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May 29, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of the 2012 – 2013
Administrative Review of the Antidumping Duty Order on
Seamless Refined Copper Pipe and Tube from the People's
Republic of China

Summary

We analyzed the comments from interested parties in the 2012 – 2013 administrative review of the antidumping duty order on seamless refined copper pipe and tube from the People's Republic of China. As a result of our analysis, we made changes to our margin calculations for Golden Dragon in these final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

- Comment 1: Whether the Department Properly Adjusted for VAT
- Comment 2: Whether the Department Properly Applied its Differential Pricing Analysis
- Comment 3: Whether Golden Dragon Accurately Reported its Copper Consumption Rate
- Comment 4: Whether Golden Dragon is Entitled to a By-Product Offset
- Comment 5: Whether the Department Accurately Calculated Credit Expenses
- Comment 6: Whether the Department Accurately Calculated the Truck Surrogate Value
- Comment 7: Whether the Department Accurately Calculated the Solvents Surrogate Value

Background

On December 1, 2014, the Department published its Preliminary Results.¹ On January 7, 2015, and January 12, 2015, Petitioners and Golden Dragon submitted case and rebuttal briefs, respectively.² On February 11, 2015, the Department held a public hearing on the Preliminary

¹ See Copper Pipe and Tube from China 2013 Preliminary Results.

² See Letter to the Department from Petitioners, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Petitioners' Case Brief," (January 7, 2015); Letter to the Department from Golden Dragon,



Results of this proceeding in the Herbert Clark Hoover Building.³ On March 25, 2015, the Department extended the time period for issuing the final results of this review by 30 days, until April 30, 2015.⁴ On April 28, 2015, the Department extended the time period for issuing the final results of this review by an additional 30 days, until May 30, 2015.⁵

Scope of the Order

For the purpose of this order, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (“OD”), regardless of wall thickness, bore (e.g., smooth, enhanced with inner grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of this order covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (“ASTM”) ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of this order are all sets of covered products, including “line sets” of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase “all sets of covered products” denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

“Refined copper” is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Department from Petitioners, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Petitioners’ Rebuttal Brief,” (January 12, 2015); Letter to the Department from Golden Dragon, “Rebuttal Brief; Seamless Refined Copper Pipe and Tube from China,” (January 12, 2015).

³ See Public Hearing Transcript.

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Howard Smith, Acting Office Director, Antidumping and Countervailing Duty Operations, Office IV, from James Martinelli, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office IV “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review” (March 25, 2015).

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Howard Smith, Acting Office Director, Antidumping and Countervailing Duty Operations, Office IV, from James Martinelli, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office IV “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review” (April 28, 2015). Because May 30, 2015 is a non-business day, the deadline is the next business day, June 1, 2015.

<u>ELEMENT</u>	<u>LIMITING CONTENT PERCENT BY WEIGHT</u>
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this order are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the HTSUS. Products subject to this order may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

List of Abbreviations and Acronyms

<u>Acronym/Abbreviation</u>	<u>Full Names</u>
Act	Tariff Act of 1930, as Amended
CEP	Constructed Export Price
CONNUM	Control Number
Copper Pipe and Tube	Seamless Refined Copper Pipe and Tube
Department	The Department of Commerce
EP	Export Price
FOP(s)	Factor(s) of Production
FTZ	Free Trade Zone
Golden Dragon	Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd.
GTA	Global Trade Atlas
HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
LME	London Metal Exchange
NME	Non-Market Economy
NV	Normal Value
PDM	Preliminary Decision Memorandum
Petitioners	Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products Inc., and Mueller Copper Tube Company, Inc.

POR	Period of Review
PRC	People's Republic of China
SAA	Statement of Administrative Authority
SV(s)	Surrogate Value(s)
VAT	Value Added Tax

Discussion of the Issues

Comment 1: Whether the Department Properly Adjusted for VAT

Golden Dragon:

- The Department ignored Golden Dragon's repeated statements that, as a bonded processor, imported copper purchases are fully VAT exempt. Although the Chinese regulations generally set VAT rates for smooth and inner grooved tube at 17 percent, and a refund rate of 13 percent, Golden Dragon is exempt from paying VAT on imported copper purchases.
- The Department misapplied the Act, which requires record evidence that VAT was paid and that some portion of the VAT was unrefunded, in order to apply an adjustment for unrefunded VAT. Because Golden Dragon did not pay any VAT on copper imported for production of subject merchandise, there was no VAT to be refunded upon export. Additionally, the quantity of copper imported by Golden Dragon under bond substantially exceeded the quantity of its total U.S. sales during the POR.
- In Methodological Change, the Department stated that it would consider evidence as to whether the particular respondent was exempted from the requirement to pay the export tax, duty, or charge. By ignoring the fact that Golden Dragon is a bonded processor exempt from paying VAT on imported copper, the Department did not follow the guidance it previously announced.
- The formula used by the Department is too simplistic to make the adjustment sought, because it applies VAT to the entire sales price, including the copper input, rather than only the value added.

Petitioners (rebuttal):

- The Department's adjustment was supported by law, as the Act states that the Department will adjust the export price or constructed export price by a fixed percentage of the price, if applicable. Evidence submitted by Golden Dragon clearly demonstrates that there is a four percent unrefunded VAT on subject merchandise. Golden Dragon failed to demonstrate that it was exempt from paying VAT on its exports.
- Chinese regulations do not exempt a company from paying VAT on imported raw materials. Of the eight items that are free from VAT, copper pipe and tubes are not listed among these items. Furthermore, the record establishes that Golden Dragon sourced raw materials from both domestic and foreign sources. Golden Dragon confirms that it would be required to pay VAT on domestically sourced materials, which Golden Dragon admits were used in the subject merchandise exported to the U.S. Golden Dragon did not establish that 100 percent of its exports were made with 100 percent imported raw materials.
- Golden Dragon claims that no VAT was owed, but supports this statement by citing a provision that confirms that processors will receive a VAT refund. Golden Dragon presented no evidence demonstrating that it was exempt from the original VAT.

- The formula used by the Department is appropriate because it reduced Golden Dragon’s U.S. prices by the percent of VAT unrefunded. To estimate the total VAT incurred only during the production of copper pipes and tubes, the Department would have to multiply the VAT by the value of raw materials purchased in China valued in yuan. This calculation would require the Department to use non-market economy prices, which it has previously declined to do.

Department’s Position: For the reasons explained below, we continue to apply the un-refunded (i.e., irrecoverable) VAT adjustment that we used in the Preliminary Results to deduct an amount for irrecoverable VAT from Golden Dragon’s reported U.S prices. In 2012, we announced a change of methodology with respect to the calculation of EP or CEP to include an adjustment of any (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.⁶ In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent’s EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.⁷

In a typical VAT system, companies do not incur any VAT expense for exports; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (“input VAT”), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.⁸ That stands in contrast to the PRC’s VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.⁹ This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales, and thus we disagree with respondent’s assertions that irrecoverable VAT should not be deducted from their U.S. prices. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.¹⁰

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of the subject merchandise. Although Golden Dragon argues that it pays no VAT upon export, it misstates what is at issue. The issue is the irrecoverable VAT, not VAT per se. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports.¹¹ It is VAT paid on inputs and raw

⁶ See Methodological Change, 77 FR 36481, 36482.

⁷ Id., 77 FR 36483; see also Chlorinated Isos 2012 and the accompanying IDM at Comment 5.

⁸ See, e.g., explanations in Diamond Sawblades and accompanying IDM at Comment 6, Wood Flooring from China and accompanying IDM at Comment 3, Methodological Change, 77 FR at 36483.

⁹ See Letter to the Department from Golden Dragon “Section C Questionnaire Response, Seamless Refined Copper Pipe and Tube from China” (“Section C Response”) (April 7, 2014) at Exhibit C-13; see also Letter to the Department from Golden Dragon “Supplemental Section A, C, & D Questionnaire Response, Seamless Refined Copper Pipe and Tube from China” (“Supplemental Questionnaire Response”) (July 10, 2014) at Exhibits SC-9 through SC-13; see also Methodological Change, 77 FR 36483.

¹⁰ Id.

¹¹ See Electrodes from China and accompanying IDM, at Comment 7.

materials (used in the production of exports) that is non-refundable and, therefore, a cost.¹² Irrecoverable VAT is, therefore, an “export tax, duty, or other charge imposed” on exportation of the subject merchandise to the United States.¹³ The statute does not define the term(s) “export tax, duty, or other charge imposed” on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.¹⁴ It is set forth in PRC law, and, therefore, can be considered to be “imposed” by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net price received by the seller. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.¹⁵

Our irrecoverable VAT calculation methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. The irrecoverable VAT is determined to be the difference between the VAT rate and the refund rate, consistent with PRC regulations, unless the respondent can show otherwise for the subject merchandise.¹⁶

Information placed on the record of this review by Golden Dragon indicates that, according to the PRC VAT schedule, the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is 13 percent.¹⁷ For the final results, therefore, we removed from the U.S. price an amount calculated based on the difference between these rates (i.e., four percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under PRC tax law and regulation.¹⁸

Irrecoverable VAT is (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.¹⁹ The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.²⁰

19 CFR 351.401(c) requires that the Department rely on price adjustments that are “reasonably attributable to the subject merchandise.” The PRC’s VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry.²¹

Irrecoverable VAT is a product-specific export tax, duty, or other charge that is incurred on the

¹² Id.

¹³ See FSVs from China and accompanying IDM at Comment 5.

¹⁴ Id.

¹⁵ See Methodological Change, 77 FR 36483, and Antidumping Duties; Countervailing Duties, 62 FR 27296, 27369 (May 19, 1997) (citing the SAA).

¹⁶ See, e.g., Diamond Sawblades and accompanying IDM, at Comment 6.

¹⁷ See Letter to the Department from Golden Dragon “Supplemental Section A, C, & D Questionnaire Response, Seamless Refined Copper Pipe and Tube from China” (July 10, 2014), at page 14.

¹⁸ See Prestressed Steel from China and accompanying IDM, at Comment 1.

¹⁹ Id., at Comment 1, n. 35.

²⁰ Id., at Comment 1, n. 36.

²¹ See FSVs from China and accompanying IDM, at Comment 5.

exportation of subject merchandise.²² Thus, our analysis is consistent with our current irrecoverable VAT policy and our treatment of irrecoverable VAT in recently completed NME cases.²³ Therefore, we have not altered our irrecoverable VAT adjustment methodology for these final results.

Golden Dragon argues that, as a bonded processor, it is exempt from paying VAT on imported materials used in the production of subject merchandise.²⁴ However, Golden Dragon stated on multiple occasions that it used both imported and domestically sourced copper to produce subject merchandise.²⁵ Furthermore, Golden Dragon stated that it would be liable to pay VAT on domestically sourced copper, even if this copper was used to produce subject merchandise destined for the U.S.²⁶ While Golden Dragon's inventory movement records contain references to both ordinary trade and processing imported materials, it is unclear whether these materials are used for subject or non-subject merchandise, which are both produced by Golden Dragon.²⁷

Further, while Golden Dragon states that it intends to purchase imported raw materials for the production of subject merchandise,²⁸ Golden Dragon is unable to sufficiently demonstrate that only raw materials imported under bond were used in the production of subject merchandise.²⁹ During the public hearing that the Department held concerning these final results, Golden Dragon argued that it simply has to demonstrate to the PRC government that the quantity of raw materials imported into its bonded facility exceeds that of its exports to qualify for a total VAT exemption on all of its exports.³⁰ While Golden Dragon's claim, if true, may satisfy the requirements of the PRC government to qualify Golden Dragon for an exemption to paying VAT on its exports, the Department requires that a respondent substantiate any such claimed adjustment according to the PRC VAT regulations. Record evidence demonstrates that Golden Dragon purchased both domestically sourced and imported copper during the POR, and that Golden Dragon used both domestically sourced and imported copper in the production of subject merchandise during the POR.³¹

During the public hearing that the Department held concerning these final results, Golden Dragon contradicted its previous submissions by stating that Golden Dragon did not pay any VAT, received no VAT refunds, and that there was no unrefunded VAT.³² Golden Dragon further stated that it purchased imported copper and exported finished tubes to the United States,

²² Id.

²³ See, e.g., Polyester Staple Fiber and accompanying IDM, at Comment 6; see also Chlorinated Isos 2013 and accompanying IDM, at Comment 4.

²⁴ See Supplemental Questionnaire Response, at 13.

²⁵ See Letter to the Department from Golden Dragon "Section D Questionnaire Response, Seamless Refined Copper Pipe and Tube from China" ("Section D Response") (April 16, 2014) at Exhibits D-2, D-5, and D-6; see also Supplemental Questionnaire Response at Exhibit SD-3 and SD-15.

²⁶ See Supplemental Questionnaire Response, at 13.

²⁷ See Section D Response, at Exhibit D-2; see also Supplemental Questionnaire Response, at Exhibit SD-3.

²⁸ See Supplemental Questionnaire Response, at 13.

²⁹ See Section D Response, at Exhibit D-2; see also Supplemental Questionnaire Response, at Exhibit SD-3.

³⁰ See Public Hearing Transcript, at 55.

³¹ See Section D Response at Exhibits D-5 and D-6; see also Supplemental Questionnaire Response at Exhibit SD-15; see also Supplemental Questionnaire Response at Exhibit SD-3.

³² See Public Hearing Transcript, at 20-21.

and therefore owed no VAT.³³ However, documentation provided by Golden Dragon show that Golden Dragon purchased both domestically sourced and imported copper during the POR.³⁴ Further, separate documentation, specifically the inventory movement records, demonstrate that Golden Dragon used both domestically sourced and imported copper in the production of subject merchandise during the POR.³⁵ These exhibits contradict Golden Dragon's statements during the hearing that only imported copper was used in the production of subject merchandise. Golden Dragon further stated during the hearing that both domestically purchased and imported copper would be exempt from VAT, which contradicts previous statements to the Department.³⁶ Finally, Golden Dragon offered an alternative argument by stating that it is exempt due to the fact that a greater quantity of exempt material was brought into the bonded facility than was exported to the United States.³⁷ This statement also stands in opposition to record evidence on irrecoverable VAT and the purchase and inventory records provided by Golden Dragon.³⁸

Furthermore, if Golden Dragon's claims are relevant to calculating Golden Dragon's irrecoverable VAT for exports of subject merchandise during this POR, PRC regulation Caishui number 39 provides the formulas necessary to adjust VAT payments and refunds for the consumption of in-bond imported materials. Golden Dragon has not only failed to submit information on the record of this review which would support an adjustment to irrecoverable VAT for the consumption of in-bond imported materials, but has even failed to translate into English the relevant PRC regulations in its questionnaire responses, even after the Department asked Golden Dragon to do so.³⁹ Indeed, it appears that Golden Dragon has only selectively translated the VAT regulations.⁴⁰

Therefore, for the final results, based on the information on the record, we have continued to adjust U.S. price by the amount of irrecoverable VAT (*i.e.*, four percent), defined as the difference in the VAT rate and the VAT refund rate for the subject merchandise, because Golden Dragon has provided no evidence or support for adjusting these rate for the consumption of in-bond material pursuant to the PRC VAT regulations.⁴¹

Comment 2: Whether the Department Properly Applied its Differential Pricing Analysis

³³ Id., page 21.

³⁴ See Section D Response at Exhibits D-5 and D-6; see also Supplemental Questionnaire Response at Exhibit SD-15.

³⁵ See Supplemental Questionnaire Response at Exhibit SD-3.

³⁶ See Public Hearing Transcript, at 55-56.

³⁷ Id., at page 55.

³⁸ See Section D Response, at Exhibits D-5 and D-6; see also Supplemental Questionnaire Response, at Exhibit SD-15.

³⁹ See Section C Response, at Exhibit C-13; see also Letter from the Department to Golden Dragon "Sections A, C, & D Supplemental Questionnaire in the 2012-2013 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China" (June 12, 2014), at page 6; see also Supplemental Questionnaire Response, at Exhibit SC-10.

⁴⁰ Id.

⁴¹ See Memorandum to the File from James Martinelli, International Trade Compliance Analyst, Office IV, AD/CVD Operations, through Robert Bolling, Program Manager, Office IV, AD/CVD Operations, "2012-2013 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China" ("Final Results Analysis Memorandum") (May 29, 2015), at Attachment II.

Golden Dragon:

- Although the Department properly relied upon an average-to-average comparison methodology, Golden Dragon's business practices should be taken into account when engaging in differential pricing analysis. Golden Dragon's contract prices were fixed for the entire period, and the metal price is determined by a third-party independent commodity exchange, therefore any price fluctuations are not the result of targeted dumping by region, customer, or time period.
- For a majority of Golden Dragon's POR sales, the overwhelming components of the reported prices were fixed by contract with a single customer to a single region. Therefore, the Department cannot identify a pattern of prices that differ among customers, regions, or time periods, and should acknowledge this fact in its differential pricing analysis.

Petitioners (rebuttal):

- As previously stated by the Department in the second administrative review of copper pipe and tube from the PRC, the Department is not required to consider the underlying causes of a company's differential pricing. Section 777A(d) of the Act does not provide the Department with any language to engage in the kind of analysis that Golden Dragon requests. The Department's analysis, including the Cohen's *d* test and factual information on the record, reasonably informs the Department whether a pattern of prices exists that differ significantly and make up a substantial portion of the value of U.S. sales.
- The intentions of the respondent, or market prices of the raw materials involved, is not relevant to the Department's differential pricing analysis.

Department's Position: As an initial matter, the Department believes that Golden Dragon's argument is moot because of the continued use of the average-to-average comparison methodology in these final results.⁴² In any case, section 777A(d) of the Act does not require the Department to engage in the kind of analysis Golden Dragon requests. Indeed, the Department previously addressed a similar argument raised by Golden Dragon in the second administrative review of copper pipe and tube:

If Congress had intended for the Department to control for external factors (such as LME prices), or consider a causal link (such as between LME prices and U.S. prices), or understand the intentions or motivations of the producer or exporter when considering whether there exists a pattern of prices that differ significantly and make up a substantial portion of the value of U.S. sales, then Congress would have included such requirements. The statute includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* and ratio tests and based on the factual information of the record of this review, reasonably informs the Department whether there exists a pattern of prices that differ significantly and make up a substantial portion of the value of U.S. sales. Simply because Golden Dragon's U.S. prices are determined by a contractual formula does not invalidate the results of the Department's Cohen's *d* test and whether there exists a pattern of prices that differ significantly and make up a substantial portion of the value of U.S. sales. On this basis, the Department will continue to apply the

⁴² See Final Results Analysis Memorandum at page 9; see also, e.g., FSVs from China and accompanying IDM at Comment 4.

Cohen's d and ratio tests, regardless of whether Golden Dragon's prices are based on contractually fixed fabrication charges and copper prices that are also set contractually by a formula.⁴³

We continue to determine that the Department is not directed by section 777A(d) of the Act to conduct the kind of analysis that Golden Dragon requests.

Comment 3: Whether Golden Dragon Accurately Reported its Copper Consumption Rate

Petitioners:

- The Department should upwardly adjust Golden Dragon's copper consumption rate to reflect the total amount of copper (virgin ingot, shells, straps, and buckles, and reclaimed briquettes) consumed to produce Golden Dragon's POR subject merchandise. Golden Dragon only reported the non-reclaimed copper consumed during the POR, instead of the total copper consumed that is reported in its books and records.
- Golden Dragon should include the reclaimed copper in its total copper consumption rate to accurately reflect its total consumption of copper, along with the overhead costs applicable to reclaiming copper.
- In recent administrative reviews of PET Film, and the second administrative review of this proceeding, the Department required the respondent to report recycled raw materials as an input. The Department explained that this was necessary to capture the entire quantity of raw materials necessary to produce the subject merchandise, and to accurately calculate overhead expenses associated with reclaimed raw materials.
- The Department should upwardly adjust Golden Dragon's copper consumption rate by taking its total consumption of copper (virgin ingots, shells, straps, and buckles, and reclaimed briquettes) and dividing it by the total POR production of subject merchandise.

Golden Dragon (rebuttal):

- Recovered copper should not be included in the copper consumption rate because it would be double counting the same copper. The recovered copper is simply reintroduced into the same production process and does not represent any additional copper.
- Petitioners are unable to point to any processing or overhead costs that are not counted. For example, labor and additional processing required to recover and remelt copper are reflected in the reported labor hours.
- The PET Film case is not applicable here because the respondent in that case reported theoretical quantities of by-product generated from production instead of actual quantities reordered in its accounting record.
- Consistent with the second administrative review of this proceeding, the Department could increase the copper consumption factor and then apply a by-product offset in the same amount of the increase, to avoid double counting of the same raw material.

Department's Position: Section 773(c) of the Act requires the Department to value all FOPs utilized in the production of subject merchandise; specifically, section 773(c)(3)(B) of the Act

⁴³ See Copper Pipe and Tube from China 2012 and accompanying IDM at Comment 5. We note that this case is in litigation before the U.S. Court of International Trade and that a decision has not yet been issued.

requires the Department to value the quantities of raw materials employed. Thus, the calculation of NV in an NME proceeding is based, in part, upon the aggregation of quantities of raw materials consumed in the production of one unit of finished goods.⁴⁴ Therefore, we agree with Petitioners that Golden Dragon should have reported the total quantity of copper consumed, including recycled material consumed, that it used in the production of subject merchandise.

The Department explained the justification for this in a recently completed administrative review of PET Film from China 2012 Final Results, where we stated that respondents are required to report recycled material in order to accurately capture expenses associated with the recycling process. The Department calculates overhead by multiplying the surrogate overhead ratio by a respondents' cost of manufacturing, which is comprised of raw materials, labor, and energy. Therefore, the overhead ratio is applied to all three components of the cost of manufacturing.⁴⁵ Despite Golden Dragon's argument that labor and energy costs are already captured in the reported per-unit expenses for labor and energy, overhead would still be understated if the overhead ratio is not multiplied by the total value of all the materials used in production, including the reintroduced copper. Accordingly, in calculating a respondent's overhead costs, the Department must determine SVs for all inputs, including recycled inputs such as reintroduced copper.⁴⁶ Since Golden Dragon did not report a copper consumption rate in its FOP database that included the total quantity of copper, including recycled copper, therefore, for the final results, the Department calculated a revised copper consumption rate based on information on the record.⁴⁷ The revised copper consumption rate includes all copper consumed during the POR, including recycled material, divided by the total production of subject merchandise.⁴⁸

Regarding Golden Dragon's argument that including the recycled copper would constitute double counting of the same raw material, the Department has, in certain instances, offset the recycled material with a by-product in the same amount.⁴⁹ This allows the Department to avoid double counting the same raw materials, while capturing the necessary overhead costs associated with recycling the material back into the production process. For the final results, we used information provided by Golden Dragon to recalculate the consumption rate for copper by including the recycled material, and calculated a by-product offset in the same amount.⁵⁰ For further discussion on this issue, see Comment 4 below.

Comment 4: Whether Golden Dragon is Entitled to a By-Product Offset

Petitioners:

- Golden Dragon should include the total quantity of raw materials, including reclaimed copper, because it reflects the most accurate quantity of raw materials needed to produce the total POR quantity of subject merchandise. The Department's practice is to include all

⁴⁴ See Copper Pipe and Tube from China 2012 Final Results and accompanying IDM at Comment 2.

⁴⁵ See PET Film from China 2012 Final Results and accompanying IDM at Comment 3.

⁴⁶ Id.

⁴⁷ See Final Results Analysis Memorandum, at page 6.

⁴⁸ Id.

⁴⁹ See, e.g., Copper Pipe and Tube from China 2012 Final Results and accompanying IDM at Comment 2.

⁵⁰ See Final Results Analysis Memorandum, at pages 6-8.

materials used in the production of subject merchandise and permit the respondent an opportunity to request a by-product offset.

- Golden Dragon, which was aware of the Department's practice from the previous proceeding, did not claim a by-product offset, or satisfy the regulatory burden required to demonstrate entitlement for one. The Department has a history of not granting a respondent a favorable adjustment to normal value unless the respondent requests it.
- It is not the Department's burden or responsibility to establish the factual record necessary for a respondent to claim a by-product offset. It is the responsibility of the respondent to create this record, which it has not done in this case. Therefore, the Department cannot grant a by-product offset, even if it wanted to defy its practice.
- Because Golden Dragon did not report CONNUM-specific by-product quantities, the Department cannot construct a by-product offset for Golden Dragon. It is clear from the record that certain CONNUMs undergo different production processes than others, which results in different quantities of by-product generated by CONNUM. Although the Department's practice allows Golden Dragon to claim a by-product offset for material that is recycled and reintroduced, the factual record is insufficient for the Department to either grant or construct such an offset without CONNUM-specific quantities of generated by-product.

Golden Dragon (rebuttal):

- Sufficient information on the record exists for the Department to grant Golden Dragon a by-product offset using the same record data, as it did in the previous administrative review of this proceeding. The Department could revise the copper factor by including the recycled copper, while also recalculating the by-product figure to include the recycled copper. This would result in the same net copper input that was used in the Preliminary Results.
- The Department does not require CONNUM-specific by-product information because the initial stages of production are common to all products. Nor did the Department require such information in the second administrative review when granting a by-product offset.

Department's Position: We agree with Golden Dragon that sufficient information exists on the record to grant a by-product offset for the recycled copper that was reintroduced into the production process. Although Petitioners assert that the burden falls upon the respondent to present all necessary information required by the Department to grant the offset, we believe that Golden Dragon has done so in this case.

Petitioners argue in their case brief that Golden Dragon is not entitled to a by-product offset because Golden Dragon did not request one, and they cite to three cases where the Department denied a respondent a by-product offset.⁵¹ The facts of the cases cited by Petitioners are distinguishable from the facts in this proceeding. Moreover, in none of these three cases did the Department deny a by-product offset because respondent did not request one. In Electrodes from China, the Department granted a by-product offset to the respondent, but ultimately disagreed with the respondent's proposed value for the by-product.⁵² In Wind Towers from Vietnam, the Department denied one of the two by-products requested by the respondent because the

⁵¹ See Electrodes from China and accompanying IDM at Comment 8, Wind Towers from Vietnam and accompanying IDM at Comment 5, OCTG from China and accompanying IDM at Comment 2.

⁵² See Electrodes from China and accompanying IDM at Comment 8.

respondent did not track actual quantities of generated by-product, and was unable to provide a reasonable method of determining an offset.⁵³ Finally, in OCTG from China, the Department denied a by-product offset because the respondent only tracked the quantity of by-product sold commercially, but did not record the quantity of by-product that was generated during the production process.⁵⁴ In this proceeding, Golden Dragon provided detailed inventory records demonstrating the recovered quantity of copper scrap and the process of recycling it back into the production process.⁵⁵ In the second administrative review, Golden Dragon provided inventory transaction records which the Department used to grant a by-product offset for recycled copper.⁵⁶ In the instant review, Golden Dragon has provided similar record evidence with which to provide a by-product offset. Specifically, Golden Dragon provided actual, rather than theoretical, quantities of by-product generated during the POR, which allows for the calculation of a specific by-product offset.⁵⁷

Petitioners further argue that the Department cannot grant Golden Dragon a by-product offset because Golden Dragon did not provide quantities for copper scrap generated by CONNUM. Without CONNUM-specific information, Petitioners argue, the Department cannot use a by-product offset applied equally to all CONNUMs, because not all CONNUMs generate copper scrap equally. However, the Department does not generally require respondents to provide CONNUM-specific quantities of scrap generated in order to provide a by-product offset,⁵⁸ nor was this a requirement in the previous administrative review of this proceeding.⁵⁹ As Golden Dragon explained in its July 10, 2014 supplemental questionnaire response, Golden Dragon uses a highly sophisticated process to recover copper, which is a very valuable commodity.⁶⁰ Moreover, given the description of Golden Dragon's recovery process, and the fact that all CONNUMs were produced at the same facility,⁶¹ we have determined that it would likely be impossible for Golden Dragon to report quantities of copper scrap generated by CONNUM. Therefore, given that Golden Dragon has provided sufficient information to warrant the application of a by-product offset, and provided a useable calculation to construct one, for the final results, we have provided Golden Dragon a by-product offset for its reintroduced copper scrap.⁶²

⁵³ See Wind Towers from Vietnam and accompanying IDM at Comment 5.

⁵⁴ See OCTG from China and accompanying IDM at Comment 2.

⁵⁵ See Letter to the Department from Golden Dragon, "Section D Questionnaire Response, Seamless Refined Copper Pipe and Tube from China" (April 16, 2014) at D-12 through D-13 and Exhibit D-10; see also Letter to the Department from Golden Dragon, "Supplemental Section A, C, & D Questionnaire Response, Seamless Refined Copper Pipe and Tube from China" ("Supplemental Questionnaire Response") (July 10, 2014), at 16 and Exhibit SD-2.

⁵⁶ See Copper Pipe and Tube from China 2012 Final Results and accompanying IDM at Comment 2.

⁵⁷ See Letter to the Department from Golden Dragon, "Section D Questionnaire Response, Seamless Refined Copper Pipe and Tube from China" (April 16, 2014) Exhibit D-10; see also Supplemental Questionnaire Response Exhibits SD-12 and SD-13.

⁵⁸ See Letter to Golden Dragon from the Department, "2012-2013 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (February 24, 2014), at D-9 through D-10.

⁵⁹ See Copper Pipe and Tube from China 2012 Final Results and accompanying IDM at Comment 2.

⁶⁰ See Supplemental Questionnaire Response, at 18-19.

⁶¹ See Letter to the Department from Golden Dragon "Section A Questionnaire Response, Seamless Refined Copper Pipe and Tube from China" (March 24, 2014), at A-12 through A-13.

⁶² See Final Results Analysis Memorandum, at page 8.

Comment 5: Whether the Department Accurately Calculated Credit Expenses

Petitioners:

- To accurately reflect the time value of money, the Department should base imputed credit expenses on the shipment date from China, or, at the very minimum, the entry date.

Golden Dragon (rebuttal):

- Based on the terms of the Supply Agreement between Golden Dragon and its customer, there is no basis for the Department to expand the inventory or credit periods.

Department's Position: The Department agrees with Golden Dragon that credit expenses were properly reported and, thus we have not made any changes to credit expenses or inventory carrying costs in these final results. Due to the proprietary nature of this issue, the Department's position is fully explained in the Final Results Analysis Memorandum.

Comment 6: Whether the Department Accurately Calculated the Truck Surrogate Value

Petitioners:

- In the Preliminary Results, the Department relied upon a value for truck freight from Prestressed Steel from China. However, the factual information used by the Department to calculate an average distance for truck freight is not on the record in this proceeding. The factual information on the record support a truck freight distance of 64.3 kilometers, and not 77.165 kilometers used by the Department, which was the same distance used in Prestressed Concrete Steel Rail Tie from China.

Golden Dragon (rebuttal):

- The truck freight surrogate value is supported by two previous Department decisions, one of which, Prestressed Steel from China, the Department incorporated into this record. The Department is permitted to conduct its own research to find appropriate surrogate values, which it did in this proceeding by incorporating its prior decision and specific distance between relevant ports.

Department's Position: The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs.⁶³ When doing this, the Department's practice is to select, to the extent practicable, surrogate values which are publicly available, non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.⁶⁴

For the Preliminary Results, the Department valued truck freight using inland transportation costs from Doing Business 2014: Thailand.⁶⁵ However, in order for the Department to calculate

⁶³ See Lightweight Thermal Paper and accompanying IDM at Comment 9.

⁶⁴ Id.

⁶⁵ See Memorandum to the File from James Martinelli, International Trade Compliance Analyst, Office IV, AD/CVD Operations, through Robert Bolling, Program Manager, Office IV, AD/CVD Operations, "2012-2013 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the

a truck freight cost that is expressed in U.S. dollars per kilometer, the total cost needs to be divided by a distance, which the Doing Business 2014: Thailand report did not provide. Therefore, the Department used distance information from Prestressed Steel from China, which was placed on the record by Petitioners.⁶⁶ In Prestressed Steel from China, the Department valued truck freight using Doing Business 2013: Thailand, and used an average of two distances (i.e., the average of 44.33 and 110 kilometers) to calculate a truck freight cost expressed in U.S. dollars per kilometer.⁶⁷

Petitioners argue that the Department cannot use the distances from Prestressed Steel from China because the factual information supporting those distances is not on the record in this proceeding. In support of their argument, Petitioners cite to Clearon Corp. and Gourmet Equipment Taiwan, in which the court ruled that the Department cannot consider precedent from previous administrative proceedings if the underlying factual information supporting that precedent is not present in the administrative record under review. Petitioners therefore request that the Department use the factual information on the record of this review, which supports an average distance of 64.3 kilometers (i.e., an average of 86.2 kilometers from Laem Chabang to the Bangkok FTZ and 42.4 kilometers from the port of Bangkok to the Bangkok FTZ).⁶⁸

Although Petitioners themselves placed the previous Department memoranda on the record to support an average distance of 77.165 kilometers (i.e., the average of 44.33 and 110 kilometers),⁶⁹ we agree with Petitioners that the factual information supporting that distance is not present on the record in this proceeding, because it is not included in the Doing Business 2014: Thailand report, nor any of the other SV submissions placed on the record by interested parties. Therefore, for the final results, we have used the information on the record, to calculate the surrogate value for truck freight. Specifically, record evidence (i.e., directions from Google Maps) supports an average distance of 64.3 kilometers (i.e., the average distance of 86.2 and 42.4 kilometers).⁷⁰ Accordingly, as a result of this change, the SV for truck freight has changed from \$0.000272144 per kilometer to \$0.000326594 per kilometer.⁷¹

People's Republic of China: Preliminary Results Surrogate Value Memorandum" (November 20, 2014).

⁶⁶ See Letter to the Department from Petitioners, "Seamless Refined Copper Pipe and Tube from China: Submission of Factual Information in Advance of Preliminary Determination" (October 31, 2014).

⁶⁷ Id., at 13-14.

⁶⁸ Id., at 20-23.

⁶⁹ Id., which contains a decision memorandum from Prestressed Steel from China and a surrogate value memorandum from Hand Trucks from China.

⁷⁰ See Letter to the Department from Petitioners, "Seamless Refined Copper Pipe and Tube from China: Submission of Factual Information in Advance of Preliminary Determination" (October 31, 2014), at Exhibit 1.

⁷¹ See Final Results Analysis Memorandum at Exhibit 1.

Comment 7: Whether the Department Accurately Calculated the Solvents Surrogate Value

Petitioners:

- The Department's download of GTA data inadvertently included import statistics for a 13th month (*i.e.*, November 2012 through November 2013) instead of the 12 month POR (*i.e.*, November 2012 through October 2013) for Thai HS category 3814.00, which was used as a surrogate value for solvents. Filtering the Department's data reveals that the Department included Thai imports from multiple countries from outside the POR. Removing the erroneously included data results in a surrogate value for solvents that is identical to the surrogate value included in Petitioners' surrogate value submission.⁸¹

No other parties commented on this issue.

Department's Position: The Department agrees with Petitioners that we inadvertently included Thailand import data reported by GTA for November 2013 in the calculation of surrogate value for solvents, which is outside of the POR. The Department notes, however, that this error is applicable to every HS category downloaded from GTA and was not limited to only HS category 3814.00. Therefore, for the final results, the Department has removed November 2013 import data from all HS categories in calculating the surrogate values. As a result of this change, the surrogate values have been slightly altered which minimally altered Golden Dragon's FOPs.⁸²

Recommendation

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

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 MAY 2015

Date

⁸¹ See Letter to the Department from Petitioners "Seamless Copper Pipe and Tube from the People's Republic of China (3rd Antidumping Administrative Review): Petitioners' Comments on Surrogate Data to Value Factors of Production" (June 10, 2014) at Exhibit 4.

⁸² See Final Results Analysis Memorandum, at Calculated_SV_Data tab.

Table of Shortened Citations

<u>Chlorinated Isos 2012</u>	<u>Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 4875 (January 30, 2014)</u>
<u>Chlorinated Isos 2013</u>	<u>Chlorinated Isocyanurates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 4539 (January 28, 2015)</u>
<u>Clearon Corp</u>	<u>Clearon Corp. v. United States, Slip Op. 2014-88 (CIT July 24, 2014).</u>
<u>Copper Pipe and Tube from China 2012 Final Results</u>	<u>Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 23324 (April 28, 2014)</u>
<u>Copper Pipe and Tube from China 2013 Preliminary Results</u>	<u>Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Preliminary Results and Partial Rescission of Administrative Review; 2012-2013, 79 FR 71089 (December 1, 2014)</u>
<u>Diamond Sawblades</u>	<u>Diamond Sawblades and Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014)</u>
<u>Electrodes from China</u>	<u>Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 57508 (September 25, 2014)</u>
<u>FSVs from China</u>	<u>Frontseating Service Valves From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71385 (December 2, 2014)</u>
<u>Gourmet Equipment Taiwan</u>	<u>Gourmet Equipment Taiwan Corp. v. United States, 24 CIT 572 (2000)</u>
<u>Hand Trucks from China</u>	<u>Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2012-2013, 79 FR 53167, September 8, 2014.</u>
<u>Lightweight Thermal Paper</u>	<u>Lightweight Thermal paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008)</u>

<u>Methodological Change</u>	<u>Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481 (June 19, 2012).</u>
<u>OCTG from China</u>	<u>Certain Oil Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012)</u>
<u>PET Film from China 2012 Preliminary Results</u>	<u>Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 78333 (December 26, 2013)</u>
<u>PET Film from China 2012 Final Results</u>	<u>Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 37715 (July 2, 2014)</u>
<u>PET Film from China 2013</u>	<u>Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments and Partial Rescission of Review; 2012-2013, 79 FR 72166 (December 5, 2014)</u>
<u>Polyester Staple Fiber</u>	<u>Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013, 80 FR 4542 (January 28, 2015)</u>
<u>Prestressed Steel from China</u>	<u>Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China, 79 FR 25572 (May 5, 2014)</u>
<u>Public Hearing Transcript</u>	<u>Enforcement and Compliance Public Hearing in the Matter of: Seamless Refined Copper Pipe and Tube Third Administrative Review, Before: Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, February 11, 2015</u>
<u>Wood Flooring from China</u>	<u>Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712, May 9, 2014.</u>
<u>Wind Towers from Vietnam</u>	<u>Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of</u>

	<u>Sales at Less Than Fair Value, 77 FR 75984</u> (December 26, 2012)
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