should be included or excluded from the calculation. Further, the Department normally will value all factors in a single surrogate country,

²⁸ See *Trust Chem Co. v. United States*, 791 F. Supp. 2d 1257 (Ct. Int'l Trade 2011) ("*Trust Chem 2011*").

²⁹ See Memorandum "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods ("OCTG") from the People's Republic of China ("China")" dated November 28, 2011.

³⁰ See *Certain Activated Carbon From the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012).

³¹ See *Trust Chem 2011* (where the court noted that "the question is whether the relative quantity of imports is distortive).

if reliable data meeting the Departments criteria are available from that country, and, in this case, we do have such data while the LME data are not specific to the surrogate country in this case, Indonesia.³²

We do not agree with ATP's argument that there is no production of seamless OCTG from billets in Indonesia, thus billets imported into Indonesia would not be used for OCTG. First, we note that, in the *Preliminary Results*, the Department determined that Indonesia is a significant producer of comparable merchandise.³³ No new information has been placed on the record since the *Preliminary Results* that would lead us to reverse this finding. Second, ATP points to no evidence on the record that there are no producers of OCTG from billets in Indonesia, and third, even if we were to accept ATP's contention, ATP has presented no evidence that these facts would lead to the conclusion that the billets imported into Indonesia are not specific to the inputs used by Chengde.

We find that record evidence does not support a finding that the HTS number 720.20.9900 suggested by U.S. Steel to value high carbon steel billets consumed by Chengde is more specific than HTS 7207.20. U.S. Steel argues that HTS number 7207.20.9900 covers round cross-section steel billets which it argues is the type consumed by Chengde in production of subject merchandise. However, the HTS DESCRIPTION IS "semi-finished iron/non-alloy steel, cont .25%<=CARBON<.696, OTHER."³⁴ This description does not specify that the material covered by this category is round, and furthermore, it places an upper limit on carbon content which may render it inappropriate for valuing high carbon billets.

Comment 2: Whether to Grant Chengde a By-product Offset

- ATP states that the Department was wrong to deny Chengde a by-product offset. ATP argues that, although Chengde does not track the scrap amounts generated, it is clear that scrap is produced and regularly sold as an ongoing practice, and Chengde provided the monthly quantities sold during the POR.
 - ATP adds that Chengde has been fully responsive to scrap-related data requests and provided what records it does have and it is not Department practice to deny the offset because scrap production figures are not regularly recorded.
 - ATP points out that the Department granted the offset in the *Multilayered Wood Flooring from China*³⁵ case for Layo Wood, another respondent that only recorded scrap sales.
- U.S. Steel counters that Chengde failed to demonstrate its scrap was produced through the production of subject merchandise (Chengde also manufactures non-subject merchandise in the same facilities) during the POR.
- U.S. Steel argues that Chengde's and ATP's references to *Multilayered Wood Flooring from China* are misguided, as in that case, unlike the instant case, it was demonstrated that the scrap at issue was produced during the POR.
- TWV contends that the burden was on Chengde to provide POR-specific data on the scrap it produced. TWV asserts that because Chengde neither recorded scrap quantities as they were generated nor kept an inventory of produced scrap, it is, therefore, unknown

³² See 19 CFR 351.408(c)(2)

³³ See *Preliminary Results*, 77 FR at 34015.

³⁴ See U.S. Steel's surrogate value submission dated January 18, 2012 at Attachment 1, Tab A.

³⁵ See *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) ("*Multilayered Wood Flooring*"), and accompanying Issues and Decision Memorandum at Comment 23.

when the scrap was actually made, and scrap sales cannot be tied to production during the POR.

Department's Position:

For the final results, the Department has determined it is not appropriate to grant Chengde a by-product offset for steel scrap because Chengde has not met its burden of demonstrating that it is entitled to a steel scrap by-product offset. The Department recently explained its practice regarding by-product offsets as follows: "... the by-product offset is limited to the total production quantity of the by-product ... produced during the POR, so long as it is shown that the by-product has commercial value."³⁶ The party requesting the offset bears the responsibility for substantiating the quantity of the by-product offset produced and demonstrating that the by-product has commercial value.³⁷ Chengde has provided evidence that steel scrap was sold during the POR³⁸ but has not substantiated the quantity of scrap generated from the production of subject merchandise during the POR. It stated it "... does not record the production of steel scraps. Steel scrap is measured only when the steel scraps sold and the accounting department entered the sales quantity and sales price into the accounting system."³⁹ Chengde submitted a chart covering the POR equating sales to total production of subject and nonsubject merchandise but did not support this chart with evidence such as inventory ledgers or inventory out slips.

The antidumping questionnaire issued to Chengde explicitly asked for both production records and records such as sales invoices demonstrating the disposition of its by-product.⁴⁰ Thus, a respondent needs to provide and substantiate the quantity of by-products it generated from the production of subject merchandise during the POR as well as demonstrate that the by-product has commercial value. Providing the production quantity is important because in considering a by-product offset, the Department examines whether the by-product was produced from the quantity of FOPs reported and whether the respondent's production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset.⁴¹ In addition, the Department has stated that "Scrap sold but not produced during the POI should not be included within the scrap offset because it would be unreasonable to offset the cost during the POI for scrap produced prior to the POI."⁴²

ATP's reference to *Multilayered Wood Flooring* is not applicable to this review. In *Multilayered Wood Flooring*, although the respondent did not account for production of scrap as it was produced in its books and ledgers, the Department determined that based on information provided by the respondent, during the POI a quantity of salable wood scrap was "... generated and sold monthly."⁴³ At verification, the Department observed the generation and storage of

³⁶ See *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 18; see also *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012), and accompanying Issues and Decision Memorandum at Issue 3.

³⁷ See *Id.*

³⁸ See Chengde's sections C and D questionnaire response dated November 17, 2011 at exhibits D-12 and D-13.

³⁹ See *Id.* at pages D-14 and D-15.

⁴⁰ See the antidumping duty questionnaire issued to Chengde by the Department on September 19, 2011.

⁴¹ See *Mid Continent Nail Corporation v. United States*, Ct. No. 08-224, Slip Op. 2010-47 (CIT May 4, 2010); see also *Silicon Metal*.

⁴² See *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman*, 77 FR 64480 (October 22, 2012), and accompanying Issues and Decision Memorandum at Comment 3.

⁴³ See *Multilayered Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 23.

scrap in the respondent's various workshops, examined the POI sales documentation and noted the types and quantities of scrap that were sold by the respondent. The Department determined that based on these procedures, the respondent had provided adequate support for its claimed scrap offsets.

Comment 3: Valuation of Brokerage and Handling

- ATP argues that the Department should not value its brokerage and handling (“BNH”) expense using a container rate because Chengde ships its cargo as bulk cargo stowed below deck and not in containers. In addition, ATP claims that if the Department uses a container rate, it should use the rates provided in *Doing Business in Indonesia 2012*. Further, ATP argues that the appropriate surrogate value for Chengde’s BNH expense is \$3/ton, as demonstrated in the Indonesian invoices submitted on the record and as used in recent cases before the Department.⁴⁴
- Chengde argues that the surrogate value for BNH that the Department derived from the World Bank Group’s publication, *Doing Business in Indonesia*, is not supported by substantial evidence. Specifically, Chengde claims that: the surrogate value relates to brokerage costs specific to a 20 foot container with a maximum weight of 10,000 kilograms (“KG”), whereas Chengde reported it did not ship subject merchandise in containers; and it submitted an invoice for shipments of seamless pipe exported from the PRC to Indonesia and Singapore in a bulk vessel, and because subject merchandise was shipped in the same manner, the surrogate value should be based on the invoice for shipments to Indonesia and Singapore.
 - Furthermore, Chengde argues that if the Department continues to value BNH based on container rates, it should base its calculation on a container weight of 28,200 KG, representing the weight of a full container, rather than 10,000 KG.
- TWV argues that the department properly derived the surrogate value for export BNH, as there is no reason to believe that charges for loading cargo stowed below deck would differ from those for loading cargo in containers. Furthermore, TMK argues that it is not evident that the BNH value that Chengde provided for the unloading of seamless pipe exported to Singapore and Indonesia, reasonably corresponds to charges for the loading of cargo for export to the United States.
 - Moreover, TWV argues that basing the calculation on a container weight of 10,000 KG is reasonable because the subject merchandise is not solid, most of the space displaced by the subject steel pipe consists of air, which has virtually no weight. Also, TMK argues that the methodology used to derive the surrogate value used for the preliminary results was based on an assumption of a dry cargo 20-ft full container load that weighs ten tons.
 - Finally, TWV argues that the BNH charges reported by the World Bank in *Doing Business 2011: Indonesia*, were specifically calibrated to a 10,000 KG weight per container.⁴⁵

⁴⁴ ATP cites *Certain Polyester Staple Fiber from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 39990, 39995 (July 6, 2012).

⁴⁵ TMK cites its surrogate value submission dated January 18, 2012.

- U.S. Steel argues that ATP's and Chengde's claims that Chengde shipped subject merchandise in bulk rather than containers is not substantiated. U.S. Steel argues that the Department specifically instructed Chengde to "...state whether during marine transportation subject merchandise is shipped..." in containers..." to which Chengde did not respond. U.S. Steel claims that, in fact, Chengde placed on the record invoices that demonstrate that the subject merchandise was shipped in containers.⁴⁶
 - Furthermore, U.S. Steel argues that data to calculate a surrogate value for BNH expenses based on bulk shipments are not on the record of this segment of the proceeding. U.S. Steel claims that the single invoice Chengde placed on the record showing bulk shipment BNH rates does not meet the Department's standard for using broad-based industry averages to calculate surrogate values.⁴⁷
 - U.S. Steel, argues that, in other proceedings, the Department has determined that it is appropriate to value BNH based on a container weight of 10,000 KG because the BNH rate reported is based on the assumption that a 20-foot container contains 10,000 KG of product.⁴⁸
 - Finally, U.S. Steel argues that *Doing Business in Indonesia 2012* is not on the record of this review, so it should not be used for the final results.

Department's Position:

We agree with Petitioners that we should continue to value BNH using an amount based on a container rate. We specifically asked Chengde whether it shipped subject merchandise in containers, but it did not state affirmatively or negatively whether it did so, therefore, without contradictory information on the record with respect to the manner in which Chengde shipped subject merchandise, and given that Chengde has not demonstrated that BNH charges based on a container rate are distortive relative to rates for bulk shipment of subject merchandise, for the final results, the Department is continuing to value BNH using the container rate used in the *Preliminary Results*.⁴⁹ Moreover, reliable data to value BNH for bulk shipments of subject merchandise to the U.S. are not on the record of this review. Further, we disagree with ATP's and Chengde's arguments that the Department should base the BNH rate on a container with a maximum container weight of 28 MT. The surrogate value used for BNH is calculated using *Doing Business in Indonesia 2011*, which is based on a price for a 20-foot container containing 10,000 KG of product. Moreover, this quantity is consistent with the actual quantity of subject merchandise shipped by Chengde during the POR.⁵⁰ Furthermore, we are unable to value BNH using *Doing Business in Indonesia 2012* because this information is not on the record of the instant review.

⁴⁶ U.S. Steel cites Chengde's third supplemental questionnaire response at Exhibit SR-3.

⁴⁷ See U.S. Steel's Rebuttal Brief at footnote 110.

⁴⁸ See U.S. Steel's rebuttal brief at page 31.

⁴⁹ See Chengde's response to the second supplemental questionnaire "Oil Country Tubular Goods from China; Submission of Jiangsu Chengde's Second Supplemental Response" dated March 15, 2012 at item 14.

⁵⁰ See Analysis Memorandum, Jiangsu Chengde Steel Tube Share Co., Ltd. ("Jiangsu Chengde"), Taizhou Chengde Steel Tube Co., Ltd. ("Taizhou Chengde"), and Yangzhou Chengde Steel Tube Co., Ltd. ("Yangzhou Chengde") (collectively "the Chengde Group") dated May 30, 2012 at Section I, Preliminary Margin Statistics, U.S. Total Quantity.

Comment 4: Surrogate Financial Ratios

Financial Ratios

- Prior to the *Preliminary Results*, parties placed the financial statements of three separate companies on the record of this review. (1) PT Bakrie & Brothers Tbk (“Bakrie”); (2) Krakatau Steel Group (“Krakatau Steel”); and, (3) PT Citra Tubindo Tbk (“Citra Tubindo”). In the *Preliminary Results*, the Department determined the surrogate financial ratios solely on the basis of Citra Tubindo. It rejected Bakrie because it did not earn a profit, and it rejected Krakatau Steel because it did not produce comparable merchandise. Parties did not place additional financial statements on the record after the *Preliminary Results*.
- Petitioners argue that the Department should determine the surrogate financial ratios using the financial statements of Bakrie, Krakatau Steel and Citra Tubindo. The parties raised the following issues with respect to the financial statements on the record of this review.

Bakrie

- U.S. Steel argues that the Department erroneously determined to exclude Bakrie’s financial statements from the calculation of the surrogate financial ratios because it did not show a profit. U.S. Steel contends that Bakrie’s net loss results from a loss on the sale of certain long-term investments, and that the Department excludes such items from the calculation of the surrogate financial ratios because such items are not related to general operations of the company, and as a consequence, do not reflect the cost of producing comparable merchandise.
 - U.S. Steel cites the following cases in support of its position: (1) *Persulfates From The People’s Republic Of China: Final Results Of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) (“*Persulfates from the PRC*”), and accompanying Issues and Decision Memorandum at Comment 5 (excluding dividend income from the calculation of the surrogate financial ratios because it is “generally investment income earned on equity investments.”); (2) *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) (“*OTR Tires from the PRC*”), and accompanying Issues and Decision Memorandum at Comment 18.D, (where the Department explained that it was its practice to exclude from the calculation of the surrogate financial ratios “income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company.”); (3) *Third Administrative Review of Frozen Warmwater Shrimp From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) (“*Shrimp from the PRC*”), and accompanying Issues and Decision Memorandum at Comment 4.a (excluding “Profit on sales of shares” from the calculation of the surrogate financial ratios because it contained long-term investments); (4) *Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) (“*FMTCs from the PRC*”), and accompanying Issues and Decision Memorandum

at Comment 1.A (excluding “profit on sale of investments” from the calculation of the surrogate financial ratios); (5) *Certain Non-Frozen Apple Juice Concentrate From The People’s Republic Of China: Final Results And Partial Rescission Of The 2001-2002 Administrative Review, And Final Results Of The New Shipper Review*, 68 FR 71062 (December 22, 2003) (“*Apple Juice from the PRC*”), and accompanying Issues and Decision Memorandum at Comment 2 (where the Department explained that the loss from the sale of shares should be excluded in the calculation of the company’s profit because it relates to an investment rather than the manufacturing operations of the company).

- Specifically, U.S. Steel claims that in *Apple Juice from the PRC*, the Department rejected the argument that it should not use the financial statements of a company reporting a net loss during the relevant period because the Department argued that the net loss was a direct result of the sale of shares in subsidiaries, which relates to an investment rather than the manufacturing operations of the company.⁵¹ U.S. Steel maintains that the Department determined that the sale of shares should be excluded from the profit calculations, and, as a result, the company showed a profit, and the financial statements were acceptable for the purposes of determining surrogate financial ratios.⁵²
- Similarly, U.S. Steel argues that in *OTR Tires from the PRC*, the Department excluded from the calculation of profit, a line item identified as “dividend from long term, other than trade investment,” because it was related to investment activities rather than the general operations of the company.⁵³ According to U.S. Steel, the Department specifically emphasized that it was excluding the investment income from the calculation of profit because, the Department explained that “{i}n instances where we can identify, from the face of the financial statement, line items that should be excluded {from the calculation of} SG&A and interest expenses, we will also remove those line items from profit.”⁵⁴
- ATP and Chengde argue that the Department properly excluded Bakrie’s financial statements because Bakrie is an investment company rather than a manufacturing company. ATP maintains that Bakrie’s financial statements consolidate its operations in many far flung business units including thermal coal production and export, rubber production, telecommunications, the gas industry, property development and infrastructure development (including toll roads, and power and gas pipelines) as well as the production of metal productions. ATP and Chengde contend that Bakrie is primarily an investment company.
 - Furthermore, ATP and Chengde assert that Bakrie’s diverse business segments include (1) trading and infrastructure (comprised of trading business, steel pipe, steel plates, construction materials and services); (2) telecommunications; and, (3) plantations (comprised of rubber and other plantations products, plantation business and management and trading of plant yields and primary products) and thus it is not comparable to the respondent. ATP argues that steel pipe manufacturing is only a small part of Bakrie’s total trading and infrastructure business, which accounts for only 50 percent of its revenues, and that Bakrie’s

⁵¹ See *Apple Juice from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2.

⁵² *Id.*

⁵³ See *OTR Tires from the PRC*, and accompanying Issues and Decision Memorandum at Comment 7.

⁵⁴ *Id.*

financial statements do not represent those of a producer of the merchandise under review.

- ATP disagrees with U.S. Steel's citation of *OTR Tires from the PRC* because, unlike the financial statements of the company at issue in *OTR Tires from the PRC*, Bakrie is an investment company. Therefore, ATP maintains that it would be distortive to isolate one single investment from many others and adjust Bakrie's profit for an extraordinarily large loss from that single investment.
- ATP and Chengde argue that the cases cited by U.S. Steel support the general proposition that the Department only considers short-term interest income as an offset to interest expense. ATP and Chengde argue that U.S. Steel attempts to extrapolate from these cases that all expenses or losses related to investments rather than general manufacturing operations should be isolated and eliminated from the calculation of financial ratios. Citing *Apple Juice from the PRC*, ATP and Chengde claim that the only support provided for such a precedent on short-term interest income is an aberrational case in 2003 where the Department used Poland as a surrogate country and determined that the sale of shares in a subsidiary was an investment-related expense rather than a manufacturing expense.
- ATP cites the following cases in support of its position: *Persulfates from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5 (it is the Department's practice to adjust interest expenses for interest income earned only on short-term loans"); *OTR Tires from the PRC*, and accompanying Issues and Decision Memorandum at Comment 18.D (The Department's longstanding practice is to disaggregate interest income between short-term and long-term income and to only offset interest expense with the short-term interest revenue earned on working capital.).
- Chengde argues that the Department appropriately declined to use Bakrie's financial statements in accordance with the Department's long-standing practice because Bakrie did not realize a profit. Chengde cites *Rhodia, Inc. v. United States*, 240 F. Supp.2d 1247 (CIT 2002) ("*Rhodia* (CIT 2002)"); *Automotive Replacement Glass Windshields From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004) (refusing to rely on St.-Gobain's financial statement to value profit because it reflected a loss for the relevant time period); *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of the Seventh New Shipper Review*, 69 FR 45012 (July 28, 2004) (refusal to use Agro Dutch's financial data to calculate surrogate profit calculations because the company experienced a loss); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (it is the Department's practice to exclude from the profit calculation information from companies that recorded losses).
- Chengde also disagrees with Petitioner's contention that the Department should attribute Bakrie's overall net loss to the loss incurred on the sale of certain investment assets because Chengde claims that the Department's general practice is to accept a company's profit margin on its face, without looking behind the numbers. Chengde contends that in each of the cases cited above, the Department

excluded those companies that experienced a loss during the relevant period of investigation without further analysis.

Krakatau Steel Group (“Krakatau Steel”)

- U.S. Steel argues that Krakatau Steel produces comparable merchandise. U.S. Steel maintains that Krakatau Steel’s subsidiary, PT KHI Pipe Industries (whose financial data are incorporated into Krakatau Steel’s financial statements) produces a significant quantity of steel pipe, including oil and gas pipes manufactured to the API 5L specification. In addition, U.S. Steel contends that Krakatau Steel produces sponge iron, slabs, billets, hot rolled coils, cold rolled coils, and wire rods, U.S. Steel claims are comparable to oil country tubular goods under the Department’s standard for comparable merchandise. Thus, U.S. Steel argues that the Department should use Krakatau Steel in its determination of financial ratios.
- ATP and Chengde argue that the Department should not use Krakatau Steel audited financial statements to determine surrogate financial ratios because: (1) Krakatau Steel does not produce comparable merchandise whose main products are hot- and cold-rolled coils and wire rods and whose other activities include utilities, infrastructure, EPC, information technology, medical services and trading activities; (2) Krakatau Steel is an integrated producer of flat-rolled steel products, whose cost structure does not reflect the production experience of respondent; (3) the Department determined that Krakatau Steel received countervailable benefits in the countervailing duty investigation of hot-rolled carbon steel flat products from Indonesia. Therefore, ATP argues that the Department should not use Krakatau Steel’s financial statements for the determination of surrogate financial ratios in this review.
 - ATP and Chengde disagree further with U.S. Steel’s contention that Krakatau Steel’s financial statements indicate that the company produces OCTG. Rather, ATP argues that the only kind of pipe products that Krakatau Steel’s financial statements identify are spiral pipes, ERW pipes and steel pipes. ATP and Chengde disagree with U.S. Steel’s contention that page 130 of Krakatau Steel’s financial statements indicates that the company produces OCTG. Rather, ATP argues that page 130 refers to a sales contract signed after the financial statements closed, which ATP and Chengde claim relates to a pipe-line project that may involve line pipe rather than OCTG. ATP thus maintains that with the exception one reference to a certification for API 5L earned in 1977 for the production of spiral pipe, there is no indication in its financial statements that Krakatau Steel produces OCTG. As a result, Chengde contends that Krakatau Steel and Chengde are in entirely different industries.
 - ATP argues that to the extent that Krakatau Steel produces some forms of steel tubes, it does so through an integrated production facility which includes the production of billets. Thus, ATP contends that Krakatau Steel, as an integrated producer, does not reflect the production experience of Chengde Steel Tube Share Co., Ltd. (“Chengde”), who purchases billets. Thus, ATP argues that there is a significant difference in the level of integration between the two companies and results in important differences in cost structure.

Department’s Position: We disagree with U.S. Steel that we have inappropriately excluded the financial statements of Baktrie and Krakatau Steel from the determination of the surrogate

financial ratios. Therefore, for the final results of this review, we will continue to rely solely on the financial statements of Citra Tubindo as the source of surrogate financial ratios.

In selecting financial statements for purposes of calculating financial ratios, the Department's policy is to use data from market economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."⁵⁵ In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.⁵⁶ Although the regulation does not define what constitutes "comparable merchandise," it is the Department's practice to, where appropriate, apply a three-prong test that considers the: (1) physical characteristics; (2) end uses; and (3) production process.⁵⁷ For purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's.⁵⁸ The Department, however, is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."⁵⁹ The Department also rejects financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available.⁶⁰ The Department generally prefers to rely on more than one surrogate financial statement.⁶¹

After examining the financial statements of Bakrie and Krakatau Steel in light of the parties' arguments, we continue to find that the financial statements of Citra Tubindo represent the best information available for calculating surrogate financial ratios for the final results of review.

We have determined not to use Bakrie's financial statements. As we stated in the preliminary results of review, Bakrie did not earn a profit during calendar year 2010. Although, as U.S. Steel points out, it is the Department's policy to exclude from the calculation of the surrogate financial ratios "income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company,"⁶² a further analysis

⁵⁵ See, e.g., *Pure Magnesium From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁶ See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁷ See *Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010), and accompanying Issues and Decision Memorandum at Comment 2; *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum at Comment 5.

⁵⁸ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 13.

⁵⁹ See *id.* (citing *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373 (Fed. Cir. 1999) and *Magnesium Corp. of America v. United States*, 166 F.3d 1364 (Fed. Cir. 1999)).

⁶⁰ See *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

⁶¹ See, e.g., *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 3B; *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review*, 69 FR 42039 (July 13, 2004), and accompanying Issues and Decision Memorandum at Comment 2.

⁶² Citing *OTR Tires from the PRC*, and accompanying Issues and Decision Memorandum at Comment 18.D.

of the record indicates that Bakrie is primarily an investment company.⁶³ As a result, we cannot determine whether the “loss on sale of investment in shares of stock –net”⁶⁴ refers to the main operations of the company, or whether it constitutes a long or short-term asset of the company. Article 1 a of the notes to the financial statements state:

According to Article 3 of the Articles of Association, the scope of the Company’s activities comprises general trading, industry, especially steel pipe manufacturing, building materials and construction products, telecommunication systems, electronic and electrical goods and equity investment in other companies.⁶⁵

Therefore, because equity investments in other companies constitute part of the general operations of the company, it is not clear that the loss on sale of investment in shares of stock should be excluded from the determination of profit for this company.

Secondly, Note 1c of Bakrie’s audited financial statements provides a breakdown of the structure of the company and its subsidiaries.⁶⁶ A brief examination of this list of companies reveals that Bakrie is involved in a broad array of industries, of which steel pipe manufacturing is a small part, based on the asset ownership before consolidation. Article 37 of the notes to the financial statements states further that Bakrie and its subsidiaries classify their products and services into three core business segments: infrastructure, telecommunication and plantations.⁶⁷ It also explains that the production of steel pipes is included in the infrastructure segment which includes: trading, corrugated metal products, cast iron products for automotive parts industry, fiber cement building products, and the provision of multi-discipline fabrication and site engineering. Note 37 also provides a segment-specific income statement which shows that the trading and infrastructure sector generated approximately 60 percent of Bakrie’s total revenue and 90 percent of Bakrie’s net loss.

We agree with ATP and Chengde that U.S. Steel’s cites do not always support U.S. Steel’s position with respect to the “loss on sale of investment in shares of stock.” For example, *Persulfates from the PRC*, *Shrimp from the PRC* and *OTR Tires from the PRC* (in part) refer to the treatment of interest income earned on short-term loans. Although *FMTCs from the PRC*, *Apple Juice from the PRC* and *OTR Tires from the PRC* (in part) refer directly to the sale of investments in stock, all of the surrogate companies at issue were producers, and none of the companies in those cases included investing in other companies as a mainline of business. To the extent that Bakrie is an investment company, as ATP and Chengde contend, these cites are inapposite. Therefore, because we cannot identify Bakrie’s mainline of business, or whether its loss applies to the general operations of the company, and because Citra Tubindo produces subject merchandise which is more specific to Jiangsu Chengde’s exports of merchandise subject to the order, we have determined that Citra Tubindo’s financial statements represent the best available information on the record of this review.⁶⁸ As a consequence, we will not include

⁶³ See, e.g., letter from Petitioners, “First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People’s Republic of China,” (“U.S. Steel’s SV Submission”) at Tab E, Attachment 1, Bakrie & Brothers 2010 Annual Report, at 14 and 15.

⁶⁴ See U.S. Steel’s SV submission, at Tab E, Attachment 1, Bakrie & Brothers 2010 Annual Report, at 233.

⁶⁵ See *Id.* at 239.

⁶⁶ See *Id.* at 245 through 248.

⁶⁷ See *Id.* at 336.

⁶⁸ See *Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 41744 (July 16, 2012) and accompanying *Issues and Decision Memorandum at Comment 2*. See also *Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) and accompanying *Issues and Decision Memorandum at Comment 30*.

Bakrie's financial statements in the determination of the surrogate financial ratios for the final results of this review.

We agree with ATP and Chengde that it is inappropriate to use Krakatau Steel's financial statements in the determination of the surrogate financial ratios in this review. As both ATP and Chengde noted, the Department determined that Krakatau Steel received countervailable benefits in the investigation of hot-rolled carbon steel flat products from Indonesia⁶⁹ and that order is still active. The Department's practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies and there are other more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.⁷⁰ Furthermore, we agree with ATP and Chengde that Krakatau Steel is an integrated steel producer and service provider, with a broad spectrum of products. Given the outstanding CVD order against Krakatau Steel, the financial statements of Krakatau Steel do not represent the best available information for purposes of calculating financial ratios. Given that we have on the record the financial statements of Citra Tubindo, an Indonesian manufacturer and service provider for oilfield tubular goods, as we did in the *Preliminary Results*, it is our practice to use only the financial statements of a producer of the merchandise that is identical to the subject merchandise. (wait for the furniture citation)

Therefore, we will base the surrogate financial ratios for the final results solely on the financial statements of Citra Tubindo, an Indonesian manufacturer and service provider for oilfield tubular goods, as we did in the *Preliminary Results*. As we stated in the *Preliminary Results*, these financial statements are complete, legible, publicly available, and contemporaneous with the POR. Moreover, because Citra Tubindo produces OCTG and begins its production process with green tubes,⁷¹ its production process is similar to Chengde's. Thus, Citra Tubindo's financial statements provide the best information on the record for purposes of determining financial ratios in this segment of the proceeding.

Comment 5: Assessment

- ATP asserts that the Department's stated policy is to calculate assessment rates on a per-MT basis when actual entered value is unavailable.
 - ATP Argues that the Department does not have necessary information on the record concerning the actual entered value to calculate importer-specific assessment rates based on entered value, because the only "entered value" on record is a calculated surrogate unrelated to the actual entered value declared to U.S. Customs and Border Protection ("CBP").
 - ATP notes that in its Preliminary Analysis Memorandum, the Department even calculated a per-MT assessment rate (and left the column "Percent Ad Valorem Assessment Rate" blank).
 - In the final results ATP says the Department should accurately describe its assessment rate calculation and state that "where the Chengde Group did not

⁶⁹ See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 49637 (September 28, 2001).

⁷⁰ See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2d Sess., at 590-913(41988).

⁷¹ See U.S. Steel's SV submission, at Tab F, Attachment 2, at 4.

report the entered value for its sales, we will calculate importer-specific per unit duty assessment rates.”

- U.S. Steel responds that the Department should calculate ATP’s assessment rate in the final results based on entered value, consistent with departmental regulations and practice, which call for the assessment rate to be computed by dividing the dumping margin on the subject merchandise by its entered value. U.S. Steel argues that there is sufficient information on the record for the Department to calculate the entered value of the subject merchandise, even though the entered value that was reported to CBP is not on the record.

Department’s Position:

It is the Department’s practice to calculate per-unit assessment rates where the Department does not have on the record accurate entered values for the subject merchandise.⁷² In the instant case, Chengde did not report actual entered values for its export price sales. While, as noted by U.S. Steel, the Department’s margin calculation program calculates an entered value, this calculation is based in part on a surrogate value for international freight, and does not reflect the actual entered value of the merchandise. Thus, for the final results, the Department will follow its practice and calculate per-unit assessment rates for Chengde.

Comment 6: The Labor Rate Used in the Preliminary Results

- ATP argues that the Department should use data from Chapter 5B, ISIC-Rev. 2-3, sub-classification 28 of the ILO’s Yearbook of Labor Statistics as the surrogate for Chengde’s labor costs. ATP states that the Department incorrectly used data from Chapter 5B, sub-classification 27, despite the Department’s claim that it relied on ISIC Revision 3-D, sub-classification 28.
- U.S. Steel argues that the Department relied on the correct labor sub-classification in the *Preliminary Results*. U.S. Steel argues that the explanatory notes to the *Yearbook of Labor Statistics* make clear that sub-classification 27 includes the “manufacture of seamless tubes, by hot rolling, hot extrusion or hot drawing, or by cold drawing or cold rolling.”⁷³

⁷² ⁷² See, e.g., *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 20782, 20787 (April 6, 2012). See also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Preliminary Results of 2002-2003 Administrative Review and Partial Rescission of Review*, 69 FR 10424 (March 5, 2004) where we stated “Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the entered value is not available, we will direct CBP to apply the resulting per-unit dollar assessment rate against each unit of merchandise in each of the importer’s/customer’s entries under the order during the review period;” *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) where we stated . Blue Field and Xingda did not report entered values for their U.S. sales. Accordingly, we calculated a per-unit assessment rate for each importer (or customer) . . .” and *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) where we stated “. . . we note that these companies did not report the entered value for the U.S. sales in question. Therefore, we have calculated importer-specific per-unit duty assessment rates . . .”

⁷³ See U.S. Steel’s surrogate value submission, “First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People’s Republic of China,” at Exhibit D, Attachment 2 dated January 18, 2012.

Department's Position:

We agree with U.S. Steel that, for the *Preliminary Results*, the Department relied on the correct labor subclassification, Chapter 5B, ISIC-Rev. 2-3, sub-classification 27 which covers “manufacture of seamless tubes, by hot rolling, hot extrusion or hot drawing, or by cold drawing or cold rolling.” While the Department used the correct labor subclassification, in the *Preliminary Results* the Department incorrectly stated it was using subclassification 28 to value labor. However, as evidenced by the subclassification 27 data included and marked in Attachment two of the preliminary results surrogate value memorandum, we intended to use subclassification 27.⁷⁴ Therefore, for the final results the Department will continue to value labor using Chapter 5B, ISIC-Rev. 2-3, sub-classification 27 as it specifically covers the “manufacture of seamless tubes.”

Comment 7: Double Counting of Surrogate Values for Threading Protectors

- ATP asserts that in its preliminary results, the Department incorrectly counted the surrogate value for threading protectors both as an input to the production process and as a packing material for four CONNUMS in Chengde's database.
- U.S. Steel responds that threading protectors should be valued only as material inputs, not packing material.

Department's Position:

We agree that the Department double counted threading protectors in its calculation of normal value for certain control numbers.⁷⁵ For the final results, the Department will value threading protectors as material inputs only. An exclusion for “unattached thread protectors” in the scope of the antidumping duty order without an exclusion for attached thread protectors, indicates that thread protectors attached to OCTG are subject merchandise.⁷⁶ Moreover, although Chengde reported thread protectors as packing materials, Chengde stated that it “. . . reported the threading protector as a packing material for convenience. However, API-5CT treats threading protector as part of subject merchandise.”⁷⁷

Comment 8: Valuation of Ocean Freight

- ATP argues that the Department's use of a surrogate value for freight runs contrary to regulations and established practice. According to ATP, Chengde reported making almost 75 percent of its shipments (by quantity) on market-economy carriers, paying in U.S. dollars (“USD”), and reporting the charges in USD. Chengde distinguished between NME and market-economy carriers in its questionnaire, and provided documentation regarding market-economy freight charges.

⁷⁴ See Memorandum to the file “2010-2011 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results of Review,” dated May 30, 2012 at Attachment 2.

⁷⁵ See Analysis Memorandum, Jiangsu Chengde Steel Tube Share Co., Ltd. (“Jiangsu Chengde”), Taizhou Chengde Steel Tube Co., Ltd. (“Taizhou Chengde”), and Yangzhou Chengde Steel Tube Co., Ltd. (“Yangzhou Chengde”) (collectively “the Cheng de Group”) dated May 30, 2012 at Attachment 1, “PART 7: CALCULATE INPUTS,” and “PART 8: CALCULATE NORMAL VALUES.”

⁷⁶ 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).

⁷⁷ See Chengde's second supplemental questionnaire response at page 11.

- ATP adds that Chengde's freight forwarder made USD payments to agents of market-economy carriers, who made USD payments to the carriers. The agents, under no obligation to offer documentation of their payments to the carriers, did at least provide certifications that they made payments to the market-economy carriers in market-economy currencies. Chengde requested further documentation, and should not be penalized for the agents' non-compliance.⁷⁸
- ATP holds that even when a respondent has used an NME freight forwarder, the Department has relied on the respondent's market-economy purchase prices when the NME freight forwarder acted on behalf of a market-economy supplier and the transaction was conducted in a market-economy currency. Here, Chengde's PRC freight forwarder was paid in a market-economy currency, and the forwarder then paid (in a market-economy currency) an agent acting on behalf of a market-economy supplier.
- ATP cites *Polyester Staple Fiber from China*, in which the Department used a respondent's reported market-economy freight expense, even though its forwarder was from the PRC. The Department concluded that the PRC forwarder, hired by a market-economy supplier, was acting on behalf of the supplier. In addition, the respondent's payment to the freight forwarder was collected on behalf of the market-economy supplier.
- Maverick points out that the NME agents of Chengde's market-economy freight carrier refused to provide documentation showing the amounts of payment to the market-economy carrier for transport of Chengde's merchandise. *Polyester Staple Fiber from China* is irrelevant as the agents of the market-economy carrier in that case provided payment documentation.
- U.S. Steel indicates that Chengde did not provide documentation related to the payment from the NME agents to the market-economy carriers. The only prices on the record are those between NME entities, making it impossible to determine the price actually paid to the market-economy carriers. U.S. Steel cites the case of *Sebacic Acid from China*, which it says presented the same facts, with the Department deciding in favor of a surrogate value.
 - U.S. Steel further holds that the fact that NME agents paid the market-economy carrier in a market-economy currency is not enough in and of itself to treat the freight costs as market-economy purchases, as the Department determined in *Apple Juice from China*.
 - U.S. Steel asserts that ATP's reference to *Polyester Staple Fiber from China* is baseless, given that Chengde did not contract the freight services directly with the market-economy carriers. Rather, Chengde contracted with its freight forwarder, who dealt with Chinese agents of the market-economy carriers; the market-economy carriers had a separate contract with their Chinese agents.
 - Lastly, U.S. Steel claims it is unclear that USD amounts were passed to the freight forwarder by the NME agents, given that the NME agents said only that their agreement with the carrier specified that settlement would occur in USD.

⁷⁸ ATP cites *SKF USA Inc. v. United States*, Slip. Op 12-94 (July 18, 2012) ("*SKF USA Inc. v. United States 2012*").

Department's Position:

For the final results, the Department is continuing to value ocean freight using a surrogate value. The Department's regulations provide that ". . . where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier."⁷⁹ However, "It is the Department's practice to require a respondent to establish a link between payments to the ME carrier through the ME ocean freight carrier's PRC agent."⁸⁰ The Department has stated, "this link is necessary to demonstrate that the price paid to the Chinese freight forwarder was set by the ME service provider, rather than by the Chinese freight forwarder or some other NME middleman between the Chinese freight forwarder and the ME ocean freight provider."⁸¹ Our practice of requiring adequate evidence of ME purchase, in particular for ocean freight, has been upheld by the CIT.⁸² In the instant case, Chengde paid ocean freight expenses to a freight forwarder, Shanghai Loyal, who in turn paid a Chinese agent for the Korean carriers, who in turn paid the Korean carriers. Chengde provided documentation regarding the payments from Chengde to Shanghai Loyal and from Shanghai Loyal to the Chinese agents. However, it did not provide any payment documentation related to the payment from the Chinese agents to the Korean carriers. Thus, the only prices on the record are those between the Chinese entities not the prices actually paid to the Korean carriers. In *Polyester Staple Fiber from China*, the respondent contracted the freight services directly with the market-economy supplier and the PRC freight forwarder, hired by the market-economy supplier, was acting on behalf of the market-economy supplier and the freight payment to the PRC freight forwarder was collected on behalf of the market-economy supplier.

Chengde submitted documents from the agents of the carrier stating "according to the agreement our company signed with {the Korean carrier}, we only use U.S. dollar settlement with {the carrier}."⁸³ The term "U.S. dollar settlement" is not defined. Moreover, this statement does not address the actual payments made for shipment of subject merchandise. It is critical that the respondent demonstrate that the price paid for ocean freight by the respondent to the NME freight forwarder or agent is set by the market-economy service provider. The Department has stated this requirement explicitly: ". . . in the absence of documentation on the record of the amount actually charged by the market-economy shipper (*i.e.*, an invoice between the market-economy supplier and either the PRC freight forwarder or the respondents), the record contains only the values associated with transactions between two PRC entities."⁸⁴

Further, ATP's reference to *SKF USA Inc. v. United States 2012* is misplaced. That case related to the possible application of adverse facts available ("AFA") where the respondent claimed it could have been subject to AFA if it had not been able to obtain certain information from its unaffiliated supplier. In this case, the Department has not applied AFA or even facts available.

⁷⁹ See 19 CFR 351.408(c)(1).

⁸⁰ See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent To Revoke, in Part, of the Sixth Antidumping Duty Administrative Review*, 77 FR 12801, 12807 (March 2, 2012).

⁸¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012).

⁸² See, e.g., *Luoyang Bearing Corp. v. United States*, 347 F. Supp. 2d 1326, 1349-502 (CIT 2004).

⁸³ See *Chengde's Third Supp. Resp. at 2 (Public Version)*.

⁸⁴ See *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

The Department has merely valued ocean freight using a surrogate value in accordance with its normal practice as described above.

Comment 9: Valuation of Inland Freight

- ATP argues that the surrogate truck freight rate used in the *Preliminary Results* is incorrect because it is not based on a full-container load.
 - ATP argues that for the final results, the Department should calculate an inland truck freight surrogate value using the average of PT Mantap's prices for 8-ton and 15-ton trucks loads.⁸⁵ ATP claims that in these cases the Department revised the same truck freight value *used here, to account for the fact* that it did not reflect prices for full container loads as shipped by the respondents.
 - In addition ATP argues that the Department has used freight rates as published in the *2001 Cost of Doing Business in ASEAN*, inflated to the POR, which were based on the cost of shipping a 20-foot or 40-foot container (with a maximum cargo weight of approximately 20 and 26 MT respectively), to various destinations to value inland freight. ATP claims that this is further evidence that a rate based on a container weight of approximately 20 MT would more accurately capture the freight rates applicable for shipping a full commercial container than those used in the *Preliminary Results*.⁸⁶
- U.S. Steel argues that the Department should not revise the surrogate value for Chengde's inland freight expenses because, unlike in *Steel Wheels*, there is simply no evidence on the record in the instant case that Chengde used full-container loads for its inland truck freight during the POR.
- ATP's argument that the Department should use the prices for 8-ton and 15-ton truck loads from PT Mantap's price list should also be rejected because those prices are not on the record of the instant review.

Department's Position:

We have determined to continue to value truck freight with the rates calculated for the *Preliminary Results* using September 2011 data from PT Mantrap Abiah Abadi. We agree with U.S. Steel that there is no evidence on the record as to whether Chengde shipped full container loads by truck during the POR, as was the case in *Steel Wheels* and *Citric Acid*, and thus no reason to follow those cases. Moreover, as noted by U.S. Steel, the alternate sources of surrogate values suggested by ATP, the PT Mantap eight-ton and 15-ton prices and the *2001 Cost of Doing Business in ASEAN*, are not on the record of this review.

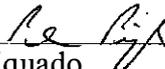
⁸⁵ ATP cites *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021, 17022 (March 23, 2012) ("*Steel Wheels*"), and accompanying Issues and Decision Memorandum at Comment 5 and *Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of the Second Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review*, 77 FR 33399, 33403 (June 6, 2012) ("*Citric Acid*").

⁸⁶ ATP cites *Floor-Standing Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 55357, 55361 (Sept. 7, 2011)(unchanged in Final Results). ATP also cites "Glycine from China," but did not provide a complete citation.

RECOMMENDATION

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

Agree Disagree



Paul Piquado
Assistant Secretary
for Import Administration

5 DECEMBER 2012
Date