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Investigation
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DATE: March 15, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Non-Refillable Steel Cylinders from the People's Republic of China: Decision Memorandum for the Final Affirmative Determination of Sales at Less-Than-Fair-Value

I. SUMMARY

The Department of Commerce (Commerce) determines that certain non-refillable steel cylinders (non-refillable cylinders) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice.

As a result of our analysis and consideration of comments submitted by interested parties, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments from interested parties:

- Comment 1: Treatment of Irrecoverable Value-Added Taxes (VAT)
- Comment 2: Selection of Primary Surrogate Country
- Comment 3: Use of Siraga's Financial Statement for Surrogate Financial Ratios
- Comment 4: Use of a Simple Average or Weighted Average for Surrogate Financial Ratios
- Comment 5: Treatment of Overhead Items
- Comment 6: Carton Inputs as Packing Expense or Packaging Cost
- Comment 7: Adhesive Tape, Hot Glue, and Iron Wire Inputs as Packing Expense or Packaging Cost

¹ See *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 68852 (October 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

- Comment 8: Factor of Production for Code-Spurting Ink
- Comment 9: Selection of the Port of Haimen or Ningbo as the Closest Port
- Comment 10: Treatment of Argon and Carbon Dioxide Welding Materials
- Comment 11: Correction of Movement Expenses
- Comment 12: Paint Factor of Production for Paint Dissolved in Organic Solvent
- Comment 13: Shipment Date Adjustment
- Comment 14: Separate Rate Request

II. BACKGROUND

On October 30, 2020, Commerce published its *Preliminary Determination*.² On October 26, 2020, Commerce notified the U.S. International Trade Commission (ITC) of the preliminary affirmative determination in this investigation.³

On November 4, and November 9, 2020, Sanjiang Kai Yuan Co. Ltd (SKY) and Worthington Industries (the petitioner) filed their timely ministerial error allegations, respectively.⁴ On November 30, 2020, the petitioner submitted comments on SKY's ministerial error allegations.⁵ On December 4, 2020, Commerce found that SKY's allegation with respect to Commerce's treatment of certain auxiliary materials as factors of production (FOP) for SKY was methodological rather than ministerial in nature. Commerce also found that the error alleged by the petitioner, with respect to Wuyi Xilinde Machinery Manufacture Co., Ltd.'s (Wuyi Xilinde) moving expenses, constitutes a ministerial error within the meaning of 19 CFR 351.224(f). However, Commerce did not amend the *Preliminary Determination* because Commerce did not find that the ministerial error meets the threshold for a significant error pursuant to 19 CFR 351.224(g).⁶ We address this ministerial error in Comment 11, below.

On November 16, 2020 and November 24, 2020, we issued a post-preliminary supplemental questionnaire to SKY and Wuyi Xilinde, respectively.⁷ On November 23, 2020, SKY submitted

² See *Preliminary Determination*.

³ See Commerce's Letter, "Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Non-Refillable Steel Cylinders from the People's Republic of China," dated October 26, 2020.

⁴ See SKY's Letter, "Certain Non-Refillable Steel Cylinders from China; A-570-126; Ministerial Error Comments," dated November 4, 2020; see also Petitioner's Letter, "Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Ministerial Error Comments Regarding the Margin Calculation for Wuyi Xilinde Machinery Manufacture Company Limited in the Preliminary Determination," dated November 9, 2020.

⁵ See Petitioner's Letter, "Non-Refillable Steel Cylinders from China – Petitioner's Comments on SKY's Ministerial Error Comments," dated November 30, 2020.

⁶ See Memorandum, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Allegation of a Ministerial Error in the Preliminary Affirmative Determination of Sales in the Less-Than-Fair-Value Investigation," dated December 4, 2020 (Ministerial Error Memorandum).

⁷ See Commerce's Letters, "Non-Refillable Steel Cylinders from China: Post-Prelim Supplemental Questionnaire," dated November 16, 2020; see also "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Post-Preliminary Section D Questionnaire for Wuyi Xilinde Machinery Manufacture Co., Ltd.," dated November 24, 2020.

a timely response to Commerce’s supplemental questionnaire.⁸ On December 4, 2020, Wuyi Xilinde also filed a timely response to Commerce’s supplemental questionnaire.⁹

On December 1, 2020, we issued questionnaires in lieu of on-site verification.¹⁰ On December 8, 2020, SKY and Wuyi Xilinde responded to these in lieu of on-site verification questionnaires.¹¹

On January 8, 2021, SKY, the petitioner and Hangzhou JM Chemical Co., Ltd. (Hangzhou JM) submitted case briefs.¹² Wuyi Xilinde submitted its comments on the *Preliminary Determination* on January 8, 2021.¹³ SKY and Wuyi Xilinde submitted rebuttal case briefs on January 15, 2021.¹⁴ The petitioner submitted its rebuttal briefs for SKY and Wuyi Xilinde on January 15, 2021.¹⁵

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2019, through December 31, 2019. This period corresponds to the most recently completed fiscal quarters prior to the month of the filing of the Petition, which was March 2020.¹⁶

⁸ See SKY’s Letter, “Certain Non-Refillable Steel Cylinders from China; A-570-126; Response to Department’s Post Preliminary Supplemental Questionnaire due on November 23, 2020,” dated November 23, 2020.

⁹ See Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.’s Post-Preliminary Supplemental Response,” dated December 4, 2020 (Wuyi’s PPSQR).

¹⁰ See Commerce’s Letters, “Non-Refillable Steel Cylinders from China: Verification Questionnaire”; and “Non-Refillable Steel Cylinders from China: Verification Questionnaire,” both dated December 1, 2020.

¹¹ See SKY’s Letter, “Certain Non-Refillable Steel Cylinders from China; A-570-126; Response to Questionnaire Issued in Lieu of Verification,” dated December 8, 2020; see also Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.’s Verification Response,” dated December 8, 2020 (Wuyi’s VQR).

¹² See SKY’s Letter, “Certain Non-Refillable Steel Cylinders from China; A-570-126; Case Brief,” dated January 8, 2021 (SKY’s Case Brief); see also Hangzhou JM’s Letter, “Hangzhou JM Case Brief in the Antidumping Duty Investigation of Certain Non-Refillable Steel Cylinders from the People’s Republic of China, Case No. A-570-126,” dated January 8, 2021 (Hangzhou JM’s Case Brief); Petitioner’s Letter, “Petitioner’s Case Brief Concerning SKY,” dated January 8, 2021 (Petitioner’s SKY Case Brief); and “Petitioner’s Case Brief Concerning Wuyi,” dated January 8, 2021 (Petitioner’s Wuyi Case Brief).

¹³ See Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.’s Comments to the Preliminary Determination,” dated January 8, 2021 (Wuyi’s Case Brief).

¹⁴ See SKY’s Letter, “Certain Non-Refillable Steel Cylinders from China; A-570-126; Rebuttal Brief,” dated January 15, 2021 (SKY’s Rebuttal Brief); see also Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.’s Rebuttal Comments to Petitioner’s Administrative Case Brief,” dated January 15, 2021 (Wuyi’s Rebuttal Brief).

¹⁵ See Petitioner’s Letter, “Petitioner’s Rebuttal Brief Concerning SKY,” dated January 15, 2021 (Petitioner’s SKY Rebuttal Brief); see also Petitioner’s Letter, “Petitioner’s Rebuttal Brief Concerning Wuyi,” dated January 15, 2021 (Petitioner’s Wuyi Rebuttal Brief).

¹⁶ See Petitioner’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China – Petition for the Imposition of Antidumping and Countervailing Duties,” dated March 26, 2020.

IV. SCOPE OF INVESTIGATION

The products covered by this investigation are certain non-refillable steel cylinders from China. For a full description of the scope of the investigation, *see* the accompanying *Federal Register* notice at Appendix I.

V. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on AFA.¹⁷ In the *Preliminary Determination*, Commerce used the highest calculated individual dumping margin (which was calculated for SKY). As explained below, we made changes to our calculations for SKY. Therefore, SKY's highest transaction-specific margin has changed. Thus, for the final determination, we continue to use SKY's highest calculated transaction-specific rate, which is now 112.21 percent.¹⁸ Because we are relying on information obtained in the course of this investigation as the AFA rate, not on secondary information, it is not necessary to corroborate this rate.¹⁹

VI. CHANGES SINCE THE PRELIMINARY DETERMINATION

- We removed packing labor from “packaging” costs within cost of manufacturing, and added it to packing costs. *See* Comment 7.
- We adjusted the value of SKY's code-spurting oil-base ink factor of production by using the import average unit value of HTS number 3215.11 for printing ink, black. *See* Comment 8.
- We accepted Haimen as the nearest port where SKY can receive supplies shipped in international containers. *See* Comment 9.
- We accounted for Wuyi Xilinde's argon and carbon inputs, as they were not included in the surrogate factory overhead ratio in the *Preliminary Determination*. *See* Comment 10.
- We converted the per-kilogram units of Wuyi Xilinde's movement expenses to per-cylinder units. *See* Comment 11.

¹⁷ *See Preliminary Determination PDM* at 16-19.

¹⁸ *See* Memorandum, “Non-Refillable Steel Cylinders from the People's Republic of China: Final Analysis Memorandum for Sanjiang Kai Yuan Co. Ltd.,” dated concurrently with this memorandum (SKY Final Analysis Memorandum); *see also Certain Corrosion Inhibitors from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 7532 (January 29, 2021) (relying on the highest calculated individual dumping margin for an individually examined respondent as the China-wide rate); and *Common Alloy Aluminum Sheet from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65363 (October 15, 2020), and accompanying PDM at 5-8 (applying the highest individual calculated margin of one individually investigated respondent as the AFA margin for a second uncooperative respondent), unchanged in *Common Alloy Aluminum Sheet from Brazil: Final Determination of Sales at Less Than Fair Value*, 86 FR 13302 (March 8, 2021).

¹⁹ *See 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying Issues and Decision Memorandum (IDM) at 3; *see also* section 776(c) of the Act and 19 CFR 351.308(c) and (d); and *Certain Carbon and Alloy Steel Cut-To-Length Plate from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79427 (November 14, 2016).

- We modified Wuyi Xilinde’s paint factor of production from HTS number 3209.10, for paint dissolved in water, to HTS number 3208.20 for paint dissolved in organic solvent. *See* Comment 12.
- We adjusted the reported shipment date of one sale made by Wuyi, so that the correct daily exchange rate may be used in connection with that sale. *See* Comment 13.

VII. DISCUSSION OF THE ISSUES

Comment 1: Treatment of Irrecoverable VAT

*Petitioner’s Comments:*²⁰

- Given that SKY incurred 13 percent VAT on all material inputs and that it reported a 13 percent VAT recovery rate on export sales of the subject merchandise, SKY should have demonstrated a VAT refund on all of its export sales during the POI, such that the company did not incur irrecoverable input VAT during the POI. Despite Commerce’s multiple requests for additional information regarding SKY’s VAT refund throughout this investigation, SKY failed to demonstrate that it did not incur irrecoverable input VAT on any portion of the difference between SKY’s total POI export sales recorded in its sales ledger and the total export sales reported in SKY’s POI tax filing.
- Accordingly, Commerce should adjust SKY’s U.S. sales prices for irrecoverable input VAT because SKY claimed a VAT refund on a lower amount of export sales during the POI than reported in the company’s main business sales sub-ledger.

*SKY’s Rebuttal Comments:*²¹

- The petitioner’s argument is misplaced. The method used by SKY to calculate the amount of irrecoverable VAT follows the normal method used by Commerce. Commerce has consistently compared the input VAT tax rate and the export VAT recovery rate and applied the difference between the input VAT and the export VAT refund rate as the amount of the irrecoverable VAT.
- The petitioner’s argument appears not to focus on the difference between the input VAT rate and the refund VAT rate, but rather over the amount collected during a particular temporal period. Then, based on an unrelated document reporting total export sales on a different basis, the petitioner claims that some additional amount of refund should have been claimed, without any evidence of any additional amount which should be owed.
- SKY has provided on the record a worksheet which shows, with references to the relevant VAT tax returns, the accumulated amount of taxes, and how all amounts tie to exemptions, deductions and taxes retained for deduction. The net total is zero.
- The petitioner’s proposed calculation of an amount does not comport with the law and practice. SKY submits that even if there were unrecoverable VAT, such amount would not be calculated as a flat per unit amount, but rather would be calculated as a dollar amount based on the price and the exchange rate in effect at the time of the transaction.

²⁰ *See* Petitioner’s SKY Case Brief at 4-8.

²¹ *See* SKY’s Rebuttal Brief at 2-4.

Commerce's Position: In 2012, Commerce announced a change of methodology with respect to the calculation of export price (EP) and constructed export price (CEP) to include an adjustment of any un-refunded VAT in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.²² In this announcement, Commerce stated that when a non-market economy 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, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.²³ In determining the amount of irrecoverable VAT, Commerce consistently compares the input VAT tax rate and the export VAT recovery rate and applies the difference between the input VAT and the export VAT refund rate.²⁴

Information placed on the record of this investigation indicates that during the POI, the input VAT rate paid by SKY was 13 percent and that there was an VAT rebate rate of 13 percent applicable to exports of the subject merchandise during the POI.²⁵ SKY provided evidence that the applicable VAT refund received on its export sales was equal to 13 percent of its export sales revenue as recorded in its tax filing, the Declaration Summary Sheet of Exemption, Deduction and Refund of Tax (VAT Exemption and Refund Documentation).²⁶ SKY also provided documentation which shows the amount of taxes and exemptions listed in its relevant VAT tax returns and how they tied to the export tax subledger.²⁷

The petitioner argues that SKY's VAT Exemption and Refund Documentation did not include all export sales made during the POI, and that Commerce should adjust SKY's U.S. sales prices for irrecoverable VAT based on all export sales reported in the company's main business sales sub-ledger.²⁸ We disagree. We find that the petitioner's recommendation to calculate a per cylinder VAT adjustment from SKY's main business sales sub-ledger, departs from Commerce's standard practice, and is based on improper conclusions with respect to the record and the reconciliation provided. Commerce's normal practice is to adjust a respondent's U.S. sales prices only when record evidence shows a difference between the input VAT tax rate and the export VAT recovery rate.²⁹ SKY provided evidence that a 13 percent input VAT tax was collected and a 13

²² See *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).

²³ *Id.*

²⁴ See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Isos from China 2011-2012*), and accompanying IDM at Comment 5; see also *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) (*PET Sheet from China 2011-2012*), and accompanying IDM at Issue 9.

²⁵ See SKY's Letter, "Certain Non-Refillable Steel Cylinders from China; A-570-126; Response to Section C and D and Appendix VI of the Initial Questionnaire," dated July 9, 2020 at 35 and Exhibit C-3 (SKY CDQR); see also SKY's Letter, "Certain Non-Refillable Steel Cylinders from China; A-570-126; Response to Department's Supplemental Questionnaire due on August 31, 2020," dated August 31, 2020 (SKY Aug. 31, 2020 SCQR) at 6 and Exhibit SC-7 (documenting the 13 percent VAT payable on purchases) and Exhibit SC-9b (demonstrating the 13 percent rebate for export sales).

²⁶ See SKY Aug. 31, 2020 SCQR at Exhibit SC-9b.

²⁷ *Id.* at 10-11, and Exhibits SC-9a, SC-9b, SC-11, and SC-13a-13c.

²⁸ See Petitioner's SKY Case Brief at 2.

²⁹ See *Isos from China 2011-2012* IDM at Comment 5; see also *PET Sheet from China 2011-2012* IDM at Issue 9.

percent rebate was received on its export sales during the POI.³⁰ It satisfies Commerce's presumption that the net total is zero, *i.e.*, no VAT was left unrecovered with respect to sales of subject merchandise.

We agree with the petitioner that SKY's VAT Exemption and Refund Documentation did not reflect the total amount of refunds for all POI export sales booked in the company's main business sales ledger. However, we do not agree that the difference is attributable to unrecovered VAT, nor that the lack of full documentation for all export sales in the POI reflects a deficiency in SKY's response. Commerce requested SKY provide documentation substantiating that all VAT payments were refunded upon export of the subject merchandise.³¹ SKY provided a sample VAT Exemption and Refund Documentation filed during the POI, which showed that the difference between the VAT paid and the VAT refunded was zero.³² Commerce subsequently requested that SKY state the exact period of export sales covered by the sample VAT Exemption and Refund Documentation filed during the POI.³³ In response, SKY provided a reconciliation, which tied the sales from the VAT Exemption and Refund Documentation to the company's export sales sub-ledger.³⁴ We find that SKY provided a reconciliation demonstrating how the export sales listed in a single tax filing made during the POI tied to certain export sales in its subledger, and that the single tax filing did not cover all sales made during the POI. This single tax filing demonstrates that SKY was refunded a VAT rate of 13 percent of the export sales for which this tax filing covers, which is a subset of export sales during the POI. Additionally, Commerce did not request that further documentation of the underlying tax returns be provided to substantiate the refund amounts not covered by that filing. Accordingly, we find that SKY provided sufficient documentation in response to our request.

We find that SKY's VAT Exempt and Refund Documentation adequately demonstrates that the refundable VAT rate on its export sales is 13 percent and the VAT rate payable is also 13 percent. Based on this documentation, the irrecoverable VAT is zero. Accordingly, we find no compelling reason to alter our standard application of the VAT methodology and have not adjusted EP sales prices for irrecoverable VAT.

Comment 2: Selection of Primary Surrogate Country

SKY's Comments:³⁵

- Commerce found that both Malaysia and Bulgaria met all the criteria to be selected as the surrogate country, but selected Malaysia based on the finding that the Malaysian data were superior to the Bulgarian data. This finding is without merit.
- The financial ratios for Malaysia are missing a meaningful breakdown for expenses, including energy expenses and overhead items.

³⁰ See SKY CDQR at 35 and Exhibit C-3.

³¹ See Commerce's Letter, "Less-Than-Fair-Value Investigation of Non-Refillable Steel Cylinders from the People's Republic of China: Section C Supplemental Questionnaire," dated August 10, 2020.

³² See SKY Aug. 31, 2020 SCQR at 7 and Exhibit SC-9a.

³³ See Commerce' Letter, "Non-Refillable Steel Cylinders from China: Second Section C Supplemental Questionnaire," dated September 24, 2020.

³⁴ See SKY's Letter, "Certain Non-Refillable Steel Cylinders from China; A-570-126; Response to Supplemental Section C Questionnaire," dated October 5, 2020 at Exhibits SC2-6b and SC2-6c.

³⁵ See SKY's Case Brief at 2.

- Bulgarian financial statements do not contain such flaws; thus, Bulgaria should be selected as the surrogate country.

Petitioner’s Rebuttal Comments:³⁶

- The only Bulgarian financial statements placed on the record in this investigation are for Kolos, Limited (Kolos), which were submitted by the mandatory respondent, Wuyi Xilinde. However, Wuyi Xilinde only submitted a summary of Kolos’s financial information with no audit report or the notes that accompany the financial statement.
- Commerce’s practice is to use complete and audited financial statements. The summary financial information available on the record for Kolos is not adequate for valuing overhead, selling, general, and administrative expenses, and profit.
- By contrast, the three Malaysian financial statements the petitioner submitted on the record are complete and audited, and thus, are preferable and superior to Kolos’ unaudited summary financial information.

Commerce’s Position: We are continuing to rely on Malaysia as the primary surrogate country for this final determination. When Commerce investigates imports from a non-market economy country, section 773(c)(1) of the Act directs it to base normal value (NV) on the non-market economy producer’s factors of production, valued using a surrogate market economy country or countries that, pursuant to section 773(c)(4) of the Act, Commerce considers to be “at a level of economic development comparable to that of the non-market economy country” and a “significant producer of comparable merchandise.” In the *Preliminary Determination*, we determined that both Malaysia and Bulgaria were at the same level of economic development as China and that both were a significant producer of comparable merchandise.

In addition to these statutory requirements, in selecting a primary surrogate country, Commerce strives to select, to the extent practicable, surrogate values that are publicly available, product-specific, representative of a broad market average, contemporaneous with the period of review, and tax and duty exclusive.³⁷ Commerce also normally values all factors of production in a single surrogate country. In the *Preliminary Determination*, we selected Malaysia over Bulgaria because of the availability of usable financial statements from Malaysian producers of comparable merchandise, which allowed for calculation of the surrogate financial ratios using multiple sources, and because the sole Bulgarian financial statement did not meet Commerce’s standards for use in calculating surrogate financial ratios.³⁸

Specifically, in the *Preliminary Determination*, we found that the record does not contain usable financial statements from Bulgaria.³⁹ While Wuyi Xilinde submitted what it purports to be a usable financial statement from a comparable producer, Kolos, Ltd,⁴⁰ we note that the information provided is not an official financial statement, but rather a report generated by a

³⁶ See Petitioner’s SKY Rebuttal Brief at 2.

³⁷ See *Jiaying Bro. Fastener Co., Ltd. v. United States*, 822 F. 3d 1289, 1293 (Fed. Cir. 2016); see also Commerce’s Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

³⁸ See *Preliminary Determination* PDM at 5-11.

³⁹ *Id.*

⁴⁰ See Wuyi Xilinde’s Letter, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Submission of Initial Surrogate Values,” dated July 30, 2020 at Exhibit 8.

third party, and it does not contain an auditor’s report or notes and schedules that normally accompany a financial statement. Further, the Kolos information pertains to the fiscal year ending December 31, 2018 and is, therefore, not contemporaneous with the POI. As it is Commerce’s preference to use actual and complete financial statements, inclusive of auditor’s reports, contemporaneous with the POI,⁴¹ and in consideration of the fact that Malaysia offers contemporaneous and complete financial statements, we did not find that the selection of Bulgaria offers the best available information from which to derive surrogate financial ratios.⁴² In contrast, in the *Preliminary Determination*, we found that Malaysia provides three financial statements (Siraga, KKB Group, and CN Asia). We determined that Siraga, KKB Group, and CN Asia are each producers of comparable merchandise in Malaysia.⁴³ All three Malaysian companies’ financial statements are audited, contemporaneous with the POI, and show no indication of receipt of subsidies previously found to be countervailable.

SKY argues that Commerce’s determination to select Malaysia as the primary surrogate country is “without merit,” pointing to the fact that the financial ratios for Malaysia are missing a meaningful breakdown of expenses, including energy expenses, that they double-count overhead expenses, and that one Malaysian statement is not contemporaneous. However, as discussed in Comments 3 and 5, below, Commerce does not agree that overhead expenses are improperly double-counted and the claim that one statement is non-contemporaneous is without merit.

⁴¹ See *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of the 2004- 2005 Semi-Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006), and accompanying IDM at Comment 2 (“In the current review, upon further examination of Jayaraja’s financial statements, we have determined that Jayaraja’s financial statements lack not a positive number for depreciation, but more significantly, they are missing an auditor’s report, which was sufficient cause to disregard surrogate financial statements in Rebar from Belarus, as well as schedules, the auditor’s opinions and notes to the financial statements. Thus, our finding with respect to Jayaraja’s financial statements that they are inappropriate for use in this review is consistent with Silicomanganese from Kazakhstan where we disregarded surrogate financial statements because they lacked certain key reports (e.g., schedules, notes), indicating incomplete financial statements.”); see also *Association of American School Paper Suppliers v. United States*, 791 F. Supp. 2d 1292, 1304 (CIT 2011) (quoting *Galvanized Steel Wire from the People’s Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 76 FR 23548, 23551 (April 27, 2011) (where Commerce rejected incomplete financial statements “as a basis for calculating surrogate financial ratios where the statement is missing key sections, such as sections of the auditor’s report, that are vital to our analysis and calculations.”)); *Certain Iron Mechanical Transfer Drive Components from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016), and accompanying IDM at Comment 16 (“In {Wooden Bedroom Furniture} from China {new shipper review}, the Department disregarded financial statements for a number of reasons, but noted a missing auditor’s report as a significant cause. Furthermore, as Petitioner noted, the Department rejected surrogate financial statements, in part, due to missing auditor’s statements in {Off-the-Road} Tires from {China} and Silicomanganese from Kazakhstan. Our decision not to rely on Thai Iron’s financial statements for this final determination is consistent with the aforementioned cases that lacked the auditor’s statement, or certain sections of the auditor’s statement, for certain financial statements indicating those were incomplete financial statements.”); and *Frontseating Service Valves from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) (*FSVs from China*), and accompanying IDM at Comment 1 (“We determined that the financial statements of Upadhaya 2007 – 2008 and Brassomatic 2007 –2008 were not suitable for use consistent with the Department’s practice not to use incomplete statements” and, “[f]inally, for purposes of the final determination, we did not use any of the three financial statements that we used in the Preliminary Determination because they were not contemporaneous with the POI...”).

⁴² See Memorandum, “Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Preliminary Factors Valuation Memorandum,” dated October 23, 2020 (Preliminary SV Memorandum).

⁴³ See *Preliminary Determination* PDM at 10-11.

Furthermore, SKY makes no attempt to address any of the deficiencies found with respect to the Bulgarian information, as discussed above (*i.e.*, the fact that it is not a usable statement, but a third-party report), nor to refute or compel reconsideration of Commerce's preference to calculate surrogate ratios using multiple surrogate financial statements whenever possible.⁴⁴

Given the above factors, we continue to select Malaysia as the primary surrogate country for this investigation. Malaysia is at the same level of economic development as China, is a significant producer of comparable merchandise, and Malaysian data overall represent the best available information for valuing the relevant FOPs because the data are publicly available, contemporaneous, represent a broad market average, are tax and duty exclusive, and specific for the majority of inputs used by the respondents to produce subject merchandise during the POI, including multiple usable financial statements.⁴⁵ Additionally, selecting Malaysia over Bulgaria as the primary surrogate country allows us to use three financial statements, thus satisfying our preference for multiple financial statements to determine surrogate financial ratios to mitigate any potential distortions that may arise from using those of a single producer.

Comment 3: Use of Siraga's Financial Statement for Surrogate Financial Ratios

SKY's Comments:⁴⁶

- Commerce should not use the Siraga financial statement in calculating financial ratios because the Siraga financial statement covers the period January 1, 2018 – December 31, 2018, which is not contemporaneous with the POI.

Petitioner's Rebuttal Comments:⁴⁷

- SKY's assertion is baseless: Commerce, in fact, used Siraga's 2019 financial statement, which is contemporaneous with the POI in the *Preliminary Determination*.

Commerce's Position: SKY's argument is without merit. As noted by the petitioner, Siraga's 2019 financial statement was used for the surrogate financial ratio calculation in the *Preliminary Determination*, not the 2018 statement, which was also submitted to the record, but not used.⁴⁸ Accordingly, we continue to use the contemporaneous 2019 financial statement of Siraga in the surrogate financial ratio calculation for this final determination.

Comment 4: Use of a Simple Average or Weighted Average for Surrogate Financial Ratios

SKY's Comments:⁴⁹

- Commerce should calculate weighted averages of the financial statements based on relative values, because the three surrogate companies are of vastly different sizes and, thus, a simple average gives disproportionate weight to the financial statements of the

⁴⁴ See *Dorbest Ltd. v. United States*, 604 F. 3d 1363, 1374 (Fed. Cir. 2010).

⁴⁵ See *Preliminary Determination PDM* at 5-11.

⁴⁶ See SKY's Case Brief at 6-7.

⁴⁷ See Petitioner's SKY Rebuttal Brief at 10.

⁴⁸ See *Preliminary SV Memorandum* at 5.

⁴⁹ See SKY's Case Brief at 5-6.

smaller companies.

Petitioner’s Rebuttal Comments:⁵⁰

- It is Commerce’s practice to use a simple average, instead of a weighted average, to combine the financial ratios from multiple surrogate financial statements, citing *Ball Bearings from China*,⁵¹ *Bicycles from China*,⁵² and *Rhodia, Inc. v. United States*.⁵³

Commerce’s Position: We agree with the petitioner. It is Commerce’s normal practice to apply a simple average of surrogate companies’ overhead, SG&A, and profit ratios.⁵⁴ SKY failed to present reasoning or precedent to compel a departure from our standard practice. SKY argues that the Malaysian companies “are of vastly different sizes and thus a simple average gives disproportionate weight to the financial statements of the smaller companies.”⁵⁵

Commerce rejected a similar argument in *Bicycles from China*, where the respondent argued for weight averaging by production quantity, stating:

Given these facts, there is no basis to conclude that a weight-average calculation would be a more accurate measure of the costs of Indian surrogate producers of comparable merchandise. Therefore, we used a simple average of these financial statements consistent with our normal practice because, barring evidence to the contrary, we assume that all of these surrogate values are equally representative of the surrogate experience.⁵⁶

The Court of International Trade (CIT) affirmed that it is Commerce’s usual practice to use a simple average, and remanded Commerce’s use of a weight average in *Rhodia*:

In almost every antidumping investigation where Commerce uses only a few surrogate companies, Commerce applies a simple average to derive overhead, SG&A, and profit...

The general practice of Commerce is to apply a simple average. In order to depart from this practice Commerce needs to “explain the reasons for its departure.”⁵⁷

⁵⁰ See Petitioner’s SKY Rebuttal Brief at 7-10.

⁵¹ See Petitioner’s SKY Rebuttal Brief (citing to *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)).

⁵² *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People’s Republic of China*, 61 FR 19026, 19039 (April 30, 1996) (*Bicycles from China*)).

⁵³ *Id.* (citing *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343, 1350 (Ct. Int’l Trade 2001) (*Rhodia*)).

⁵⁴ See, e.g., *Ball Bearing from China* IDM at 7-8; *1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 67925 (December 12, 2019), and accompanying IDM at Comment 7; and *Steel Propane Cylinders from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019) (*Propane Cylinders from China*), and accompanying IDM at Comment 1.

⁵⁵ See SKY’s Case Brief at 5.

⁵⁶ See *Bicycles from China*, 61 FR at 19039.

⁵⁷ See *Rhodia*, 185 F. Supp. 2d 1343, 1350 (CIT 2001).

On remand, Commerce applied a simple average, and the CIT sustained its determination.⁵⁸ In the instant case, SKY fails to explain why Commerce should depart from its normal practice. With respect to SKY's argument that the magnitude of revenue affects the overhead, SG&A, and profit rates, we find that the differences among the ratios of surrogate companies can be caused by a myriad of reasons other than differences in the magnitudes of the companies' revenues.⁵⁹ Therefore, we find that SKY has not shown that deviating from our normal practice of using a simple average is warranted in this case. Further, SKY has presented no record evidence that indicates that its own experience is more comparable to Malaysian companies with larger revenues than it is to Malaysian companies with smaller revenues. Consequently, because there is no evidence to the contrary, we find it is reasonable to assume that the financial statements of the Malaysian companies are "equally representative of the surrogate experience."⁶⁰ As such, we continue to base the surrogate financial ratios on a simple average of the overhead, SG&A, and profit ratios of CN Asia, KKB, and Siraga, in line with Commerce's practice.

Comment 5: Treatment of Overhead Items

SKY's Comments:⁶¹

- The Malaysian financial statements used to calculate surrogate financial ratios for the *Preliminary Determination* are problematic due to a lack of detail. Specifically, the notes to the financial statements indicate that the companies allocate a portion of their overhead expenses to finished goods and work in progress and not to raw materials.
- Because the amounts for overhead are not properly accounted for in the financial ratio calculations, to avoid double counting, the overhead amounts reported by SKY should be excluded from the factors of production.

Petitioner's Rebuttal Comments:⁶²

- In the derivation of surrogate financial ratios, Commerce accounts for changes in work in progress inventory in the calculation of material, labor, and energy denominator. Because a portion of the surrogate companies' overhead costs are accounted for in the work in progress inventory, these overhead costs are also part of the companies' total cost of manufacturing.
- Accordingly, SKY's argument that overhead costs are improperly accounted for in the calculation of surrogate financial ratios is unavailing and misleading. The record indicates that SKY also accounts for certain overhead costs in its total cost of manufacture. Thus, removing SKY's overhead amounts from its FOPs would not prevent double counting of overhead costs; it would instead understate SKY's total cost of manufacture and normal value.

Commerce's Position: We agree with the petitioner that a review of the surrogate ratio calculations of the three Malaysian companies, and the reported FOPs, confirms that there is no

⁵⁸ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1251-55 (CIT 2002).

⁵⁹ See *Bicycles from China*, 61 FR at 19039.

⁶⁰ *Id.* at 19039.

⁶¹ See SKY's Case Brief at 5.

⁶² See Petitioner's SKY Rebuttal Brief at 5-7.

double-counting of overhead costs.⁶³ Specifically, in the calculation of the surrogate ratios for overhead, only depreciation and rental expenses are classified as overhead expenses for each company. All other elements of each surrogate company's cost of manufacturing (*i.e.*, cost of sales adjusted for the change in finished goods inventory), were treated as Material, Labor and Energy (MLE) and included in the denominator to the overhead ratio.⁶⁴ Thus, because the surrogate financial ratios for overhead do not include expenses for overhead costs other than depreciation and rental expenses, there is no double-counting by including certain other overhead items as FOPs. Accordingly, we have continued to rely on the same overhead expenses to calculate the overhead ratio as we did in the *Preliminary Determination*, and we have not removed any items from SKY's FOPs.

Comment 6: Carton Inputs as Packing Expense or Packaging Cost

SKY's Comments:⁶⁵

- Commerce should treat the cartons as “packing,” rather than “packaging” costs.
- The main use of the carton is for packing rather than marketing the merchandise under consideration.
- The petitioner's claim that cartons are purchased by customers is factually incorrect.
- SKY has no knowledge as to the ultimate consumer; if the ultimate customer is the refrigerant user, the subject merchandise, as well as the carton, will be discarded because it is a non-refillable steel cylinder.
- Cartons are not manufactured on SKY's production lines and do not consume direct and indirect labor, energy, or packing labor. Including these cartons as a raw material cost would result in an overstatement of direct labor, as well as energy costs, as such amounts are included in the surrogate financial ratios.
- The non-refillable cylinders are painted in different colors to clearly indicate the type of the filled refrigerant; using the cartons to identify the material would not be necessary, might also be confusing, and therefore unsafe.

Wuyi Xilinde's Comments:⁶⁶

- The carton is solely for shipping purposes and is not integral to the subject merchandise; the ultimate consumer will discard it after shipment. Therefore, it should be considered a “packing” expense.
- The potential for reusing the cartons is merely intended to reduce costs; the primary function of the carton is still shipping. The effort and expense of the design of the carton is intended to save on the cost of packing.
- It is common for U.S. importers to require their foreign suppliers or foreign producers to provide certain artwork, such as logos and contact info, on their packing cartons; it is incorrect to assume Wuyi would not have gone to the trouble of adding the customer's artwork on the carton if it was only meant for shipping purposes.

⁶³ See Preliminary SV Memorandum.

⁶⁴ *Id.* at Attachment 1.

⁶⁵ See SKY's Case Brief at 10-13.

⁶⁶ See Wuyi's Case Brief at 2-4.

Petitioner's Rebuttal Comments:⁶⁷

- The main use of carton is not for packing; record evidence shows that the carton has many uses throughout the lifecycle of the cylinders.⁶⁸
- The producer/exporter's knowledge as to the specific ultimate customer is irrelevant; thus, SKY's argument that cartons do not consume inputs is irrelevant. In *Ribbons*, Commerce held that separate (*i.e.*, not indivisible) materials not physically consumed in the production of the subject material itself may be considered integral and reported as part of COM if they are inescapably purchased as part of the subject merchandise.⁶⁹
- Wuyi's contention that the ultimate customer will discard the carton is both belied by the record and similarly irrelevant. Neither respondent contested Commerce's analysis of the record information from the *Preliminary Determination* which supports that the ultimate customer does not discard the carton.⁷⁰ Further, even if the ultimate customer will discard the carton, that does not change the fact that the ultimate customer receives the non-refillable steel cylinder within Wuyi Xilinde's carton, and thus, it is inescapably purchased as part of subject merchandise, nor does this refute the record evidence which suggests that, even if a refrigerant cylinder can technically be used without a carton, best practices within the relevant industry dictate that it should not be.⁷¹
- The fact that the cylinders also identify the material contained within them is irrelevant. Commerce should continue to find that the cartons are not discarded upon receipt of the refrigerant by the end user.
- The record further reflects that the carton is a significant product characteristic that is important to the ultimate customer's purchasing decision.⁷²

Commerce's Position: As noted in the *Preliminary Determination*, Commerce generally distinguishes between "packaging" materials and "packing" materials, finding that packaging materials are "inescapably purchased as part of the subject merchandise by the ultimate

⁶⁷ See Petitioner's SKY Rebuttal Brief at 9-11; *see also* Petitioner's Wuyi Rebuttal Brief at 13-15.

⁶⁸ See Petitioner's SKY Rebuttal Brief at 10; *see also* SKY's Letter, "Certain Non-Refillable Steel Cylinders from China; A-570-126; Response to Department's Supplemental Questionnaire due on September 4, 2020," dated September 4, 2020 at Exhibit DS17 (SKY Sept. 4 SDQR); and Wuyi Xilinde's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.'s Second Supplemental Section D Response," dated September 30, 2020 (Wuyi's Sept. 30 SDQR) at Exhibit S3-2.

⁶⁹ See Petitioner's SKY Rebuttal Brief at 16; *see also* Petitioner's Wuyi Rebuttal Brief at 9 (citing *Certain Plastic Decorative Ribbon From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 1055 (February 1, 2019) (*Ribbons*), and accompanying IDM at Comment 20).

⁷⁰ See Petitioner's Wuyi Rebuttal at 6; *see also* Petitioner's SKY Rebuttal at 16-17 (citing Memorandum, "Antidumping Duty Investigation of Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Results Margin Calculation for Wuyi Xilinde Machinery Manufacture Co., Ltd.," dated October 23, 2020 (Wuyi's Preliminary Analysis Memorandum); and Memorandum, "Non-Refillable Steel Cylinders from the People's Republic of China: SKY's Preliminary Analysis Memorandum," dated October 23, 2020 (SKY's Preliminary Analysis Memorandum)); *see also* Wuyi's Sept. 30 SDQR at Exhibit S3-2; and Wuyi's VQR at Exhibit 14 (page 315).

⁷¹ See Petitioner's Letter, "Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Comments Concerning Wuyi Xilinde Machinery Manufacture Company Limited's Supplemental Section C and D Questionnaire Response," dated September 10, 2020 at Attachment 1 and 3.

⁷² See Petitioner's Wuyi Rebuttal at 3-4 and 13-15; *see also* *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007) (*Shrimp from India*), and accompanying IDM at Comment 6.

consumer” and “are properly considered raw materials.”⁷³ Packaging materials are included in the cost of manufacture of the subject merchandise. Additionally, packaging costs refer to materials that become an integral part of the merchandise that is sold and are included in the cost of manufacture of the product.⁷⁴ In contrast, packing materials are used only for the shipment of the product, and are valued as a separate component of the normal value calculation.⁷⁵

Wuyi Xilinde maintains that the carton cannot be considered “integral” to subject merchandise as it is not connected to the cylinder in an indivisible manner, and it is not indispensable in the use of subject merchandise.⁷⁶ However, this is not the standard established by Commerce. In *Ribbons*, Commerce determined that a respondent, a ribbons and bows manufacturer, prepared its ribbons and bows by placing them in plastic bags, plastic boxes, and on paper cards, and that the respondent sometimes placed the entire item, including the plastic bags, boxes, and paper cards, in “display boxes or carton boards/trays for display in retail stores.”⁷⁷ Finally, Commerce explained that the entire item was placed in cartons for shipment to the customer.⁷⁸ Commerce determined that the plastic bags, plastic boxes, and paper cards were an “integral part of the subject merchandise because they are inescapably purchased as part of the subject merchandise by the ultimate consumer, and as such, {they were} properly considered raw material.”⁷⁹ Commerce has explained that packaging is an “integral part” of the subject merchandise because it is “inescapably purchased as part of the subject merchandise;” Commerce has not required that packaging be “indispensable in the use” of subject merchandise, only that it is “inescapably purchased as part of the subject merchandise.”⁸⁰

Here, information on the record demonstrates that the carton input is an integral part of the non-refillable cylinders as sold to the first downstream U.S. customer.⁸¹ The cartons are retained throughout the sales and distribution process by the refrigerant suppliers (*i.e.*, the respondents’ immediate customers), and the respondents concede that their immediate customers fill the cylinders and sell the filled cylinders within the original carton. They also indicate that the cylinders are not to be removed from the carton.⁸² Further, the respondents did not cite to any record evidence which contradicts Commerce’s preliminary analysis of the record evidence supporting the finding that the cartons are not used only for shipping purposes. The respondents do not cite any evidence to support their claims that the end-user typically discards the carton upon receipt, whereas the petitioner provides examples of several sources suggesting that

⁷³ See Wuyi’s Preliminary Analysis Memorandum; see also SKY’s Preliminary Analysis Memorandum (both citing *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502 (May 10, 2005) (*Isos from China*), and accompanying IDM at Comment 10); *Ribbons* IDM at Comment 20; and *Shrimp from India* IDM at Comment 6.

⁷⁴ See *Ribbons* IDM at Comment 20.

⁷⁵ See *Preliminary Determination PDM* at 11-16.

⁷⁶ See Wuyi’s Case Brief at 2-4.

⁷⁷ See *Ribbons* IDM at Comment 20.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*; see also *Chlorinated Isocyanurates from Japan: Final Determination of Sales at Less than Fair Value*, 79 FR 56059 (September 18, 2014) (*Isos from Japan*), and accompanying IDM at Comment 6.

⁸¹ See Wuyi’s Preliminary Analysis Memorandum; see also SKY’s Preliminary Analysis Memorandum for a full discussion including business proprietary information.

⁸² See Wuyi Xilinde’s Rebuttal Brief at 3; see also Wuyi’s Sept. 30 SDQR at Exhibit S3-2; SKY’s Case Brief at 10; and SKY Sept. 4 SDQR at Exhibits DS-17 and DS-18.

retention of the carton through the supplier and to the downstream customer is a best practice in the refrigerant industry (which is supported by instructions printed on certain cartons).⁸³

The record thus shows that carton inputs serve a number of functions including, but not limited to, the shipping process: *i.e.*, protecting the empty cylinders during ocean transport, providing ease of access for distributors to fill the cylinders with gas without removing the packaging, allowing for the safe reuse of the carton to transport cylinders now filled with hazardous materials, and display of the custom label or marketing graphics or safety instructions for the end-user.⁸⁴ That the carton is an important consideration to the ultimate customer's purchasing decision is further supported by record evidence which reflects refrigerant retailers' prominent display of the carton along with the cylinder and including details of the carton in advertising/marketing materials.⁸⁵

SKY also argues that cartons are not packaging and are packing because cartons are not manufactured on SKY's production lines, and SKY does not consume direct and indirect labor, or energy to produce cartons.⁸⁶ However, this argument disregards Commerce's prior analysis and does not speak to whether cartons are an integral part of the subject merchandise or whether they are inescapably purchased as part of the subject merchandise by the ultimate consumer. Information provided to the record demonstrates that the carton input is an integral part of the subject merchandise. SKY's customers purchase a cylinder within a carton, keep the cylinder within the carton while filling it, and then sell the filled cylinder to the ultimate end consumer within the same carton.⁸⁷ The cartons thus serve a purpose beyond that of a generic cardboard box used for shipping purposes, and instead are an integral part of the non-refillable cylinders sold. As such, we find in this instance that cartons are similar to inputs discussed in, *e.g.*, *Ribbons from China* and *Isos from China*,⁸⁸ where packaging materials were found to be an

⁸³ See Petitioner's Letter, "Certain Non-Refillable Steel Cylinders from China – Petitioner's Comments on SKY's Supplemental Section D Questionnaire Response," dated September 21, 2020 at 6 and Attachment 2; *see also* SKY's September 4 SDQR at Exhibit DS17; and Wuyi's Sept. 30 SDQR at Exhibit S3-2.

⁸⁴ See Petitioner's Letters, "Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Comments Concerning the Response Of Wuyi Xilinde Machinery Manufacture Company Limited To Section D Of The Antidumping Questionnaire," dated July 30, 2020 at Attachment I (containing ITC's Preliminary Report, page I-14); *see also* Petitioner's Letter, "Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Comments Concerning Wuyi Xilinde Machinery Manufacture Company Limited's Supplemental Section C and D Questionnaire Response," dated September 10, 2020 (Petitioner's C&D Rebuttal Information Wuyi Xilinde) at Attachments 1-4; Petitioner's Letter, "Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Supplemental Comments Regarding The Department's Upcoming Preliminary Determination," dated October 1, 2020; Petitioner's Letter, "Certain Non-Refillable Steel Cylinders from China – Petitioner's Comments on SKY's Supplemental Sections C and D Questionnaire Responses," dated October 21, 2020 (Petitioner's C&D Rebuttal Information SKY) at 5-7; Wuyi Xilinde's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.'s Section A Response," dated June 23, 2020 at Exhibit A-16; Wuyi Xilinde's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.'s Supplemental Sections C & D Response," dated August 31, 2020 at Exhibit S2-4; and SKY Sept. 4. SDQR at Exhibits DS-17 and DS-18.

⁸⁵ See Wuyi's Sept. 30 SDQR at Exhibit S3-2; *see also* SKY Sept. 4 SDQR at Exhibits DS-17 and DS-18.

⁸⁶ See SKY's Case Brief at 10-13.

⁸⁷ See Wuyi Xilinde's Rebuttal Brief at 3; *see also* Wuyi's Sept. 30 SDQR at Exhibit S3-2; SKY's Case Brief at 10; and SKY Sept. 4 SDQR at Exhibits DS-17 and DS-18.

⁸⁸ See *Isos from China* IDM at Comment 10.

integral part of the subject merchandise because they are inescapably purchased as part of the subject merchandise by the ultimate consumer.

Therefore, the record supports that the carton boxes at issue are an integral part of the subject merchandise because they are inescapably purchased with the subject merchandise by the ultimate consumer, similar to inputs discussed in, *e.g.*, *Ribbons* and *Isos from China*. As such, Commerce continues to classify the carton boxes as packaging costs.

Comment 7: Adhesive Tape, Hot Glue, and Iron Wire as Packaging Expense or Packing Cost

Petitioner's Comments:⁸⁹

- In the *Preliminary Determination*, Commerce correctly concluded that SKY's carton input is "packaging" because the carton is an integral part of the subject merchandise and as such it is inescapably purchased by the end-user (*see*, discussion immediately above).
- SKY consumes transparent adhesive tape and hot melt glue in order to assemble the carton. Similarly, Wuyi Xilinde consumes hot melt glue and iron wire to prepare the carton, and the two inputs therefore become components of the carton. Thus, iron wire and hot melt glue – as components of the carton – are also inescapably purchased as part of the subject merchandise by the end-user. Though Commerce classified these inputs as packing for the *Preliminary Determination*, following the decision to classify carton inputs as packaging, Commerce should also classify transparent adhesive tape and hot melt glue as part of SKY's packaging costs, and hot melt glue and iron wire as Wuyi Xilinde's, and include those costs in the respondents' cost of manufacturing.

SKY's Rebuttal Comments:⁹⁰

- Even if the cartons are re-used by the intermediate user, the sealing tape and the hot glue would likely be removed and replaced by the intermediate user in the process of inspecting and filling the cylinders prior to their shipment to the final customers. Accordingly, the adhesive sealing tape and the hot melt glue are nothing more than ordinary packing materials and Commerce should continue to classify them as such in the final determination.

Wuyi Xilinde's Rebuttal Comments:⁹¹

- For the final determination, Commerce should treat Wuyi Xilinde's carton packing material as packing costs as initially reported, and, consistent with this decision, continue to classify hot melt glue and iron wire inputs as packing costs rather than treating them as part of the cost of manufacturing.

Commerce's Position: As noted above, Commerce continues to find that both SKY's and Wuyi Xilinde's carton boxes serve a number of functions beyond shipping, and as such, the cartons are an integral part of the subject merchandise because they are inescapably purchased with the

⁸⁹ See Petitioner's Wuyi Case Brief at 13-15.

⁹⁰ See SKY's Rebuttal Brief at 4-5.

⁹¹ See Wuyi Xilinde's Rebuttal Brief at 2-4.

subject merchandise by the ultimate consumer. Accordingly, they are properly classified as packaging expenses and included in the cost of production. Also at issue is whether various auxiliary materials, including adhesive tape, hot melt glue, and iron wire, used to seal the cartons, should similarly be classified as packaging. The petitioner argues that, since iron wire, hot glue, and adhesive tape are materials that make up SKY's and Wuyi Xilinde's finished carton, they too should be treated as packaging because they are an integral part of the subject merchandise and inescapably purchased with the subject merchandise by the ultimate consumer.⁹² We disagree.

In the *Preliminary Determination*, we classified these auxiliary materials as packing costs. For the final determination, we are continuing to determine that adhesive tape, hot glue, and iron wire are components of packing, not packaging costs. Comments provided to the record describe the downstream shipment/reshipment process as follows: “{non-refillable cylinders} typically are packaged in an unsealed cardboard carton specified by the customer. These cartons are purchased by the {non-refillable cylinder's} customers from corrugated-cardboard suppliers and shipped directly to the {non-refillable cylinder} producer's facilities. The customer later fills the cylinders while in the carton and seals the box prior to shipment.”⁹³ For example, as the packaged cylinders make their way through the shipment process, SKY notes the adhesive tape and hot glue used to seal its cartons are removed and replaced by the intermediate user during the process of filling the cylinders for shipment to the final end-user.⁹⁴ Similarly, Wuyi Xilinde notes that it uses iron wire and hot glue to seal its carton boxes before beginning a two-part shipment process.⁹⁵ First, the cylinder is shipped from Wuyi Xilinde to its customer, a U.S. manufacturer of refrigerants in a carton containing the refrigerant manufacturer's logo. The U.S. manufacturer fills the cylinder with refrigerants, and then using the same carton, the cylinder is shipped to the ultimate consumer in the United States.⁹⁶

As such, the record does not support that the adhesive tape, hot melt glue, and iron wire inputs are an integral part of the subject merchandise, as – unlike with the carton inputs – they are applied expressly to pack the carton and cylinder for shipment, are removed and discarded, or otherwise replaced by other generic packing materials as the product is received by the respondents' immediate customer, filled, and sold downstream to the ultimate consumer. The determination with respect to the carton, as discussed above, is reliant on record evidence demonstrating that the carton is retained by the immediate customer, through to the end user, and throughout the lifecycle of the cylinder itself as a best practice. The cartons, thus, are an integral

⁹² See Petitioner's SKY Rebuttal Brief at 10.

⁹³ See Petitioner's Letter, “Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Comments Concerning the Response Of Wuyi Xilinde Machinery Manufacture Company Limited To Section D Of The Antidumping Questionnaire,” dated July 30, 2020 at Attachment I (containing ITC's Preliminary Report, page I-14).

⁹⁴ See SKY's Rebuttal Brief at 5.

⁹⁵ See Wuyi Xilinde's Letter, “Non-Refillable Steel Cylinders from the People's Republic of China: Submission of Wuyi Xilinde Machinery Manufacture Co., Ltd.'s Section D Response and Cost Reconciliation,” dated July 16, 2020 (Wuyi Xilinde's DQR) at Exhibit D-4.

⁹⁶ See Petitioner's Letters, “Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Comments Concerning the Response Of Wuyi Xilinde Machinery Manufacture Company Limited To Section D Of The Antidumping Questionnaire,” dated July 30, 2020 at Attachment I (containing ITC's Preliminary Report, page I-14); see also Petitioner's C&D Rebuttal Information Wuyi Xilinde at Attachments 1-4; and Petitioner's C&D Rebuttal Information SKY.

part of the subject merchandise inescapably purchased with the subject merchandise by the ultimate consumer.⁹⁷ No such record evidence exists to suggest that the adhesive tape, hot melt glue, and iron wire inputs constitute an integral component of subject cylinders and exist only to pack the product for shipment. Rather, the record reflects that such inputs are “ordinary” packing materials used to prepare merchandise for shipment and used only for that purpose. Accordingly, Commerce continues to treat the adhesive tape and hot melt glue used by SKY, and the hot melt glue and iron wire used by Wuyi Xilinde as packing inputs.

Though not expressly briefed by parties, we note that our *Preliminary Determination* classified packing labor along with cartons as a packaging expense. Our review of the instant issue with respect to the auxiliary packing materials has compelled reconsideration of the treatment of packing labor. In particular, we find that, as with the auxiliary materials, the labor itself constitutes packing, and not packaging, labor. In other words, there is nothing on the record to indicate that the process of packing the carton differs from that required to pack a standard carton that Commerce would treat as a packing material nor that the packing labor itself imparts any essential character to the merchandise (*i.e.*, the only packing component shown to be extraordinary such as to impart essential characteristics to subject merchandise is the carton itself). Accordingly, we have removed packing labor from the packaging component of cost of manufacture and included it along with the auxiliary materials in the separate calculation of packing.⁹⁸

Comment 8: Factor of Production for Code-Spurting Ink

Petitioner’s Comments:⁹⁹

- In the *Preliminary Determination*, Commerce valued SKY’s code-spurting oil-based ink input using the average unit value of imports under HTS category 3215.90 (“Ink, other than printing”). However, evidence on the record indicates that the FOP reported as code-spurting oil-based ink is, in fact, used for printing.
- In the final determination, Commerce should value SKY’s code-spurting oil-base ink FOP using the average unit value for imports under HTS category 3215.11 (“Printing ink, black”).

⁹⁷ See Petitioner’s Letters, “Non-Refillable Steel Cylinders from the People’s Republic of China – Petitioner’s Comments Concerning the Response Of Wuyi Xilinde Machinery Manufacture Company Limited To Section D Of The Antidumping Questionnaire,” dated July 30, 2020 at Attachment I (containing ITC’s Preliminary Report, page I-14); see also Petitioner’s Letter, “Non-Refillable Steel Cylinders from the People’s Republic of China – Petitioner’s Supplemental Comments Regarding The Department’s Upcoming Preliminary Determination,” dated October 1, 2020; and “Non-Refillable Steel Cylinders from the People’s Republic of China – Petitioner’s Comments Concerning Wuyi Xilinde Machinery Manufacture Company Limited’s Supplemental Section C and D Questionnaire Response,” dated September 10, 2020 (Petitioner’s C&D Rebuttal Information) at Attachments 1-4.

⁹⁸ See Memorandum, “Antidumping Duty Investigation of Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Final Determination Margin Calculation for Wuyi Xilinde Machinery Manufacture Co., Ltd.,” dated concurrently with this memorandum (Wuyi’s Final Analysis Memo); see also SKY’s Final Analysis Memo.

⁹⁹ See Petitioner’s SKY Case Brief at 8-9.

SKY's Rebuttal Comments:¹⁰⁰

- The petitioner is incorrect. The description of the product used is “code-spurting” ink. SKY’s description of this input on the record reflects this ink has special properties and is more than printing ink. Accordingly, it is properly classified under HTS category 3215.90 (“Ink, other than printing”).

Commerce’s Position: The issue is whether the SKY’s input, “code-spurting oil-based ink,” is properly classified under HTS 3215.90 for “Inks, other than printing ink” or HTS 3125.11 for “Printing ink, black.” In the *Preliminary Determination*, we valued SKY’s code-spurting oil-based ink (COINK) by using HTS number 3215.90, which is defined as “inks, other than printing ink.” For the final determination, we have re-examined the record evidence and find that the FOP reported by SKY as code-spurting oil-based ink is in fact used for printing. SKY identifies the code-spurting oil-based ink as “Hitachi IJ Printer ink, type TH-18/S 1018,” and stated that “[t]he material is used for printing.”¹⁰¹ Record evidence also indicates that SKY used this ink to print product information on the subject merchandise.¹⁰²

SKY argues that “code-spurting” ink is “more than” printing ink, but fails to substantiate its claim with record evidence.¹⁰³ There is nothing on the record to indicate that “code-spurting” involves a non-printing application of ink. On the contrary, SKY clearly explained that this ink is “used for printing.”¹⁰⁴ Accordingly, we find that HTS number 3215.11 is a more accurate HTS number for the valuation of SKY’s COINK factor of production and have used Malaysian price data for imports under HTS 3215.11 to value SKY’s input for the final determination.¹⁰⁵

Comment 9: Selection of the Port of Haimen or Ningbo as the Closest Port

SKY's Comments:¹⁰⁶

- SKY initially reported the distance to the closest port of Haimen as the cap for distance applicable to the calculation of freight for FOPs. In response to Commerce’s request, SKY revised this reported distance to reflect the distance to the port of Ningbo (*i.e.*, the international container port used for export sales). However, for the final determination, Commerce should use the distance to the port of Haimen, as initially reported.
- The language of the questionnaire is clear: “Report the distance in kilometers from the plant to the nearest port where the plant can receive supplies shipped in international containers.” The record reflects that the port of Haimen fits this standard.
- It is factually and legally incorrect to reject the use of Haimen as the closest port to SKY; the standard for the closest port is not the closest port used by SKY for export sales

¹⁰⁰ See SKY’s Rebuttal Brief at 4.

¹⁰¹ See SKY’s Letter, “Certain Non-Refillable Steel Cylinders from China; A-570-126; Response to Department’s Supplemental Section D Questionnaire issued on September 24, 2020,” dated October 5, 2020 (SKY October 5, 2020 SDQR) at Exhibits SD-6(a) and 25D-10.

¹⁰² *Id.* at Exhibit SD-6(a).

¹⁰³ See SKY’s Rebuttal Brief at 4.

¹⁰⁴ See SKY October 5, 2020 SDQR at Exhibits SD-6(a) and 25D-10.

¹⁰⁵ See SKY’s Final Analysis Memorandum.

¹⁰⁶ See SKY’s Case Brief at 8-9.

during the POI, it is the closest port where SKY can receive an international container. Haimen was the closest port where SKY could receive an international container.

- U.S. Customs expressly includes as international ports multiple locations that receive international containers but are not “deep-water” ports. Though Haimen is not a “deep-water international seaport,” it is still a container port with the ability to receive international containers from vessels that use the port.¹⁰⁷
- Further, Haimen has been a category 1, “Foreign Trade port,” since 2014, and the International Maritime Organization designates Haimen as a seaport, and states that this port includes a terminal for bulk carriers, container ships, and cargo ships.

Petitioner’s Rebuttal Comments:¹⁰⁸

- SKY failed to demonstrate on the record that the port of Haimen can receive international containers. Record evidence indicates that Haimen is used by ships under Chinese flag on domestic maritime routes between Chinese ports, not for international container traffic.

Commerce’s Position: Commerce’s practice, when the surrogate value for material is based on import prices, is to use the shorter of the reported distance, or the distance from the nearest port to the producer, to value the transportation of materials in the surrogate country.¹⁰⁹ As noted by SKY, our questionnaire requests that respondents report the closest port which “can receive supplies shipped in international containers.”¹¹⁰ This port is also referred to as the “*Sigma* port.” The response submitted by SKY on Haimen shows that the port has the capability to receive international containers: “The Haimen seaport was approved as foreign trade port in 2014 treated as the port in category 1.”¹¹¹

The petitioner did not contest the information provided by SKY showing it to be an active container port, which was approved for international traffic but, rather, provided information demonstrating that the Port of Haimen is used by ships under Chinese flag on domestic maritime routes between Chinese ports.¹¹² The petitioner’s information indeed shows only Chinese-flag departures and arrivals; however, this information only reflects one month of the POI and does not refute the information that the port itself has the potential to receive (*i.e.*, “can receive”) international shipments, whether or not it actually does receive such shipments in the normal course of business.

In *OTR Tires 2012-2013*, Commerce used the respondent’s reported distance from the factory to the closest commercial port as the *Sigma* cap distance, though “{t}he record also demonstrat{ed} that {the respondent’s} ME input purchases and finished good exports predominantly transit

¹⁰⁷ See SKY’s Case Brief at 9 (citing to Exhibit DS-35 of SKY’s Supplemental Questionnaire Response of September 4, 2020 (SKY Sept. 4 SQR).

¹⁰⁸ See Petitioner’s SKY Rebuttal Brief at 11-12.

¹⁰⁹ See *Sigma Corp v. United States*, 117 F.3d 1401 (Fed. Cir. 1997) (*Sigma*); see also *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) (*OTR Tires 2012-2013*), and the accompanying IDM at Comment 16.

¹¹⁰ See Commerce’s Letter, “Antidumping Duty Questionnaire,” dated May 26, 2020.

¹¹¹ See SKY Sept. 4, 2020 SQR at Exhibit DS-35.

¹¹² See Petitioner’s Letter, “Certain Non-Refillable Steel Cylinders from China — Petitioner’s Comments on SKY’s Supplemental Section D Questionnaire Response,” dated September 21, 2020 at 6 and Attachment 5.

through a different port (or ports), which is (are) at a greater distance from {the respondent's} factory," and the petitioners in that proceeding contended that the latter was the more appropriate distance.¹¹³ The petitioners challenged Commerce's decision, but it was sustained by the Court.¹¹⁴

Finally, the court rejects Titan's and the USW's vague assertion that the Department's decision not to adopt their suggestion on GTC's freight costs was "otherwise not in accordance with the law." Because the statute and the regulations are silent on how Commerce is to determine freight distances when calculating surrogate freight costs for a respondent's nonmarket economy input purchases, the court considers the Department's decision according to an abuse of discretion standard. The court discerns no violation of law in the Department's decision not to depart from its standard methodology in the circumstance presented.¹¹⁵

We find that SKY has provided reliable information that Haimen meets the *Sigma*-port standard. Accordingly, we find Haimen is the closest *Sigma* port and have changed the margin calculation for SKY to cap relevant freight expenses at the distance from SKY to Haimen in the final determination.¹¹⁶

Comment 10: Treatment of Argon and Carbon Dioxide Welding Materials

Wuyi Xilinde's Comments:¹¹⁷

- Wuyi did not include FOPs for argon and carbon dioxide materials consumed in the welding of subject merchandise in its initial reporting. Subsequent to the *Preliminary Determination*, Commerce requested, and Wuyi Xilinde provided, consumption information for these inputs to be included in the calculation of normal value for the final determination. However, the classification of these materials as factory overhead and not raw material or energy inputs was correct, and Commerce should not include argon and carbon dioxide inputs in the build-up of Wuyi Xilinde's normal value for the final determination.
- Argon and carbon dioxide are used to protect the welded products and the welding machines from damage through overheating during the welding process of joining the valve and handle onto the upper cylinder body. These materials are not physically incorporated into the finished cylinder.
- The consumption of argon and carbon dioxide gases were booked in the sub-ledger for "factory overhead-gas" in Wuyi Xilinde's internal record-keeping. As these materials are treated as overhead in Wuyi Xilinde's normal course of business, Commerce should continue to treat them as factory overhead, rather than as raw materials or direct energy inputs, because they are not incorporated into the subject merchandise through the production process.

¹¹³ See *OTR Tires 2012-2013 IDM* at Comment 16.

¹¹⁴ See *China Mfrs. Alliance, LLC v. United States*, 205 F. Supp. 3d 1325 (CIT 2017).

¹¹⁵ *Id.* at 1364.

¹¹⁶ See SKY Final Analysis Memorandum.

¹¹⁷ See Wuyi's Case Brief 4-5; see also Wuyi's Rebuttal Brief at 4-6.

- Both argon and carbon dioxide gases act similar to lubrication used to prevent overheating of machinery. As noted by Charles Horngren in *Cost Accounting, A Managerial Emphasis* (2002), lubricants are commonly defined as an indirect manufacturing cost.
- Overhead expenses were fully taken into account through the application of the overhead component of the surrogate financial ratios (overhead, SG&A and profit) that were applied to total manufacturing costs. The inclusion of overhead items as either raw material or energy inputs would result in the double-counting of overhead expenses.

Petitioner’s Rebuttal Comments:¹¹⁸

- Wuyi Xilinde argues that these inputs should not be separately valued because they are indirect materials that are not physically incorporated into the final product. The separate valuation of an input, however, depends on the content of the surrogate factory overhead; physical incorporation of that input into the final product is not dispositive.
- In the instant case, the financial statements of CN Asia, KKB, and Siraga, which were used to determine a surrogate value for factory overhead, show that their factory overhead only includes depreciation and rental expenses; thus, material or consumables (whether direct or indirect) are not part of the reported surrogate factory overhead.
- Because Wuyi Xilinde’s argon and carbon dioxide inputs are not a part of the reported surrogate factory overhead, Commerce should separately value the argon and carbon dioxide inputs in its final determination.

SKY’s Rebuttal Comments:¹¹⁹

- In the *Preliminary Determination*, Commerce did not treat the argon and carbon dioxide inputs used by SKY as overhead. If Commerce continues to treat these inputs as overhead for Wuyi Xilinde, it should also treat such inputs as overhead for SKY. If Commerce does not change the treatment of these inputs for SKY, then Wuyi Xilinde’s position is also wrong, and they must be treated as inputs for Wuyi Xilinde and not overhead.

Commerce’s Position: As an initial matter, we disagree with Wuyi Xilinde’s claim that argon and carbon dioxide welding inputs should not be appropriately classified as energy inputs or raw material FOPs.¹²⁰ The treatment of such gases as direct raw material or energy inputs is normal practice in dumping cases for products involving welding processes. For example, in *Steel Propane Cylinders from China*, concerning very similar merchandise, both argon gas and carbon dioxide were classified as energy inputs in initial reporting by both respondents and were included in the resulting NV build-up for the margin calculation.¹²¹ Indeed, in the instant case the other respondent in this investigation, SKY, reported such materials as FOPs in its initial reporting.¹²² Notably, Wuyi Xilinde cites to no precedent where Commerce declined to include welding gases in the NV calculation.

¹¹⁸ See Petitioner’s Wuyi Brief at 3 and 8-13.

¹¹⁹ See SKY’s Rebuttal Brief at 5.

¹²⁰ *Id.*

¹²¹ See *Propane Cylinders from China* IDM at Comment 4.

¹²² See SKY’s Letter, “Section D of the Initial Questionnaire of Sanjiang Kai Yuan Co., Ltd,” dated June 9, 2020 at 17.

Wuyi Xilinde asserts that both argon and carbon dioxide gases act similar to lubrication used to prevent overheating of machinery and should be considered an indirect manufacturing cost rather than energy-related FOPs. We disagree. Argon and carbon dioxide gases are used to protect the welded products, in addition to the machinery, from damage.¹²³ While these gases are not physically and chemically incorporated into the merchandise, the weld itself is a physical characteristic directly incorporated into subject merchandise during the production process, and argon and carbon dioxide are inputs to the welding process.¹²⁴ As such, these materials are not analogous to overhead materials such as machine oil (an auxiliary material applied to the machinery which manufactures the merchandise and not consumed in direct production) but, rather, akin to energy inputs such as steam or electricity, which are not themselves physically incorporated into the merchandise but nonetheless essential inputs directly related to the production of the merchandise.

Further, we agree with the petitioner that neither how materials are classified in a respondent's own record-keeping, nor whether such inputs are physically incorporated into the final product,¹²⁵ are relevant considerations in considering whether such inputs should be considered as factors of production. Wuyi Xilinde is correct that it would be inappropriate to double-count FOPs where they are otherwise valued by (and cannot be separated from) components of surrogate financial ratio calculations. However, Wuyi Xilinde's assertion that such items are separately accounted for in the surrogate financial ratio calculations in this case is incorrect. Commerce used the 2019 audited public financial statements of CN Asian, KKB, and Siraga, producers of comparable merchandise in Malaysia, to value factory overhead.¹²⁶ The overhead component of these financial statements is inclusive only of depreciation and rental expenses, not indirect material costs; thus, we do not agree with Wuyi Xilinde that such inputs are already included in the factory overhead ratio, and would be double-counted if separately valued at the final determination.¹²⁷

Since these gases were consumed during the production process and the surrogate overhead ratio does not otherwise include indirect material expenses, we have included argon and carbon dioxide factors of production in the calculation of Wuyi Xilinde's margin for the final determination.¹²⁸

¹²³ See Wuyi's PPSQR at 1-2.

¹²⁴ See Wuyi Xilinde's DQR at Exhibit D-2.

¹²⁵ See *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying IDM at Comment 6.

¹²⁶ See Memorandum, "Antidumping Duty Investigation of Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Results Margin Calculation for Wuyi Xilinde Machinery Manufacture Co., Ltd.," dated October 23, 2020 at Attachment 1.

¹²⁷ See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61976 (November 20, 1997) (Commerce valued industrial gases, used in steelmaking, as direct energy inputs after determining that these gases had not been already accounted for within surrogate factory overhead costs, so no double-counting of costs had occurred).

¹²⁸ See Wuyi's Final Analysis Memo.

Comment 11: Correction of Movement Expenses

Petitioner's Comments:¹²⁹

- Commerce made a ministerial error pursuant to 19 CFR 351.224(f) by failing to convert Wuyi Xilinde's U.S. domestic inland freight and brokerage and handling expenses from a dollar amount per-kilogram, to a dollar amount per-cylinder. To correct this error in the final determination, Commerce should convert the movement expenses from a per-kilogram basis to a per-cylinder basis before subtracting it from the per-cylinder U.S. gross unit price.

No other interested party provided comment on this issue.

Commerce's Position: We agree that Commerce inadvertently failed to convert Wuyi Xilinde's U.S. movement expenses from a per-kilogram dollar amount to a per cylinder dollar amount in our margin calculation, resulting in a ministerial error within the meaning of 19 CFR 351.224(f), resulting "from inaccurate copying, duplication, or the like." Accordingly, as previously noted in our December 4, 2020 memorandum,¹³⁰ we have corrected this error in the final determination.¹³¹

Comment 12: Paint Factor of Production for Paint Dissolved in Organic Solvent

Petitioner's Comments:¹³²

- Commerce valued Wuyi's paint factor of production using the Malaysian import average unit value for paint dissolved in water. Record evidence shows, however, that Wuyi Xilinde uses paint dissolved in organic solvent or a nonaqueous medium. According to Section D of Wuyi Xilinde's initial questionnaire, Wuyi Xilinde uses organic solvent to dilute its paint sprayed on the cylinder, as well as for cleaning purposes. Since Wuyi Xilinde dilutes its paint input with solvent, the paint must also be in an organic solvent medium.
- Global Trade Atlas describes HTS number 3209.10 as: "Paints And Varnishes (Including Enamels And Lacquers) Based On Synthetic And Other Polymers In An Aqueous Medium, Based On Acrylic Or Vinyl Polymers." However, HTS number 3208.20 (for paint in a nonaqueous medium) is the more appropriate HTS number to value Wuyi Xilinde's paint factor of production than HTS number 3209.10 (for paint in an aqueous medium).
- In the final determination, Commerce should modify the Harmonized Tariff Schedule (HTS) value associated with Wuyi Xilinde's paint FOP from HTS number 3209.10, for paint dissolved in water (*i.e.*, an aqueous medium), to HTS number 3208.20, for paint dissolved in organic solvent (*i.e.*, in a non-aqueous medium).

No other interested party provided comment on this issue.

¹²⁹ See Petitioner's Wuyi Rebuttal Brief at 4-6.

¹³⁰ See Ministerial Error Memorandum at 3.

¹³¹ See Wuyi Final Analysis Memo.

¹³² See Petitioner's Wuyi Rebuttal Brief at 6-8.

Commerce’s Position: In the *Preliminary Determination*, we valued Wuyi Xilinde’s reported FOP for paint using Malaysian data for imports under HTS 3209.10 (“Paints And Varnishes (Including Enamels And Lacquers) Based On Synthetic And Other Polymers In An Aqueous Medium, Based On Acrylic Or Vinyl Polymers”). We note that in its initial Section D response, Wuyi Xilinde notes that it uses organic solvent to dilute its paint sprayed on the cylinder,¹³³ as well as for cleaning purposes, which is properly valued under HTS 3208.20.¹³⁴ Therefore, we agree with the petitioner that, import data for HTS 3208.20 (for paint in a nonaqueous medium) is the more appropriate HTS category to value this FOP for the final determination. Accordingly, we have used Malaysian price data for imports under HTS 3209.20 to value Wuyi’s paint factor of production for the final determination.¹³⁵

Comment 13: Shipment Date Adjustment

Petitioner’s Comments:¹³⁶

- Wuyi Xilinde misreported the shipment date of one of its sales. For the final determination, Commerce should adjust the reported shipment date so that the correct daily exchange rate may be used in connection with that sale.

No other interested party provided comment on this issue.

Commerce’s Position: Commerce agrees with the petitioner’s request to adjust the reported shipment date of Wuyi Xilinde’s sale, as does Wuyi Xilinde, citing an inadvertently misreported shipment date.¹³⁷ As such, we have adjusted the shipment date for the sale identified in the calculation of Wuyi Xilinde’s margin.¹³⁸

Comment 14: Separate Rate Request

Hangzhou JM’s Comments:¹³⁹

- Commerce should continue to assign Hangzhou JM a separate rate in this proceeding.

No other interested party provided comment on this issue.

Commerce’s Position: We found Hangzhou JM to be eligible for a separate rate in the *Preliminary Determination*.¹⁴⁰ No information has since been provided that would compel

¹³³ See Wuyi Xilinde’s DQR at Exhibit D-2 (“Stage 7. Coating: Hang the cylinder on the spray table for coating. Paint and solvent mixed and sprayed on the surface of the cylinder. Water is used to clean up not-sprayed paint and prevent paint from sticking to the equipment on this stage.”)

¹³⁴ See Wuyi Xilinde’s DQR at Exhibit D-4 (“PAINT” variable’s description, “containing CH₃COO(CH₂)₃CH₃, (C₃H₆N₆CH₂O)_x, and (C₃H₄O₂)_n, used to beautify the products and as erosion resistant coating,” and the “SOLVENT” variable’s description, “containing CH₃CH(CH₃)CH₂CH₂OOCCH₃, used to dilute the paint and clean the machine.”)

¹³⁵ See Wuyi’s Final Analysis Memo at Attachment 1 (“Surrogate Value Spreadsheet”).

¹³⁶ See Petitioner’s Wuyi Rebuttal Brief at 15.

¹³⁷ See Wuyi’s VQR at 6.

¹³⁸ See Wuyi’s Final Analysis Memo.

¹³⁹ See Hangzhou JM’s Case Brief at 2.

¹⁴⁰ See “Separate Rates” section of the PDM.

Commerce to reconsider this finding, nor has any party contested this finding. Accordingly, we continue to assign Hangzhou JM a separate rate in this proceeding.

VIII. RECOMMENDATION

We recommend approving all of the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree

3/15/2021

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance